

By the Committees on Governmental Oversight and Productivity;
Children and Families; Banking and Insurance; and Senator Lynn

302-2428-04

1 A bill to be entitled
2 An act relating to foster care services;
3 amending s. 20.19, F.S.; prohibiting certain
4 members of a community alliance from receiving
5 funds from the Department of Children and
6 Family Services or a community-based lead
7 agency; amending s. 409.1671, F.S.; providing
8 additional requirements for an eligible lead
9 community-based provider to compete for a
10 privatization project; requiring contracts with
11 lead community-based providers to include
12 certain standards; revising requirements for
13 the department's quality assurance program for
14 privatized services; directing the Florida
15 Coalition for Children, Inc., to develop a plan
16 for a statewide risk pool for community-based
17 providers that provide foster care and related
18 services under contract with the department or
19 a lead community-based provider; deleting a
20 requirement that the department develop a
21 proposal; specifying the requirements of the
22 plan; extending a submission deadline; revising
23 the process for plan approval; directing the
24 department to issue a loan upon approval of the
25 plan; modifying the purposes of the risk pool;
26 revising the purposes for which funding may be
27 recommended to the Legislature; deleting
28 provisions requiring the creation of a risk
29 pool within the State Treasury; revising the
30 requirements for operating the risk pool;
31 authorizing the risk pool to invest funds and

1 retain interest; providing for payments upon a
2 determination of insolvency; prohibiting
3 payment of dividends until repayment of the
4 loan by the department and until the risk pool
5 is actuarially sound; deleting a requirement
6 for a performance bond; providing for the risk
7 pool to be managed by the Florida Coalition for
8 Children, Inc., or its designated contractor;
9 specifying the manner by which nonmember
10 entities may be authorized to contract with the
11 department; providing an exemption from state
12 travel policies for community-based providers
13 and subcontractors; providing effective dates.
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15 Be It Enacted by the Legislature of the State of Florida:
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17 Section 1. Subsection (6) of section 20.19, Florida
18 Statutes, is amended to read:

19 20.19 Department of Children and Family
20 Services.--There is created a Department of Children and
21 Family Services.

22 (6) COMMUNITY ALLIANCES.--

23 (a) The department shall, in consultation with local
24 communities, establish a community alliance of the
25 stakeholders, community leaders, client representatives and
26 funders of human services in each county to provide a focal
27 point for community participation and governance of
28 community-based services. An alliance may cover more than one
29 county when such arrangement is determined to provide for more
30 effective representation. The community alliance shall
31 represent the diversity of the community.

1 (b) The duties of the community alliance shall
2 include, but not necessarily be limited to:

3 1. Joint planning for resource utilization in the
4 community, including resources appropriated to the department
5 and any funds that local funding sources choose to provide.

6 2. Needs assessment and establishment of community
7 priorities for service delivery.

8 3. Determining community outcome goals to supplement
9 state-required outcomes.

10 4. Serving as a catalyst for community resource
11 development.

12 5. Providing for community education and advocacy on
13 issues related to delivery of services.

14 6. Promoting prevention and early intervention
15 services.

16 (c) The department shall ensure, to the greatest
17 extent possible, that the formation of each community alliance
18 builds on the strengths of the existing community human
19 services infrastructure.

20 (d) The initial membership of the community alliance
21 in a county shall be composed of the following:

22 1. The district administrator.

23 2. A representative from county government.

24 3. A representative from the school district.

25 4. A representative from the county United Way.

26 5. A representative from the county sheriff's office.

27 6. A representative from the circuit court

28 corresponding to the county.

29 7. A representative from the county children's board,
30 if one exists.

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1 (e) At any time after the initial meeting of the
2 community alliance, the community alliance shall adopt bylaws
3 and may increase the membership of the alliance to include the
4 state attorney for the judicial circuit in which the community
5 alliance is located, or his or her designee, the public
6 defender for the judicial circuit in which the community
7 alliance is located, or his or her designee, and other
8 individuals and organizations who represent funding
9 organizations, are community leaders, have knowledge of
10 community-based service issues, or otherwise represent
11 perspectives that will enable them to accomplish the duties
12 listed in paragraph (b), if, in the judgment of the alliance,
13 such change is necessary to adequately represent the diversity
14 of the population within the community alliance service
15 districts.

