

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 CS Adult Protective Services
SPONSOR(S): Culp and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	7 Y, 0 N, w/CS	DePalma	Walsh
2) Civil Justice Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

SUMMARY ANALYSIS

The Committee Substitute for HB 329 amends the Adult Protective Services Act to allow the Department of Children and Family Services explicit authority to protect persons from the effects of self-neglect, and redefines the term "abuse" to include abuse by a relative or household member.

The CS further amends the Act through inclusion of the Agency for Persons with Disabilities among the list of departmental agencies, employees and agents with access to Adult Protective Services records and reports, and also provides exceptions to the Act's proscription against using information collected through the central abuse hotline for employment screening purposes.

Finally, the CS grants the Department of Children and Family Services, the Agency for Persons with Disabilities, the Agency for Health Care Administration, the Department of Elder Affairs, and the Department of Health or county agencies explicit authority to access information in the central abuse hotline and automated abuse information system for purposes of licensure or approval of certain nursing facilities.

The CS is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government; promote personal responsibility – The CS amends the Adult Protective Services Act to allow DCF explicit authority to protect persons from the effects of self-neglect and investigate alleged abuse of vulnerable adults by relatives and household members who are not in a caregiver role.

B. EFFECT OF PROPOSED CHANGES:

Self-Neglect

Chapter 415, F.S., the Adult Protective Services Act, provides statutory authority for the Department of Children and Family Services (DCF) to investigate reports of self-neglect¹ – alleged second party abuse, neglect and exploitation of vulnerable adults² caused by the vulnerable adult himself. In Fiscal Year 2003-2004, DCF investigated 6,394 cases reported to the Florida Abuse Hotline that were verified or contained some indications of self-neglect (other than medical neglect).³ Of these self-neglect cases, more than 40 percent involved persons 80 years of age and older.

The Adult Protective Services program is a system of specialized social services directed toward protecting vulnerable adults who are unable to prevent further instances of abuse, neglect or exploitation. The department sends staff to make an assessment of an individual's need for protective services after a reported allegation of abuse, neglect or exploitation is received at the Hotline. Adult Protective Services includes four basic elements:

1. The on-site investigation of all reports of alleged abuse, neglect, or exploitation.
2. Determination of immediate risk to the vulnerable adult and the provision of necessary emergency services.
3. Evaluation of the need for and provision of ongoing protective supervision.
4. Provision or arrangement of ongoing protective services.

If a vulnerable adult is in danger of continued abuse, neglect or exploitation, staff from the Aging Services Program provides services through the authority of the Protective Supervision Program.

Presently, the current definition of "neglect" (s. 415.102(15), F.S.), does not include neglect caused by the vulnerable adult, and the department's authority to provide services upon occurrence of self-neglect has been questioned by the courts.⁴

¹ See ss. 415.104, 415.105, F.S.

² "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. S. 415.102(26), F.S.

³ *Adult Protective Services Annual Report Fiscal Year 2003-2004*, Table F-6, Demographic Characteristics of Victims by Verified and Some Indication Maltreatments, Self-Neglect In Need of Services, Department of Children and Family Services, March 2005.

⁴ *Florida Department of Children and Family Services v. McKim*, 869 So.2d 760 (Fla. 1st DCA 2004) (fact that allegedly vulnerable adult was suffering from results of self-neglect did not support order under Adult Protective Services Act of protective services, where definition of "neglect" required that neglect have occurred at hand of caregiver and statutory definition of "vulnerable adult" did not include concept of self-neglect.)

Abuse

Moreover, the Adult Protective Services Act defines “abuse”⁵ in terms of willful acts committed or threatened by a “caregiver” that causes or is likely to cause impairment to a vulnerable adult’s well-being. The statutory definition of “caregiver” found in Chapter 415 includes as a caregiver a person entrusted with the responsibility for the frequent and regular care of a vulnerable adult, and who has an agreement or understanding with that person or that person’s guardian that a caregiver role exists.⁶ Although the definition notes that a caregiver may include “relatives, household members, guardians, neighbors, and employees and volunteers of facilities ...” either an explicit or implicit caregiver relationship must be present for DCF to accept and investigate a report of abuse.⁷

During the 2000 Legislative session, s. 415.102(1) was amended to omit the requirement that a relationship exist between a vulnerable adult and the individual alleged to have committed acts or omissions evidencing abuse. Subsequently, in 2003 the Legislature again amended the Adult Protective Services Act to require the presence of a caregiver relationship before DCF could accept and investigate alleged abuse maltreatments.

Central Abuse Hotline

Pursuant to s. 415.103, F.S., DCF maintains a central abuse hotline receiving, prioritizing and indexing reports of abuse, neglect or exploitation alleged to have been committed against a vulnerable adult. In addition to its report intake procedures, the hotline also operates as a central depository of prior reports that have been filed, as an oversight mechanism for tracking investigative measures taken as a result of a report, as a primary resource for the evaluation and planning of preventive and remedial services for vulnerable adults, and as a referral service when calls do not allege the abuse, neglect or exploitation of a vulnerable adult.

