

Committee Substitute for Committee Substitute for  
Committee Substitute for House Bill No. 935

An act relating to area agencies on aging; amending s. 20.41, F.S.; requiring the Department of Elderly Affairs to contract with area agencies on aging to fulfill programmatic and funding requirements; revising responsibilities of the governing body of an area agency on aging and the executive director of the agency; amending s. 430.203, F.S.; revising the definition of “lead agency”; removing obsolete language; revising requirements with respect to the request for proposal process for the designation of a lead agency for community care for the elderly; requiring the Department of Elderly Affairs to create a dispute resolution mechanism by rule; providing requirements with respect to the dispute resolution mechanism; specifying required standards for a bid protest; providing for specified entitlement of litigants when certain lead agency designations are the subject matter of litigation; eliminating provisions that require an area agency on aging to exempt specified providers from the competitive bid process; amending s. 430.2053, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsections (6), (7), (8), and (9) of section 20.41, Florida Statutes, are amended to read:

20.41 Department of Elderly Affairs.—There is created a Department of Elderly Affairs.

(6) In accordance with the federal Older Americans Act of 1965, as amended, the department shall designate and contract with area agencies on aging in each of the department’s planning and service areas. Area agencies on aging, as nongovernmental, independent, not-for-profit corporations under s. 501(c)(3) of the Internal Revenue Code, shall ensure a coordinated and integrated provision of long-term care services to the elderly and shall ensure the provision of prevention and early intervention services. The department shall have overall responsibility for information system planning. The department shall ensure, through the development of equipment, software, data, and connectivity standards, the ability to share and integrate information collected and reported by the area agencies in support of their contracted obligations to the state. The department shall contract with area agencies on aging to fulfill programmatic and funding requirements.

~~(7) The department shall contract with the governing body, hereafter referred to as the “board,” of an area agency on aging to fulfill programmatic and funding requirements. The board shall be responsible for the overall direction of the agency’s programs and services and shall ensure that the agency is administered in accordance with the terms of its contract with the department, legal requirements, established agency policy, and effective management principles. The board shall also ensure the accountability of~~

the agency to the local communities included in the planning and service area of the agency.

~~(7)(8)~~ The area agency on aging board shall, in consultation with the secretary, appoint a chief executive officer, hereafter referred to as the “executive director,” ~~to whom shall be delegated responsibility for agency management and for implementation of board policy, and who shall be accountable for the agency’s performance.~~

~~(8)(9)~~ Area agencies on aging are subject to chapter 119, relating to public records, and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings.

Section 2. Subsection (9) of section 430.203, Florida Statutes, is amended to read:

430.203 Community care for the elderly; definitions.—As used in ss. 430.201-430.207, the term:

(9) “Lead agency” means an agency designated at least once every 6 ~~3~~ years by an area agency on aging as the result of a competitive procurement conducted through a request for proposal process to be in place no later than the state fiscal year 1996-1997.

(a) ~~The guidelines for the request for proposal must be developed by the department in consultation with the area agency agencies on aging and. Such guidelines must include requirements for the assurance of quality and cost-efficiency of services, minimum personnel standards, and employee benefits. The department shall adopt a rule creating a dispute resolution mechanism. The rule, which shall be adopted no later than August 1, 2009, and which all area agencies on aging shall be required to follow, shall create standards for a bid protest and a procedure for resolution. The dispute resolution mechanism established in the rule shall include a provision for a qualified, impartial decisionmaker who shall conduct a hearing to determine whether the area agency’s proposed action is contrary to the area agency’s governing statutes or rules or to the solicitation specifications. The standard of proof for the protestor shall be whether the area agency’s action was clearly erroneous, contrary to competition, arbitrary, or capricious. The dispute resolution mechanism shall also provide a mechanism for review of the decisionmaker’s determination by a qualified and impartial reviewer, if review is requested. The standards for the bid protest shall include:~~

1. A provision requiring notice of an area agency’s proposed contract award and a clear point of entry for any substantially affected entity to challenge the proposed award.

2. A provision for an automatic stay of the contract award process upon the filing of a bid protest that shall not be lifted until the protest is resolved.

3. Provisions permitting all substantially affected entities to have an opportunity to participate in the hearing, to conduct discovery, to obtain subpoenas compelling the appearance of witnesses, to present evidence and argument on all issues involved, to conduct cross-examination, to submit

rebuttal evidence, and to submit proposed findings of fact and conclusions of law.

4. Provisions for expeditious resolution of the bid protest, including a requirement that once the area agency on aging refers a bid protest petition to the decisionmaker, a hearing shall be conducted within 30 days, unless that timeframe is waived by all parties.

(b) For any lead agency designation conducted prior to the effective date of this subsection that is the subject matter of litigation on the date on which this subsection becomes law, the litigants shall be entitled to proceed with discovery under the Florida Rules of Civil Procedure immediately upon the date on which this subsection becomes law, and the litigants shall further be entitled to participate in the bid protest procedures enacted by rule pursuant to this subsection. The area agency on aging, in consultation with the department, shall exempt from the competitive bid process any contract with a provider who meets or exceeds established minimum standards, as determined by the department.

(c) In each community care service system the lead agency must be given the authority and responsibility to coordinate some or all of the services, either directly or through subcontracts, for functionally impaired elderly persons. These services must include case management, homemaker and chore services, respite care, adult day care, personal care services, home-delivered meals, counseling, information and referral, and emergency home repair services. The lead agency must compile community care statistics and monitor, when applicable, subcontracts with agencies providing core services.

Section 3. Subsection (7) of section 430.2053, Florida Statutes, is amended to read:

430.2053 Aging resource centers.—

(7) The aging resource center shall have a governing body which shall be the same entity described in s. 20.41(7), and an executive director who may be the same person as described in s. 20.41(7)(8). The governing body shall annually evaluate the performance of the executive director.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor May 20, 2009.

Filed in Office Secretary of State May 20, 2009.