



# The Florida Senate

Interim Project Report 98-07

October 1998

Committee on Children, Families and Seniors

Senator Tom Rossin, Chairman

## STRUCTURE AND SERVICES OF THE DEPARTMENT OF ELDERLY AFFAIRS

### CONSIDERATION OF THE TRANSFER OF DUTIES IN THE AREA OF ADULT SERVICES AND ADULT PROTECTIVE SERVICES

#### SUMMARY

Staff obtained written and oral comments on the issue of a proposed transfer to the Department of Elderly Affairs of all aging and adult services and the adult protective services program, both of which are currently housed in the Department of Children and Family Services. After reviewing much data and considering all comments and recommendations, the conclusion reached by staff is that none of the programs, described in greater detail below, should be transferred to the Department of Elderly Affairs at this time. It is recommended that increased budget allocations be provided for the temporary emergency shelter for adult victims of abuse, neglect or exploitation, and the adult payments program should receive increased funding to hire additional staff. Funding to support the district long-term care ombudsman councils should be provided by the Legislature and they should be relocated to either the Department of Elderly Affairs or the Agency for Health Care Administration or should remain at the Department of Children and Family Services.

#### BACKGROUND

When the Department of Elderly Affairs (DOEA) was created in 1991, a number of programs relating to aging and adult services were not made a part of that agency and remained in the Department of Children and Family Services (formerly the Department of Health and Rehabilitative Services). Since 1991, the Legislature has moved several additional aging programs to DOEA but declined to move other programs that are either not targeted to the aging population or apparently require a greater substate structure than exists in DOEA. In 1998, legislation was

filed which would have moved virtually all related services remaining at the Department of Children and Family Services (DCF) to the Department of Elderly Affairs. This bill, though later withdrawn, raised many issues regarding the cost and practicality of such a move.

#### Programs

Chapter 410, Florida Statutes, provides statutory authority for a variety of aging and adult services programs under DCF. These programs include the following:

##### *Home Care for Disabled Adults*

Described in ss. 410.031 - 410.037, F.S., the Home Care for Disabled Adults program is administered in 15 DCF districts statewide through the Aging and Adult Services office. The program is designed to assist disabled adults, 18 to 59 years of age, who dwell in private homes and is an alternative to a nursing home or other institutional type care. A basic subsidy is provided to assist with food and personal needs. A medical subsidy reimburses the cost of prescription medication. A special subsidy assists with the cost for special equipment. Case management is provided by DCF staff.

##### *Community Care for Disabled Adults*

Described in ss. 410.601 - 410.606, F.S., the Community Care for Disabled Adults program is administered statewide by local providers under contract with DCF. The program is designed to serve disabled adults, 18 to 59 years of age, who have permanent physical or mental limitations that restrict their ability to perform normal activities of daily living

or to live independently. Program services include adult day care, home delivered meals, chore services, home nursing services, and transportation. Case management is provided to clients by either DCF staff or providers under contract to DCF.

### ***Adult Protective Services***

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

The adult protective services office and the Florida Abuse Hotline are located in DCF. The adult protective services law is found in Part I of Chapter 415 (ss. 415.101-415.113), F.S. This law requires that any person who knows or has reasonable cause to suspect that an elderly or disabled person is being abused must immediately report this information to the central abuse registry and tracking system. The call and information are then referred to the appropriate district office which will begin an investigation to determine whether there is any indication of abuse, neglect, or exploitation. If such a condition exists, services are provided either directly or after referral to another agency or the person is removed from the home.

The Department of Children and Family Services is required to complete its investigation no later than 45 days after receiving the initial report. After the completion of its investigation, the department must classify a report as “proposed confirmed,” “unfounded,” or “closed without classification.” Adults formerly referred to as “self neglect” cases are now defined as those “in need of services.” Whether elderly or disabled, these persons (in need of services) may be referred to other programs or agencies for assistance. Any elderly adult protective services referral may be made to one of 11 Area Agencies on Aging (AAA), which are under contract with the DOEA to administer both federal and state programs for the elderly. None of the adult protective services program is contracted out.

