

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1175

Transportation Disadvantaged Services

**SPONSOR(S):** Policy & Budget Council; Healthcare Council; Robaina

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

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Healthcare Council</u>	<u>18 Y, 0 N, As CS</u>	<u>Quinn-Gato/ Massengale</u>	<u>Gormley</u>
2) <u>Policy &amp; Budget Council</u>	<u>34 Y, 0 N, As CS</u>	<u>Leznoff</u>	<u>Hansen</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

CS/HB 1175 amends Part 1 of Chapter 427, F.S., to further the coordinated planning and provision of transportation disadvantaged services to state human service agencies and local transportation agencies. The bill creates a definition of "purchasing agencies" and requires all such agencies to identify dollars spent on non-emergency transportation services to transportation disadvantaged clients and to require all agencies to pay the transportation rates approved by the Commission. This bill also updates terminology, deletes obsolete language, and makes other technical changes.

Additionally, the bill amends provisions allowing for purchase of transportation services outside the coordinated system. This primarily modifies the way that the Medicaid program interacts with the Commission by requiring each purchasing agency pay the rates established in the service plan unless the purchasing agency has completed an alternative provider procedure and demonstrated that an alternative provider can provide a trip of comparable quality and standards at a lower price. Under current law, Medicaid has the flexibility to use and directly purchase more cost effective methods of non-emergency transportation for Medicaid recipients. The bill includes provisions that allow all purchasing agencies to establish maximum fee schedules, individualized reimbursement policies by provider type, negotiated fees, or any other mechanism, including contracting with another entity that the agency considers to be more cost-effective and of comparable or higher quality and standards than those of the Commission if it meets new requirements for doing so provided for in the bill.

The bill also requires that agencies include the specific amount of money the agency will allocate for the provision of transportation disadvantaged services in their legislative budget requests provided to the Governor.

The bill also amends s. 409.908(18), F.S., to authorize AHCA to, notwithstanding chapter 427, continue contracting with managed care plans under contract with AHCA in Service Area 11 prior to July 1, 2004, for Medicaid nonemergency transportation services.

The bill appears to have no fiscal impact on state government but may have some impact on local governments due to the requirement to pay the rate in the service plan unless the contingencies in the bill regarding an alternate plan are met.

The effective date of the bill is July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### The Transportation Disadvantaged Program

The Transportation Disadvantaged (TD) Program was created by the Legislature in 1979 and coordinates a network of local and state programs providing transportation services for elderly, disabled, and low-income citizens.<sup>1</sup> Today, the TD Program is administered by a 7-member Commission through a decentralized network of state and local organizations, with funding provided by various state agencies for specific client groups. At the local level, coordination of TD services is accomplished through planning agencies, local advisory boards, community transportation coordinators and transportation operators.<sup>2</sup>

##### Commission for the Transportation Disadvantaged (the "Commission")

The Legislature created the Commission in 1989 as an independent entity within the Department of Transportation to set state policy for the TD program and oversee statewide implementation.<sup>3</sup> The Commission is housed within the Department of Transportation (DOT) for administrative and fiscal accountability purposes only.

Appointments to the Commission are made by the Governor, and the Governor must appoint two members who are persons with disabilities who use the transportation disadvantaged system, and five of the members must have significant experience in the operation of a business.<sup>4</sup> Current law further requires the Governor, when appointing members with business experience, to select persons who reflect the broad diversity of the business community in the state, as well as the geographical, racial, ethnic, and gender diversity of the state's population. Current law provides for restrictions on appointments for individuals who, currently or within the last five years, have or have had a financial relationship with or represent or have represented as a lobbyist specified TD program providers, coordinators, agencies, boards, or brokers.<sup>5</sup>

In addition to gubernatorial appointed members, the top executive (or a senior management level designee) from each of the following entities serves as an ex officio, nonvoting advisor of the Commission:

- The Department of Transportation;
- The Department of Children and Family Services;
- The Agency for Workforce Innovation;
- The Department of Veterans' Affairs;
- The Department of Elderly Affairs;
- The Agency for Health Care Administration (AHCA);

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<sup>1</sup> See 79-180, L.O.F.

<sup>2</sup> Part I, Chapter 427, F.S.

<sup>3</sup> See 89-376, L.O.F.

