

By the Committee on Children & Families and Representative  
Murman

1                                   A bill to be entitled  
2           An act relating to child welfare; amending s.  
3           216.136, F.S.; revising duties of the Child  
4           Welfare System Estimating Conference; amending  
5           s. 409.1671, F.S.; revising requirements  
6           relating to the plan for privatization of  
7           foster care and related services; requiring  
8           community-based agencies providing foster care  
9           and related services under contract with the  
10          Department of Children and Family Services to  
11          obtain certain liability insurance coverage;  
12          requiring such coverage for such agencies'  
13          subcontractors; providing limitations on tort  
14          actions; providing exclusiveness of liability;  
15          providing a hiring preference for certain state  
16          employees whose positions are privatized;  
17          revising timeframe for an annual report;  
18          authorizing certain substitute care providers  
19          to provide family day care services; providing  
20          reimbursement eligibility for dually licensed  
21          providers; continuing privatized foster care  
22          and related services in district 5 of the  
23          department for a specified period; providing  
24          for distribution, transfer, and use of certain  
25          excess or additional funds for foster care and  
26          related services provided under contract with  
27          the department; amending s. 409.175, F.S.;  
28          providing for state insurance coverage for  
29          persons who own or operate family foster care  
30          homes for community-based agencies providing  
31          foster care under contract with the department;

1           amending s. 409.912, F.S.; authorizing the  
2           Agency for Health Care Administration to  
3           contract with community-based agencies for  
4           services to Medicaid recipients; requiring a  
5           waiver from the federal Health Care Finance  
6           Administration; providing the form of payment  
7           for such services; providing for establishment  
8           of a targeted case management program;  
9           providing funding limitations; providing an  
10          effective date.

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

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14           Section 1. Paragraph (a) of subsection (8) of section  
15 216.136, Florida Statutes, 1998 Supplement, is amended to  
16 read:

17           216.136 Consensus estimating conferences; duties and  
18 principals.--

19           (8) CHILD WELFARE SYSTEM ESTIMATING CONFERENCE.--

20           (a) Duties.--The Child Welfare System Estimating  
21 Conference shall develop such official ~~the following~~  
22 information relating to the child welfare system of the state,  
23 including forecasts of child welfare caseloads, as the  
24 conference determines is needed for the state planning and  
25 budgeting system. Such official information may include, but  
26 not be limited to:

27           1. Estimates and projections of the number of initial  
28 and additional reports of child abuse, abandonment, or neglect  
29 ~~made to the central abuse hotline maintained by the Department~~  
30 ~~of Children and Family Services as established in s.~~  
31 ~~39.201(4).~~

1           2. Estimates and projections of the number of children  
2 who are alleged to be victims of child abuse, abandonment, or  
3 neglect and are in need of emergency shelter, protective  
4 services, family reunification, foster care, residential group  
5 care, adoptive services, or other appropriate care placement  
6 ~~in a shelter.~~

7  
8 In addition, the conference shall develop other official  
9 information relating to the child welfare system of the state  
10 which the conference determines is needed for the state  
11 planning and budgeting system. The Department of Children and  
12 Family Services shall provide information on the child welfare  
13 system requested by the Child Welfare System Estimating  
14 Conference, or individual conference principals, in a timely  
15 manner.

16           Section 2. Paragraph (a) of subsection (1),  
17 subsections (2), (4), and (5), and paragraph (a) of subsection  
18 (3) of section 409.1671, Florida Statutes, 1998 Supplement,  
19 are amended, paragraphs (c) through (h) are added to  
20 subsection (1), and subsection (7) is added to said section,  
21 to read:

22           409.1671 Foster care and related services;  
23 privatization.--

24           (1)(a) It is the intent of the Legislature that the  
25 Department of Children and Family Services shall privatize the  
26 provision of foster care and related services statewide. As  
27 used in this section, the term "privatize" means to contract  
28 with competent, community-based agencies. The department  
29 shall submit a plan to accomplish privatization statewide,  
30 through a competitive process, phased in over a 3-year period  
31 beginning January 1, 2000. This plan is to be submitted by

