

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2510

SPONSOR: Senator Diaz-Balart

SUBJECT: Rulemaking Authority of the Department of Children and Family Services

DATE: April 13, 2000 REVISED: 4/25/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 Amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

SB 2510 provides statutory authority for the Department of Children and Family Services to adopt pertinent rules relating to supported living arrangements in the developmental services program, refugee cash and medical assistance program, Medicaid eligibility determination, and the Work and Gain Economic Self-Sufficiency (WAGES) program.

This bill substantially amends sections 393.066, 409.919, 409.953, 414.085, 414.095, 414.13, and 414.15, of the Florida Statutes.

II. Present Situation:

Section 120.74, F.S., requires that each state agency review and revise its rules as often as necessary to ensure that its rules are correct and comply with statutory requirements. Each agency must perform a formal review of its rules every 2 years that corrects deficiencies, deletes obsolete or unnecessary rules, and improves the overall efficiency of state agencies and the private sector.

During the Department of Children and Family Services' (department) 1999 review of rules, 18 rules were identified as requiring authorizing legislation because they exceed the rulemaking authority contained in s. 120.536, F.S. Section 120.536, F.S., specifies that an agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency has the authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Developmental Services

The rulemaking authority in s. 393.501, F.S., for the developmental services program is broad and general and does not include specific statutory authority for the department to develop rules for community-based services in regular family homes or small homes or apartments.

Medicaid Eligibility Determination

The Agency for Health Care Administration (agency) is designated the single state agency to administer the Medicaid program in accordance with 42 Code of Federal Register 431.10. The agency has, however, delegated eligibility determination activities to the Department of Children and Family Services through an interagency agreement signed on July 1, 1993, and the department has adopted 16 Medicaid eligibility rules over the past years. The agency retained all other Medicaid program responsibilities.

Chapter 99-08, L.O.F., passed by the 1999 Legislature primarily updates the name changes of the department and the agency and reassigns duties and functions within the agencies pursuant to ch. 19, F.S. The revision from *department* to *agency* was too broad and inadvertently removed the department's authority to adopt rules relative to Medicaid eligibility.

The Department is currently involved in litigation about Medicaid-related disability determinations (*Spencer v. Bush*) and must have rulemaking authority for any policy changes stemming from the litigation. Discussion about policy changes with plaintiffs is ongoing. Some agreements have been reached, and, as a result, policy statements have been issued and forms developed that must be supported in rule. Without the proper rulemaking authority, any necessary rule amendments stemming from this suit cannot be promulgated by the department. Failure to restore the department's rulemaking authority will invalidate all policies made by the department during this intervening year.

The Refugee Assistance Program

The Refugee Assistance Program provides financial and medical assistance to refugee adults and families. The program is 100 percent federally funded and is designed to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible. The department is the state agency designated under federal regulations to administer the program.

The legal basis for the Refugee Assistance Program is the U.S. Immigration and Naturalization Act and the Migration and Refugee Assistance Act of 1962. The legal basis and the rulemaking authority for administering the Refugee Assistance Program was previously included in s. 409.026, F.S. The department reports that this section of law was inadvertently repealed in s. 111, ch. 96-175, L.O.F., while transferring the public assistance provisions from ch. 409, F.S., to ch. 414, F.S.

Work and Gain Economic Self-Sufficiency (WAGES) Program

The 1996 Legislature created the Work and Gain Economic Self-Sufficiency (WAGES) program. The purpose of the program is to develop opportunities for families that provide for their needs, enhance their well-being, and support self-reliance and economic self-sufficiency. The program was based on the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193).

Section 414.45, F.S., contains the statutory provisions for the department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement and enforce the WAGES program. These provisions are broad and general specifying that the rules must provide protection against discrimination and the opportunity for a participant to request a review by a supervisor or administrator of any decision made by a panel or board of the department or the WAGES Program.

The department reports that the passage of legislation in 1996 through 1999 has been an evolution of interpreting federal laws, application of federal regulations, and creation of innovative programs to further the goals of the state and federal law. The department has adopted 21 administrative rules relating solely to the WAGES program. The department has been relying on the general rulemaking authority that is provided by s. 414.45, F.S.

