

1 A bill to be entitled
2 An act relating to the Department of Children
3 and Family Services; providing legislative
4 intent with respect to establishing a structure
5 by which the department shall monitor and
6 manage contracts with external service
7 providers; providing definitions; requiring the
8 department to competitively procure certain
9 commodities and contractual services; requiring
10 the department to allow all public
11 postsecondary institutions to bid on contracts
12 intended for any public postsecondary
13 institution; authorizing the department to
14 competitively procure and contract for systems
15 of treatment or service that involve multiple
16 providers; providing requirements if other
17 governmental entities contribute matching
18 funds; requiring that an entity providing
19 matching funds must comply with certain
20 procurement procedures; authorizing the
21 department to independently procure and
22 contract for treatment services; requiring that
23 the department develop a validated business
24 case before outsourcing any service or
25 function; providing requirements for the
26 business case; requiring that the validated
27 business case be submitted to the Legislature
28 for approval; requiring that a contractual
29 service that has previously been outsourced be
30 subject to the requirements for a validated
31 business case; requiring that a procurement of

1 contractual services equal to or in excess of
2 the threshold amount for CATEGORY FIVE comply
3 with specified requirements, including a scope
4 of work and performance standards; authorizing
5 the department to adopt incremental penalties
6 by rule; authorizing the department to include
7 cost-neutral, performance-based incentives in a
8 contract; requiring multiyear contracts unless
9 justification is provided; requiring that a
10 contract in excess of \$1 million be negotiated
11 by a contract negotiator who is certified
12 according to standards established by the
13 Department of Management Services; limiting
14 circumstances under which the department may
15 amend a contract; requiring that a proposed
16 contract amendment be submitted to the
17 Executive Office of the Governor for approval;
18 requiring approval of a contract amendment by
19 the Administration Commission under certain
20 circumstances; requiring the department to
21 verify that contractual terms have been
22 satisfied before renewing a contract; requiring
23 certain documentation; requiring the department
24 to develop, in consultation with the Department
25 of Management Services, contract templates and
26 guidelines; requiring that the department
27 establish a contract-management process;
28 specifying the requirements for and components
29 of the contract-management process; providing
30 requirements for resolving performance
31 deficiencies and terminating a contract;

1 requiring a corrective-action plan under
2 certain circumstances; requiring the department
3 to develop standards of conduct and
4 disciplinary actions; requiring that the
5 department establish contract-monitoring units
6 and a contract-monitoring process; requiring
7 written reports; requiring on-site visits for
8 contracts involving the provision of direct
9 client services; requiring the department to
10 make certain documents available to the
11 Legislature; requiring the department to create
12 an electronic database to store the documents;
13 prohibiting contractors from performing certain
14 functions; amending s. 402.73, F.S.; requiring
15 the Agency for Persons with Disabilities to
16 implement systems to ensure quality and fiscal
17 integrity of programs in the developmental
18 services Medicaid waiver system; providing an
19 exemption for health services from competitive
20 bidding requirements; amending s. 409.1671,
21 F.S.; conforming provisions to changes made by
22 the act; requiring that the Office of Program
23 Policy Analysis and Government Accountability
24 conduct two reviews of the contract-management
25 and accountability structures of the department
26 and report to the Legislature and the Auditor
27 General; repealing s. 402.72, F.S., relating to
28 contract-management requirements for the
29 Department of Children and Family Services;
30 providing an appropriation; providing an
31 effective date.

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

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3 Section 1. Department of Children and Family Services;
4 procurement of contractual services; outsourcing or
5 privatization; contract management.--

6 (1) LEGISLATIVE INTENT.--The Legislature intends that
7 the Department of Children and Family Services obtain services
8 in the manner that is most efficient and cost-effective for
9 the state, that provides the greatest long-term benefits to
10 the clients receiving services, and that minimizes the
11 disruption of client services. In order to meet these
12 legislative goals, the department shall comply with
13 legislative policy guidelines that require compliance with
14 uniform procedures for procuring contractual services,
15 prescribe how the department must outsource its programmatic
16 and administrative services to external service providers
17 rather than having them provided by the department or another
18 state agency, and establish a contract-management and
19 contract-monitoring process.

20 (2) DEFINITIONS.--As used in this section, the term:

21 (a) "Contract manager" means the department employee
22 who is responsible for enforcing the compliance with
23 administrative and programmatic terms and conditions of a
24 contract. The contract manager is the primary point of contact
25 through which all contracting information flows between the
26 department and the contractor. The contract manager is
27 responsible for day-to-day contract oversight, including
28 approval of contract deliverables and invoices. All actions
29 related to the contract shall be initiated by or coordinated
30 with the contract manager. The contract manager maintains the
31 official contract files.

1 (b) "Contract monitor" means the department employee
2 who is responsible for observing, recording, and reporting to
3 the contract manager and other designated entities the
4 information necessary to assist the contract manager and
5 program management in determining whether the contractor is in
6 compliance with the administrative and programmatic terms and
7 conditions of the contract.

8 (c) "Department" means the Department of Children and
9 Family Services.

10 (d) "Outsourcing" means the process of contracting
11 with an external service provider to provide a service, in
12 whole or in part, while the department retains the
13 responsibility and accountability for the service.