<sup>4</sup> s. 20.052, F.S.

<sup>5</sup> s. 427.012(1)(h)

- The Agency for Persons with Disabilities; and
- A county manager or administrator who is appointed by the Governor.

The Commission is required to meet at least quarterly, or more frequently at the call of the chairperson. Five members of the Commission constitute a quorum, and a majority vote of the members present is necessary for any action taken by the Commission.

### Funding

The Commission distributes a share of its budgeted funds to local providers, based upon specific criteria, to ensure the availability of efficient and quality transportation services for transportation disadvantaged persons in a cost-effective manner. The Commission also administers the Medicaid Non-Emergency Transportation Program pursuant to a contract with AHCA, and the Transportation Disadvantaged Trust Fund (trust fund). The trust fund receives moneys from a \$1.50 fee on each initial registration and registration renewal of vehicles pursuant to s. 320.03(9), F.S., and revenues as designated by the Legislature. The trust fund subsidizes trips, provides funding for TD eligible persons not otherwise funded, and provides for administrative expenses.<sup>6</sup>

In fiscal year 2006-2007, total funding for TD services in Florida from all sources was \$368 million which included a state appropriation of \$38 million. Not all the funds were expended directly by the Commission which, until 2004, relied on the average \$25 million to \$35 million it received from four statutory program earmarks and special appropriations from the Legislature.

In November, 2004, AHCA executed a memorandum of agreement authorizing the Commission to oversee an additional \$68 million in Medicaid funds for non-emergency transportation (NET) services for Medicaid clients.

### Coordination of Services at the Statewide Level

The Commission assists communities in establishing coordinated transportation systems, manages contracts and memoranda of agreement, ensures state agencies purchase transportation services from within the TD coordinated system unless a more cost-effective provider outside the coordinated system can be found by the purchasing agency, and approves the local entities that manage the delivery of transportation services to eligible clients. As managers of the Medicaid NET program, the Commission identifies and enters into agreements with “subcontracted transportation providers,” and pays them a monthly lump-sum amount. These subcontracted transportation providers, in turn, pay the local transportation operators actually providing the services.

### Coordination of services at the Local Level

At the local level, the TD program is implemented through a network of planning agencies, local advisory boards, community transportation coordinators (CTCs), and transportation operators. Local planning agencies, such as a metropolitan planning organization (MPO) or regional planning council, appoint and staff each local coordinating board. A local elected official chairs each coordinating board. These local boards also recommend the CTCs to the Commission.

The CTCs are the entities responsible for the actual arrangement or delivery of transportation services within their local service area. A CTC may be a government entity, a transit agency, a private not-for-profit agency or a for-profit company. A CTC may function as a sole-source provider of TD services or it may broker part or all of the trips to transportation operators. The Commission enters into a

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<sup>6</sup> Persons are considered transportation disadvantaged when physical or mental disability, income status, or age make them unable to transport themselves or to purchase transportation. These conditions cause them to rely on others to obtain access to health care, employment, education, shopping, or other life-sustaining activities. Handicapped children or children at-risk or high-risk are also eligible for services under this program. See s. 427.011, F.S.

memorandum of agreement for services with a CTC and the agreement identifies the anticipated service population, service area, information regarding any subcontractors, and rates for services.

### Service Areas

Florida's 67 counties are divided into 48 TD service areas. While most urban counties are single-county service areas, some rural counties are organized into multi-county service areas. All counties have some level of TD service for their elderly, disabled, or needy residents. According to the Commission's latest annual report, 51.5 million trips were provided to clients in fiscal year 2006-2007, approximately 2 percent fewer than in the previous fiscal year. These trips served 697,159 passengers, and about one-third were to a doctor's office or medical facility. Trips to educational or training facilities rank second.

