

# 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/CS/SB 1280

SPONSOR: Appropriations Committee, Children and Families Committee and Senator Peadar

SUBJECT: The Medicaid Program

DATE: April 20, 2004

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AHS</u>	<u>Withdrawn</u>
3.	<u>Fabricant</u>	<u>Coburn</u>	<u>AP</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill removes the developmental disabilities program from the Department of Children and Family Services (the department or DCF) and establishes the Agency for Persons with Disabilities (the agency or APD). The new agency is to be administratively housed within the department but established as a separate budget entity not subject to the control, supervision, or the direction of the department.

The director of the agency is to be appointed by the Governor to administer the affairs of the agency and is authorized to hire staff within available resources.

The agency has responsibility for the provision of all services for persons with developmental disabilities pursuant to chapter 393 of the Florida Statutes. However, fiscal management of the home and community-based waiver services will be managed by the Agency for Health Care Administration (AHCA). The new agency will retain the fiscal and programmatic management of the developmental disabilities institutions and those community-based services currently funded by general revenue.

Effective October 1, 2004, the developmental disabilities program and the developmental disabilities institutions programs in the department are to be transferred to the Agency for Persons with Disabilities by a Type 2 transfer. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources within the department dedicated to the program to be transferred to the agency and which staff persons from the department are to provide administrative support.

The Director of the Agency for Persons with Disabilities is directed to work in consultation with the Secretaries of DCF and AHCA or their designees to develop a transition plan. This plan is to be submitted to the Executive Office of the Governor and the Legislature by September 1, 2004.

The agency is directed to enter into inter-agency agreements with AHCA and DCF to delineate the responsibilities of each organization. These agreements must also address the operational support of the new agency as well as reimbursement mechanisms. The bill also directs APD, AHCA, and DCF to work together to develop a plan to ensure all necessary electronic and paper-based data are accessible to the Medicaid program. Electronic records are to be moved to a new system compatible with the Florida Medicaid Management Information System.

A plan is to be developed by APD and AHCA for the relocation of the local APD staff to the AHCA area offices. Provisions of the plan are to address leases, reimbursement of collocation costs, office space, and other operating expenses. Further, effective October 1, 2004, APD is to enter into an agreement with DCF for the provision of day-to-day administrative and operational needs.

The Office of Program Policy and Government Accountability must identify and evaluate statewide entities receiving state funding to provide services for persons with disabilities. A report from OPPAGA is due to the Governor and the Legislature by December 2005.

This bill creates the domestic violence program office within the Department of Children and Family Services.

This bill makes it a crime for an employee of the department, the Agency for Persons with Disabilities, or the Agency for Healthcare Administration to engage in sexual misconduct with a client or patient. The bill requires employees to report sexual misconduct. If an employee fails to make a report, prevents another person from doing so, or knowingly submits an inaccurate, incomplete, or untruthful report, the employee will be guilty of a first degree misdemeanor. A person who threatens or coerces another person to alter testimony or a written report will be guilty of a third degree felony. A defendant will be prohibited from using consent as a defense for the charge of sexual misconduct. Sexual misconduct is added to the list of offenses prohibiting employment if identified through a Level 1 or 2 background screening. The sealing or the expunction of criminal records when sexual misconduct has been committed is prohibited. Provisions and penalties in this bill are in addition to other civil, administrative, or criminal sanctions.

This bill authorizes the department to conduct its eligibility determination functions with either department staff or through a contractual agreement. These functions are currently being provided by the economic self-sufficiency program office.