The Adult Protective Services Act imposes a mandatory reporting requirement on any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected or exploited.⁸ In addition, the Act imposes a reporting requirement on any person who is required to investigate such reports, where there is a reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect or exploitation. In such instances, these individuals are required to immediately report their suspicion to the appropriate medical examiner, criminal justice agency, and to DCF.⁹

Except as otherwise provided in ss. 415.101-113, F.S., all departmental records concerning abuse, neglect or exploitation of a vulnerable adult are confidential and may not be disclosed. Included in the enumeration of persons, officials, and agencies granted access to all records are “Employees or agents of the department, of the Agency for Health Care Administration, or of the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, or other facilities used for the placement of vulnerable adults.”

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) was created by Chapter 2004-267, Laws of Florida. As of October 1, 2004, the agency was given responsibility for provision of all services for persons with developmental disabilities, and Chapter 393, F.S. (“the Developmental Disabilities Prevention and Community Services Act”) was amended to reflect this change.

⁵ S. 415.102(1), F.S.

⁶ S. 415.102(4), F.S.

⁷ Id.

⁸ S. 415.1034(1)(a).

⁹ S. 415.1034(2), F.S.

Proposed Changes

The CS for HB 329 adds “vulnerable adult” to the definition of “neglect” in section 415.102(15), F.S., and adds “vulnerable adult in need of services”¹⁰ to section 415.1051(1), F.S., relating to non-emergency protective services. These changes will give DCF explicit authority to provide voluntary services or petition the court for involuntary non-emergency services and protective supervision when an investigation determines that the vulnerable adult is neglecting himself or herself.

Additionally, the CS amends the definition of “abuse” in section 415.102(1), F.S. to include willful or threatened acts committed by a relative or household member which cause, or are likely to cause, significant impairment to a vulnerable adult’s health. This change allows DCF to accept and investigate the alleged abuse of vulnerable adults by relatives and household members who are neither explicit nor implicit caregivers of such vulnerable adult.

Lastly, the CS for HB 329 inserts the APD into the list of agencies, departments, employees and agents contained in s. 415.107(3)(a), F.S. with access to records and reports of the Adult Protective Services. Additionally, the CS permits certain exceptions, as provided in s. 415.107(3)(a) and (h), F.S. to the proscription found in s. 415.107(8), F.S. against use of information collected through the central abuse hotline for employment screening purposes.¹¹ The CS again amends s. 415.107(8), F.S. to grant DCF and its authorized agents and contract providers, APD, the Agency for Health Care Administration (AHCA), the Department of Elderly Affairs (DOEA), and the Department of Health (DOH) or county agencies access to information in the central abuse hotline and automated abuse information system for purposes of licensure or approval of certain nursing facilities.

C. SECTION DIRECTORY:

Section 1. Amends s. 415.102(1), F.S., adding abuse committed by a relative or household member to the definition of “abuse”; amends s. 415.102(15), F. S., adding “vulnerable adult” to the definition of “neglect” to include within the definition of neglect the concept of self-neglect.

Section 2. Amends s. 415.1051(1), F. S., adding “vulnerable adult in need of services” to include, within the department’s authority to seek an order authorizing the provision of protective services, those persons determined to have neglected themselves.

Section 3. Amends s. 415.107(3)(a), F.S., including the APD among the list of agencies, departments, employees and agents able to access Adult Protective Services records and reports; amends s. 415.107(8), F.S., enabling information collected from the central abuse hotline to be used for employment screening under certain scenarios and allowing DCF and its authorized agents and contract providers, APD, AHCA, DOEA, DOH or county agencies to use such central abuse hotline information as part of the licensure or approval of certain nursing facilities.

Section 4. Provides the act is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DCF has indicated that the CS has no fiscal impact.

¹⁰ “Vulnerable adult in need of services” means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm. S. 415.102(27), F.S.

¹¹ Compare ss. 415.107(3)(a), (h) and 415.107(8), F.S., of the Adult Protective Services Act to ss. 39.202(a), (h) and 39.201(6), F.S., dealing with reports of child abuse.

2. Expenditures:

DCF anticipates that the CS will have a minimal fiscal impact on the department, which it states can be absorbed within existing departmental resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The CS does not require counties or municipalities to take an action requiring the expenditure of funds; does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is some redundancy of language in the CS, as lines 121-128 and 131-138 both appear to grant DCF, AHCA, APD and DOEA access to information from the central abuse hotline for the purpose of "licensure or approval" of certain nursing facilities.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its January 11, 2006 meeting, the Committee on Elder & Long-Term Care adopted an amendment to HB 329. The amendment:

- Includes the Agency for Persons with Disabilities to the list of agencies, departments, employees and agents bestowed with access to all Adult Protective Services records for the purpose of carrying out protective investigations, ongoing protective services, or licensure and approval of certain nursing facilities.

- Enables information collected from the central abuse hotline to be used for employment screening in the instances contemplated pursuant to ss. 415.107(3)(a) and (h).
- Allows such information, and information collected from the automated abuse information system to be used by the Department of Children and Family Services and its agents and contract providers, the Agency for Persons with Disabilities, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Health and county agencies for licensure and approval of certain nursing facilities.

The Committee favorably reported a Committee Substitute.

This analysis is drafted to the Committee Substitute.