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# **Committee on Healthy Seniors**

**Tuesday, March 4, 2008  
2:30 PM - 4:00 PM  
24 HOB**

**Marco Rubio  
Speaker**

**Hugh Gibson  
Chair**





**House of Representatives**  
**Committee on Healthy Seniors**

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**A G E N D A**

**March 4, 2008**  
**2:30 PM – 4:00 PM**  
**24 HOB**

- I. Opening Remarks by Chair Gibson**
- II. Introduction of Holly Benson, Secretary  
Agency for Health Care Administration**
- III. Consideration of the following bill:**  
**HB 731 Personal Care Attendant Program by Rep. Gardiner**
- IV. Consideration of recommendations with respect to PCB HCC 08-20, relating  
to Alzheimer's Disease Medicaid Waiver**
- V. Closing Remarks by Chair Gibson**
- VI. Adjournment**



## **Biography for Holly Benson**

Governor Charlie Crist appointed Holly Benson Secretary of the Agency for Health Care Administration on February 25, 2008. He asked her to lead the Agency charged with working for affordable, quality health care for all Floridians and outlined a bold agenda of finding more affordable insurance for uninsured Floridians and of reducing the regulatory burden placed on health care providers.

Prior to her appointment as Secretary of the Agency, Secretary Benson served as Secretary of the Department of Business and Professional Regulation where she and her team worked to improve customer service and to reduce the regulatory burden placed on Florida's businesses and professionals. The Department is responsible for licensing over 1 million Floridians.

Prior to joining Governor Crist's administration, Secretary Benson served the people of Pensacola and Gulf Breeze for six years as their representative in the Florida House. During her tenure in the House, Secretary Benson earned a reputation for successfully tackling tough issues. As Chair of the Select Committee on Article V, she led the successful reorganization of the state procurement system. As Chair of the Committee on State Administration, she updated the state's procurement code. In addition, as Chair of the Health and Families Council she addressed the tough health care access issues that touch the lives of all Floridians.

Secretary Benson is a graduate of Dartmouth College and the University of Florida College of Law. She practiced municipal bond law with Miller, Canfield, Paddock and Stone, P.L.C. from 1996 to her appointment as Secretary of the Department of Business and Professional Regulation in 2007.

In addition to her service as Secretary of the Agency for Health Care Administration, she serves on the Council on Efficient Government, the Florida Council of 100, the Board of Directors for the Mary Brogan Museum of Art and Science and the Board of Directors of the Tallahassee Chamber of Commerce











## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes** – House Bill 731 does not propose any additional taxes or fees; however the proposal redirects 90 percent of the sales tax collections obtained through the tax collection enforcement diversion program from the General Revenue Fund to the Able Trust as one source of funding for the expanded personal care attendant program.

**Promote Personal Responsibility** – House Bill 731 provides personal care attendants to disabled persons who, without such assistance, would be unable to obtain or maintain employment or who would otherwise be in need of government assistance.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### ***Personal Care Attendant Program***

The Personal Care Attendant (PCA) program was established to assist eligible persons, who are disabled because of a traumatic spinal cord injury, to return to work in their communities by providing personal care attendants. The PCA program was initially established as a pilot program in 2002 in select counties in Florida.<sup>1</sup> Under the pilot project, the law required the Department of Revenue (DOR) in coordination with the Florida Association of Centers for Independent Living (FACIL) and the Florida Prosecuting Attorneys Association, to select counties in which to operate the pilot project.<sup>2</sup> The following counties currently participate in the program: Miami-Dade, Broward, Palm Beach, Hillsborough and Duval.

Responsibility for implementation and administration of the program is with the Personal Care Attendant Program Oversight Workgroup established by the Department of Health (DOH.) The workgroup consists of: one representative from the Brain and Spinal Cord Injury Program in the DOH; one representative from the Department of Revenue (DOR); one representative from the Florida Medicaid program in the AHCA; one representative from the Florida Endowment Foundation for Vocational Rehabilitation (FEFVR); one representative from the Florida Association of Centers for Independent Living (FACIL); one representative from the Division of Vocational Rehabilitation (VR) of the Department of Education (DOE); and two members who are persons with traumatic spinal cord injuries or are family members of persons with traumatic spinal cord injuries.<sup>3</sup>

Persons eligible to participate in the program must:

- Be at least 18 years of age who are significantly disabled because of a traumatic spinal cord injury;
- Require a personal care attendant for bathing, dressing, bowel and bladder management, and transportation;
- Require a personal care attendant to obtain or maintain substantial gainful employment;

<sup>1</sup> Ch.2002-286, L.O.F., established the PCA program as a pilot; the program was made permanent in Ch. 2005-172, L.O.F

<sup>2</sup> Ch.2002-286 section 2, L.O.F.

<sup>3</sup> S. 413.402(6), F.S.

- Be able to hire and supervise a personal care attendant; and
- Meet one of the following requirements:
  - Live in a nursing home;
  - Have recently moved out of a nursing home to participate in a Medicaid home; and community-based waiver program targeted to persons with brain or spinal cord injuries; or
  - Presently be employed, but because of a loss of a caregiver, will lose employment and potentially return to a nursing home.<sup>4</sup>

The PCA program consists of two major components:

- Recruiting, screening, selecting, and training candidates as personal care attendants; and
- Selecting eligible individuals for participation in the program and providing financial assistance to eligible participants. Program participants are provided approximately \$670 per month (\$8,000 per year) as reimbursement for the cost of his or her personal care attendant.<sup>5</sup>

Current enrollment in the program is as follows:

Date	Enrollment
January 2006	3
January 2007	22
January 2008	30

### ***Program Care Attendant Program Funding***

There are two funding sources for the PCA program: proceeds from the Tax Collection Enforcement Diversion Program, and from the Motorcycle Specialty License Tag.<sup>6</sup>

#### ***Tax Collection Enforcement Diversion Program***

In conjunction with establishing the personal care attendant program, the Legislature directed the FACIL and the State Attorney's offices in the participating counties to implement a Tax Collection Enforcement Diversion program, which collects revenue from persons who have not remitted their sales taxes. Section 413.4021(1), F.S., specifies that 50 percent of those collections are to be remitted by the DOR to the Able Trust of the Florida Endowment Foundation for Vocational Rehabilitation to be used to implement the PCA program, with the other 50 percent going to the General Revenue Fund. The Able Trust, in turn, remits funds to the FACIL to administer and operate the PCA program.