This bill amends sections 20.19, 92.53, 393.063, 393.064, 393.0655, 393.066, 393.0661, 393.068, 393.0695, 393.067, 393.11, 393.13, 393.17, 393.22, 393.502, 397.405, 400.464, 419.001, 408.301, 408.302, 409.906, 419.001, 914.16, 914.17, 918.16, 393.0641, 393.065, 393.0651, 393.0673, 393.0675, 393.0678, 393.071, 393.075, 393.115, 393.12, 393.125, 393.15, 393.501, 393.503, 393.506, 435.03, 435.04, 943.0585, 943.059, 943.059, and 943.0585 F.S. This

bill creates sections 20.197, 393.135, 394.4593, and 916.1075 F.S. Sections 393.068 (8), 393.14, 393.165, 393.166, and 393.505 of the Florida Statutes are repealed.

This bill takes effect July 1, 2004.

## II. Present Situation:

### *The Department of Children and Family Services*

The mission of the Department of Children and Family Services is to work in partnership with local communities to help people be self sufficient and live in stable families and communities, and to deliver or provide for the delivery of all family services. The developmental disabilities program currently resides within the department.

The department is responsible for the delivery of diverse programs throughout the state of Florida. Program service areas include adult services, child care services, developmental disabilities, economic self-sufficiency services, family safety, mental health, refugee services, and substance abuse. These programs are directed by the Secretary at the headquarters level and administered in 14 separate districts or regions that are managed by a district administrator.

### *The Developmental Disabilities Program*

Within the department, the developmental disabilities program provides support services to enable persons with developmental disabilities to live productive lives and achieve personal outcomes. The program has two main parts, developmental disabilities institutions<sup>1</sup> and community-based care. The program is administered through a central program office in Tallahassee, four state developmental disabilities institutions, and 14 district/regional developmental disabilities offices.

Most client services are provided contractually by community-based care providers and are paid for through the use of federal waivers (that are managed by the Agency for Health Care Administration) and general revenue. These services may include medical care, therapy, vocational training and employment, case management, residential and basic care, daily living assistance, transportation, and recreation.

In spite of significant appropriation increases, the program has a long list of clients who are waiting for services. At the Legislature's request, a program review conducted by the Office of Program Policy Analysis and Government Accountability (OPPAGA)<sup>2</sup> focused on the rising costs of the developmental disabilities program. An analysis of program expenditure data for FY 1996-97 through FY 2000-2001 found errors making it impossible for the department to accurately assess the number of services a client received or the average rate paid for the

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<sup>1</sup> There are four state institutions operated by the developmental disabilities program. They include Sunland, in Jackson County, Tacachale, in Alachua County, Gulf Coast, in Lee County, and Landmark in Miami-Dade County. The developmental disabilities program also operates the Mentally Retarded Defendants Program located on the grounds of Florida State Hospital in Gadsden County. More than 3000 staff are employed at these sites.

<sup>2</sup> Legislative Options to Control Rising Developmental Disabilities Costs, Report No. 02-09, February 2002, Office of Program Policy Analysis and Government Accountability.

different units of service. Since this study, and at the direction of the Legislature, the department has redesigned the home and community-base waiver program and developed a methodology for standardized service rates. These initiatives were conducted to help the program contain expenditures and reduce the number of persons who were waiting to receive services.

Following the implementation of the standardized rate payment in July 2004, the department conducted a fiscal analysis of expenditures. Budget projections indicated the rate of spending would exceed the annual appropriation for the program. Based upon this analysis, the department implemented rate reductions.

### *Sexual Misconduct*

Persons with developmental disabilities are particularly vulnerable to sexual misconduct. Sexual misconduct is a problem for citizens who live in residential facilities, developmental services institutions, foster care facilities, group homes, intermediate care facilities, residential habilitation centers, and family care centers.

According to some national statistics, between 70 and 90 percent of persons with disabilities have been, or will be the victims of sexual abuse, assault, or exploitation. Abuse is often perpetrated by persons who are providing care to these vulnerable citizens.