1 July 1, 1999, to the President of the Senate, the Speaker of  
2 the House of Representatives, the Governor, and the minority  
3 leaders of both houses. This plan must be developed with local  
4 community participation, including, but not limited to, input  
5 from the district health and human services board and  
6 community-based providers that are currently under contract  
7 with the department to furnish community-based foster care and  
8 related services, and must include a methodology for  
9 determining and transferring all available funds, including  
10 federal funds that the provider is eligible for and agrees to  
11 earn and that portion of general revenue funds which is  
12 currently associated with the services that are being  
13 furnished under contract. The methodology must provide for the  
14 transfer of funds appropriated and budgeted for all services  
15 and programs that have been incorporated into the project,  
16 including all management, capital (including current furniture  
17 and equipment), and administrative funds to accomplish the  
18 transfer of these programs. This methodology must address  
19 expected workload and at least the 3 previous years'  
20 experience in expenses and workload. With respect to any  
21 district or portion of a district in which privatization  
22 cannot be accomplished within the 3-year timeframe, the  
23 department must clearly state in its plan the reasons the  
24 timeframe cannot be met and the efforts that should be made to  
25 remediate the obstacles, which may include alternatives to  
26 total privatization, such as public-private partnerships. As  
27 used in this section, the term "related services" means family  
28 preservation, independent living, emergency shelter,  
29 residential group care, foster care, therapeutic foster care,  
30 intensive residential treatment, foster care supervision, case  
31 management, postplacement supervision, permanent foster care,

1 adoption, and family reunification. Unless otherwise provided  
2 for, beginning in fiscal year 1999-2000, either the state  
3 attorney or the Office of the Attorney General shall provide  
4 child welfare legal services, pursuant to chapter 39 and other  
5 relevant provisions, in Sarasota, Pinellas, Pasco, and Manatee  
6 Counties. Such legal services shall commence and be  
7 effective, as soon as determined reasonably feasible by the  
8 respective state attorney or the Office of the Attorney  
9 General, after the privatization of associated programs and  
10 child protective investigations has occurred. When a private  
11 nonprofit agency has received case management  
12 responsibilities, transferred from the state under this  
13 section, for a child who is sheltered or found to be dependent  
14 and who is assigned to the care of the privatization project,  
15 the agency may act as the child's guardian for the purpose of  
16 registering the child in school if a parent or guardian of the  
17 child is unavailable and his or her whereabouts cannot  
18 reasonably be ascertained. The private nonprofit agency may  
19 also seek emergency medical attention for such a child, but  
20 only if a parent or guardian of the child is unavailable, his  
21 or her whereabouts cannot reasonably be ascertained, and a  
22 court order for such emergency medical services cannot be  
23 obtained because of the severity of the emergency or because  
24 it is after normal working hours. However, the provider may  
25 not consent to sterilization, abortion, or termination of life  
26 support. If a child's parents' rights have been terminated,  
27 the nonprofit agency shall act as guardian of the child in all  
28 circumstances.

29 (c) Any community-based agency that provides foster  
30 care and related services to children and families under  
31 contract with the department pursuant to this section must, as

1 a part of its contract, obtain general liability insurance  
2 coverage. Any tort action brought against an eligible lead  
3 community-based provider shall be limited to net economic  
4 damages, including, but not limited to, past and future  
5 medical expenses, wage loss, and loss of earning capacity,  
6 offset by any collateral source payments paid. Any offset of  
7 collateral source payments made as of the date of the  
8 settlement or judgment shall be in accordance with s. 768.76.  
9 The state shall hold harmless the private providers for  
10 noneconomic damages over \$200,000 pursuant to s. 768.28.

11 (d) The liability of an eligible lead community-based  
12 provider prescribed in this section shall be exclusive and in  
13 place of all other liability of such provider. The same  
14 immunities from liability enjoyed by such providers shall  
15 extend as well to each employee of the provider when such  
16 employee is acting in furtherance of the provider's business.  
17 Such immunities shall not be applicable to a provider or an  
18 employee who acts in a culpably negligent manner or with  
19 unprovoked physical aggression when such acts result in injury  
20 or death or such acts proximately cause such injury or death,  
21 nor shall such immunities be applicable to employees of the  
22 same provider when each is operating in the furtherance of the  
23 provider's business, but they are assigned primarily to  
24 unrelated works within private or public employment. The same  
25 immunity provisions enjoyed by a provider shall also apply to  
26 any sole proprietor, partner, corporate officer or director,  
27 supervisor, or other person who in the course and scope of his  
28 or her duties acts in a managerial or policymaking capacity  
29 and the conduct which caused the alleged injury arose within  
30 the course and scope of said managerial or policymaking duties  
31 and was not a violation of a law, whether or not a violation

1 was charged, for which the maximum penalty which may be  
2 imposed does not exceed 60 days' imprisonment as set forth in  
3 s. 775.082.

