

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 723 w/CS Foster Care Services
SPONSOR(S): Murman
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)	6 Y, 0 N	Preston	Liem
2) Future of Florida's Families	13 Y, 0 N w/CS	Preston	Liem
3) State Administration	5 Y, 0 N	Williamson	Everhart
4) Human Services Appropriations	6 Y, 0 N	Money	Ekholm
5) Appropriations	39 Y, 0 N w/CS	Ekholm	Baker

SUMMARY ANALYSIS

The bill amends section 409.1671, Florida Statutes, related to the privatization of foster care and related services, to provide new requirements for the proposal related to a statewide shared financial risk pool intended to protect community-based care providers who deliver foster care and related services. The bill extends a deadline for the submission by the Department of Children and Family Services to the Legislative Budget Commission of a proposal regarding the risk program from December 31, 2002 until October 1, 2004, removes conflicting language related to the use of risk program funds, adds a purpose for which risk pool funds may be used, clarifies requirements for performance bonds, and adds requirements related to the composition of the boards of directors for community-based care lead agencies. The bill also prohibits entities that receive funding from either the Department of Children and Family Services or a community-based lead agency from serving on the community alliance.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0723h.ap.doc
DATE: April 23, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Legislative History

In 1994, the Florida Legislature enacted legislation creating section 409.1671, Florida Statutes, which provided that the former Department of Health and Rehabilitative Services (HRS) could contract for the delivery, administration, or management of protective services, family preservation services, family reunification services, foster care services, and other related services or programs as appropriate. HRS was to retain responsibility for the quality of contracted services.¹

In 1996, the Legislature further amended section 409.1671, Florida Statutes, to provide legislative intent to encourage HRS² to contract with competent community-based agencies to provide foster care and related services. The legislation stated privatizing these services would increase community commitment to family reunification, would strengthen care to children and families, and would increase efficiencies and accountability. Each privatized contract was to be evaluated annually with a report submitted each year, beginning in 1998, to the governor and the legislature summarizing among other things, cost efficiency of those contracts. Establishment of a quality assurance program related to the privatization of services was also required. Further, the legislation required the establishment of model programs and required that each of the model programs be established community-based organizations within the district or subdistrict in which they were operated. Each entity participating in the model program effort was required to analyze and report the complete direct and indirect costs of delivering these services through HRS and the full cost of privatization. Both the quality assurance program and the annual evaluations of the model programs were to be funded from cost savings from the privatization efforts.³

In 1998, The Department of Children and Family Services (DCFS) was required to privatize the provision of foster care and related services statewide. Locally based entities were removed from the statutes as a result of requirements that quality assurance and annual model program evaluations were to be funded from realized cost savings and that model programs were to be established.⁴

In 2000, section 409.1671, Florida Statutes, was amended to address the risk assumed by community-based care providers as they became responsible for service provision by authorizing DCFS to

¹ See Chapter 94-164, Laws of Florida.

² HRS became the Department of Children and Family Services during agency reorganization in 1996.

³ See Chapter 96-402, Laws of Florida.

⁴ See Chapter 98-180, Laws of Florida

establish and administer a risk pool intended to reduce the financial risk to eligible lead community-based providers resulting from unanticipated caseload growth.⁵ The risk pool did not have an established year-to-year funding source but was funded by specific appropriation each year from non-recurring funds. The sum of \$4.5 million was appropriated in Fiscal Year 2000-2001 to establish the risk pool.

Legislation enacted in 2002 required DCFS to develop, in consultation with existing lead-agency providers, a statewide proposal related to the long-term use and structure of a shared-earnings program addressing the financial risk to eligible lead community-based care providers not only from unanticipated caseload increases as provided in legislation enacted in the year 2000, but also from significant changes in client mixes or services eligible for federal reimbursement. The proposal expanded upon the issue of risk management and replaced the existing risk pool. The proposal was required to be submitted to the Legislative Budget Commission (LBC) for adoption before December 31, 2002, and to be submitted to the legislature in the form of recommended legislation if the LBC failed to concur with the proposal. The 2002 legislative changes provided that DCFS could request and the governor could recommend that excess federal earnings be used to provide for continuity of care in the event of lead agency failure, discontinuance of service provision or financial misconduct. The General Appropriations Act was required to include any funds appropriated for this purpose in a lump sum in the Administered Funds Program. DCFS was required to use such appropriation to offset the need for a performance bond, which bond cannot exceed 2.5 percent of the annual value of a contract.⁶