Currently, s. 825.102, F.S., addresses the sexual abuse of elderly or disabled persons and specifies the penalties for these crimes. Depending upon the offense, the sexual abuse of an elderly or disabled person is a second or third degree felony with punishment as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. Section 415.1034, F.S., requires persons who know or have a reasonable suspicion sexual misconduct is occurring, to immediately make a report to the abuse hotline. Section 794.011, F.S., addresses the crime of sexual battery and specifies penalties if the victim is “mentally defective.” These provisions are considered too weak to deter sexual misconduct.

It is usually difficult to prosecute offenders because consent is often used as a defense.

### *Administration of Public Assistance Eligibility*

The economic self-sufficiency (ESS) program of the department is responsible for determining eligibility for food stamps, Temporary Assistance for Needy Families (TANF), Medicaid, and refugee cash assistance. More than 7,367 individuals are employed by the ESS program who, during FY 2002-2003, processed more than 1.4 million eligibility applications and assisted more than 2.7 million clients.<sup>3</sup> The Florida Legislature has provided direction to the department in both 1997 and in 2003 to examine and begin pursuing the option of outsourcing the eligibility determination function for Medicaid, food stamps, and TANF.

In response to the 2003 legislative directive in the General Appropriations Act for 2003-2004 proviso language, the department has embarked upon a modernization initiative for the ESS

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<sup>3</sup> *Economic Self-Sufficiency Eligibility Process: A Study in Conjunction with DCF Reengineering Initiatives*, Internal Audit of the Office of Inspector General of the Department of Children and Families, November 26, 2003.

program. This modernization initiative has focused on soliciting bids for most of the ESS eligibility determination functions with the goal of simplifying the ESS process and utilizing other innovations to create more efficiencies in the program such as a call/change center and internet innovations. The department has released the request for information to receive comments on the program requirements and the draft solicitation document. The anticipated contract execution date is July 2004. At this time, the department estimates a 5-year contract for approximately \$1.2 billion. The department's plan for outsourcing eligibility determination includes the option of awarding a contract to a single vendor for statewide implementation. However the possibility using a single vendor may shift too much power to the vendor from the state, creating a disadvantage when negotiating future contracts. If the vendor failed, the state would have no capacity to provide the functions.

The employees of the department have been developing an employee plan for achieving the required efficiencies. The employees' plan will be compared with the selected private sector plan after the competitive procurement process and a decision will be made as to whether to contract with the private sector vendor or utilize the employees' plan.

### III. Effect of Proposed Changes:

**Section 1:** Amends s. 20.19, F.S., removing the Developmental Disabilities program from the Department of Children and Families and creating the domestic violence program office.

**Section 2:** Creates s. 20.197, F.S., establishing the Agency for Persons with Disabilities to be administratively housed within DCF. The agency is to be a separate budget entity not subject to the control, supervision, or direction of the department in any manner.

The director of the agency is to be appointed by and serve at the pleasure of the Governor. The director is required to administer the affairs of the agency and establish administrative units as needed. The director is also authorized to employ assistants, professional staff, and other employees, within appropriated resources, needed to discharge the powers and duties of the agency. The agency is responsible for the provision of all services pursuant to chapter 393, F.S., for persons with developmental disabilities. These responsibilities include the operation of all state institutional programs and the programmatic management of the Medicaid waiver programs. The agency is further directed to engage in other administrative activities deemed necessary to effectively and efficiently address the needs of clients who are served by the Agency for Persons with Disabilities.

The agency is directed to enter into an interagency agreement delineating the responsibilities of the Agency for Health Care Administration for:

- The terms and execution of contracts with Medicaid providers for the provision of services through Medicaid, including federally approved waiver programs,
- The billing, payment, and reconciliation of claims for Medicaid services to be reimbursed by the agency,
- The implementation of utilization management measures, including the prior authorization of services plans and the streamlining and consolidation of waivers services, to ensure the cost effective provision of needed Medicaid services, and

- A system of approving each client’s plan of care to ensure that the services provided are necessary to prevent the client requiring services of an intermediate care facility for the developmentally disabled.