#### *The Department of Elderly Affairs*

The Department of Elderly Affairs was created by the Florida Legislature in 1991. Among the purposes provided in s. 430.03, F.S., the department has the responsibility to “[a]ssist elderly persons to secure needed services . . .” and “[p]romote the prevention of neglect, abuse, or exploitation of elderly persons unable to protect their own interests.”

Prior to July 1998, elderly persons identified by DCF’s adult protective services program as having been abused, neglected, or exploited were referred to DOEA and may have received services on a “primary consideration” basis if a functional assessment determined that they were in immediate need of services. Changes to the law last session, however, resulted in a modification of this referral system.

Currently, those elderly persons who are determined by DCF adult protective services to be elderly persons in need of services, as defined, or to be victims of abuse, neglect, or exploitation who are in need of immediate services to prevent further harm and are referred to DOEA are to be given primary consideration in the receipt of community care services. The term “primary consideration” is now defined to mean within 72 hours of referral or as established in accordance with DOEA contracts by local protocols developed between department service providers and adult protective services (DCF).

#### *Coordination of Efforts Between the Two Departments*

For some time, problems in the referral process from DCF to DOEA have been observed by staff, department personnel, Senators, and others. This may occur under the present structure because elderly persons who are identified by DCF as having been abused, neglected, or exploited are frequently referred to DOEA. Though many such referrals need and should receive services right away, a shortage of resources at the local level, as well as other AAA priority clients, often delay the delivery of services. When AAA services are not available right away, affected individuals may be placed upon a waiting list, but may also be maintained by APS as an open case and may receive services through DCF under DCF’s limited emergency shelter budget.

#### ***Temporary Emergency Shelter for Adult Victims of Abuse, Neglect, or Exploitation***

The Legislature currently appropriates about \$203,000 statewide for the purpose of meeting emergency needs for adult victims of abuse, neglect, or exploitation. These funds are allocated to the 15 DCF districts and may be used to purchase emergency shelter, medical examinations, transportation, and any other emergency services deemed necessary by DCF.

### ***Adult Payments***

The Florida On-Line Recipient Integrated Data Access (FLORIDA) system was planned and developed in response to a 1983 legislative mandate to integrate the Assistance Payments and Food Stamp Information Systems. The FLORIDA system now has two basic components -- Public Assistance (including Temporary Assistance for Needy Families, Medicaid, and Food Stamps) and Child Support Enforcement. The FLORIDA system helps provide support services for the following programs: Temporary Assistance for Needy Families, Food Stamps, Medicaid, Refugee Assistance, and the management and distribution of court ordered child support enforcement payments.

In August of 1995 adult payments was officially moved to the Economic Self-Sufficiency Program. Currently, three districts continue to have adult payment staff assigned to the Adult Services Program office; one district has community cases under Economic Self-Sufficiency and institutional cases under the Adult Services program. There are a total of 951 adult payments staff in the Economic Self-Sufficiency Program at DCF. This staff count includes field staff and district office staff but does not include state headquarters office staff.

Staff also oversees interim assistance agreements with counties who participate in the Supplemental Security Income (SSI) Interim Assistance Program, facilitate development of training materials for SSI-related programs, and provide data analysis and system support for SSI-related programs.

### ***Home and Community Based Waiver Services for Disabled Adults***

The federal Omnibus Reconciliation Act of 1981 authorized the Secretary of the Department of Health and Human Services to waive federal Medicaid requirements to allow states to provide home and community-based services to individuals who would require institutionalization without such services. One such waiver program is the Aged/Disabled Adult Waiver Program, which provides home and community-based services to frail elderly and non-elderly severely disabled individuals. The Department of Elderly Affairs and DCF (under Adult Payments) divide waiver services with DOEA taking responsibility overall for the waiver and the two agencies share oversight, day-to-day operation, and

funding responsibilities. Funds for non-elderly, disabled adults are appropriated to DCF; funds for the elderly are appropriated to DOEA.

### ***District Long-Term Care Ombudsman Councils***

Pursuant to s. 400.0063, F.S., there is created an Office of State Long-Term Care Ombudsman which is located for administrative purposes in DOEA. District Long-Term Care Ombudsman Councils, described in s. 400.0069, F.S., are allocated one council per each planning and service area of DOEA and function under the direction of the state ombudsman council. The purpose of the ombudsman council is to advocate on behalf of residents of nursing homes and other residential homes. Though the ombudsman councils are actually placed within DOEA, s. 400.0069(9), F.S., directs DCF to provide space and in-kind administrative support for each district ombudsman council staff until the Legislature appropriates funding for office space and administrative support. Currently, 11 of the 15 DCF district offices house and support this function.