14 (e) "Performance measure" means the quantitative
15 indicators used to assess if the service the external provider
16 is performing is achieving the desired results. Measures of
17 performance include outputs, direct counts of program
18 activities, and outcomes or results of program activities in
19 the lives of the clients served.

20 (f) "Performance standard" means the quantifiable,
21 specified, and desired level to be achieved for a particular
22 performance measure.

23 (g) "Privatize" means any process aimed at
24 transferring the responsibility for a service, in whole or in
25 part, from the department to the private sector such that the
26 private sector is solely and fully responsible for the
27 performance of the specific service.

28 (h) "Service" means all or any portion of a program or
29 program component as defined in section 216.011.

30 (3) PROCUREMENT OF COMMODITIES AND CONTRACTUAL
31 SERVICES.--

1 (a) For the purchase of commodities and contractual
2 services in excess of the threshold amount established in
3 section 287.017, Florida Statutes, for CATEGORY TWO, the
4 department shall comply with the requirements set forth in
5 section 287.057, Florida Statutes.

6 (b) Notwithstanding section 287.057(5)(f)13., Florida
7 Statutes, whenever the department intends to contract with a
8 public postsecondary institution to provide a service, the
9 department must allow all public postsecondary institutions in
10 this state that are accredited by the Southern Association of
11 Colleges and Schools to bid on the contract. Thereafter,
12 notwithstanding any other provision to the contrary, if a
13 public postsecondary institution intends to subcontract for
14 any service awarded in the contract, the subcontracted service
15 must be procured by competitive procedures.

16 (c) When it is in the best interest of a defined
17 segment of its consumer population, the department may
18 competitively procure and contract for systems of treatment or
19 service that involve multiple providers, rather than procuring
20 and contracting for treatment or services separately from each
21 participating provider. The department must ensure that all
22 providers that participate in the treatment or service system
23 meet all applicable statutory, regulatory, service-quality,
24 and cost-control requirements. If other governmental entities
25 or units of special purpose government contribute matching
26 funds to the support of a given system of treatment or
27 service, the department shall formally request information
28 from those funding entities in the procurement process and may
29 take the information received into account in the selection
30 process. If a local government contributes matching funds to
31 support the system of treatment or contracted service and if

1 the match constitutes at least 25 percent of the value of the
2 contract, the department shall afford the governmental match
3 contributor an opportunity to name an employee as one of the
4 persons required by section 287.057(17), Florida Statutes, to
5 evaluate or negotiate certain contracts, unless the department
6 sets forth in writing the reason why the inclusion would be
7 contrary to the best interest of the state. Any employee so
8 named by the governmental match contributor shall qualify as
9 one of the persons required by section 287.057(17), Florida
10 Statutes. A governmental entity or unit of special purpose
11 government may not name an employee as one of the persons
12 required by section 287.057(17), Florida Statutes, if it, or
13 any of its political subdivisions, executive agencies, or
14 special districts, intends to compete for the contract to be
15 awarded. The governmental funding entity or contributor of
16 matching funds must comply with all procurement procedures set
17 forth in section 287.057, Florida Statutes, when appropriate
18 and required.

19 (d) The department may procure and contract for or
20 provide assessment and case-management services independently
21 from treatment services.

22 (4) SOURCING STANDARDS AND REQUIREMENTS.--If the
23 department proposes to outsource a service, the department
24 must comply with the requirements of this section prior to the
25 procurement process provided for in section 287.057, Florida
26 Statutes.

27 (a) The department shall develop a business case
28 describing and analyzing the service proposed for outsourcing.
29 A business case is part of the solicitation process and is not
30 a rule subject to challenge pursuant to section 120.54,
31

1 Florida Statutes. The business case must include, but need not
2 be limited to:

3 1. A detailed description of the services to be
4 outsourced, a description and analysis of the department's
5 current performance of the service, and a rationale
6 documenting how outsourcing the service would be in the best
7 interest of the state, the department, and its clients.

8 2. A cost-benefit analysis documenting the estimated
9 specific direct and indirect costs, savings, performance
10 improvements, risks, and qualitative and quantitative benefits
11 involved in or resulting from outsourcing the service. The
12 cost-benefit analysis must include a detailed plan and
13 timeline identifying all actions that must be implemented to
14 realize expected benefits. Under section 92.525, Florida
15 Statutes, the Secretary of Children and Family Services shall
16 verify that all costs, savings, and benefits are valid and
17 achievable.

18 3. A description of the specific performance measures
19 and standards that must be achieved through the outsourcing
20 proposal.

21 4. A statement of the potential effect on applicable
22 federal, state, and local revenues and expenditures. The
23 statement must specifically describe the effect on general
24 revenue, trust funds, general revenue service charges, and
25 interest on trust funds, together with the potential direct or
26 indirect effect on federal funding and cost allocations.

27 5. A plan to ensure compliance with public-record
28 laws, which must include components that:

29 a. Provide public access to public records at a cost
30 that does not exceed that provided in chapter 119, Florida
31 Statutes.

1 b. Ensure the confidentiality of records that are
2 exempt from disclosure or confidential under law.

3 c. Meet all legal requirements for record retention.