**Section 3:** Amends s. 393.063, F.S., *Definitions*. Deleting terms that are no longer used in the chapter: “active treatment,” “developmental training facility,” “rehabilitation workshop facility,” and “supported employee.” This section also establishes new definitions for the terms “agency,” “day habilitation service,” and “residential rehabilitation.” Certain other definitions are clarified and updated.

**Section 4:** Amends s. 393.064(1), F.S., *prevention*. Deletes the requirement that the department identify prevention funding needs in its annual legislative budget request. The department reports this change will reduce the duplication of program services provided by children’s medical services (responsible for early intervention program for persons 0 – 3 years of age) and the Developmental Disabilities Council (responsible for prevention/awareness programs).

**Section 5:** Amends s. 393.0655, F.S., *screening of direct service providers*. This section continues the requirement direct service providers receive a level 2 employment screening. The bill specifies identified positions and volunteers must receive this screening. Background screening must include local criminal checks through local law enforcement agencies.

Exceptions to these screening requirements include:

- Volunteers assisting on an intermittent basis for fewer than 40 hours a month if the person is under the direct and constant supervision of persons meeting the screening requirements of this section;
- Physicians, nurses, or other professionals licensed and regulated by the Department of Health (DOH) who are providing services within their scope of licensed practice;
- Persons providing supports or services to an individual with developmental disabilities who are selected and paid by the individual or the individual’s family; and
- Persons living with the direct services provider who are between the ages and 12 and 18 years who are only required to be screened for delinquency records.

**Section 6:** Amends s. 393.066, F.S., *community services and treatment for persons who are developmentally disabled*. This section:

- Deletes language requiring programs to be administered through the districts to serve all clients regardless of the setting in which they live.
- Specifies all elements of the community based services are to be made available and be provided consistently statewide rather than by district.
- Deletes language reflecting the intent of the Legislature for the department to prioritize appropriations for community-based services and the requirement the department’s five year plan reflect this prioritization of individualized, community-based supports and services for consumers and their families.
- Directs the agency to provide supports and services, within available resources, to assist Medicaid waiver clients who pursue gainful employment.
- Deletes language authorizing the department to permit construction of a residential facility.
- Deletes language allowing the department to adopt rules to ensure compliance with federal laws or regulations that apply to services provided in s. 393.066, F.S.

**Section 7:** Amends s. 393.0661, F.S., *home and community-based services delivery and comprehensive redesign*. Removes directions to the department to include certain elements in the plan for system redesign. These tasks have been finalized.

The agency is directed to utilize a valid and reliable assessment instrument to identify the support needs of clients. The agency is authorized to contract with an external vendor or to use support coordinators to complete the client assessment if the proper safeguards and training have been developed to ensure inter-rater reliability. The agency may, with the concurrence of AHCA, contract for services to determine the medical necessity of services and to establish individualized budgets for clients.

**Section 8:** Amends subsections (1) and (2) of section 393.068, F.S., relating to the family care program. This section:

- Deletes language recognizing the importance of family support in the long range success of deinstitutionalization and that core elements of caring for an individual who is developmentally disabled is support and flexibility of coordinating support and services.
- Specifies the services and supports authorized under this program are to be contingent upon the availability of resources, strikes a redundant reference to parent training and respite care and adds supported employment to the list of authorized services.
- Deletes language prioritizing appropriations for family-based services and supports for persons with developmental disabilities and the requirement for this priority to be reflected in the department's five year plan. The department reports that five year plans are no longer developed.

**Section 9:** Amends s. 393.0695, F.S., *provision of in-home subsidies*. This section deletes obsolete provisions and changes references from the department to the agency.

**Section 10:** Amends s. 393.11, F.S., *involuntary admission to residential services*. This section deletes obsolete provisions and changes references from the department to the agency.