The 2003 General Appropriations Act provided 10 million dollars from the federal grants trust fund for the shared risk fund for community-based providers of child welfare to be used for unanticipated costs associated with the privatization of foster care and related services as authorized in section 409.1671(7)(i), Florida Statutes. This appropriation is funded from unrestricted trust fund cash in DCFS. Funds in this lump sum shall not be released until DCFS submits the required plan, and final approval is received by the Legislative Budget Commission.⁷

The implementing bill for the 2003 General Appropriations Act (GAA) provided that for Fiscal Year 2003-2004 excess federal earnings used to provide for continuity of care in the event of lead agency failure, discontinuance of service provision, or financial misconduct must be included by the GAA in a lump sum in DCFS rather than in the Administered Funds Program. This provision expires on July 1, 2004.⁸

Performance Bonds

A performance bond is a surety bond which guarantees that a contractor will fully perform a contract and guarantees against the breach of such contract. Proceeds of the bond are used to complete the contract or compensate for loss in the event of nonperformance.⁹

Effect of Bill

The bill redirects DCFS, in consultation with the existing community-based care lead agencies, to develop a proposal related to the use and structure of a statewide shared financial risk program intended to protect eligible lead agencies that contract with the department for the provision of foster care and related services. It also removes a provision which currently restricts the use of funds to provide for continuity of care in the event of the failure of a lead agency, discontinuance of service provision by a lead agency, or financial misconduct; it adds a purpose for which risk pool funds may be used; and, it provides requirements for the membership of lead agency boards of directors. The bill

⁵ See Chapter 2000-139, Laws of Florida.

⁶ See Chapter 2002-219, Laws of Florida.

⁷ See Chapter 2003-397, Laws of Florida.

⁸ See Chapter 2003-399, Laws of Florida.

⁹ See Blacks Law Dictionary, 6th Edition.

also revises quality assurance requirements related to privatized services and prohibits certain entities from serving on community alliances.

C. SECTION DIRECTORY:

Section 1 amends section 20.19, Florida Statutes, prohibiting anyone who receives funding from either DCFS or a community-based lead agency from serving on a community alliance.

Section 2 amends section 409.1671, Florida Statutes, providing new requirements for a statewide shared financial risk pool intended to protect community-based care providers who deliver foster care and related services; extending the deadline for submission by DCFS to the Legislative Budget Commission of a proposal regarding the risk program from December 31, 2002 until October 1, 2004; removing conflicting language related to the use of risk program funds; adding a purpose for which risk pool funds may be used; clarifying requirements for performance bonds; adding requirements related to board of director composition for lead agencies; exempting lead agencies and their subcontractors from state travel policies; and, providing that lead agencies should directly provide no more than 35% of all services.

Section 2 provides for an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The Department of Children and Family Services did not initially provide a fiscal analysis for this bill. DCFS has requested \$10 million to fund the shared risk program and \$3 million to fund a community-based care risk/insurance premium which is not addressed in this bill. The House Committee on Appropriations proposed General Appropriations Act (HB 1835 – As Introduced) contains \$10 million for the shared risk program and \$3 million related to the community-based care insurance issue.

On April 2, 2004 the DCFS provided fiscal analysis of the bill as amended in the Human Services Appropriations Subcommittee, and the department has determined there was no fiscal impact associated with the amendments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The decision to privatize the provision of foster care and related services has transferred the associated financial risk from the state to those entities that have contracted to become community-based care lead agencies. A report issued by the Child Welfare League of America stated:

In 1997, Florida began its entry into privatization with relatively small pilots in four geographic regions of the state. The state now has a legislative mandate to privatize foster care and all related services statewide over the course of the next few years, using lead agency contracts that will shift significant financial risk to contractors.¹⁰

Unlike DCFS, private providers do not have the ability to manage that risk through the use of statewide realignments in the agency budget nor do they have sovereign immunity.