16 (f) A member of the community alliance, other than a
17 member specified in paragraph (d), may not receive payment for
18 contractual services from the department or a community-based
19 care lead agency.

20 ~~(g)(f)~~ Members of the community alliances shall serve
21 without compensation, but are entitled to receive
22 reimbursement for per diem and travel expenses, as provided in
23 s. 112.061. Payment may also be authorized for preapproved
24 child care expenses or lost wages for members who are
25 consumers of the department's services and for preapproved
26 child care expenses for other members who demonstrate
27 hardship.

28 ~~(h)(g)~~ Members of a community alliance are subject to
29 the provisions of part III of chapter 112, the Code of Ethics
30 for Public Officers and Employees.

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1 (i)~~(h)~~ Actions taken by a community alliance must be
2 consistent with department policy and state and federal laws,
3 rules, and regulations.

4 (j)~~(i)~~ Alliance members shall annually submit a
5 disclosure statement of services interests to the department's
6 inspector general. Any member who has an interest in a matter
7 under consideration by the alliance must abstain from voting
8 on that matter.

9 (k)~~(j)~~ All alliance meetings are open to the public
10 pursuant to s. 286.011 and the public records provision of s.
11 119.07(1).

12 Section 2. Paragraph (e) of subsection (1) and
13 subsections (4), (7), and (8) of section 409.1671, Florida
14 Statutes, as amended by section 27 of chapter 2003-399, Laws
15 of Florida, are amended, paragraph (e) is added to subsection
16 (3) of that section, and subsection (10) is added to that
17 section, to read:

18 409.1671 Foster care and related services;
19 privatization.--

20 (1)

21 (e) As used in this section, the term "eligible lead
22 community-based provider" means a single agency with which the
23 department shall contract for the provision of child
24 protective services in a community that is no smaller than a
25 county. The secretary of the department may authorize more
26 than one eligible lead community-based provider within a
27 single county when to do so will result in more effective
28 delivery of foster care and related services. To compete for a
29 privatization project, such agency must have:

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1 1. The ability to coordinate, integrate, and manage
2 all child protective services in the designated community in
3 cooperation with child protective investigations.

4 2. The ability to ensure continuity of care from entry
5 to exit for all children referred from the protective
6 investigation and court systems.

7 3. The ability to provide directly, or contract for
8 through a local network of providers, all necessary child
9 protective services. In selecting contract service providers,
10 such agency shall give preference to established providers
11 within the counties served by the lead agency. If an
12 established provider within the counties served is not
13 selected, the lead agency must provide documentation based on
14 specific performance or capacity criteria demonstrating the
15 rationale for the decision. The lead agency must deliver this
16 documentation to the department before the contract is
17 executed or before the agency decides to provide the service
18 directly.

19 4. The willingness to accept accountability for
20 meeting the outcomes and performance standards related to
21 child protective services established by the Legislature and
22 the Federal Government.

23 5. The capability and the willingness to serve all
24 children referred to it from the protective investigation and
25 court systems, regardless of the level of funding allocated to
26 the community by the state, provided all related funding is
27 transferred.

28 6. The willingness to ensure that each individual who
29 provides child protective services completes the training
30 required of child protective service workers by the Department
31 of Children and Family Services.

1 7. The ability to maintain eligibility to receive all
2 federal child welfare funds, including Title IV-E and IV-A
3 funds, currently being used by the Department of Children and
4 Family Services.

5 8. Written agreements with Healthy Families Florida
6 lead entities in their community, pursuant to s. 409.153, to
7 promote cooperative planning for the provision of prevention
8 and intervention services.

9 9. A board of directors, of which at least 51 percent
10 of the membership is comprised of persons residing in this
11 state. Of the state residents, at least 51 percent must also
12 reside within the service area of the lead community-based
13 provider.

14 (3)

15 (e) Each contract with an eligible lead
16 community-based provider must include all performance outcome
17 measures established by the Legislature and that are under the
18 control of the lead agency. The standards must be adjusted
19 annually by contract amendment to enable the department to
20 meet the legislatively-established statewide standards.