There are currently five Florida State Attorney's offices operating a program in which un-remitted sales tax is collected from delinquent business owners. These collections generate approximately \$80,000 per month for the personal care attendant program. According to the DOR, in FY 2005-06 the Tax Collection Enforcement Diversion programs in the five participating counties collected, and the DOR remitted, the following to the Able Trust:

<sup>4</sup> S. 413.402, F.S.

<sup>5</sup> Personal Care Attendant Program Procedures

<sup>6</sup> Sections 413.402, F.S. and s. 320.08068, F.S.

County	Total Collected FY 2006-07	Able Trust 50 Percent	General Revenue 50 Percent
Broward	\$ 481,402	\$ 240,701	\$ 240,701
Duval	511,841	255,921	255,921
Hillsborough	825,128	412,564	412,564
Miami-Dade	235,134	117,567	117,567
Palm Beach	245,431	122,715	122,715
Specialty Tag		55,807	
Other Contributions		50	
Interest		61,399	
<b>TOTAL</b>	<b>\$2,298,936</b>	<b>*\$1,266,727</b>	<b>\$1,149,468</b>

\*Includes County collections in italics.

### Motorcycle Specialty (Bikers Care) Tag

Since 2003, the Department of Highway Safety and Motor Vehicles has offered a specialty tag to the owner or lessee of any motorcycle who chooses to pay the additional cost. Pursuant to s. 320.08068(4), F.S., a \$20.00 annual fee is collected from the sale of each specialty license plate under this section. These fees are distributed to the Able Trust as the custodial agent of the funds.<sup>7</sup> The Able Trust may retain up to 10 percent of these funds for administrative costs and the remaining funds are distributed as follows:

- Twenty percent to the Brain and Spinal Cord Injury Program Trust Fund;
- Twenty percent to Prevent Blindness Florida;
- Twenty percent to the Blind Services Foundation of Florida;
- Twenty percent to the Foundation for Vocational Rehabilitation to support the Personal Care Attendant Program pursuant to s. 413,402, F.S.; and,
- Twenty percent to the FACIL to be used to leverage additional funding and new sources of revenue for the centers for independent living in Florida.

In FY 2006-07, the FACIL received approximately \$56,000 from the Able Trust as their share of the specialty tag proceeds.

### **Cross Disability Pilot Program**

In 2006, the Legislature appropriated \$400,000 in non-recurring general revenue to establish a pilot personal care attendant project in Orange, Osceola, Lake and Seminole counties.<sup>8</sup> In contrast to the statutory PCA program, which serves only those who suffer from traumatic spinal cord injuries, the Cross Disability pilot project is intended to serve persons who are significantly physically or mentally disabled without regard to the underlying cause of the disability. Such individuals who need the assistance of a personal care attendant to accept or maintain employment are eligible to enroll in the pilot project.

<sup>7</sup> Prior to July 1, 2006, the share allotted to the personal care attendant program was 25 percent. See ch. 2006-169, L.O.F.

<sup>8</sup> See Specific Appropriation 340, General Appropriations Act, ch. 2006-25, L.O.F. These funds were appropriated to the Department of Children and Families and are being distributed to the FACIL pursuant to grant agreements.

Operating procedures for the Cross Disability pilot project are based on the experiences of the existing PCA program. The Cross Disability pilot project provides each participant up to \$1,500 per month to pay for a personal care attendant. The maximum reimbursable amount is based on a formula that takes into account a participant's income. Among current enrollees, those maximums range from \$1,238.15 to \$1,500; however, in no case may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant. The pilot project began enrollment in January 2007 and currently has 11 individuals participating.

Because the appropriation establishing the pilot project specified non-recurring general revenue, the Cross Disability pilot project is operating under the original appropriation in 2006. The Department of Children and Families was permitted to carry forward the unspent balance of the original appropriation to fund the program's operations in FY 2007-08.<sup>9</sup> Without new funding, the program will not continue after July 2008.

### ***Effect of Proposed Legislation***

House Bill 731 amends the existing Personal Care Attendant program (PCA) to expand participant eligibility to persons who have severe and chronic disabilities of all kinds, not just those with traumatic spinal cord injuries. The bill names the revised program the "James Patrick Memorial Work Incentive Personal Attendant Services Program." The bill derives from the experience of the Cross Disability Pilot program providing personal care attendants to the significantly disabled in Orange, Osceola, Lake and Seminole counties and provides that all persons who are enrolled in the existing PCA and the Cross Disability pilot project on June 30, 2008, are automatically eligible for and enrolled in the revised program.

The effect of this proposal is to combine the existing PCA program and the Cross Disability Pilot program into a single cross-disability PCA program for individuals with severe and chronic disabilities who require a personal care attendant to go to work.

The bill requires the Florida Endowment Foundation for Vocational Rehabilitation to enter into an agreement with the Florida Association of Centers for Independent Living (FACIL) to administer the new program and provides that FACIL receive 15 percent of the funds in the Florida Endowment Foundation for Vocational Rehabilitation received from the Tax Collection Enforcement Diversion Program and the Motorcycle Specialty License Tab to administer the program. The bill increases the percentage of revenue collected from the Tax Collection Enforcement Diversion program from 50 percent to 90 percent, changing the 50/50 distribution to 90/10 (program funding/general revenue.)