### **Effect of Proposed Changes**

House Bill 1175 amends each section of law comprising Part 1, Chapter 427, F.S., relating to Special Transportation and Communication Services. Specifically, the bill makes the following amendments to specified sections:

- s. 409.908: Authorizes AHCA to, notwithstanding chapter 427, continue contracting with managed care plans that were under contract with the agency in Service Area 11 prior to July 1, 2004, for Medicaid nonemergency transportation services.
- s. 427.011: (1) Creates the term "purchasing agency" in lieu of "member department." "Purchasing agency" means a department or agency that purchases transportation services for the transportation disadvantaged or an agency whose head is an ex officio, non-voting "advisor" to the Commission; and (2) removes the definition of "annual budget estimate."
- s. 427.012: Provides that four Commission members constitutes a quorum, rather than the five provided by current law.
- s. 427.013: (1) Clarifies that the procedures, guidelines or directives issued by purchasing agencies must be conducive to the coordination of transportation services unless otherwise provided by state or federal law; (2) authorizes purchasing agencies to purchase trips outside the coordinated system when they have fulfilled the requirements of s. 427.0135(3), F.S., and use a more cost effective alternative provider that meets comparable quality and standards; (3) includes a cross reference to s. 427.0135(3) in the rulemaking authority of the Commission related to purchasing agencies; (4) exempts purchasing agencies meeting the requirements of s. 427.0135(3), F.S., and using an alternative provider from the Commission's standards for community transportation coordinators, transportation operators, and coordination contractors; (5) removes a provision allowing the Commission to include in its standards for community transportation coordinators, transportation operators, and coordination contractors acceptable ranges of trip costs for various modes and types of transportation provided; (6) requires the Commission to consolidate actual expenditures reported by each purchasing agency and each local government and directly federally funded agency, and the amount collected by each official planning agency; (7) removes a provision providing that quality assurance and management review staff functions independently of the Commission and is under direct control of the executive director of the Commission; and (8) creates a new provision allowing the Commission to incur expenses for marketing and advertising.
- s. 427.0135: (1) Clarifies that purchasing agencies need not use the coordinated transportation system if they meet the criteria provided in rule or statute to use an alternative provider; (2) removes a provision in current law pertaining to AHCA's ability to purchase alternative transportation services for Medicaid recipients and, instead, provides that each purchasing agency, including AHCA, pay the rates established in the service plan or negotiated statewide contract, unless the purchasing agency has completed the procedure for using an alternative provider and demonstrated that an alternative provider can provide a more cost-effective transportation service of comparable quality and standards or unless the agency has met the requirements of s. 427.0135(3); (3) precludes a purchasing agency from procuring transportation disadvantaged services without initially negotiating with the Commission pursuant

to s. 287.057(5)(f)13 or unless otherwise authorized by statute, allows a purchasing agency, if unable to reach mutually acceptable contract terms with the Commission, to contract for the same transportation services provided in a more cost-effective manner and of comparable or higher quality and standards than those provided by the Commission, as determined by the purchasing agency, and allows AHCA to implement the subsection in a manner consistent with s. 409.908(18) and as otherwise limited or directed in the General Appropriations Act; (4) requires that each state agency identify in its annual legislative budget request the specific amount of money that the agency will allocate for the provision of transportation disadvantaged services.

- s. 427.015: Requires each local government to annually report to its metropolitan planning organization the actual expenditure of all local and federal funds, which shall then be consolidated and reported to the Commission by September 15 of each year.
- ss. 427.0155 and 427.0157: Allows community transportation coordinators, with the assistance of coordinating boards, to establish eligibility guidelines and priorities for recipients of non-sponsored transportation disadvantaged services.
- s. 427.0158: (1) Requires that school boards provide information as requested by the community transportation coordinator; (2) removes provisions requiring school boards to provide the coordinator and coordinated transportation board with specified information regarding vehicles not scheduled for use in transporting students; and (3) requires that public transportation systems provide information requested by the community transportation coordinator and allows the community transportation to request information, without limitation, from an exclusive list of items.
- s. 427.0159: Provides the Commission with the authority to implement, manage, and administer the purchasing agencies' funds deposited in the trust fund.
- s. 427.016: (1) Authorizes purchasing agencies to establish maximum fee schedules, individualized reimbursement policies by provider type, negotiated fees, or any other mechanism, including contracting for more cost-efficient services of comparable or higher quality standards than those of the Commission, for its clients; and (2) requires each agency to identify in its annual legislative budget request the specific amount the agency will allocate for the provision of transportation disadvantaged services.

Additionally, the bill makes a number of conforming and technical changes throughout Part I of Chapter 427.

The effective date of the bill is July 1, 2008.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 409.908, F.S.; relating to reimbursement of Medicaid providers.