4 d. Allow for transfer to the state, at no cost, all
5 public records in possession of the external service provider
6 upon termination of the contract.

7 6. A department transition and implementation plan for
8 addressing changes in the number of agency personnel, affected
9 business processes, and employee-transition issues. Such a
10 plan must also specify the mechanism for continuing the
11 operation of the service if the contractor fails to perform
12 and comply with the performance measures and standards and
13 provisions of the contract. Within this plan, the department
14 shall identify all resources, including full-time equivalent
15 positions, which are subject to outsourcing. All full-time
16 equivalent positions identified in the plan shall be placed in
17 reserve by the Executive Office of the Governor until the end
18 of the second year of the contract. Notwithstanding the
19 provisions of section 216.262, Florida Statutes, the Executive
20 Office of the Governor shall request authority from the
21 Legislative Budget Commission to reestablish full-time
22 positions above the number fixed by the Legislature when a
23 contract is terminated and the outsourced service must be
24 returned to the department.

25 7. A listing of assets proposed for transfer to or use
26 by the external service provider, a description of the
27 proposed requirements for maintenance of those assets by the
28 external service provider or the department in accordance with
29 chapter 273, Florida Statutes, a plan for their disposition
30 upon termination of the contract, and a description of how the
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1 planned asset transfer or use by the contractor is in the best
2 interest of the department and the state.

3 (b)1. If the department proposes to outsource the
4 service in the next fiscal year, the department shall submit
5 the business case with the department's final legislative
6 budget request, in the manner and form prescribed in the
7 legislative budget request instructions under section 216.023,
8 Florida Statutes. Prior to approval in the General
9 Appropriations Act, the agency may initiate the procurement
10 process pursuant to section 287.057, Florida Statutes.
11 However, only upon approval in the General Appropriations Act
12 may the agency complete contract execution pursuant to section
13 287.057, Florida Statutes.

14 2. If a proposed outsourcing initiative would require
15 integration with, or would in any way affect other state
16 information technology systems, the department shall submit
17 the feasibility study documentation required by the
18 legislative budget request instructions under section 216.023,
19 Florida Statutes.

20 (c) If the department proposes to outsource a service
21 during a fiscal year and the outsourcing provision was not
22 included in the approved operating budget of the department,
23 the department must provide to the Governor, the President of
24 the Senate, the Speaker of the House of Representatives, the
25 chairs of the legislative appropriations committees, and the
26 chairs of the relevant substantive committees the business
27 case that complies with the requirements of paragraph (a) at
28 least 45 days before the release of any solicitation
29 documents, as provided for in section 287.057, Florida
30 Statutes. Any budgetary changes that are inconsistent with the
31 department's approved budget may not be made to existing

1 programs unless the changes are recommended to the Legislative
2 Budget Commission by the Governor and the Legislative Budget
3 Commission expressly approves the program changes.

4 (d) The department may not privatize a service without
5 specific authority provided in general law, the General
6 Appropriations Act, legislation implementing the General
7 Appropriations Act, or a special appropriations act.

8 (5) CONTRACTING AND PERFORMANCE MEASURES.--In addition
9 to the requirements of section 287.058, Florida Statutes,
10 every procurement of contractual services by the department
11 which meets or is in excess of the threshold amount provided
12 in section 287.017, Florida Statutes, for CATEGORY FIVE, must
13 comply with the requirements of this subsection.

14 (a) The department shall execute a contract containing
15 all provisions and conditions, which must include, but need
16 not be limited to:

17 1. A detailed scope of work that clearly specifies
18 each service and deliverable to be provided, including a
19 description of each deliverable or activity that is
20 quantifiable, measurable, and verifiable by the department and
21 the contractor.

22 2. Associated costs and savings, specific payment
23 terms and payment schedules, including incentive and penalty
24 provisions, criteria governing payment, and a clear and
25 specific schedule to complete all required activities needed
26 to transfer the service from the state to the contractor.

27 3. Clear and specific identification of all required
28 performance measures and standards, which must, at a minimum,
29 include:

30 a. Acceptance criteria for each deliverable and
31 service to be provided to the department under the terms of

1 the contract which document, to the greatest extent possible,
2 the required performance level. Acceptance criteria must be
3 detailed, clear, and unambiguous and shall be used to measure
4 deliverables and services to be provided under the contract.

5 b. A method for monitoring and reporting progress in
6 achieving specified performance standards and levels.

7 c. The sanctions or penalties that shall be assessed
8 for contract or state nonperformance. The department may
9 adopt, by rule, provisions for including in its contracts
10 incremental penalties to be imposed by its contract managers
11 on a contractor due to the contractor's failure to comply with
12 a requirement for corrective action. Any financial penalty
13 that is imposed upon a contractor may not be paid from funds
14 being used to provide services to clients, and the contractor
15 may not reduce the amount of services being delivered to
16 clients as a method for offsetting the effect of the penalty.
17 If a financial penalty is imposed upon a contractor that is a
18 corporation, the department shall notify, at a minimum, the
19 board of directors of the corporation. The department may
20 notify any additional parties that the department believes may
21 be helpful in obtaining the corrective action that is being
22 sought. In addition, the rules adopted by the department must
23 include provisions that permit the department to deduct the
24 financial penalties from funds that would otherwise be due to
25 the contractor, not to exceed 10 percent of the amount that
26 otherwise would be due to the contractor for the period of
27 noncompliance. If the department imposes a financial penalty,
28 it shall advise the contractor in writing of the cause for the
29 penalty. A failure to include such deductions in a request for
30 payment constitutes grounds for the department to reject that
31 request for payment. The remedies identified in this paragraph

1 do not limit or restrict the department's application of any
2 other remedy available to it in the contract or under law. The
3 remedies described in this paragraph may be cumulative and may
4 be assessed upon each separate failure to comply with
5 instructions from the department to complete corrective
6 action.