21 (4)(a) The department, in consultation with the
22 community-based agencies that are undertaking the privatized
23 projects, shall establish a quality assurance program for
24 privatized services. The quality assurance program shall be
25 based on standards established by the Adoption and Safe
26 Families Act as well as by a national accrediting organization
27 such as the Council on Accreditation of Services for Families
28 and Children, Inc. (COA) or CARF--the Rehabilitation
29 Accreditation Commission. ~~The department may develop a request~~
30 ~~for proposal for such oversight. This program must be~~
31 ~~developed and administered at a statewide level. The~~

1 ~~Legislature intends that the department be permitted to have~~
2 ~~limited flexibility to use funds for improving quality~~
3 ~~assurance. To this end, the department may transfer up to~~
4 ~~0.125 percent of the total funds from categories used to pay~~
5 ~~for these contractually provided services, but the total~~
6 ~~amount of such transferred funds may not exceed \$300,000 in~~
7 ~~any fiscal year. When necessary, the department may establish,~~
8 ~~in accordance with s. 216.177, additional positions that will~~
9 ~~be exclusively devoted to these functions. Any positions~~
10 ~~required under this paragraph may be established,~~
11 ~~notwithstanding ss. 216.262(1)(a) and 216.351. The department,~~
12 ~~in consultation with the community-based agencies that are~~
13 ~~undertaking the privatized projects, shall establish minimum~~
14 ~~thresholds for each component of service, consistent with~~
15 ~~standards established by the Legislature and the Federal~~
16 ~~Government.~~ Each program operated under contract with a
17 community-based agency must be evaluated annually by the
18 department. The department shall, to the extent possible, use
19 independent financial audits provided by the community-based
20 care agency to eliminate or reduce the ongoing contract and
21 administrative reviews conducted by the department. The
22 department may suggest additional items to be included in such
23 independent financial audits to meet the department's needs.
24 Should the department determine that such independent
25 financial audits are inadequate, then other audits, as
26 necessary, may be conducted by the department. Nothing herein
27 shall abrogate the requirements of s. 215.97. The department
28 shall submit an annual report regarding quality performance,
29 outcome measure attainment, and cost efficiency to the
30 President of the Senate, the Speaker of the House of
31 Representatives, the minority leader of each house of the

1 Legislature, and the Governor no later than January 31 of each
2 year for each project in operation during the preceding fiscal
3 year.

4 (b) The department shall use these findings in making
5 recommendations to the Governor and the Legislature for future
6 program and funding priorities in the child welfare system.

7 (7) The Florida Coalition for Children, Inc., in
8 consultation with the department, shall develop a plan based
9 on an independent actuarial study regarding the long-term use
10 and structure of a statewide community-based care risk pool
11 for the protection of eligible lead community-based providers,
12 their subcontractors, and providers of other social services
13 who contract directly with the department. The plan must also
14 outline strategies to maximize federal earnings as they relate
15 to the community-based care risk pool. At a minimum, the plan
16 must allow for the use of federal earnings received from child
17 welfare programs to be allocated to the community-based care
18 risk pool by the department, which earnings are determined by
19 the department to be in excess of the amount appropriated in
20 the General Appropriations Act. The plan must specify the
21 necessary steps to ensure the financial integrity and
22 industry-standard risk management practices of the
23 community-based care risk pool and the continued availability
24 of funding from federal, state, and local sources. The plan
25 must also include recommendations that permit the program to
26 be available to entities of the department providing child
27 welfare services until full conversion to community-based care
28 takes place. The final plan shall be submitted to the
29 department and the Office of Insurance Regulation and then to
30 the Executive Office of the Governor and the Legislative
31 Budget Commission for formal adoption before January 1, 2005.

1 Upon approval of the plan by all parties, the department shall
2 issue an interest-free loan that is secured by the cumulative
3 contractual revenue of the community-based care risk pool
4 membership, and the amount of the loan shall equal the amount
5 appropriated by the Legislature for this purpose. The plan
6 shall provide for a governance structure that assures the
7 department the ability to oversee the operation of the
8 community-based care risk pool at least until this loan is
9 repaid in full.

10 (a) The purposes for which the community-based care
11 risk pool shall be used include, but are not limited to:

12 1. Significant changes in the number or composition of
13 clients eligible to receive services.

14 2. Significant changes in the services that are
15 eligible for reimbursement.

16 3. Scheduled or unanticipated, but necessary, advances
17 to providers or other cash-flow issues.

18 4. Proposals to participate in optional Medicaid
19 services or other federal grant opportunities.

20 5. Appropriate incentive structures.

21 6. Continuity of care in the event of failure,
22 discontinuance of service, or financial misconduct by a lead
23 agency.