**Section 11:** Amends s. 393.13, F.S., *personal treatment of persons who are developmentally disabled*. It is legislative intent for persons with disabilities to receive services based on normalization principles. Therefore the bill reduces the use of sheltered workshops and other non-competitive employment activities and promote opportunities for gainful employment for persons who seek such employment. The bill also deletes the requirement to develop a plan for implementation of meaningful treatment programs.

**Section 12:** Amends s. 393.17, F.S., *behavioral programs; certification of behavior analysts; fees*. Current language requiring the department to implement and manage a behavior analyst certification program and reflecting the minimum requirements for certification is deleted. The proposed language authorizes the agency to recognize certification of behavior analysts awarded by a non-profit corporation if the corporation's work has the support of the Association for Behavior Analysis International. This change may result in persons becoming a certified behavior analyst, who do not meet the requirements currently established in rule which are to ensure that qualified persons oversee the design and implementation of programs for persons with developmental disabilities.

**Section 13:** Amends s. 393.22, F.S., *transfer of appropriations; barriers to services; financial commitment to programs*. This legislation deletes:

- Provisions prohibiting the transferring of funding from the developmental services program if the Secretary determines such a transfer will not adversely effect treatment programs; and
- Provisions prohibiting the reduction of an ongoing commitment of funding to services for persons with mental retardation, cerebral palsy, autism, or spina bifida because of the development of programs for other disabilities.

**Section 14:** Amends s. 393.502, F.S., *family care councils*. This section:

- Specifies a family care council will be established in each service area of the agency rather than each district.
- Deletes the provisions for appointments to the council, when the Governor does not act on a recommendation for membership within a specified time period and deletes the terms of membership.

**Section 15:** Amends s. 408.301, F.S., *legislative findings*. This section deletes obsolete provisions and changes references from the department to the agency. The Department of Elder Affairs (DOEA) is included in this section as an example of clients with special needs. The bill further directs AHCA to include DOEA in the development of plans to assure that the needs of special clients are met.

**Section 16:** Amends s. 408.302, F.S., *interagency agreement*. This section deletes obsolete provisions requiring AHCA to enter into interagency agreements with APD and DOEA, to assure coordination and to provide for these agencies' prior approval of AHCA rules impacting their respective missions.

**Section 17:** Amends s. 409.906, F.S., and deletes language no longer used relating to the Project AIDS Care Waiver.

**Section 18:** Repeals ss. 393.068(8), 393.14, 393.165, and 393.505, of the Florida Statutes:

- Subsection 393.068(8), F.S., a receiver may be held personally liable only for the receiver's own gross negligence, intentional acts, or breach of fiduciary duty;
- Section 393.14, F.S., specifies the requirements of a multiyear plan;
- Section 393.165, F.S., non-institutional home and community-based services are cost effective and an appropriate alternative to institutional care; and
- Section 393.505, F.S., authorizes the department to initiate projects to demonstrate the effectiveness of day treatment services.

**Section 19:** Effective October 1, 2004, the developmental disabilities program and the developmental disabilities institutions programs in the department are transferred to the Agency for Persons with Disabilities by a Type 2 transfer pursuant to s. 20.06, F.S. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources of the developmental disabilities program to be transferred to the new agency and determine who within the department will provide administrative support.

The director of APD is directed to consult with the Secretaries for DCF and AHCA or their designees to prepare a transition plan to address at a minimum: building leases, information support systems, cash ownership and transfer, administrative support functions, inventory, expenditure transfers, budget authority and positions, and certifications forward. This plan is to be submitted by September 1, 2004, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This bill directs APD and DCF to work with AHCA to develop a plan ensuring all of the necessary electronic and paper-based data of the developmental disabilities program are accessible to the Medicaid program. All electronic records are to be moved to a new data system compatible with the Florida Medicaid Management Information System.

The Agency for Persons with Disabilities and AHCA are directed to develop a plan for the orderly relocation of the non-central office staff of APD to the area offices of AHCA. This plan is to include a schedule taking into consideration the availability of space, the expiration of current leases and the initiation of new leases to accommodate the relocated staff as well as appropriate reimbursement for collation costs, office space, and other operating expenses.