## **METHODOLOGY**

Children, Families and Seniors Committee staff worked with staff from the Office of Program and Policy Analysis and Governmental Accountability and the Senate Committee on Ways and Means, as well as the House Committee on Elder Affairs and Long Term Care, to assess the advisability of additional program transfers from DCF to DOEA. Staff from the Senate Governmental Reform and Oversight Committee and the Office of Planning and Budget were also consulted on this project.

A questionnaire was distributed to DCF and DOEA; a separate questionnaire was distributed to the 11 Area Agencies on Aging and the 15 district DCF offices. The Agency for Health Care Administration was consulted on the possibility of housing the long-term care ombudsman councils. General comments were solicited from interested persons in the elder and disabled communities. This project also involved meetings with representatives of the two affected departments. A properly noticed public forum was held in Plantation, Florida on July 22, 1998. At this forum, public comment was invited and taken.

## FINDINGS

### *Home Care for Disabled Adults and Community Care for Disabled Adults*

Department and agency response to the surveys, letters received from interested parties, and testimony taken at the public forum all strongly indicate that the two adult care programs should remain with DCF.

These programs generally serve a population comprised of disabled adults, 18 to 59 years of age. Members of this population, elderly persons, and representatives for both the disabled and elderly populations indicate they would not like the disabled programs to be housed within the Department of Elderly Affairs. The disabled community fears a loss of identity within a department whose mission is to serve the elderly; they also expressed reservations that members of the disabled community would not associate their service needs with a department with the name, Department of Elderly Affairs. Likewise, many elderly do not want the DOEA mission and focus expanded to include members of the disabled community.

There are other problems associated with such a move, as well. The contract providers of many services may be similar or even the same provider as those for the comparable elder service program, Community Care for the Elderly, thus giving the impression of efficiency in coordination of services delivery. The reality, however, is that the needs of the disabled community reach much further than simple service delivery. Along this line, advocates for the disabled community expressed concern that many of the problems and challenges faced by the disabled population vary significantly from those faced by the elderly. For example, disabled adults are usually not prepared to live on a fixed income, may still have children living at home, and have fewer community resources readily available to them. The conclusion and recommendation that it is inadvisable to move either the Community Care for Disabled Adults or the Home Care for the Disabled Adults programs from DCF to DOEA is based in large part upon the differences and uniqueness of the respective populations to be served.

### *Adult Protective Services*

A number of legal issues arise in a discussion of relocating the adult protective services program to DOEA; these issues are due in large part to the

absence of a sub-state structure at DOEA. A number of practical issues arise in such a discussion, as well, due to the Hotline structure, system, and referral process.

Legal issues involved in relocating the adult protective services program include the ability of a state to delegate that state's police power. Barron's law dictionary defines "police power" as the "inherent power of state governments . . . to impose upon private rights those restrictions that are reasonably related to promotion and maintenance of the health, safety, morals and general welfare of the public." Such a power is generally inherent in the government's ability to act in its efforts to protect the public. As a general rule of law, the state can not contract away police power. See e.g., *City of Belleview v. Belleview Firefighters, Inc.*, 367 So.2d 1086 (Fla. 1st DCA 1979).

The state may, however, invoke its police power in cases involving investigations of abuse, neglect, and exploitation and/or in a case where it is determined that the investigated party lacks capacity to consent. In such cases, emergency services may necessarily be provided. By stepping in and providing services or by removing a person from their home, DCF must rely upon the authority vested in the department as a state entity. This authority is justified by the state's valid use of police power.

Another legal issue involved in such a transfer is the state's waiver of sovereign immunity. Barron's law dictionary defines the term "sovereign immunity" as a "doctrine precluding the institution of a suit against the sovereign [government] without the sovereign's consent."