The bill deletes obsolete language regarding eligibility criteria and program development, and deletes provisions allowing nurse registries to recruit and screen candidates to act as fiscal intermediaries to make payments to personal care attendants. The bill establishes a new program oversight group and requires that FACIL work with this group to review and revise policies and procedures governing the combined program.

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<sup>9</sup> Section 19 in the General Appropriations Act for FY 2007-08 authorizes DCF to carry forward the unexpended balance of the FY 2006-07 appropriation of \$400,000. The actual carry-forward amount was \$202,000 in non-recurring funds.

### C. SECTION DIRECTORY:

Section 1: Amends s. 413.402, F.S., requires the Florida Endowment Foundation for Vocational Rehabilitation to contract with the FACIL to administer the newly designated "James Patrick Memorial Work Incentive Personal Attendant Services Program" to provide personal care attendants to persons having severe and chronic disabilities of all kinds; provides that, effective July 1, 2008, FACIL will receive administrative funds from deposits with the Able Trust to administer the program; amends program eligibility standards; deletes requirements relating to recruitment, screening and selection of personal care attendants; requires FACIL to provide certain training to program participants; establishes an oversight group and provides membership.

Section 2. Amends s. 413.4021, F.S., increases the percentage of revenue collected to operate the program; repeals the provision that the Florida Endowment Foundation for Vocational Rehabilitation shall select the entity to administer the Personal Care Attendant program.

Section 3. Creates an undesignated section of law providing for automatic eligibility for and enrollment in the Personal Care Attendant program for certain persons.

Section 4. Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill decreases the percent of collected sales tax received from the Tax Collection Enforcement Diversion program that would be deposited in the General Revenue Fund. Currently, 50 percent is deposited in General Revenue – in Fiscal Year 2006-2007, that amount was \$1,149,468. The bill decreases that percentage to 10 percent. The Revenue Estimating Conference analysis dated February 29, 2008, estimates the fiscal impact resulting from this decrease to the General Revenue Fund to be \$1M in Fiscal Year 2008-09.

#### 2. Expenditures:

The Department of Revenue reports that it anticipates increased State Attorney participation in the Tax Collection Enforcement Diversion Program by at least two judicial circuits because of this bill. DOR prepared diversion cases and refers these cases to the participating state Attorney. In support of the current effort, the DOR has an investigator and the equivalent of one additional staff member in each of the five judicial circuits where the Diversion Program operates. If two new Diversion Programs were added, DOR would need two Investigators (Pay Grade 18) to prepare these cases and two Revenue Specialists III's (Pay Grade 17) to make adjustments to the DOR's integrated tax system (SUNTAX.)<sup>10</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Not applicable

<sup>10</sup> Department of Revenue Analysis, dated February 16, 2008 on file with the committee.

2. Expenditures:

Not applicable

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals with disabilities will have the opportunity to hire a personal care attendant to assist him or her in order to obtain or maintain gainful employment.

D. FISCAL COMMENTS:

As noted in the staff analysis, the current PCA program provides participants approximately \$670 per month (\$8,000) per year. FACIL advises that the proposal to combine the PCA and Cross Disability pilot programs may provide participants with up to \$1,500 per month for his or her personal care attendant. The maximum reimbursable amount is based on a formula which takes into account a participant's income. Among current enrollees, those maximums range from \$1,238 to \$1,500 per month; in no case, however, may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant.

House Bill 731 provides that all persons enrolled in the PCA program and the Cross Disability pilot on June 30, 2008 are automatically enrolled in the new program. Currently there are 30 PCA program participants and 11 Cross Disability pilot participants totaling 41. The estimate for available revenue to the Able Trust is \$1,266,724 for Fiscal Year 2006-2007. Program expenses in that year were \$318,936, leaving \$947,788 available for payments to program participants. Using these figures, if each participant were to receive the maximum payment of \$1,500 per month under the provisions of the bill, approximately 52 participants could be served through the program created in this bill.

There are also expenses associated with the Diversion Program, which is one source of funding for the PCA Program.

As reported by FACIL, for the first year of the PCA project, the Brain and Spinal Cord Injury program (BSCIP) provided a \$50,000 loan to the State Attorney's Office in each of the sites to establish a Tax Collection Enforcement Diversion Program office. To re-pay the loan, each program site is required to pay 25 percent of each quarter's earnings to the PCIP until they have paid back the full \$50,000. After the first year and the loan payments are made, the rest of the collections up to an amount of \$50,000 per year are given back to the state attorney offices to support the cost of the diversion program. The remaining funds are then available to pay for personal care attendants for program participants.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Not applicable

B. RULE-MAKING AUTHORITY:

Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 731**

COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                               \_\_\_ (Y/N)  
OTHER                                     \_\_\_\_\_

1 Council/Committee hearing bill: Healthy Seniors  
2 Representative(s) Gardiner offered the following:

3

4           **Amendment**

5           On line 155 remove:

6           (1) Notwithstanding the provisions of s. 212.20, 90 ~~50~~

7           and insert:

8           (1) Notwithstanding the provisions of s. 212.20, 50



1                                   A bill to be entitled  
2           An act relating to the personal care attendant program;  
3           amending s. 413.402, F.S.; revising provisions governing a  
4           program to provide personal care attendants for persons  
5           who have disabilities; requiring the Florida Endowment  
6           Foundation for Vocational Rehabilitation to enter into an  
7           agreement with the Florida Association of Centers for  
8           Independent Living to administer a program to provide such  
9           attendants to persons who have severe and chronic  
10          disabilities; naming the program the "James Patrick  
11          Memorial Work Incentive Personal Attendant Services  
12          Program"; providing for payment for the administration of  
13          the program; removing a provision requiring interagency  
14          memoranda of agreement; revising eligibility requirements  
15          for participation in the personal care attendant program;  
16          removing provisions concerning the training, selection,  
17          and recruitment of personal care attendants; providing for  
18          training of program participants concerning hiring and  
19          managing an attendant; providing for the adoption and  
20          revision of program policies and procedures by the  
21          association in cooperation with an oversight group;  
22          providing for membership in the oversight group; amending  
23          s. 413.4021, F.S.; increasing the percentage of revenues  
24          collected from persons who fail to remit sales tax which  
25          is deposited in the operating account of the Florida  
26          Endowment Foundation for Vocational Rehabilitation to  
27          administer the program; deleting a provision requiring  
28          that the Florida Endowment Foundation for Vocational

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29 Rehabilitation select an entity to administer the program;  
30 providing for automatic enrollment in the program for  
31 certain persons; providing an effective date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Section 413.402, Florida Statutes, is amended  
36 to read:

37 413.402 Personal care attendant program.--The personal  
38 care attendant program created under this section shall be cited  
39 as the "James Patrick Memorial Work Incentive Personal Attendant  
40 Services Program." The Florida Endowment Foundation for  
41 Vocational Rehabilitation shall enter into an agreement with the  
42 Florida Association of Centers for Independent Living to  
43 administer the James Patrick Memorial Work Incentive Personal  
44 Attendant Services, in conjunction with the Brain and Spinal  
45 Cord Injury Program in the Department of Health, shall develop a  
46 Program to provide personal care attendants to persons who have  
47 severe and chronic disabilities of all kinds and who are  
48 eligible under pursuant to subsection (1). Effective July 1,  
49 2008, the Florida Association of Centers for Independent Living  
50 shall receive 15 percent of the funds to be deposited with the  
51 Florida Endowment Foundation for Vocational Rehabilitation  
52 pursuant to ss. 320.08068(4)(d) and 413.4021(1) to administer  
53 the program. The association and the Department of Health shall  
54 jointly develop memoranda of understanding with the Department  
55 of Revenue, the Florida Medicaid program in the Agency for  
56 Health Care Administration, the Florida Endowment Foundation for

CODING: Words stricken are deletions; words underlined are additions.

57 ~~Vocational Rehabilitation, and the Division of Vocational~~  
 58 ~~Rehabilitation of the Department of Education.~~

59 (1) In order to be ~~Persons~~ eligible to participate in the  
 60 program, a person must:

61 (a) Be at least 18 years of age, be a resident of this  
 62 state for at least 12 months immediately prior to application to  
 63 the program, and be significantly and chronically disabled ~~due~~  
 64 ~~to a traumatic spinal cord injury;~~

65 (b) Require a personal care attendant for assistance with  
 66 or support for at least two activities of daily living as  
 67 defined in s. 429.02, as determined by a physician or  
 68 psychiatrist ~~bathing, dressing, bowel and bladder management,~~  
 69 ~~and transportation;~~

70 (c) Require a personal care attendant in order to accept a  
 71 job or maintain substantial gainful employment; and

72 (d) Be able to acquire ~~hire~~ and direct ~~supervise~~ a  
 73 personal care attendant. ~~;~~ and

74 ~~(e) Meet one of the following requirements:~~

75 ~~1. Live in a nursing home;~~

76 ~~2. Have moved out of a nursing home within the preceding~~  
 77 ~~180 days due to participation in a Medicaid home and community-~~  
 78 ~~based waiver program targeted to persons with brain or spinal~~  
 79 ~~cord injuries; or~~

80 ~~3. Presently be employed but, because of a loss of a~~  
 81 ~~caregiver, will lose employment and potentially return to a~~  
 82 ~~nursing home.~~

83 (2) (a) ~~The association, in cooperation with the Department~~  
 84 ~~of Health and the Florida Endowment Foundation for Vocational~~

85 ~~Rehabilitation, shall develop a program to recruit, screen, and~~  
86 ~~select candidates to be trained as personal care attendants.~~

87 ~~(b) The services of a nurse registry licensed pursuant to~~  
88 ~~s. 400.506 may be utilized to recruit and screen candidates and~~  
89 ~~to operate as a fiscal intermediary through which payments are~~  
90 ~~made to individuals performing services as personal care~~  
91 ~~attendants under the program. The Department of Health and the~~  
92 ~~Agency for Health Care Administration shall seek any federal~~  
93 ~~waivers necessary to implement this provision.~~

94 ~~(3) The Florida Association of Centers for Independent~~  
95 ~~Living association and the Department of Health, in cooperation~~  
96 ~~with the Florida Endowment Foundation for Vocational~~  
97 ~~Rehabilitation, shall provide ~~develop~~ a training to program~~  
98 ~~participants on hiring and managing a personal care attendant~~  
99 ~~and, in cooperation with the oversight group described in~~  
100 ~~paragraph (b), adopt and revise the policies and procedures~~  
101 ~~governing the personal care attendant program and the training~~  
102 ~~program.~~

103 ~~(b) The oversight group shall include, but need not be~~  
104 ~~limited to, a member of the Florida Association of Centers for~~  
105 ~~Independent Living, a person who is participating in the~~  
106 ~~program, and one representative each from the Department of~~  
107 ~~Revenue, the Department of Children and Family Services, the~~  
108 ~~Division of Vocational Rehabilitation in the Department of~~  
109 ~~Education, the Medicaid program in the Agency for Health Care~~  
110 ~~Administration, the Florida Endowment Foundation for Vocational~~  
111 ~~Rehabilitation, and the Brain and Spinal Cord Injury Program in~~  
112 ~~the Department of Health ~~program for personal care attendants.~~~~