Management of financial risk is a serious issue that can affect privatization efforts both on the front end when trying to recruit lead agencies and on the back end when lead agencies fail. In February 2001, a report issued by the Office of Program Policy Analysis and Government Accountability stated that DCFS must address several potential obstacles before achieving statewide implementation of privatized foster care and related services, including the reluctance of many providers to assume the increased financial risk that comes with lead agency status.¹¹ As more and more lead agencies assume service provision at the accelerated pace currently in place, there appears to be a justifiable concern that lead agencies will fail. DCFS contract monitoring reports for November 2002 and January 2003 identified two lead agencies that were experiencing problems, some of which were related to financial stability that jeopardized their existence. One of those agencies, Family Continuity Programs, which began providing services in June 2000, has failed, reportedly having exhausted an almost \$4 million credit line. In spite of this, it is a problem that Florida has been slow to address and has not yet implemented an adequate solution.

Florida law first allowed the department to contract for the provision of foster care and related services in 1994, with that permissiveness becoming a statewide mandate in 1998. As of January 2004, DCFS has contracts in place with 11 lead agencies, serving 28 counties and 42% of all children receiving child protection services, with a total contract value of just over \$342 million dollars.¹²

¹⁰ See CWLS Managed Care and Privatization Child Welfare Tracking Project, Child Welfare League of America, (1998) p. 15.

¹¹ See Justification Review of the Child Protection Program in the Department of Children and Family Services, Office of Program Policy Analysis and Government Accountability, February 2001.

¹² See Report No. 04-15, DCFS Lead Agency Readiness Assessment process Meets Statutory Requirements, But Needs Strengthening, Office of Program Policy Analysis and Government Accountability, February 2004.

There are many ways public purchasers can limit contractor risks... Another method used to limit risk is to require a risk pool to cover unexpected high costs for certain individuals or groups of children. Both the public agency and the contractor might contribute to the risk pool and the terms for its use would be described in the contract.¹³

In an ongoing evaluation of Florida's community-based care initiative, it was stated:

In most privatization arrangements across the country, lead agencies have been financed through capitation or case rate payments that reflect the actual number of people the agency is serving or likely to serve. Florida is the only state using a global budget transfer, that is, giving a fixed amount of money to the lead agency and making it responsible for providing all services needed to children who enter the child welfare system. Since a lead agency cannot unilaterally control, but can impact the number of children entering the system, it is at financial risk ... DCF has recognized this and worked with the lead agencies around issues such as sudden increases in enrollment and has taken steps to mitigate potential financial risks under the purview of Senate Bill 632.¹⁴

The provisions of chapter 2002-219, Laws of Florida (SB 632), related to the development of a statewide proposal for the long-term use and structure of a shared-earnings program addressing the financial risk to eligible lead community-based care providers were never accomplished. The proposal was required to be submitted to the Legislative Budget Commission (LBC) for adoption before December 31, 2002 and to be submitted to the legislature in the form of recommended legislation if the LBC failed to concur with the proposal. Neither of these statutory requirements were carried out by DCFS. This would appear to leave the issue of financial risk unresolved even as more lead agencies assume the responsibility for service provision and spend contract dollars. The analysis of SB 632 provided by DCFS stated the bill requires a proposal developed jointly by DCFS and the community-based care agencies related to the structure and use of a shared financial risk program and that this proposal will be a significant step towards having a responsive program in place to mitigate financial and liability risk for the community-based care lead agencies.¹⁵

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 10, 2004, the Committee on the Future of Florida's Families adopted a strike everything amendment that made the following changes to the bill:

- Added a provision that any entity receiving funds from either DCFS or a community-based care lead agency may not serve as a member of the community alliance;
- Added a requirement for agencies serving under contract as community-based lead agencies, requiring a board of directors, of which at least 51% of the membership must reside in Florida and at least 51% of those Florida residents must reside in the service district of the lead agency;
- Revised requirements related to the quality assurance program for privatized foster care services;
- Added a purpose for which the risk pool can be used;
- Revised requirements related to performance bonds and removed the provision allowing a letter of credit to be substituted for such bond; and,
- Provided an exemption from state travel policies for lead community-based providers and their subcontractors.