7 4. A requirement that the contractor maintain adequate
8 accounting records that comply with all applicable federal and
9 state laws and generally accepted accounting principles.

10 5. A requirement authorizing the department and state
11 to have access to and conduct audits of all records related to
12 the contract and outsourced services.

13 6. A requirement that ownership of any intellectual
14 property developed in the course of, or as a result of, work
15 or services performed under the contract shall transfer to the
16 state if the contractor ceases to provide the outsourced
17 service.

18 7. A requirement describing the timing and substance
19 of all plans and status or progress reports that are to be
20 provided. All plans and status or progress reports must comply
21 with any relevant state and federal standards for planning,
22 implementation, operations, and oversight.

23 8. A requirement that the contractor shall comply with
24 public-record laws. The contractor shall:

25 a. Keep and maintain the public records that
26 ordinarily and necessarily would be required by the department
27 to perform the service.

28 b. Provide public access to such public records on the
29 same terms and conditions that the department would and at a
30 cost that does not exceed that provided in chapter 119.

31

1 c. Ensure the confidentiality of records that are
2 exempt from disclosure or confidential under law.

3 d. Meet all legal and auditing requirements for record
4 retention, and transfer to the state, at no cost to the state,
5 all public records in possession of the contractor upon
6 termination of the contract. All records stored electronically
7 must be provided to the state in the format compatible with
8 state information technology systems.

9 9. A requirement that any state funds provided for the
10 purchase of or improvements to real property are contingent
11 upon the contractor granting to the state a security interest
12 in the property which is at least equal to the amount of the
13 state funds provided for at least 5 years following the date
14 of purchase or the completion of the improvements or as
15 further required by law. The contract must include a provision
16 that, as a condition of receipt of state funding for this
17 purpose, the contractor agrees that, if it disposes of the
18 property before the department's interest is vacated, the
19 contractor must refund the proportionate share of the state's
20 initial investment, as adjusted by depreciation.

21 10. A provision that the contractor annually submit
22 and verify, under section 92.525, Florida Statutes, all
23 required financial statements.

24 11. A provision that the contractor will be held
25 responsible and accountable for all work covered under the
26 contract including any work performed by subcontractors. The
27 contract must state that the department may monitor the
28 performance of any subcontractor.

29 (b) A contract may include cost-neutral,
30 performance-based incentives that may vary according to the
31 extent a contractor achieves or surpasses the performance

1 standards set forth in the contract. The incentives may be
2 weighted proportionally to reflect the extent to which the
3 contractor has demonstrated that it has consistently met or
4 exceeded the contractual requirements and the performance
5 standards.

6 (c) The department shall review the time period for
7 which it executes contracts and shall execute multiyear
8 contracts to make the most efficient use of the resources
9 devoted to contract processing and execution. Whenever the
10 department chooses not to use a multiyear contract, a
11 justification for that decision must be contained in the
12 contract.

13 (d) When the annualized value of a contract is in
14 excess of \$1 million, at least one of the persons conducting
15 negotiations must be certified as a contract negotiator based
16 upon standards established by the Department of Management
17 Services.

18 (e) The department may not amend a contract without
19 first submitting the proposed contract amendment to the
20 Executive Office of the Governor for approval if the effect of
21 the amendment would be to increase:

22 1. The value of the contract by \$250,000 for those
23 contracts with a total value of at least \$250,000 but less
24 than \$1 million;

25 2. The value of the contract by \$1 million for those
26 contracts with a total value of at least \$1 million but less
27 than \$10 million;

28 3. The value of the contract by 10 percent for those
29 contracts with a total value of \$10 million or more; or

30 4. The term of the contract by 1 year or more.
31

1 When the department proposes any contract amendment that meets
2 the criteria described in this paragraph, it shall submit the
3 proposed contract amendment to the Executive Office of the
4 Governor for approval and shall immediately notify the chairs
5 of the legislative appropriations committees. The Executive
6 Office of the Governor may not approve the proposed contract
7 amendment until 14 days following receipt of the notification
8 to the legislative appropriations chairs. If either chair of
9 the legislative appropriations committees objects in writing
10 to a proposed contract amendment within 14 days following
11 notification and specifies the reasons for the objection, the
12 Executive Office of the Governor shall disapprove the proposed
13 contract amendment or shall submit the proposed contract
14 amendment to the Administration Commission. The proposed
15 contract amendment may be approved by the Administration
16 Commission by a two-thirds vote of the members present with
17 the Governor voting in the affirmative. In the absence of
18 approval by the commission, the proposed contract amendment
19 shall be automatically disapproved. Otherwise, upon approval
20 by the Governor or Administration Commission, the department
21 may execute the contract amendment.