113 ~~(4) The association, in cooperation with the Department of~~  
 114 ~~Health and the Florida Endowment Foundation for Vocational~~  
 115 ~~Rehabilitation, shall establish procedures for selecting persons~~  
 116 ~~eligible under subsection (1) to participate in the program.~~

117 ~~(5) The association, in cooperation with the Department of~~  
 118 ~~Revenue, the Brain and Spinal Cord Injury Program in the~~  
 119 ~~Department of Health, the Florida Medicaid program in the Agency~~  
 120 ~~for Health Care Administration, a representative from the state~~  
 121 ~~attorney's office in each of the judicial circuits participating~~  
 122 ~~in the program, the Florida Endowment Foundation for Vocational~~  
 123 ~~Rehabilitation, and the Division of Vocational Rehabilitation of~~  
 124 ~~the Department of Education, shall develop a plan for~~  
 125 ~~implementation of the program.~~

126 ~~(6) The Department of Health shall establish an oversight~~  
 127 ~~workgroup for the personal care attendant program to oversee the~~  
 128 ~~implementation and administration of the program. The workgroup~~  
 129 ~~shall be composed of one representative from the Brain and~~  
 130 ~~Spinal Cord Injury Program in the Department of Health, one~~  
 131 ~~representative from the Department of Revenue, one~~  
 132 ~~representative from the Florida Medicaid Program in the Agency~~  
 133 ~~for Health Care Administration, one representative from the~~  
 134 ~~Florida Endowment Foundation for Vocational Rehabilitation, one~~  
 135 ~~representative from the Florida Association of Centers for~~  
 136 ~~Independent Living, one representative from the Division of~~  
 137 ~~Vocational Rehabilitation of the Department of Education, and~~  
 138 ~~two members who are persons with traumatic spinal cord injuries~~  
 139 ~~or are family members of persons with traumatic spinal cord~~  
 140 ~~injuries.~~

141 Section 2. Subsections (1) and (2) of section 413.4021,  
 142 Florida Statutes, are amended to read:

143 413.4021 Program participant selection; tax collection  
 144 enforcement diversion program.--The Department of Revenue, in  
 145 coordination with the Florida Association of Centers for  
 146 Independent Living and the Florida Prosecuting Attorneys  
 147 Association, shall select judicial circuits in which to operate  
 148 the program. The association and the state attorneys' offices  
 149 shall develop and implement a tax collection enforcement  
 150 diversion program, which shall collect revenue due from persons  
 151 who have not remitted their collected sales tax. The criteria  
 152 for referral to the tax collection enforcement diversion program  
 153 shall be determined cooperatively between the state attorneys'  
 154 offices and the Department of Revenue.

155 (1) Notwithstanding the provisions of s. 212.20, 90 ~~50~~  
 156 percent of the revenues collected from the tax collection  
 157 enforcement diversion program shall be deposited into the  
 158 operating account of the Florida Endowment Foundation for  
 159 Vocational Rehabilitation, to be used to administer the personal  
 160 care attendant program and to contract with the state attorneys  
 161 participating in the tax collection enforcement diversion  
 162 program in an amount of not more than \$50,000 for each state  
 163 attorney.

164 (2) The program shall operate only from funds deposited  
 165 into the operating account of the Florida Endowment Foundation  
 166 for Vocational Rehabilitation. ~~The Florida Endowment Foundation~~  
 167 ~~for Vocational Rehabilitation shall select the entity to~~  
 168 ~~administer the personal care attendant program.~~



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169           Section 3. Notwithstanding any other law, each person  
 170 enrolled in the personal care attendant program under s.  
 171 413.402, Florida Statutes, on June 30, 2008, and each person  
 172 enrolled in the pilot personal care attendant program in Lake,  
 173 Orange, Osceola, and Seminole Counties as authorized in Specific  
 174 Appropriation 340, chapter 2006-25, Laws of Florida, on June 30,  
 175 2008, is automatically eligible for and enrolled in the personal  
 176 care attendant program, as amended by this act, on July 1, 2008.

177           Section 4. This act shall take effect July 1, 2008.







**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**



**BILL #:** PCB HCC 08-20 Alzheimer's Medicaid Waiver Program

**ANALYSIS OF POSSIBLE BILL LANGUAGE**

**SPONSOR(S):**

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:		 DePalma/Massengale	 Ciccone
1)			
2)			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

The bill extends the repeal date for the Medicaid Home and Community-Based Waiver Program for Persons with Alzheimer's Disease so that the program is automatically eliminated at the close of the 2010 Regular Session of the Legislature, rather than following the 2008 Regular Session.

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an evaluation of comparable Medicaid home and community-based services waiver programs to determine their comparative cost effectiveness and ability to delay or prevent institutionalization of Medicaid recipients. The bill requires OPPAGA to coordinate with relevant experts to determine which waiver programs should be included in the evaluation in order to make reasonable comparisons. The evaluation must also include a review of the flexibility provided to states by operation of the federal Deficit Reduction Act (DRA) of 2005. The bill requires that the findings and recommendations of the evaluation are to be submitted to the Speaker of the House of Representatives and the President of the Senate by February 1, 2010.

The bill codifies the recommendations of the Senate Interim Project Report 2008-113, titled the "Review of the Medicaid Home and Community-Based Waiver Program for Persons with Alzheimer's Disease."

The bill will have a fiscal impact on the Department of Elder Affairs. Currently, the waiver program is appropriated \$5,057,409 for state fiscal year 2007-2008. If the waiver program is extended two additional years, the department would require continuation budget to maintain the program.