4 (e) Any subcontractor of an eligible lead  
5 community-based agency that provides foster care and related  
6 services to children and families under contract with the  
7 department pursuant to this section must, as a part of its  
8 subcontract, be covered under a general liability insurance  
9 policy. Any tort action brought against a subcontractor of an  
10 eligible lead community-based provider which is a direct  
11 provider of foster care and related services shall be limited  
12 to net economic damages, including, but not limited to, past  
13 and future medical expenses, wage loss, and loss of earning  
14 capacity, offset by any collateral source payments paid. Any  
15 offset of collateral source payments made as of the date of  
16 the settlement or judgment shall be in accordance with s.  
17 768.76. The state shall hold harmless the private providers  
18 for noneconomic damages over \$200,000 pursuant to s. 768.28.

19 (f) The liability of a subcontractor of an eligible  
20 lead community-based provider which is a direct provider of  
21 foster care and related services as prescribed in this section  
22 shall be exclusive and in place of all other liability of such  
23 provider. The same immunities from liability enjoyed by such  
24 subcontractor provider shall extend as well to each employee  
25 of the subcontractor when such employee is acting in  
26 furtherance of the subcontractor's business. Such immunities  
27 shall not be applicable to a subcontractor or an employee who  
28 acts in a culpably negligent manner or with unprovoked  
29 physical aggression when such acts result in injury or death  
30 or such acts proximately cause such injury or death, nor shall  
31 such immunities be applicable to employees of the same

1 subcontractor when each is operating in the furtherance of the  
2 subcontractor's business, but they are assigned primarily to  
3 unrelated works within private or public employment. The same  
4 immunity provisions enjoyed by a subcontractor shall also  
5 apply to any sole proprietor, partner, corporate officer or  
6 director, supervisor, or other person who in the course and  
7 scope of his or her duties acts in a managerial or  
8 policymaking capacity and the conduct which caused the alleged  
9 injury arose within the course and scope of said managerial or  
10 policymaking duties and was not a violation of a law, whether  
11 or not a violation was charged, for which the maximum penalty  
12 which may be imposed does not exceed 60 days' imprisonment as  
13 set forth in s. 775.082.

14 (g) The Legislature is cognizant of the increasing  
15 costs of goods and services each year and recognizes that  
16 fixing a set amount of compensation actually has the effect of  
17 a reduction in compensation each year. Accordingly, the  
18 conditional limitation on noneconomic damages in this section  
19 shall be increased at the rate of 5 percent each year,  
20 prorated from the effective date of this paragraph to the date  
21 at which noneconomic damages subject to such limitation are  
22 awarded by final judgment or settlement.

23 (h) If any paragraph, sentence, clause, phrase, or  
24 word of this subsection is for any reason held or declared to  
25 be unconstitutional, invalid, inoperative, ineffective,  
26 inapplicable, or void, such invalidity or unconstitutionality  
27 shall not affect the portions of this subsection not so held  
28 to be unconstitutional, void, invalid, or ineffective, or  
29 affect the application of this subsection to other  
30 circumstances not so held to be invalid, it being the express  
31 legislative intent that any such unconstitutional, illegal,



1 invalid, ineffective, inapplicable, or void portion or  
2 portions of this subsection did not induce its passage, and  
3 that without the inclusion of any such unconstitutional,  
4 illegal, invalid, ineffective, or void portions of this  
5 subsection, the Legislature would have enacted the valid and  
6 constitutional portions thereof.

7       (2)(a) The department may contract for the delivery,  
8 administration, or management of protective services, the  
9 services specified in subsection (1) relating to foster care,  
10 and other related services or programs, as appropriate. The  
11 department shall retain responsibility for the quality of  
12 contracted services and programs and shall ensure that  
13 services are delivered in accordance with applicable federal  
14 and state statutes, rules,and regulations.

15       (b) Persons employed by the department in the  
16 provision of foster care and related services whose positions  
17 are privatized pursuant to this section shall be given hiring  
18 preference by the provider, if provider qualifications are  
19 met.