22 (f) An amendment that is issued under legislative
23 direction, including funding adjustments annually provided for
24 in the General Appropriations Act or the federal
25 appropriations acts, need not be submitted for approval in
26 accordance with paragraph (d).

27 (g) In addition to the requirements of subsections
28 287.057(13) and (14), Florida Statutes, the department shall
29 verify, based on the best available data at the point of
30 contract renegotiations, that all specific direct and indirect
31 costs, savings, performance measures and standards, and

1 qualitative and quantitative benefits identified in the
2 original contract have been satisfied by a contractor or the
3 department before the contract is extended or renewed. The
4 documentation must include an explanation of any differences
5 between the required performance as identified in the contract
6 and the actual performance of the contractor. The
7 documentation must be included in the official contract file.

8 (h) The department shall, in consultation with the
9 Department of Management Services, develop contract templates
10 and guidelines that define the mandatory contract provisions
11 and other requirements identified in this subsection and that
12 must be used for all contractual service contracts meeting the
13 requirements of this subsection. All contract templates and
14 guidelines shall be developed by September 30, 2005.

15 (6) CONTRACT-MANAGEMENT REQUIREMENTS AND
16 PROCESS.--Notwithstanding section 287.057(15), Florida
17 Statutes, the department is responsible for establishing a
18 contract-management process that requires a member of the
19 department's Senior Management Service to assign in writing
20 the responsibility of a contract to a contract manager. The
21 department shall maintain a set of procedures describing its
22 contract-management process which must minimally include the
23 following requirements:

24 (a) The contract manager shall maintain the official
25 contract file throughout the duration of the contract and for
26 a period not less than 6 years after the termination of the
27 contract.

28 (b) The contract manager shall review all invoices for
29 compliance with the criteria and payment schedule provided for
30 in the contract and shall approve payment of all invoices
31 before their transmission to the Department of Financial

1 Services for payment. Only the contract manager shall approve
2 the invoices for a specific contract, unless the contract
3 manager is temporarily unavailable to review an invoice. The
4 contract file must contain an explanation for any periods of
5 temporary unavailability of the assigned contract manager. For
6 any individual invoice in excess of \$500,000, a member of the
7 Selected Exempt Service or Senior Management Service shall
8 also sign payment approval of the invoice. For any individual
9 invoice in excess of \$1 million, a member of the Senior
10 Management Service shall also sign payment approval of the
11 invoice.

12 (c) The contract manager shall maintain a schedule of
13 payments and total amounts disbursed and shall periodically
14 reconcile the records with the state's official accounting
15 records.

16 (d) For contracts involving the provision of direct
17 client services, the contract manager shall periodically visit
18 the physical location where the services are delivered and
19 speak directly to clients receiving the services and the staff
20 responsible for delivering the services.

21 (e) For contracts for which the contractor is a
22 corporation, the contract manager shall attend at least one
23 board meeting semiannually, if held and if within 100 miles of
24 the contract manager's official headquarters.

25 (f) The contract manager shall meet at least once a
26 month directly with the contractor's representative and
27 maintain records of such meetings.

28 (g) The contract manager shall periodically document
29 any differences between the required performance measures and
30 the actual performance measures. If a contractor fails to meet
31 and comply with the performance measures established in the

1 contract, the department may allow a reasonable period for the
2 contractor to correct performance deficiencies. If performance
3 deficiencies are not resolved to the satisfaction of the
4 department within the prescribed time, and if no extenuating
5 circumstances can be documented by the contractor to the
6 department's satisfaction, the department must terminate the
7 contract. The department may not enter into a new contract
8 with that same contractor for the services for which the
9 contract was previously terminated for a period of at least 24
10 months after the date of termination. The contract manager
11 shall obtain and enforce corrective-action plans, if
12 appropriate, and maintain records regarding the completion or
13 failure to complete corrective-action items.

14 (h) The contract manager shall document any contract
15 modifications, which shall include recording any contract
16 amendments as provided for in this section.

17 (i) The contract manager shall be properly trained
18 before being assigned responsibility for any contract.

19
20 The department shall develop standards of conduct and a range
21 of disciplinary actions for its employees which are
22 specifically related to carrying out contract-management
23 responsibilities.

24 (7) CONTRACT-MONITORING REQUIREMENTS AND PROCESS.--The
25 department shall establish contract-monitoring units staffed
26 by full-time career service employees who report to a member
27 of the Select Exempt Service or Senior Management Service and
28 who have been properly trained to perform contract monitoring.
29 A member of the Senior Management Service shall assign in
30 writing a specific contract to a contract-monitoring unit,
31 with at least one member of the contract-monitoring unit

1 possessing specific knowledge and experience in the contract's
2 program area. The department shall establish a
3 contract-monitoring process that must include, but need not be
4 limited to, the following requirements:

5 (a) Performing a risk assessment at the start of each
6 fiscal year and preparing an annual contract-monitoring
7 schedule that includes consideration for the level of risk
8 assigned. The department may monitor any contract at any time
9 regardless of whether such monitoring was originally included
10 in the annual contract-monitoring schedule.