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Empower Families** – This bill extends the repeal date for the Medicaid Home and Community-Based Waiver Program for Persons with Alzheimer’s Disease. The waiver program permits up to 350 Medicaid recipients with Alzheimer’s disease to live in the community as long as possible – while avoiding institutional care in nursing facilities – by providing certain supportive services to program beneficiaries and their live-in caregivers.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Alzheimer’s Disease

Dementia describes a group of symptoms related to a brain disorder that seriously affects a person’s ability to carry out activities of daily living, such as cooking, driving, shopping, or attending to personal hygiene. The two most common forms of dementia among older people are Alzheimer’s disease (which initially involves the parts of the brain that control thought, memory, and language) and multi-infarct dementia (caused by a series of small strokes or changes in the brain’s blood supply, which result in the death of brain tissue). It is still not known what causes Alzheimer’s disease, and there is presently no cure for the ailment.<sup>1</sup>

Alzheimer’s disease affects approximately 5.1 million persons in the United States as of 2007. It is estimated that 360,000 Floridians had Alzheimer’s disease in 2000, and this number is expected to reach 450,000 (a 25 percent increase) by 2010. Ninety-six percent of persons with Alzheimer’s disease are 65 years of age or older.<sup>2</sup> The mortality rate for persons with Alzheimer’s disease has increased over the last few years. Alzheimer’s disease is now the seventh-leading cause of death in the United States (65,965 deaths reported in 2004). For purposes of comparison, while age-adjusted death rates decreased significantly from 2003 to 2004 for nine of the 15 leading causes of death, significant increases in mortality rates occurred for unintentional injuries, hypertension, and Alzheimer’s disease.<sup>3</sup>

This increase in Alzheimer’s disease morbidity and mortality has direct fiscal effects on federal and state health initiatives. Persons with Alzheimer’s disease and other forms of dementia tend to use more medical services and have higher overall medical expenses than persons without these conditions. In 2000, Medicare spent nearly three times as much annually, on average, for people with Alzheimer’s disease and other dementias as the amount spent on beneficiaries without dementia (\$13,207 versus \$4,454, per beneficiary). Additionally, approximately 30 percent of Medicare beneficiaries with Alzheimer’s disease and other dementias also receive services financed by Medicaid, particularly long-term care services. Among nursing home patients with Alzheimer’s disease and other forms of dementia, 51 percent used Medicaid to pay for their nursing home care in 2000.<sup>4</sup>

##### Florida’s Alzheimer’s Disease Initiative

<sup>1</sup> “Alzheimer’s Disease Fact Sheet,” United States Department of Health and Human Services, National Institute on Aging, July 2006, available at: <http://www.nia.nih.gov/alzheimers/publications/adfact.htm>.

<sup>2</sup> “Alzheimer’s Disease Facts and Figures 2007,” Alzheimer’s Association, 2007, available at: [http://www.alz.org/national/documents/Report\\_2007FactsAndFigures.pdf](http://www.alz.org/national/documents/Report_2007FactsAndFigures.pdf).

<sup>3</sup> “Deaths: Final Data for 2004,” Centers for Disease Control and Prevention, National Center for Health Statistics, accessed 26 February, 2008, available at: <http://www.cdc.gov/nchs/products/pubs/pubd/hestats/finaldeaths04/finaideaths04.htm>.

<sup>4</sup> “Alzheimer’s Disease Facts and Figures 2007,” Alzheimer’s Association, *supra*.

Due in large part to the growing number of persons at risk for Alzheimer's disease in Florida, the Legislature created the Alzheimer's Disease Initiative (ADI) in 1985 to provide a continuum of services to meet the changing needs of individuals affected by Alzheimer's disease and related memory disorders. The initiative is comprised of four components: 1) memory disorder clinics providing diagnosis, research, treatment, and referrals; 2) model day care programs to test new care alternatives; 3) a research database and brain bank to support research; and 4) supportive services, including case management, counseling, consumable medical supplies, respite for caregivers, and nine other services as part of the Medicaid Home and Community-Based Waiver Program for Persons with Alzheimer's Disease. The statutory authorization for the ADI is found in ss. 430.501-430.504, F.S. The authority to continue the waiver program will be automatically eliminated at the close of the 2008 Regular Session, unless the Legislature takes action to continue the program.

### Medicaid Home and Community-Based Services Waiver Programs

In 1981, the U.S. Congress approved the use of Medicaid home and community-based services (HCBS) waiver programs to allow states to provide certain Medicaid services in the home for persons who would otherwise require institutional care in a hospital, nursing facility, or intermediate care facility. These programs are federally-approved Medicaid initiatives authorized by Title XIX of the Social Security Act, Section 1915.

States may offer a variety of services to consumers under an HCBS waiver program, and the number of services that can be provided is not limited. These programs may provide a combination of both traditional medical services (i.e., dental services, skilled nursing services, etc.), and non-medical services (i.e., respite care, case management, environmental modifications, etc.). Family members and friends may be providers of waiver services if they meet the specified provider qualifications. The HCBS waiver programs are initially approved for 3 years, and may be renewed at 5-year intervals.

If a state terminates a HCBS waiver, federal law requires that recipients receive continued services in an amount that does not violate the comparability of service requirements established in the Social Security Act.<sup>5</sup> In effect, this requirement dictates that states must transition recipients into programs with comparable services upon termination of a HCBS waiver.

Florida presently operates the following home and community-based services waiver programs:

- Adult Cystic Fibrosis;
- Aged/Disabled Adult Services;
- Adult Day Health Care;
- Assisted Living for the Elderly;
- Alzheimer's Disease;
- Channeling Services for the Frail Elderly;
- Consumer Directed Care Plus;
- Developmental Disabilities;
- Familial Dysautonomia;
- Family and Supported Living Model;
- Nursing Home Diversion;
- Project AIDS Care; and,
- Traumatic Brain Injury and Spinal Cord Injury.

