

# 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.)

Prepared By: Health Care Committee

BILL: CS/SB 1330

INTRODUCER: Children and Families Committee and Senator Fasano

SUBJECT: The Department of Elderly Affairs

DATE: April 6, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Goltry</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Garner</u>	<u>Wilson</u>	<u>HE</u>	<u>Favorable</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>HA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill authorizes the Department of Elderly Affairs (DOEA or department) to terminate a contract with an Area Agency on Aging (AAA or area agency) for administration of state-funded aging programs if at least 90 days after sanctioning the agency, the agency has failed to plan, fund, or administer these programs and services. If a contract is terminated pursuant to this authority, DOEA must contract with another entity to administer the state-funded programs and services or may directly provide the program or service for a time-limited, but unspecified, period of time. Within 180 days after the termination of the contract, DOEA must begin a competitive procurement process to replace the area agency. The AAAs would retain responsibility for programs funded through the federal Older Americans Act. After July 1, 2006, any contract or referral agreement between an area agency and a lead agency must be assignable to DOEA and, subsequently, to a competitively procured entity.

This bill amends s. 430.04, Florida Statutes.

## II. Present Situation:

The department is created in s. 20.41, F.S. This section directs the department to plan and administer its programs and services through planning and service areas (PSAs). The department is designated as the state unit on aging as defined in the federal Older Americans Act of 1965, as amended. Chapter 430, F.S., provides the duties, purposes and responsibilities of DOEA, its subcontractors, and other agencies that administer programs for the elderly in Florida.

Among the statutorily stated purposes of DOEA is serving as the “primary state agency responsible for administering human services programs for the elderly and for developing policy recommendations for long-term care,” (to) “recommend state and local level organizational

models for the planning, coordination, implementation, and evaluation of programs serving the elderly population” and (to)“oversee implementation of federally funded and state funded programs and services for the state’s elderly population.”<sup>1</sup>

The department is required to prepare a master plan for policies and programs in the state relating to aging which must identify and assess the needs of persons who are elderly across a range of areas such as housing, medical care, long term care, transportation, and social services. Each major program relating to aging must be reviewed every three years and the plan updated at that time.<sup>2</sup>

Contractual agreements to implement the department’s programs are executed at three levels: 1) contracts between DOEA and the AAAs for each major program; 2) contracts between the AAAs and lead agencies and/or service providers; and 3) contracts between lead agencies and local service providers. According to the 2005 monitoring report, in calendar year 2004, programs for which the AAAs had administrative and fiscal oversight responsibilities (including Medicaid spending authority) amounted to approximately \$270 million dollars in annual contract awards.

During Fiscal Year 2005-06, the Legislature appropriated over \$367 million to the department, with state general revenue funds accounting for 40 percent of the total appropriations and 60 percent coming from federal trust funds. Since 1998, the number of consumers served by programs administered by the department has increased by 43 percent. Approximately 49 percent of the department’s budget goes to services provided primarily by not-for-profit agencies and local governments.<sup>3</sup>

### **Older Americans Act of 1965**

The federal Older Americans Act (OAA) of 1965 provides funding to states for a range of community planning and service programs to older persons at risk of losing their independence. Since its enactment, the OAA has been amended fourteen times to expand the scope of services, increase local control and responsibility, and add more protections for the elderly. Federal law authorizes the use of OAA funds to the state for services including:

- Supportive services;
- Congregate meal services;
- Home delivered meal services;
- In-home services;
- Ombudsman services;
- Special needs services;
- Elder abuse services;

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<sup>1</sup> S. 430.03(1), F.S.

<sup>2</sup> S. 430.04, F.S.

<sup>3</sup> Department of Elderly Affairs, *Summarizing the Department of Elder Affairs Monitoring Activities of Area Agencies on Aging 2005*, January 2005.

- Preventive health services; and,
- Outreach services.<sup>4</sup>

To develop and implement this array of OAA services, a system of federal, state, and local agencies known as the aging network was established. The aging network consists of the U.S. Administration on Aging, 56 State and Territorial Agencies or Units on Aging, 650 Area Agencies on Aging, 240 Title VI Native American aging programs, and over 30,000 service provider organizations. This network is the infrastructure of the nation's home and community-based long-term care system offering support to older persons and persons with disabilities.<sup>5</sup>

### **Area Agencies on Aging**

In accordance with the OAA, the department is required to designate and contract with AAAs in each of the service areas. Each AAA must ensure a coordinated and integrated provision of long-term care services to elderly persons and must ensure the provision of prevention and early intervention services.