20       (3)(a) The department shall establish a quality  
21 assurance program for privatized services. The quality  
22 assurance program may be performed by a national accrediting  
23 organization such as the Council on Accreditation of Services  
24 for Families and Children, Inc. (COA) or the Council on  
25 Accreditation of Rehabilitation Facilities (CARF). The  
26 department shall develop a request for proposal for such  
27 oversight. This program must be developed and administered at  
28 a statewide level. The Legislature intends that the department  
29 be permitted to have limited flexibility to use funds for  
30 improving quality assurance. To this end, effective January 1,  
31 2000, the department may transfer up to 0.125 percent of the

1 total funds from categories used to pay for these  
2 contractually provided services, but the total amount of such  
3 transferred funds may not exceed \$300,000 in any fiscal year.  
4 When necessary, the department may establish, in accordance  
5 with s. 216.177, additional positions that will be exclusively  
6 devoted to these functions. Any positions required under this  
7 paragraph may be established, notwithstanding ss.  
8 216.262(1)(a) and 216.351. The department, in consultation  
9 with the community-based agencies that are undertaking the  
10 privatized projects, shall establish minimum thresholds for  
11 each component of service, consistent with standards  
12 established by the Legislature. Each program operated under  
13 contract with a community-based agency must be evaluated  
14 annually by the department. The department shall submit an  
15 annual report regarding quality performance, outcome measure  
16 attainment, and cost efficiency to the President of the  
17 Senate, the Speaker of the House of Representatives, the  
18 minority leader of each house of the Legislature, and the  
19 Governor no later than November 30 ~~January 31~~ of each year for  
20 each project in operation during the preceding fiscal year.

21 (4)(a) The community-based agency must comply with  
22 statutory requirements and agency rules in the provision of  
23 contractual services. Each foster home, therapeutic foster  
24 home, emergency shelter, or other placement facility operated  
25 by the community-based agency or agencies must be licensed by  
26 the Department of Children and Family Services under chapter  
27 402 or this chapter. Each community-based agency must be  
28 licensed as a child-caring or child-placing agency by the  
29 department under this chapter. The department, in order to  
30 eliminate or reduce the number of duplicate inspections by  
31

1 various program offices, shall coordinate inspections required  
2 pursuant to licensure of agencies under this section.

3 (b) Substitute care providers licensed under s.  
4 409.175 and contracted with a lead agency authorized under  
5 this section shall also be authorized to provide registered or  
6 licensed family day care under s. 402.313, provided that:

7 1. The home has met the requirements of s. 402.313.

8 2. The home has met the requirements of s. 402.281 and  
9 has received Gold Seal Quality Care designation.

10 (c) A dually licensed home under this subsection shall  
11 be eligible to receive both the foster care board rate and the  
12 subsidized child care rate for the same child only if care is  
13 provided 24 hours per day. The subsidized child care rate  
14 shall be no more than the approved full-time rate.

15 (5) Beginning January 1, 1999, and continuing at least  
16 through June 30, 2000 ~~December 31, 1999~~, the Department of  
17 Children and Family Services shall privatize all foster care  
18 and related services in district 5 and shall expand the  
19 privatization for the care model in district 12 while  
20 continuing to contract with the current model programs in  
21 districts 1, 4, and 13, and in subdistrict 8A, and shall  
22 expand the subdistrict 8A pilot program to incorporate Manatee  
23 County. Planning for the district 5 privatization shall be  
24 done by providers that are currently under contract with the  
25 department for foster care and related services and shall be  
26 done in consultation with the department. A lead provider of  
27 the district 5 program shall be competitively selected, must  
28 demonstrate the ability to provide necessary comprehensive  
29 services through a local network of providers, and must meet  
30 criteria established in this section. Contracts with  
31 organizations responsible for the model programs must include

1 the management and administration of all privatized services  
2 specified in subsection (1). However, the department may use  
3 funds for contract management only after obtaining written  
4 approval from the Executive Office of the Governor. The  
5 request for such approval must include, but is not limited to,  
6 a statement of the proposed amount of such funds and a  
7 description of the manner in which such funds will be used. If  
8 the community-based organization selected for a model program  
9 under this subsection is not a Medicaid provider, the  
10 organization shall be issued a Medicaid provider number  
11 pursuant to s. 409.907 for the provision of services currently  
12 authorized under the state Medicaid plan to those children  
13 encompassed in this model and in a manner not to exceed the  
14 current level of state expenditure.

15 (7) Notwithstanding the provisions of s. 215.425, all  
16 documented federal funds earned for the current fiscal year by  
17 the department and community-based agencies that exceed the  
18 amount appropriated by the Legislature shall be distributed  
19 based on a schedule and methodology developed by the  
20 department and approved by the Executive Office of the  
21 Governor. Additional state funds appropriated by the  
22 Legislature for community-based agencies or made available  
23 pursuant to the budgetary amendment process described in s.  
24 216.177 shall be transferred to the community-based agencies.  
25 The community-based agencies shall use any such funds made  
26 available under this subsection for the sole purpose of  
27 providing child welfare services. The department shall amend a  
28 community-based agency's contract to permit expenditure of  
29 these funds.