### Recent Changes in Federal Medicaid Law Pertaining to HCBS Waivers

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<sup>5</sup> 42 C.F.R. 441.356

Congress provided new flexibility to state Medicaid programs through passage of the Deficit Reduction Act (DRA) of 2005.<sup>6</sup> Among the DRA's numerous changes to the Medicaid program is a provision allowing states to include home and community-based services for the elderly and disabled as an optional benefit instead of requiring a waiver.<sup>7</sup> In addition, unlike other optional services (such as rehabilitation or personal care), states are allowed to cap the number of people eligible for the services through modifications to the needs-based eligibility criteria established by the state. The DRA also removes the prior statutory requirement that beneficiaries receive needed services at home only if they would need institutional care without them. States can now provide home and community-based care under their state plans to those who may not yet be at risk for immediate institutionalization.

### Senate Interim Project 2008-133

In Interim Project 2008-133, Senate staff reviewed subsections (7), (8), and (9) of s. 430.502, F.S., which require the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) to implement a Medicaid home and community-based waiver program for persons with Alzheimer's disease.<sup>8</sup> The goal of the waiver program is to allow Medicaid recipients with Alzheimer's disease to live in the community as long as possible, and avoid long-term care in nursing facilities by providing supportive services to beneficiaries and their caregivers.

#### *The Medicaid Alzheimer's Disease HCBS Waiver Program*

The Medicaid Home and Community-Based Waiver Program for Persons with Alzheimer's Disease serves individuals ages 60 and over who have a specific diagnosis of Alzheimer's disease (no other dementias qualify), and who have a live-in caregiver. Eligible waiver participants must be diagnosed with Alzheimer's disease by a physician, as confirmed by a Memory Disorder Clinic, a board certified neurologist, or a licensed medical doctor with experience in neurology. -Eligible participants must also meet the nursing home level of care criteria as assessed by DOEA's Comprehensive Assessment Review and Evaluation Services (CARES) unit. Persons already living in a nursing home or an intermediate care facility for individuals with mental retardation, the medically needy, and those persons receiving services through another Medicaid home and community-based waiver program are ineligible for participation.

The authorized services delivered through the Medicaid Alzheimer's Disease waiver program include:

- Case management;
- Adult day care;
- Respite care;
- Wanderer alarm systems;
- Wanderer identification and location programs;
- Caregiver training;
- Behavioral assessment and intervention;
- Incontinence supplies;
- Personal care assistance;
- Environmental modifications; and,
- Pharmacy review.

The Alzheimer's disease waiver program began enrolling participants in late 2005 in three areas of the state: Miami-Dade/Broward, Palm Beach, and Pinellas Counties. AHCA and DOEA selected vendors through a competitive bid process. Each vendor, in turn, was contracted to develop a network of service

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<sup>6</sup> P.L. 109-171

<sup>7</sup> Section 6086 of the Deficit Reduction Act of 2005.

<sup>8</sup> Ch. 2003-57, s. 26. L.O.F.



providers to deliver direct waiver services consistent with those listed above. The subsequent contracts entered into were for 36-month periods, with the beginning and ending dates varying with each vendor.<sup>9</sup>

### *Interim Project Findings*

The objectives of the interim project were to assess how many people were enrolled in and using the waiver services, whether the waiver program was considered effective and efficient in helping individuals with Alzheimer's disease remain in the community, and whether the waiver should be reauthorized during the 2008 Regular Session of the Legislature. Senate staff from the Health Policy Committee and the Children, Families, and Elder Affairs Committee conducted a joint project to develop recommendations regarding reauthorization of the waiver program. Staff conducted interviews with operational staff in AHCA and DOEA, as well as with staff of the contract vendors, to assess the implementation of the waiver program. Staff also reviewed evaluations of the waiver program conducted by the Louis de la Parte Florida Mental Health Institute at the University of South Florida. Finally, staff also analyzed vendor contracts supplied by AHCA.

Based on this review, Senate staff concluded that implementation of the Alzheimer's disease waiver program was slow, and the program had experienced limited participation since its inception. As of October, 2007 (the third year of the program), the waiver program was serving only 207 Medicaid recipients (roughly 60 percent of the 350 available slots). Comparatively, most of the other Medicaid home and community-based services waiver programs are at capacity, and new slots for these programs are added through the appropriations process and typically filled within the same fiscal year. Staff identified a number of reasons for this slow implementation, including: a contract award challenge, programming issues that hindered provider enrollment, staff turnover at AHCA and among the vendors, and a limited pool of eligible recipients.

A review of the evaluations by the University of South Florida found that individuals choosing to enroll in the waiver program spent less days, on average, in institutional settings such as nursing homes and hospitals than similarly-situated individuals not enrolling in the waiver program. Participants in the Alzheimer's disease waiver program spent an average of 3.6 days in nursing homes over the course of a year, compared to an average of 4.79 days in nursing homes for individuals in the Aged and Disabled waiver program, and an average of 9.16 days in nursing homes for non-waiver Medicaid recipients with similar health conditions. However, the average per member program cost associated with delaying these participants from going into nursing homes was substantially higher compared to the cost for those who did not receive any waiver services. The non-waiver group had the lowest average annual expenditures of all the comparison groups, with almost \$5,900 less in expenditures on average, per person, than the 12-month Alzheimer's disease waiver program participant.

### *Interim Project Recommendations*

Based on the limited availability of program data, and the short period of time that the program has been operational, Senate staff recommended that the Alzheimer's disease waiver program be saved from repeal for a period of 2 years. During this 2-year period, it was recommended that a comprehensive study comparing cost savings and nursing home diversion effectiveness of this and similar home and community-based waiver initiatives be conducted. It was recommended that the study also examine whether the state could achieve similar results by using the flexibility provided to states through the federal DRA to provide home and community-based services without reliance upon waiver programs.