24 7. Payment for time-limited technical assistance and
25 consultation to lead agencies in the event of serious
26 performance or management problems.

27 8. Payment for meeting all traditional and
28 nontraditional insurance needs of eligible members.

29 9. Significant changes in the mix of available funds.

30 (b) After approval of the plan in the 2004-2005 fiscal
31 year and annually thereafter, the department may also request

1 in its annual legislative budget request, and the Governor may
2 recommend, that the funding necessary to carry out paragraph
3 (a) be appropriated to the department. Subsequent funding of
4 the community-based care risk pool shall be supported by
5 premiums assessed to members of the community-based care risk
6 pool on a recurring basis. The community-based care risk pool
7 may invest and retain interest earned on these funds. In
8 addition, the department may transfer funds to the
9 community-based care risk pool as available in order to ensure
10 an adequate funding level if the fund is declared to be
11 insolvent and approval is granted by the Legislative Budget
12 Commission. Such payments for insolvency shall be made only
13 after a determination is made by the department or its actuary
14 that all participants in the community-based care risk pool
15 are current in their payments of premiums and that assessments
16 have been made at an actuarially sound level. Such payments by
17 participants in the community-based care risk pool may not
18 exceed reasonable industry standards, as determined by the
19 actuary. Money from this fund may be used to match available
20 federal dollars. Dividends or other payments, with the
21 exception of legitimate claims, may not be paid to members of
22 the community-based care risk pool until the loan issued by
23 the department is repaid in full. Dividends or other payments,
24 with the exception of legitimate claims and other purposes
25 contained in the approved plan, may not be paid to members of
26 the community-based care risk pool unless, at the time of
27 distribution, the community-based care risk pool is deemed
28 actuarially sound and solvent. Solvency shall be determined by
29 an independent actuary contracted by the department. The
30 Office of Insurance Regulation must approve the determination
31

1 of solvency by the independent actuary before the department
2 may accept the recommendation of the independent actuary.

3 1. Such funds shall constitute partial security for
4 contract performance by lead agencies and shall be used to
5 offset the need for a performance bond. Subject to the
6 approval of the plan, the community-based care risk pool shall
7 be managed by the Florida Coalition for Children, Inc., or the
8 designated contractors of the Florida Coalition for Children,
9 Inc. Nonmembers of the community-based care risk pool may
10 continue to contract with the department, but must provide a
11 letter of credit equal to one-twelfth of the annual contract
12 amount in lieu of membership in the community-based care risk
13 pool.

14 2. The department may separately require a bond to
15 mitigate the financial consequences of potential acts of
16 malfeasance, misfeasance, or criminal violations by the
17 provider.

18 ~~(7) The department, in consultation with existing lead~~
19 ~~agencies, shall develop a proposal regarding the long-term use~~
20 ~~and structure of a statewide shared earnings program which~~
21 ~~addresses the financial risk to eligible lead community-based~~
22 ~~providers resulting from unanticipated caseload growth or from~~
23 ~~significant changes in client mixes or services eligible for~~
24 ~~federal reimbursement. The recommendations in the statewide~~
25 ~~proposal must also be available to entities of the department~~
26 ~~until the conversion to community-based care takes place. At a~~
27 ~~minimum, the proposal must allow for use of federal earnings~~
28 ~~received from child welfare programs, which earnings are~~
29 ~~determined by the department to be in excess of the amount~~
30 ~~appropriated in the General Appropriations Act, to be used for~~
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1 ~~specific purposes. These purposes include, but are not limited~~
2 ~~to:~~
3 ~~(a) Significant changes in the number or composition~~
4 ~~of clients eligible to receive services.~~
5 ~~(b) Significant changes in the services that are~~
6 ~~eligible for reimbursement.~~
7 ~~(c) Significant changes in the availability of federal~~
8 ~~funds.~~
9 ~~(d) Shortfalls in state funds available for eligible~~
10 ~~or ineligible services.~~
11 ~~(e) Significant changes in the mix of available funds.~~
12 ~~(f) Scheduled or unanticipated, but necessary,~~
13 ~~advances to providers or other cash flow issues.~~
14 ~~(g) Proposals to participate in optional Medicaid~~
15 ~~services or other federal grant opportunities.~~
16 ~~(h) Appropriate incentive structures.~~
17 ~~(i) Continuity of care in the event of lead agency~~
18 ~~failure, discontinuance of service, or financial misconduct.~~
19
20 ~~The department shall further specify the necessary steps to~~
21 ~~ensure the financial integrity of these dollars and their~~
22 ~~continued availability on an ongoing basis. The final proposal~~
23 ~~shall be submitted to the Legislative Budget Commission for~~
24 ~~formal adoption before December 31, 2002. If the Legislative~~
25 ~~Budget Commission refuses to concur with the adoption of the~~
26 ~~proposal, the department shall present its proposal in the~~
27 ~~form of recommended legislation to the President of the Senate~~
28 ~~and the Speaker of the House of Representatives before the~~
29 ~~commencement of the next legislative session. For fiscal year~~
30 ~~2003-2004 and annually thereafter, the Department of Children~~
31 ~~and Family Services may request in its legislative budget~~