The AAAs operate as 501(c)(3) public and private funded non-profit corporations. The department is required to contract with the governing body (the board) of the AAA to fulfill programmatic and funding requirements. The board is responsible for the overall direction of the agency's programs and services and must ensure that the agency is administered in accordance with the terms of its contract with the department, legal requirements, established agency policy, and effective management principles. The AAA board, in consultation with the secretary of DOEA, must appoint a chief executive officer to whom shall be delegated responsibility for agency management and for implementation of board policy and who is held accountable for the agency's performance.

There are currently 11 area agencies in the state. The AAAs serves as the advocate for elders within each PSA. Under Title III of the OAA, the AAAs must plan and coordinate programs and services for seniors and are required to:

- Administer a Nutrition Program;
  - Congregate and Home Delivered Meals
  - Nutrition Education Activities
- Offer Access and Support Services;
  - Transportation,
  - In-Home Services,
  - Information and Referral Assistance,
  - Outreach/Advocacy,
  - Case Management,
  - Legal Services,
  - Family Caregiver Support;
- Provide Disease Prevention/Health Promotion Activities; and

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<sup>4</sup> 45 CFR 1321.63.

<sup>5</sup> National Association of Area Agencies on Aging, *The Road to Reauthorization, Reauthorization of the Older Americans Act, 2005 Toolkit*, [http://www.n4a.org/pdf/OAA\\_Toolkit\\_One\\_Page\\_Fact\\_Sheet.pdf](http://www.n4a.org/pdf/OAA_Toolkit_One_Page_Fact_Sheet.pdf) (last visited on April 6, 2006)

- Provide Information/Education about the Prevention of Elder Abuse.<sup>6</sup>

The AAAs also provide program oversight for DOEA at the local level. For example, DOEA has contractual agreements with the AAAs to oversee the Medicaid Aged/Disabled Adult waiver and the Medicaid Assisted Living for the Elderly waiver. In Florida, AAAs also administers the federally funded Emergency Home Energy Assistance for the Elderly program, as well as the state funded Community Care for the Elderly, Alzheimer’s Disease Initiative, and Home Care for the Elderly programs.

Under s. 430.04(2), F.S., DOEA is responsible for ensuring that each AAA operates in a manner to ensure that elderly Floridians receive the best services possible. The department is required to rescind designation of an area agency or take intermediate measures against the agency, including corrective action, unannounced special monitoring, temporary assumption of operation of one or more programs by DOEA, placement on probationary status, imposition of a moratorium on agency action, imposition of financial penalties for nonperformance, or other administrative action pursuant to ch. 120, F.S., if the department finds any of the following have occurred:

- An intentional or negligent act of the agency has materially affected the health, welfare, or safety of clients, or substantially and negatively affected the operation of an aging services program.
- The agency lacks financial stability sufficient to meet contractual obligations or that contractual funds have been misappropriated.
- The agency has committed multiple or repeated violations of legal and regulatory requirements or department standards.
- The agency has failed to continue the provision or expansion of services after the declaration of a state of emergency.
- The agency has exceeded its authority or otherwise failed to adhere to the terms of its contract with the department or has exceeded its authority or otherwise failed to adhere to the provisions specifically provided by statute or rule adopted by the department.
- The agency has failed to properly determine client eligibility as defined by the department or efficiently manage program budgets.
- The agency has failed to implement and maintain a department-approved client grievance resolution procedure.

The Florida Administrative Code requires that “the State agency on aging shall withdraw an area agency’s designation in accordance with Section 305(b)(5)(c) of the Older Americans Act, as amended, whenever, after reasonable notice and opportunity for a hearing, it is determined that:

- An area agency does not meet the requirements of 45 CFR 1321 and Section 305 of the Older Americans Act as amended; or
- An area plan including amendments is not approved by the department after reasonable opportunity to comply; or

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<sup>6</sup> Ibid, page A-4.

- There is substantial failure in provisions or administration of an approved plan to comply with provisions of the Older Americans Act of 1965, as amended, the applicable federal regulations, state statute, or administrative rule.”<sup>7</sup>

Federal regulations implementing the OAA also require that the state agency on aging develop and enforce policies governing all aspects of programs operated under the OAA. Those policies must address the “manner in which the state agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness.”<sup>8</sup> The regulations also require that the state must assure in its plan that each AAA engages “only in activities which are consistent with its statutory mission as prescribed in the Act (OAA) and as specified in state policies under s. 1321.11.”<sup>9</sup> The state agency “shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing finds that an area agency does not meet the requirements of this part.”<sup>10</sup>

### **Area Agencies on Aging Monitoring Reports**

Section 430.0401, F.S., requires DOEA to submit to the Governor and the Legislature a summary of the results of monitoring of AAA activities. The report is due by January 1 of each year and must address: compliance with state and federal rules pertaining to all programs administered by the AAA; information about each area agency’s financial management of state and federally funded programs; information about each area agency’s compliance with the terms of its contracts with the department; and, a summary of corrective actions required by the department.