Pursuant to Florida law, sovereign immunity is waived for the state and its agencies only to the extent specified in statute. See, e.g., s. 768.28(1), F.S. State agencies or subdivisions include executive departments, such as DOEA or DCF, and may include corporations primarily acting as agencies or instrumentalities of the state. See, e.g., s. 768.28(2), F.S. While it is conceivable that DOEA contracts with the Area Agencies on Aging (AAAs) could be drafted to clarify this issue, the extent of such a proposition is unclear at this time.

Practical considerations involved in moving adult protective services from DCF to DOEA primarily concern DCF's Hotline approach to dealing with reports of elderly abuse, neglect, or exploitation. Presently, in any type of abuse case -- child or adult -- persons who are reporting the victim's condition call

the same toll free Hotline number at DCF. If the adult protective services program is moved to DOEA, from a pragmatic perspective, DOEA would most likely have to contract back with DCF for services and maintenance of the Hotline system. The other option is that DOEA establish its own Hotline system, to handle only reports of elder abuse. This latter effort would no doubt result in, at the least, a costly and duplicative Hotline system that, at worst, would cause confusion for persons reporting *any* abuse, neglect, or exploitation case (child or adult, elderly or disabled).

A second practical consideration involves the actual referral process of an adult victim from DCF to DOEA or other providers. According to figures provided by DCF, adult protective services undertook a total of nearly 30,000 investigations (elderly and disabled) in fiscal year 1997-1998. Of this number nearly 22,000 are community investigations while just over 8,000 are investigations of abuse, neglect, or exploitation in a facility. The majority of cases in both categories, but particularly facility investigations, are classified as "unfounded" and some community investigation clients refuse services. In 1997-1998, a total of nearly 11,000 persons required corrective action or were referred for further services. Of this number, just over 3,800 elderly clients were referred to DOEA; the remaining clients

had cases in which DCF provided the corrective action. Corrective action by DCF includes protective supervision; placement in a nursing home, assisted living facility, or adult family care home; placement in another type of facility; referral to mental health for residential services; or, referral to developmental services for residential services. A majority of the programs to which DCF will refer, therefore, are services located within DCF. This gives rise to the observation that a move of the adult protective services program from DCF to DOEA would in no way eliminate the need for inter-departmental coordination.

Another consideration in assessing the issue of transferring the adult protective services program is the creation of a sub-state structure in DOEA. While this option may eliminate the legal problems raised in conjunction with DOEA assuming the adult protective services program -- issues such as delegating the state's police power to a contract entity and clarifying sovereign immunity issues in contract -- this option does nothing to alleviate the practical considerations discussed above. Furthermore, creation of a sub-state structure within DOEA could be a costly endeavor thus making this option unacceptable.

Due to the the findings discussed above, including the fact that DOEA, as a state entity, cannot contract away its police power to its private providers (AAAs) and the lack of clarity in whether DOEA can contract with the AAAs to provide sovereign immunity, as well as the probable need for DOEA to contract back for Hotline services from DCF, the continuing need for inter-agency coordination, and the lack of DOEA sub-state structure, it is recommended that none of the adult protective services program be removed from DCF to DOEA.

### ***Temporary Emergency Shelter for Adult Victims of Abuse, Neglect, or Exploitation***

If, during the course of an investigation, the victim of abuse, neglect, or exploitation is in need of emergency or non-emergency services, this budget entity is tapped to finance those services. Services may include emergency shelter, a medical assessment, medical transportation, and in-home services. These services are generally provided in the period of time between DCF receiving the report on the Hotline and DOEA agents or other providers picking up the client, as referred from DCF, for services. Last year between 2500 and 3000 victims were served under an annual budget of \$203,000. Due to lack of resources to serve all those adult and, primarily, elderly who need to be served, as well as the fact that most AAAs have very long waiting lists for those elderly in need of services (either as DCF referrals, self-, or other referrals), both DCF and DOEA believe that this emergency budget should be increased to more easily accommodate DCF's Hotline response needs. It is, therefore, recommended that funds allocated each year for the temporary emergency shelter for adult victims of abuse, neglect, or exploitation be increased and continue to be allocated to and administered by DCF.

### ***Adult Payments***

Committee staff considered many sub-issues when considering the larger issue of whether to move adult payments from DCF to DOEA. Issues considered include the high rate of efficiency DCF has demonstrated in its administration of adult payments, the actual population served in adult payments, and the fact that eligibility determination is administered by use of the FLORIDA system.