11 (b) Preparing a contract-monitoring plan, including
12 sampling procedures, before performing on-site monitoring at
13 external locations of a service provider. The plan must
14 include a description of the programmatic, fiscal, and
15 administrative components that will be monitored on-site. If
16 appropriate, clinical and therapeutic components may be
17 included.

18 (c) Conducting analyses of the performance and
19 compliance of an external service provider by means of desk
20 reviews if the external service provider will not be monitored
21 on-site during a fiscal year.

22 (d) Unless the department sets forth in writing the
23 need for an extension, providing a written report presenting
24 the results of the monitoring within 30 days after the
25 completion of the on-site monitoring or desk review. Report
26 extensions may not exceed 30 days after the original
27 completion date. The department shall develop and use a
28 standard contract-monitoring report format and shall provide
29 access to the reports by means of a website that is available
30 to the Legislature.

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1 (e) For contracts involving the provision of direct
2 client services, requiring the contract monitor to visit the
3 physical location where the services are being delivered and
4 to speak directly to the clients receiving the services and
5 with the staff responsible for delivering the services.

6 (f) Developing and maintaining a set of procedures
7 describing the contract-monitoring process.

8
9 The department shall develop standards of conduct and a range
10 of disciplinary actions for its employees which are
11 specifically related to carrying out contract-monitoring
12 responsibilities.

13 (8) CONTRACTOR PROHIBITIONS.--

14 (a) A contractor, as defined in chapter 287, Florida
15 Statutes, or its employees, agents, or subcontractors, may not
16 directly or indirectly supervise, direct, or act as an
17 approving authority over any state employee or over the
18 actions committed to the responsibility of a state employee.

19 (b) A contractor, as defined in chapter 287, Florida
20 Statutes, or its employees, agents, or subcontractors, may not
21 knowingly participate through decision, approval, disapproval,
22 recommendation, preparation of any part of a purchase request,
23 influencing the content of any specification or procurement
24 standard, rendering of advice, investigation, or auditing, or
25 in any other advisory capacity, in the procurement of
26 contractual services from an entity of which the contractor,
27 or its employees, agents, or subcontractors, has a material
28 interest.

29 (9) REPORTS TO THE LEGISLATURE.--Beginning October 1,
30 2005, the department shall make available to the Legislature
31 electronically all documents associated with the procurement

1 and contracting functions of the department. The documents in
2 the database must include, but are not limited to, all:

3 (a) Business cases;

4 (b) Procurement documents;

5 (c) Contracts and any related files, attachments, or
6 amendments;

7 (d) Contract monitoring reports;

8 (e) Corrective action plans and reports of corrective
9 actions taken when contractor performance deficiencies are
10 identified; and

11 (f) Status reports on all outsourcing initiatives
12 describing the progress by the department towards achieving
13 the business objectives, costs, savings, and quantifiable
14 benefits identified in the business case.

15 Section 2. Section 402.73, Florida Statutes, is
16 amended to read:

17 402.73 Contracting and performance standards.--

18 ~~(1) The Department of Children and Family Services~~
19 ~~shall establish performance standards for all contracted~~
20 ~~client services. Notwithstanding s. 287.057(5)(f), the~~
21 ~~department must competitively procure any contract for client~~
22 ~~services when any of the following occurs:~~

23 ~~(a) The provider fails to meet appropriate performance~~
24 ~~standards established by the department after the provider has~~
25 ~~been given a reasonable opportunity to achieve the established~~
26 ~~standards.~~

27 ~~(b) A new program or service has been authorized and~~
28 ~~funded by the Legislature and the annual value of the contract~~
29 ~~for such program or service is \$300,000 or more.~~

30 ~~(c) The department has concluded, after reviewing~~
31 ~~market prices and available treatment options, that there is~~

1 ~~evidence that the department can improve the performance~~
2 ~~outcomes produced by its contract resources. At a minimum, the~~
3 ~~department shall review market prices and available treatment~~
4 ~~options biennially. The department shall compile the results~~
5 ~~of the biennial review and include the results in its annual~~
6 ~~performance report to the Legislature pursuant to chapter~~
7 ~~94-249, Laws of Florida. The department shall provide notice~~
8 ~~and an opportunity for public comment on its review of market~~
9 ~~prices and available treatment options.~~

10 ~~(2) The competitive requirements of subsection (1)~~
11 ~~must be initiated for each contract that meets the criteria of~~
12 ~~this subsection, unless the secretary makes a written~~
13 ~~determination that particular facts and circumstances require~~
14 ~~deferral of the competitive process. Facts and circumstances~~
15 ~~must be specifically described for each individual contract~~
16 ~~proposed for deferral and must include one or more of the~~
17 ~~following:~~

18 ~~(a) An immediate threat to the health, safety, or~~
19 ~~welfare of the department's clients.~~

20 ~~(b) A threat to appropriate use or disposition of~~
21 ~~facilities that have been financed in whole, or in substantial~~
22 ~~part, through contracts or agreements with a state agency.~~

23 ~~(c) A threat to the service infrastructure of a~~
24 ~~community which could endanger the well being of the~~
25 ~~department's clients.~~