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1           Section 3. Paragraph (a) of subsection (14) of section  
2 409.175, Florida Statutes, 1998 Supplement, is amended to  
3 read:

4           409.175 Licensure of family foster homes, residential  
5 child-caring agencies, and child-placing agencies.--

6           (14)(a) The Division of Risk Management of the  
7 Department of Insurance shall provide coverage through the  
8 Department of Children and Family Services to any person who  
9 owns or operates a family foster home solely for the  
10 Department of Children and Family Services, or who owns or  
11 operates a family foster home solely for a community-based  
12 agency providing foster care under s. 409.1671, and who is  
13 licensed to provide family foster home care in her or his  
14 place of residence. The coverage shall be provided from the  
15 general liability account of the Florida Casualty Insurance  
16 Risk Management Trust Fund, and the coverage shall be primary.  
17 The coverage is limited to general liability claims arising  
18 from the provision of family foster home care pursuant to an  
19 agreement with the department and pursuant to guidelines  
20 established through policy, rule, or statute. Coverage shall  
21 be limited as provided in ss. 284.38 and 284.385, and the  
22 exclusions set forth therein, together with other exclusions  
23 as may be set forth in the certificate of coverage issued by  
24 the trust fund, shall apply. A person covered under the  
25 general liability account pursuant to this subsection shall  
26 immediately notify the Division of Risk Management of the  
27 Department of Insurance of any potential or actual claim.

28           Section 4. Paragraph (e) is added to subsection (3) of  
29 section 409.912, Florida Statutes, 1998 Supplement, to read:

30           409.912 Cost-effective purchasing of health care.--The  
31 agency shall purchase goods and services for Medicaid

1 recipients in the most cost-effective manner consistent with  
2 the delivery of quality medical care. The agency shall  
3 maximize the use of prepaid per capita and prepaid aggregate  
4 fixed-sum basis services when appropriate and other  
5 alternative service delivery and reimbursement methodologies,  
6 including competitive bidding pursuant to s. 287.057, designed  
7 to facilitate the cost-effective purchase of a case-managed  
8 continuum of care. The agency shall also require providers to  
9 minimize the exposure of recipients to the need for acute  
10 inpatient, custodial, and other institutional care and the  
11 inappropriate or unnecessary use of high-cost services.

12 (3) The agency may contract with:

13 (e) A community-based agency that meets Medicaid  
14 provider enrollment criteria and provides behavioral health  
15 care to Medicaid recipients through a community-based child  
16 welfare project approved by and under contract with the  
17 Department of Children and Family Services and authorized  
18 under s. 409.1671. The agency must obtain a waiver from the  
19 federal Health Care Finance Administration pursuant to  
20 paragraph (d) to implement these services. Payments for  
21 services may be made on a prepaid capitation, fee-for-service,  
22 or fixed-sum basis. The community-based entity may provide  
23 such prepaid services either directly or through formal  
24 arrangements with other qualified providers. Further, the  
25 Agency for Health Care Administration is authorized to  
26 establish a targeted case management program within those  
27 counties included in the community-based child welfare project  
28 approved by the Department of Children and Family Services and  
29 authorized under s. 409.1671. The general revenue required  
30 match for these services is limited to those funds available  
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1 for match and contained within the contracted funds for  
2 covered services with the lead agency.

3 Section 5. This act shall take effect upon becoming a  
4 law.

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7 HOUSE SUMMARY

8  
9 Revises duties of the Child Welfare System Estimating  
10 Conference. Revises requirements relating to the plan for  
11 privatization of foster care and related services.  
12 Requires community-based agencies contracting with the  
13 Department of Children and Family Services to provide  
14 such services to obtain certain liability insurance  
15 coverage and requires coverage of subcontractors.  
16 Provides limitations on tort actions. Provides  
17 exclusiveness of liability. Provides a hiring preference  
18 for certain state employees whose positions are  
19 privatized. Authorizes substitute care providers which  
20 meet described requirements to provide family day care  
21 services, and provides reimbursement eligibility for such  
22 dually licensed providers. Continues a program of  
23 privatized foster care and related services in district 5  
24 of the department until June 30, 2000. Provides for  
25 distribution, transfer, and use of certain excess or  
26 additional funds for foster care and related services  
27 provided under contract with the department. Authorizes  
28 the Agency for Health Care Administration to contract  
29 with community-based agencies for services for Medicaid  
30 recipients, subject to a waiver from the federal Health  
31 Care Finance Administration. Provides for a targeted case  
management program within such contract area and provides  
certain funding limitations for such contracts. See bill  
for details.