**Section 2.** Amends s. 427.011, F.S.; relating to definitions, changing the term “member department” to “purchasing agency” and amending that definition; deleting the definition of “annual budget estimate”.

**Section 3.** Amends s. 427.012, F.S.; relating to the creation of the Commission for the Transportation Disadvantaged; amending the number of commissioners required for a quorum.

**Section 4.** Amends s. 427.013, F.S.; relating to the Commission for the Transportation Disadvantaged; conforming the bill to the definitions changes in s. 427.011; making cross-references; amending rulemaking authority and rule application; amending budget-related duties; and requiring expenditures for marketing.

**Section 5.** Amends s. 427.0135, F.S.; relating to purchasing agencies; duties and responsibilities; providing a process for procurement of transportation disadvantaged services from entities other than the Commission; requiring purchasing agencies to identify transportation disadvantaged monies in legislative budget requests.

**Section 6.** Amends s. 427.015, F.S.; relating to function of the Metropolitan planning organization or designated official planning agency in coordinating transportation for the transportation disadvantaged.

**Section 7.** Amends s. 427.0155, F.S.; relating to community transportation coordinators; powers and duties; .

**Section 8.** Amends s. 427.0157, F.S.; relating to coordinating boards; powers and duties.

**Section 9.** Amends s. 427.0158, F.S.; relating to school bus and public transportation.

**Section 10.** Amends s. 427.0159, F.S.; relating to Transportation Disadvantaged Trust Fund.

**Section 11.** Amends s. 427.016, F.S.; relating to expenditure of local government, state, and federal funds for transportation disadvantaged.

**Section 12.** Providing an effective date of July 1, 2008.

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

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

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

None.

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

None.

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

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

None.

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

Local governments will be impacted to the extent that they will pay the rates established in the service plan unless the requirements for alternative providers are met.

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

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

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

This 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:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**D. STATEMENT OF THE SPONSOR**

No statement provided.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On April 8, 2008, the Health Care Council adopted one substitute strike-all amendment to the bill. The substitute amendment:

- Adds a provision in s. 427.013(7), F.S., to give effect to state and federal laws when agencies issue procedures, guidelines, and directives that may affect the coordination of transportation services.
- Creates a new process for purchasing agencies to contract with transportation providers other than through the Commission when the purchasing agency cannot reach mutually acceptable contract terms with the Commission, and has a means of obtaining services in a more cost-effective manner of comparable or higher quality standards; provides cross-references to this process where applicable within Part I of chapter 427; and exempts agencies that meet these standards and are using an alternative providers, from the rules developed by the Commission for community transportation coordinators, and transportation operators or coordination contractors.
- Includes a provision requiring the Commission to collect information about the amounts collected by each official planning agency, and removes a provision from current law requiring the Commission to issue a report regarding the consolidated annual budget estimates for state agencies, local governments, and directly federally funded agencies.
- Clarifies that purchasing agencies do not have to use the coordinated transportation system if they meet the criteria outlined in rule or statute.
- Removes language in the original bill that required the community transportation coordinators to include results of the Commission-approved rate methodology in their service plan.
- Amends current law to authorize community transportation coordinators to request an exclusive list of information from public transit fixed route or fixed schedule systems without limitation.
- Amends current law to allow all purchasing agencies to establish maximum fee schedules, individualized reimbursement policies by provider type, negotiated fees, or other mechanisms, or to contract with other providers that the purchasing agency finds to be more cost effective and of comparable or higher quality standards pursuant to s. 427.0135(3).
- Requires the dollar amount appropriated for transportation disadvantaged funding to be separately identified in the General Appropriations Act.

The bill was reported favorably as a Council Substitute with one strike-all amendment.

On April 15, 2008, the Policy and Budget Council adopted two amendments to the bill. The amendments are as follows:

- The first amendment removed a provision requiring the dollar amount for transportation disadvantaged funding to be separately identified in the General Appropriations Act.
- The second amendment amends s. 409.908(18), F.S., by providing AHCA with the authority under to continue contracting with managed care plans under contract with the agency prior to July 1, 2004 for Medicaid non-emergency transportation services provided in Service Area.



The bill was reported favorably as a Council Substitute with two amendments. The analysis reflects the bill as amended.