26
27 ~~Competitive procurement of client services contracts that meet~~
28 ~~the criteria in subsection (1) may not be deferred for longer~~
29 ~~than 1 year.~~

30 ~~(3) The Legislature intends that the department obtain~~
31 ~~services in the manner that is most cost effective for the~~

1 ~~state, that provides the greatest long term benefits to the~~
2 ~~clients receiving services, and that minimizes the disruption~~
3 ~~of client services. In order to meet these legislative goals,~~
4 ~~the department may adopt rules providing procedures for the~~
5 ~~competitive procurement of contracted client services which~~
6 ~~represent an alternative to the request for proposal or~~
7 ~~invitation to bid process. The alternative competitive~~
8 ~~procedures shall permit the department to solicit professional~~
9 ~~qualifications from prospective providers and to evaluate such~~
10 ~~statements of qualification before requesting service~~
11 ~~proposals. The department may limit the firms invited to~~
12 ~~submit service proposals to only those firms that have~~
13 ~~demonstrated the highest level of professional capability to~~
14 ~~provide the services under consideration, but may not invite~~
15 ~~fewer than three firms to submit service proposals, unless~~
16 ~~fewer than three firms submitted satisfactory statements of~~
17 ~~qualification. The alternative procedures must, at a minimum,~~
18 ~~allow the department to evaluate competing proposals and~~
19 ~~select the proposal that provides the greatest benefit to the~~
20 ~~state while considering the quality of the services,~~
21 ~~dependability, and integrity of the provider, the~~
22 ~~dependability of the provider's services, the experience of~~
23 ~~the provider in serving target populations or client groups~~
24 ~~substantially identical to members of the target population~~
25 ~~for the contract in question, and the ability of the provider~~
26 ~~to secure local funds to support the delivery of services,~~
27 ~~including, but not limited to, funds derived from local~~
28 ~~governments. These alternative procedures need not conform to~~
29 ~~the requirements of s. 287.042 or s. 287.057(1) or (2).~~
30 ~~(4) The department shall review the period for which~~
31 ~~it executes contracts and, to the greatest extent practicable,~~

1 ~~shall execute multiyear contracts to make the most efficient~~
2 ~~use of the resources devoted to contract processing and~~
3 ~~execution.~~

4 ~~(5) When it is in the best interest of a defined~~
5 ~~segment of its consumer population, the department may~~
6 ~~competitively procure and contract for systems of treatment or~~
7 ~~service that involve multiple providers, rather than procuring~~
8 ~~and contracting for treatment or services separately from each~~
9 ~~participating provider. The department must ensure that all~~
10 ~~providers that participate in the treatment or service system~~
11 ~~meet all applicable statutory, regulatory, service quality,~~
12 ~~and cost control requirements. If other governmental entities~~
13 ~~or units of special purpose government contribute matching~~
14 ~~funds to the support of a given system of treatment or~~
15 ~~service, the department shall formally request information~~
16 ~~from those funding entities in the procurement process and may~~
17 ~~take the information received into account in the selection~~
18 ~~process. If a local government contributes match to support~~
19 ~~the system of treatment or contracted service and if the match~~
20 ~~constitutes at least 25 percent of the value of the contract,~~
21 ~~the department shall afford the governmental match contributor~~
22 ~~an opportunity to name an employee as one of the persons~~
23 ~~required by s. 287.057(17) to evaluate or negotiate certain~~
24 ~~contracts, unless the department sets forth in writing the~~
25 ~~reason why such inclusion would be contrary to the best~~
26 ~~interest of the state. Any employee so named by the~~
27 ~~governmental match contributor shall qualify as one of the~~
28 ~~persons required by s. 287.057(17). No governmental entity or~~
29 ~~unit of special purpose government may name an employee as one~~
30 ~~of the persons required by s. 287.057(17) if it, or any of its~~
31 ~~political subdivisions, executive agencies, or special~~

1 ~~districts, intends to compete for the contract to be awarded.~~
2 ~~The governmental funding entity or match contributor shall~~
3 ~~comply with any deadlines and procurement procedures~~
4 ~~established by the department. The department may also involve~~
5 ~~nongovernmental funding entities in the procurement process~~
6 ~~when appropriate.~~

7 ~~(6) The department may contract for or provide~~
8 ~~assessment and case management services independently from~~
9 ~~treatment services.~~

10 ~~(7) The department shall adopt, by rule, provisions~~
11 ~~for including in its contracts incremental penalties to be~~
12 ~~imposed by its contract managers on a service provider due to~~
13 ~~the provider's failure to comply with a requirement for~~
14 ~~corrective action. Any financial penalty that is imposed upon~~
15 ~~a provider may not be paid from funds being used to provide~~
16 ~~services to clients, and the provider may not reduce the~~
17 ~~amount of services being delivered to clients as a method for~~
18 ~~offsetting the impact of the penalty. If a financial penalty~~
19 ~~is imposed upon a provider that is a corporation, the~~
20 ~~department shall notify, at a minimum, the board of directors~~
21 ~~of the corporation. The department may notify, at its~~
22 ~~discretion, any additional parties that the department~~
23 ~~believes may be helpful in obtaining the corrective action~~
24 ~~that is being sought. Further, the rules adopted by the~~
25 ~~department must include provisions that permit the department~~
26 ~~to deduct the financial penalties from funds that would~~
27 ~~otherwise be due to the provider, not to exceed 10 percent of~~
28 ~~the amount that otherwise would be due to the provider for the~~
29 ~~period of noncompliance. If the department imposes a financial~~
30 ~~penalty, it shall advise the provider in writing of the cause~~
31 ~~for the penalty. A failure to include such deductions in a~~