Specific statutory authority is needed in ch. 414, F.S., supporting the development of rules for determining income eligibility for the WAGES program addressing at least income inclusions, income exclusions, income deductions, budgeting criteria, money management by participants, criteria for eligibility verification, and processing time frames. Criteria are also needed regarding requirements for verification of income and limitations on eligibility.

Regarding the calculation of levels of temporary cash assistance for the WAGES program, rule making authority is needed supporting criteria for types of budgeting, conversion factors, verification of income, treatment of self-employment income, treatment of child-support income, and treatment of other sources of income.

Section 414.15, F.S., includes provisions for diverting persons from the WAGES program who do not need ongoing temporary cash assistance, but, due to an unexpected circumstance or emergency situation, require some immediate assistance in meeting a financial obligation while they are securing employment or child support. These immediate obligations may include a shelter or utility payment, a car repair to continue employment, or other assistance which will alleviate the applicant's emergency financial need and allow the person to focus on obtaining or continuing employment. There is no rulemaking authority for: the administration of diversion activities or guidelines for screening, referrals to community resources, restrictions on receipt of up-front diversion and transitional services, definitions of emergency services, requirements for verification of income, and processing time frames.

III. Effect of Proposed Changes:

The provisions contained in SB 2510 will provide the department with specific rulemaking authority. Without such authority, the department is not in compliance with ch. 120, F.S., and could face legal challenges from affected individuals and possible suspension of critical benefit programs.

The bill amends s. 393.066, F.S., directing the department to adopt rules governing supported-living services which limit the number of nonrelated clients who may live in a single dwelling unit. The department may specify in rule the maximum number of supported-living dwelling units that may be located within an identifiable geographical area such as a municipal block or subdivision but may not restrict the ability of any client to choose to live in a dwelling that has more residents than the maximum number established by rule and may not restrict a client from choosing to live in a geographic area that contains more than the maximum number of supported-living dwelling units established by rule. There is no provision in the bill requiring that these dwelling units meet certain life-safety or fire-safety standards. The purpose of these rules is not clear if clients are permitted to live in a dwelling that exceeds the maximum number of clients established by rule or in a geographic area that exceeds the maximum number of units established by rule.

The bill amends s. 409.919, F.S., by adding that the department will adopt rules necessary to comply with or administer ss. 409.901-409.920, F.S., relating to Medicaid services and recipients. The only agency currently given statutory rulemaking authority for the Medicaid program is the Agency for Health Care Administration.

The bill amends s. 409.953, F.S., specifying that the department will adopt rules to administer the eligibility requirements for the refugee assistance program.

The bill amends s. 414.085, F.S., regarding income eligibility standards for the WAGES program, directing the department to adopt rules governing the administration of income eligibility and rules for income inclusions, income exclusions, income deductions, budgeting criteria, money management by participants, criteria for eligibility verification, processing time frames, and other eligibility criteria necessary for the department to administer.

The bill amends s. 414.095, F.S., regarding the calculation of levels of temporary cash assistance by directing the department to establish rules for administering the cash assistance program which may include criteria pertaining to types of budgeting, conversion factors, verification of income, treatment of self-employment income, treatment of child-support income, and treatment of other sources of income.

The bill adds subsection (20) to s. 414.095, F.S., giving the department statutory authority to adopt rules governing the administration of the WAGES program which may include criteria for verifying income and placing limitations on eligibility.

The bill amends s. 414.15, F.S., by specifying that the department may adopt rules governing the administration of the WAGES diversion program and may establish guidelines for screening, referrals to community resources, restrictions on receipt of up-front diversion and transitional services, definitions of emergency services, verification requirements, and processing time frames.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There will be minimal staff costs and expenses to the department associated with the adoption of rules under SB 2510.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1336, which was reported favorably by committee, also grants the Department of Children and Family Services the statutory authority to adopt rules necessary to administer its responsibilities of receiving and processing applications for Medicaid and determining Medicaid eligibility.

VIII. Amendments:

1 by Children and Families:

Removes Section 1 of the bill that pertains to supported living services for persons who are developmentally disabled. The amendment also provides conforming language to SB 1336 regarding Medicaid eligibility determination.

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