Effective October 1, 2004, the Agency for Persons with Disabilities is to enter into an interagency agreement with DCF for the provision of day-to-day administrative and operational needs until the agency no longer requires the provision of services through such an agreement. These administrative and operational services include, but are not limited to, personnel, purchasing, information technology support, legal support, and other related services.

Any pending judicial or administrative proceedings on October 30, 2004, are not affected by this act. The Agency for Persons with Disabilities is to be substituted as the real party of interest in respect to any pending proceedings.

**Section 20:** Directs OPPAGA to identify and evaluate statewide entities receiving state funding to address the interests of, but not directly serve persons with disabilities. This analysis is to provide findings and recommendations relating to:

- The extent the activities of these entities are coordinated;
- The similarities and differences in the organizational missions of these entities; and
- The amount of state funds provided to these entities for the purpose of addressing the interests of persons with disabilities, the uses of these funds, and whether they duplicate the efforts of other private or federally funded entities.

A report is to be completed and provided to the Governor and the Legislature by December 2005.

**Sections 21-43:** Changes references from department to agency.

**Sections 44, 45, and 46:** Creates three new sections of statute prohibiting sexual misconduct by employees with clients who receive services from the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the mental health program within DCF. The terms “employee,” “sexual activity,” and “sexual misconduct” are defined. This bill makes it a second

degree felony for an employee to engage in sexual misconduct with a client or a patient. Under this bill, an employee may be found guilty of sexual misconduct without having committed the crime of sexual battery.

The bill requires employees who witness sexual misconduct or have reasonable cause to believe sexual misconduct has occurred, to immediately report the incident to the department's central abuse hotline and to law enforcement. The employee must prepare, sign and date a report specifically describing the nature of the misconduct, the time and location of the incident, and the persons involved. The department inspector general is required to immediately conduct an administrative investigation and notify the state attorney if there is reasonable cause to believe a crime has occurred.

An employee who fails to make a report, prevents another person from making a report, or knowingly submits an inaccurate or incomplete report will be guilty of a first degree misdemeanor. A person who threatens or coerces another person to alter testimony or a written report will be guilty of a third degree felony.

Provisions and penalties in this bill will be in addition to other current civil, administrative, or criminal sanctions.

**Sections 47 and 48:** Amends ss. 435.03, and 455.04, F.S., to include sexual misconduct as an offense banning employment.

**Sections 49 and 50:** Amends ss. 943.0585 and 943.059, F.S., prohibiting the court-ordered expunction and sealing of criminal history records relating to the sexual misconduct of an employee as specified by ss. 393.135, 394.4593, or 916.1075, F.S.

**Section 51:** Authorizes the department to provide its eligibility determination functions with either department staff or through a contract with at least two private vendors, or a combination of at least one private vendor and department employees. The following restrictions apply:

- A contract may not include a geographic area larger than a combined seven districts or a combined three zones without prior approval from the Legislative Budget Commission (with the exception of information technology).
- Department employees are to provide the eligibility determination functions in at least one area of the state if state provision is cost competitive.

This section is to take effect upon becoming law.

**Section 48:** Establishes an effective date of July 1, 2004.

#### **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:**

The Governor and the Department of Children and Family Services report this bill will have no fiscal impact. However, the organizational structure proposed for the new agency includes the positions of deputy director of staff, general counsel, senior attorney, inspector general, and a deputy director of operations and their staffs. Offices for legislative affairs, communications, administrative services, and information technology are also proposed. These offices and positions are not currently established in the developmental disabilities program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In the FY 2004-05 Governor's budget request (Issue #33G0110) includes a reduction of \$2,225,097 (\$1,435,963 GR) for zone administration efficiencies. If this bill becomes law, APD will not benefit from the zone administration efficiencies.

**VIII. Amendments:**

None.