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<sup>9</sup> The contract with Gulf Coast Jewish Family Services, Inc., is for \$388,800 (\$135 per member, per month, at a maximum average caseload of 90 individuals), and is effective from February 15, 2005 through February 14, 2008. The contract with Miami Jewish Home and Hospital for the Aged, Inc., is for \$874,800 (\$135 per member, per month, at a maximum average caseload of 180 individuals), and is effective from March 15, 2005 through March 14, 2008. The contract with Alzheimer's Community Care, Inc., is for \$388,800 (\$135 per member, per month, at a maximum average caseload of 80 individuals), and is effective from September 20, 2005 through June 30, 2008.

## **Effect of Proposed Changes**

The bill extends the repeal date for the Medicaid Home and Community-Based Waiver Program for Persons with Alzheimer's Disease so that the program is automatically eliminated at the close of the 2010 Regular Session of the Legislature, effectively preventing a sunset of the waiver program following the 2008 Legislative session.

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an evaluation of comparable Medicaid home and community-based services waiver programs. This report will include a determination of the waiver program's comparative cost effectiveness and ability to delay or prevent institutionalization of Medicaid recipients. The bill further requires OPPAGA to consult with AHCA, DOEA, appropriate substantive and fiscal legislative committees, and other subject matter experts to determine which waiver programs should be included in the evaluation in order to make reasonable comparisons. The evaluation must also include a review of the flexibility provided to states by the federal Deficit Reduction Act (DRA) of 2005. Finally, the bill requires that the findings and recommendations of the evaluation are to be submitted to the Speaker of the House of Representatives and the President of the Senate by February 1, 2010.

### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 430.502(9), F.S., specifying that the authority to continue the waiver program shall be automatically eliminated at the close of the 2010 Regular Session of the Legislature, unless further legislative action is taken to continue the program.

**Section 2.** Directs OPPAGA to conduct an evaluation of comparable Medicaid home and community-based services waiver programs; requiring OPPAGA to consult with AHCA, DOEA, appropriate substantive and fiscal legislative committees, and other subject matter experts to determine which waiver programs should be included in the evaluation; providing that the evaluation shall include a review of the flexibility provided to states through operation of the federal Deficit Reduction Act of 2005; requiring findings and recommendations to be submitted to the Speaker of the House of Representatives and the President of the Senate by February 1, 2010.

**Section 3.** Provides that the legislation is effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The bill will have a fiscal impact on DOEA. Currently, the waiver program is appropriated \$5,057,409 for state fiscal year 2007-2008. If the waiver program is extended two additional years, the department would need continuation budget to maintain the program.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

Two factors make calculating the net fiscal effect of continuing, or discontinuing, the waiver program unclear. First, the waiver program has never attained full enrollment of the available 350 slots. For state fiscal year 2007-2008, the average monthly enrollment in the program is 226 individuals, with an estimated annual expenditure of \$3,284,916 (\$1,722,493 below the program's FY 2007-08 General Appropriations Act appropriation). To the extent that the program does not achieve full enrollment during the 2-year extension provided in the bill, expenditures will likely continue to be below the program's annual appropriation.

However, if the Legislature chooses to allow the program to sunset following the 2008 Regular Session, current enrollees would need to be transitioned into a similar waiver program to comply with federal law. The cost of serving these individuals under a similar waiver program would be comparable, or greater, than current expenditures under the Alzheimer's Disease HCBS Waiver Program. Any cost savings would only be derived from the number of unfulfilled slots at the time program enrollment ceased, and the attrition of individuals if they cannot be replaced with new participants.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

Non-applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**



PCB HCC 08-20

ORIGINAL

YEAR

1                                   A bill to be entitled  
 2           An act relating to the Medicaid waiver program for  
 3           patients who have Alzheimer's disease; amending s.  
 4           430.502, F.S.; extending the authority to continue the  
 5           waiver program; requiring the Office of Program Policy  
 6           Analysis and Government Accountability to conduct a  
 7           comparative study of Medicaid home and community-based  
 8           services waiver programs; requiring that the findings and  
 9           recommendations be submitted to the Legislature by a  
 10          specified date; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Subsection (9) of section 430.502, Florida  
 15 Statutes, is amended to read:

16           430.502 Alzheimer's disease; memory disorder clinics and  
 17 day care and respite care programs.--

18           (9) Authority to continue the waiver program specified in  
 19 subsection (7) shall be automatically eliminated at the close of  
 20 the 2010 ~~2008~~ Regular Session of the Legislature unless further  
 21 legislative action is taken to continue it prior to such time.

22           Section 2. The Office of Program Policy Analysis and  
 23 Government Accountability shall conduct an evaluation of  
 24 comparable Medicaid home and community-based services waiver  
 25 programs. The office shall consult with the Agency for Health  
 26 Care Administration, the Department of Elderly Affairs,  
 27 appropriate substantive and appropriations committees of the  
 28 Senate and the House of Representatives, and other subject

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29 matter experts to determine which waiver programs should be  
 30 included in the evaluation in order to make reasonable  
 31 comparisons. The evaluation shall assess whether the waiver  
 32 programs are more effective at delaying or preventing  
 33 participants from entering institutional settings and the cost  
 34 of the waiver programs across groups compared to the regular  
 35 Medicaid program. The evaluation shall also assess whether  
 36 specialty home and community-based services waiver programs are  
 37 more effective at keeping participants out of institutional  
 38 settings than the broader home and community-based services  
 39 waiver programs and whether there is a difference in Medicaid  
 40 expenditures per participant on average between specialty and  
 41 broad waiver programs. The evaluation shall provide a review of  
 42 the flexibility provided to states by the federal Deficit  
 43 Reduction Act of 2005 in regard to home and community-based  
 44 services and recommend whether this flexibility should be used  
 45 instead of providing these services under the provisions of  
 46 current Medicaid home and community-based services waivers. The  
 47 evaluation's findings and recommendations shall be submitted to  
 48 the President of the Senate and the Speaker of the House of  
 49 Representatives by February 1, 2010.

50 Section 3. This act shall take effect upon becoming a law.