The process DOEA follows to comply with this requirement is a standard monitoring format with a letter of engagement, entrance conference, review of documents, policies, and procedures, site visit, and exit conference. After the completion of fieldwork, a monitoring report is provided to the AAAs with findings and recommendations, and a corrective action plan is developed. The AAAs are given a time frame in which to respond.

According to DOEA, in addition to the compliance and operational aspects of the AAA monitoring, the department views the monitoring process as a “value-added” extension of each area agency’s quality assurance. Consequently, DOEA’s monitoring and review procedures are continuously updated to not only accommodate expanded program and service delivery offerings at the AAAs but also to build upon experiences honed from prior monitoring reviews. The monitoring instrument for each AAA is appropriately revised, based upon the risk assessment associated with the audit entity. As a result, the type of monitoring the AAA receives is largely based upon the AAA’s prior year performance, the effectiveness of systems of internal controls, and the risk assessment associated with the agency. The report does not contain responses or corrective action plans from the agencies with significant findings.

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<sup>7</sup> Ch. 58A-1.005(4), F.A.C.

<sup>8</sup> 45 CFR 1321.11(b).

<sup>9</sup> 45 CFR 1321.17(1).

<sup>10</sup> 45 CFR 1321.35 (a).

The AAA monitoring report released in January 2005, covered the period from January 1, 2004, through December 31, 2004. The areas reviewed included the AAAs' systems of governance, service delivery, and use of resources, performance measures, consumer satisfaction, due process/grievance procedures, and data integrity. Also included as part of the review was an examination of the independent auditor's reports and accompanying management letters for compliance with the Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations and Florida's Single Audit Act.<sup>11</sup>

The analysis and results contained in the 2005 monitoring report generally fell within one of five major categories, which summarize reoccurring program deficiencies noted at two or more AAAs. The department's report noted common findings in the following five areas:

1. Program Governance, Oversight, and Administration
  - Low levels of Board of Directors' participation.
  - Failure to establish a quorum at board meetings to conduct agency business.
  - Failure to follow up and fully resolve prior-period findings and/or corrective actions.
  - Ineffectual sub recipient monitoring.
2. Financial Management and Internal Controls
  - Outdated or incomplete operating procedures.
  - Absence of adequate separation of duties.
  - Noncompliance with OMB guidelines by failing to follow proper protocols for accounting for and/or disposing of equipment acquired partially or completely with state or federal funds.
  - Not providing a full set of financial statements to the board of directors.
3. Contract, Program and Statutory Compliance
  - Consistent deficiencies noted for Adult Protective Services Referrals and Imminent Risk referred clients.
    - Insufficient documentation to support assertions that timely and/or adequate service was provided to clients flagged as being in danger of nursing home placement.
  - Nutrition findings.
    - Lack of signed, dated and approved menus by the AAAs' or service providers' independent dietitians.
    - Lack of training.
    - Improper food temperatures.
    - Inadequate menu substitutions.
  - Emergency home energy assistance.
    - Use of obsolete applications
    - Overpayment of benefits
  - Information and referral/elder helpline - lack of crisis intervention capabilities.
  - Co-payment - co-payment goals were not being established or enforced.

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<sup>11</sup> Department of Elderly Affairs, *Summarizing the Department of Elder Affairs Monitoring Activities of Area Agencies on Aging 2005*, January 2005.

4. Medicaid Waiver Program Deficiencies
  - Deficient case file documentation.
  - Lack of fair hearing information being provided to clients.
  - Insufficient documentation to support required Medicaid waiver specialist qualifications.
5. Legislatively-Mandated Performance Outcome Measures

There are nine, legislatively mandated performance outcome measures that attempt to gauge the overall effectiveness of programs funded through the AAAs. According to the monitoring report, although no AAA achieved all nine of the measures, five agencies met five or more of the standards. In addition, when performance fell below a particular standard, each AAA had, on the average, two measures that were within 5 percent of the mandated score. Of the nine measures, Measure #3 (percentage of elders assessed with high or moderate risk environments who improved their environment score) and Measure #9 (average time in the Community Care for the Elderly Program for Medicaid Waiver probable customers) appeared to pose the greatest challenge for achievement. Only two of the eleven AAAs in Florida achieved this outcome measure. Overall, AAAs appear to be meeting six of the nine standards on a consistent basis.<sup>12</sup>