1 ~~request, and the Governor may recommend, the funding necessary~~
2 ~~to carry out paragraph (i) from excess federal earnings. The~~
3 ~~General Appropriations Act shall include any funds~~
4 ~~appropriated for this purpose in a lump sum in the~~
5 ~~Administered Funds Program, which funds constitute partial~~
6 ~~security for lead agency contract performance. The department~~
7 ~~shall use this appropriation to offset the need for a~~
8 ~~performance bond for that year after a comparison of risk to~~
9 ~~the funds available. In no event shall this performance bond~~
10 ~~exceed 2.5 percent of the annual contract value. The~~
11 ~~department may separately require a bond to mitigate the~~
12 ~~financial consequences of potential acts of malfeasance,~~
13 ~~misfeasance, or criminal violations by the provider. Prior to~~
14 ~~the release of any funds in the lump sum, the department shall~~
15 ~~submit a detailed operational plan, which must identify the~~
16 ~~sources of specific trust funds to be used. The release of the~~
17 ~~trust fund shall be subject to the notice and review~~
18 ~~provisions of s. 216.177. However, the release shall not~~
19 ~~require approval of the Legislative Budget Commission.~~

20 (8) Notwithstanding the provisions of s. 215.425, all
21 documented federal funds earned for the current fiscal year by
22 the department and community-based agencies which exceed the
23 amount appropriated by the Legislature shall be distributed to
24 all entities that contributed to the excess earnings based on
25 a schedule and methodology developed by the department and
26 approved by the Executive Office of the Governor. Distribution
27 shall be pro rata based on total earnings and shall be made
28 only to those entities that contributed to excess earnings.
29 Excess earnings of community-based agencies shall be used only
30 in the service district in which they were earned. Additional
31 state funds appropriated by the Legislature for

1 community-based agencies or made available pursuant to the
2 budgetary amendment process described in s. 216.177 shall be
3 transferred to the community-based agencies. The department
4 shall amend a community-based agency's contract to permit
5 expenditure of the funds. ~~The distribution program applies~~
6 ~~only to entities that were under privatization contracts as of~~
7 ~~July 1, 2002.~~

8 (10) The lead community-based providers and their
9 subcontractors shall be exempt from state travel policies as
10 set forth in s. 112.061(3)(a) for their travel expenses
11 incurred in order to comply with the requirements of this
12 section.

13 Section 3. This act shall take effect July 1, 2004.

14
15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 CS for CS for SB 1698

18 The CS for the CS for CS for SB 1698 revises the structure
19 under which the community agencies will share in and be
20 indemnified for their financial risk by establishing an entity
21 that will operate under standards overseen by the Office of
22 Insurance Regulation. Members of the community alliance may
23 not receive payment for contractual services. Preference in
24 the selection of service providers shall be afforded to
25 established providers and documentation must be provided for
26 decisions that select other providers. Service provider board
27 members must have a majority of in-state residents and a
28 majority of them must reside in the service area. Quality
29 assurance standards must conform to the Federal Adoption and
30 Safe Families Act and current law specifying separate quality
31 assurance standards and their funding is repealed. The Florida
Coalition for Children and the department are to jointly
develop a financially sound indemnification structure to
assure the financial integrity of the program providers. The
final plan shall involve the oversight by the Office of
Insurance Regulation and shall be used for many of the same
purposes contained in the current law. The department is
directed to make the necessary legislative budget requests for
funds to make the shared risk pool financially viable.
Solvency will be determined by the Office of Insurance
Regulation. Lead community-based providers and their
subcontractors are not required to abide by the prior state
agency approval process for incurred travel expenses.