Beginning with the sub-issue of DCF efficiency in the administration of adult payments, staff reviewed data from the past year on application activity and the DCF

approval/denial rate within the federally prescribed time limits for all programs under adult payments. In spite of reportedly heavy caseloads per caseworker, DCF consistently approved or denied pending applications well within compliance with federal standards. (The federal standard for eligibility determination is 45 days or 90 days if a disability is involved.) The Department of Children and Family Services has never faced federal sanctions for any failure to complete the approval/denial process within these federal time frames. In fact, DCF approval/denial (within the federal standards) ratings range from a low in the high-80 percent range to a high of 100 percent, with an average rate in the high 90s. Regardless of when eligibility is determined, Medicaid benefits are retroactive up to three months prior to eligibility determination if the person is, indeed, determined eligible.

Another sub-issue is the actual population served in adult payments. Adult payments covers individuals who are aged but also covers the blind and disabled at any age. This means that infants and children are a part of the adult payments caseload. Food stamp eligibility is also determined by adult payments staff but may be determined by specialized food stamp staff (depending upon the district). Any transfer of adult payments, therefore, must take into account those adult payments cases which involve families and children. This raises the issue of trying to separate out the elderly population from other adult payments cases, thus fragmenting the system, or allowing DOEA to process all adult payments cases. In either case the issue of multiple eligibility clients may arise in some cases. For example, some adult payments cases are those of disabled or non-disabled children who live with a caretaker relative. Some elderly may also receive food stamps. In such a complex case, it is essential to link with the FLORIDA system and DCF family track programs to assure that the children, their families, and others receive all the benefits for which they are eligible. Directly tied to the issue of multiple eligibility processing, therefore, is the third sub-issue, the FLORIDA system.

Under the FLORIDA system only one caseworker can work on any one client file at one time. Such precautions are critical to the integrity of the system and to the privacy of the client. It appears, therefore, that were DOEA to assume only elderly adult payments cases, but not food stamp eligibility or family eligibility cases, DOEA would have to interface with the FLORIDA system. While not impossible, this

is a costly consideration. On the other hand, were DOEA to assume all adult payments cases, a costly and duplicative system would have to be created.

In conclusion, staff considered DCF efficiency in processing adult payments, the complications involved with the types of cases processed by adult payments, and the potential cost and fragmentation of the system associated with DOEA interface with the FLORIDA system in determining that all or part of adult payments should not be transferred to DOEA.

### *District Long-Term Care Ombudsman Councils*

While the position of district long-term care ombudsman council is federally funded, DCF supports this position in 11 of its 15 district offices. Though support costs range from an estimated \$2,121 to just over \$17,000, no funding has been allocated for this support. At this time, pursuant to law, support for the position remains the responsibility of DCF; however, the duties of the district long-term care ombudsman council are more consistent with the duty and mandate of DOEA. The Agency for Health Care Administration (AHCA) also works closely with the district long-term care ombudsman councils. It is, therefore, recommended that this position be funded; it may then remain at DCF but should be moved to DOEA or AHCA.

## **RECOMMENDATIONS**

Staff recommends no transfer of any adult services programs from the Department of Children and Family Services to the Department of Elderly Affairs.

Staff recommends that the adult protective services program not be transferred to the Department of Elderly Affairs due in large part to the absence of a DOEA sub-state structure.

Staff recommends that adult payments not be transferred to the Department of Elderly Affairs and that the Legislature consider funding for additional adult payments staff at the Department of Children and Family Services.

Staff recommends that support to the district long-term care ombudsman council be funded. Once funded, this function may remain at DCF; however, it is more consistent with the duty and mandate of the district long-term care ombudsman councils that they be located in DOEA or, perhaps, the Agency for Health Care Administration.

**COMMITTEE(S) INVOLVED IN REPORT** (*Contact first committee for more information.*)

Committee on Children, Families and Seniors, 404 S. Monroe Street, 520 Knott Bldg., Tallahassee, FL 32399-1100, (850) 487-5340  
SunCom 277-5340

Committee on Governmental Reform and Oversight  
Committee on Ways and Means, Subcommittee C  
Office of Program Policy Analysis and Government Accountability

**MEMBER OVERSIGHT**

Senator Campbell  
Senator Forman