### **Community Care for the Elderly and Lead Agencies**

Sections 430.201-430.25, F.S., are known as the Community Care for the Elderly (CCE) Act. The purpose of CCE is “to assist functionally impaired elderly persons in living dignified and reasonably independent lives in their own homes or in the homes of relatives or caregivers through the development, expansion, reorganization, and coordination of various community-based services.”<sup>13</sup> Core services under the program are defined as home-delivered services, day care services, and other basic services for functionally impaired elderly persons, which make up the CCE continuum of care and encompass a full range of preventive, maintenance, and restorative services for functionally impaired elderly persons. Core services are services needed to prevent unnecessary institutionalization and AAAs are prohibited from being a direct provider of core services.<sup>14</sup>

Each PSA in the state must develop at least one community care service system to enable functionally impaired elders to live independently in the community and prevent unnecessary nursing home placement. A “community care service system” is defined in s. 430.203, F.S., as a “service network comprising a variety of home-delivered services, day care services, and other basic services, referred to as ‘core services,’ for functionally impaired elderly persons which are provided by several agencies under the direction of a single lead agency. Its purpose is to provide a continuum of care encompassing a full range of preventive, maintenance, and restorative services for functionally impaired elderly persons.” A “lead agency” is defined in s. 430.203, F.S., as “an agency designated at least once every three years by an area agency on aging as the result of a request for proposal [RFP] process.” Guidelines for the RFP process are developed by DOEA in consultation with AAAs.

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<sup>12</sup> Ibid, page 6.

<sup>13</sup> s. 430.202, F.S.

<sup>14</sup> s. 430.203, F.S.

“In each community care service system the lead agency must be given the authority and responsibility to coordinate some or all of the services, either directly or through subcontracts, for functionally impaired elderly persons. These services must include case management, homemaker and chore services, respite care, adult day care, personal care services, home-delivered meals, counseling, information and referral, and emergency home repair services. The lead agency must compile community care statistics and monitor, when applicable, subcontracts with agencies providing core services.”<sup>15</sup> Lead agencies have provided case management services to the state’s functionally impaired elders since 1980 when the Legislature expanded the Community Care for the Elderly program statewide. Lead agencies may directly provide these services or subcontract with other providers. In essence, the lead agencies were developed specifically for the CCE program, although they now function to provide case management and services under other programs (i.e., Home Care for the Elderly and the Alzheimer’s Disease Initiative), as well.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 430.04, F.S., authorizing DOEA to terminate a contract for the administration of state funded aging programs with an area agency, if after an evaluation the agency has been found to have committed certain violations, and at least 90 days after the intermediate sanctions have been imposed on the AAA, the agency has failed to plan, fund, or administer contracts and services for state funded programs.

If a contract is terminated pursuant to this authority, DOEA must contract, in compliance with ch. 287, F.S., with another entity to administer the state funded programs. Upon termination of the contract, the department may directly provide the program or service for a limited, but unspecified period of time.

Within 180 days after the termination of the contract with an area agency, DOEA must begin a competitive procurement process. Although contracts for state funded programs would be terminated, the AAA would retain responsibility for programs funded through the federal OAA unless the agency was de-designated and federal OAA funds were subsequently contracted with another agency.

The bill also requires that after July 1, 2006, any contract or referral agreement between an area agency and a lead agency must be assignable to DOEA, who may then assign it to the new contracted administering entity.

**Section 2.** The bill takes effect July 1, 2006.

### 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.

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<sup>15</sup> S. 430.203(9), F.S.



**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 Article I, Section 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:**

According to DOEA, local government and private sector entities may be fiscally impacted to the degree that this bill would encourage competition and allow additional or different entities to provide services for Florida's elder adults.

**C. Government Sector Impact:**

The department reports that the bill would have no fiscal impact on DOEA. However, it is possible that this bill would allow for the establishment of parallel systems in the same geographic area for planning and delivery of aging network services: one through the AAAs for OAA federally funded programs, and one through another entity for state funded programs. If this occurs, it could be expected that DOEA would require additional staff to carry out the monitoring, contract management, and quality assurance activities necessary to assure that managing entities and contracted providers comply with federal and state law and regulation. Since much of the administrative structure of the AAAs is supported by federal funds, there would be additional administrative overhead for the entity to administer state funds and programs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The department reports that this legislation is necessary because they currently have insufficient authority to act when an area agency is noncompliant with state or federal requirements. However, it is unclear that this bill provides DOEA with any additional authority or remedy not already available to it.<sup>16</sup> By removing the requirement that all aging programs be administered through AAAs, the department may contract with other entities for state funded programs but OAA funds must be administered by AAAs. If an area agency is noncompliant with federal

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<sup>16</sup> See 45 CFR 1321.35 (a) and ch. 58A-1.005(4), F.A.C.

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funding requirements, the department, as the state authority on aging, is still required by federal regulation to revoke the AAA's designation.<sup>17</sup>

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>17</sup> 45 CFR 1321.35(a).

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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