¹³ See CWLS Managed Care and Privatization Child Welfare Tracking Project, Child Welfare League of America, (1998) p. 32.

¹⁴ See Evaluation of the Florida Department of Children and Family Services Community-Based Care Initiative, Louis de la Parte Florida Mental Health Institute, University of South Florida, September 2003.

¹⁵ See Staff Analysis and Economic Impact, Department of Children and Families, HB 723, February 20, 2004.

On March 10, 2004, the Committee on the Future of Florida's Families also adopted an amendment to the amendment which provides that a community-based lead agency should provide no more than 35% of all services provided.

This analysis reflects changes made by both the amendment and the amendment to the amendment.

On April 2, 2004, the Human Services Appropriations Subcommittee amended the CS for HB 723. The amendment:

- Specifies that a member of the community alliance, other than those identified in statutes, may not receive payment for contractual services from the department or a community-based care lead agency.

Further, the amendment substantially modifies the portion of the bill which addresses section 409.1671, Florida Statutes, as follows:

- Specifies that eligible lead community-based providers must have a board of directors of which 51 percent of the membership is comprised of persons residing in Florida, and of the state residents, at least 51 percent must also reside within the service area of the lead community-based provider.
- Specifies that each contract with an eligible lead community-base provider must include all performance outcome measures that are established by the Legislature and that are under the control of the lead agency.
- Requires that the Florida Coalition for Children, Inc., in consultation with the DCFS prepare an independent actuarial study regarding the long-term use and structure of a statewide community-based care risk pool. Elements of the plan are to include: strategies to maximize federal earnings; use of federal earnings received from child welfare programs to be allocated to the risk pool; steps to ensure financial integrity and risk management practices of the risk pool; and, recommendations that permit the program to be available to entities of the department providing child welfare services until full conversion to community-based care takes place.
- Provides that the final plan be submitted to the DCFS, the Office of Insurance Regulation and then to the Executive Office of the Governor and the Legislative Budget Commission for formal adoption before January 1, 2005.
- Directs that, upon approval of the plan by all parties, the department shall issue an interest-free loan that is secured by the cumulative contractual revenue of the community-based care risk pool membership. The amount of the loan shall equal the amount appropriated by the Legislature for this purpose.
- Provides that there is to be a governance structure that assures the department the ability to oversee the operation of the community-based care risk pool at least until the loan is repaid in full.
- Adds two purposes for which the community-based care risk pool shall be used: payment for time-limited technical assistance and consultation to lead agencies in the event of serious performance or management problems; and, payment for meeting all traditional and nontraditional insurance needs of eligible members.
- Specifies that, following approval of the plan, the department may request funding to carry out the purposes for which the risk pool shall be used. Also provides that subsequent funding of the risk pool shall be supported by premiums assessed to members of the risk pool on a recurring basis.
- Provides that money from this fund may be used to match available federal dollars.

- Specifies that: appropriated funds shall constitute partial security for contract performance by lead agencies and shall be used to offset the need for a performance bond; and, subject to approval of the plan, the risk pool shall be managed by the Florida Coalition for Children, Inc.
- Exempts the lead community-based providers and their subcontractors from state travel policies.

There were 3 amendments to the amendment that were adopted by the Human Services Appropriations Subcommittee on April 2, 2004.

- Corrects a statutory reference;
- Specifies that residential facilities that serve as foster care facilities are considered single family dwellings for the purposes of the Fire Prevention Code and the Building Code; and,
- Specifies that a lead community-based provider should provide no more than 35 percent of all child protective services provided.

On April 23, 2004, the Appropriations Committee adopted the amendment to HB 723 adopted by the Human Services Appropriations Subcommittee on April 2, 2004, and 2 of the 3 amendments to the amendment described above. The amendment addressing foster care facilities and the Fire Prevention and Building codes was withdrawn.