1 ~~request for payment constitutes a ground for the department to~~
2 ~~reject that request for payment. The remedies identified in~~
3 ~~this subsection do not limit or restrict the department's~~
4 ~~application of any other remedy available to it in the~~
5 ~~contract or under law. The remedies described in this~~
6 ~~subsection may be cumulative and may be assessed upon each~~
7 ~~separate failure to comply with instructions from the~~
8 ~~department to complete corrective action.~~

9 ~~(8) The department shall develop standards of conduct~~
10 ~~and a range of disciplinary actions for its employees which~~
11 ~~are specifically related to carrying out contracting~~
12 ~~responsibilities.~~

13 ~~(1)(9) The Agency for Persons with Disabilities~~
14 ~~department~~ must implement systems and controls to ensure
15 financial integrity and service provision quality in the
16 developmental services Medicaid waiver service system.

17 ~~(10) If a provider fails to meet the performance~~
18 ~~standards established in the contract, the department may~~
19 ~~allow a reasonable period for the provider to correct~~
20 ~~performance deficiencies. If performance deficiencies are not~~
21 ~~resolved to the satisfaction of the department within the~~
22 ~~prescribed time, and if no extenuating circumstances can be~~
23 ~~documented by the provider to the department's satisfaction,~~
24 ~~the department must cancel the contract with the provider. The~~
25 ~~department may not enter into a new contract with that same~~
26 ~~provider for the services for which the contract was~~
27 ~~previously canceled for a period of at least 24 months after~~
28 ~~the date of cancellation. If an adult substance abuse services~~
29 ~~provider fails to meet the performance standards established~~
30 ~~in the contract, the department may allow a reasonable period,~~
31 ~~not to exceed 6 months, for the provider to correct~~

1 ~~performance deficiencies. If the performance deficiencies are~~
2 ~~not resolved to the satisfaction of the department within 6~~
3 ~~months, the department must cancel the contract with the adult~~
4 ~~substance abuse provider, unless there is no other qualified~~
5 ~~provider in the service district.~~

6 ~~(11) The department shall include in its standard~~
7 ~~contract document a requirement that any state funds provided~~
8 ~~for the purchase of or improvements to real property are~~
9 ~~contingent upon the contractor or political subdivision~~
10 ~~granting to the state a security interest in the property at~~
11 ~~least to the amount of the state funds provided for at least 5~~
12 ~~years from the date of purchase or the completion of the~~
13 ~~improvements or as further required by law. The contract must~~
14 ~~include a provision that, as a condition of receipt of state~~
15 ~~funding for this purpose, the provider agrees that, if it~~
16 ~~disposes of the property before the department's interest is~~
17 ~~vacated, the provider will refund the proportionate share of~~
18 ~~the state's initial investment, as adjusted by depreciation.~~

19 ~~(12) The department shall develop and refine~~
20 ~~contracting and accountability methods that are~~
21 ~~administratively efficient and that provide for optimal~~
22 ~~provider performance.~~

23 ~~(13) The department may competitively procure any~~
24 ~~contract when it deems it is in the best interest of the state~~
25 ~~to do so. The requirements described in subsection (1) do not,~~
26 ~~and may not be construed to, limit in any way the department's~~
27 ~~ability to competitively procure any contract it executes, and~~
28 ~~the absence of any or all of the criteria described in~~
29 ~~subsection (1) may not be used as the basis for an~~
30 ~~administrative or judicial protest of the department's~~
31

1 ~~determination to conduct competition, make an award, or~~
2 ~~execute any contract.~~

3 ~~(14) A contract may include cost neutral,~~
4 ~~performance based incentives that may vary according to the~~
5 ~~extent a provider achieves or surpasses the performance~~
6 ~~standards set forth in the contract. Such incentives may be~~
7 ~~weighted proportionally to reflect the extent to which the~~
8 ~~provider has demonstrated that it has consistently met or~~
9 ~~exceeded the contractual requirements and the department's~~
10 ~~performance standards.~~

11 ~~(2)(15)~~ Nothing contained in chapter 287 shall require
12 competitive bids for health services involving examination,
13 diagnosis, or treatment.

14 Section 3. Section 409.1671, Florida Statutes, is
15 amended to read:

16 409.1671 Foster care and related services; outsourcing
17 ~~privatization~~.--

18 (1)(a) It is the intent of the Legislature that the
19 Department of Children and Family Services shall outsource
20 ~~privatize~~ the provision of foster care and related services
21 statewide. It is further the Legislature's intent to encourage
22 communities and other stakeholders in the well-being of
23 children to participate in assuring that children are safe and
24 well-nurtured. However, while recognizing that some local
25 governments are presently funding portions of certain foster
26 care and related services programs and may choose to expand
27 such funding in the future, the Legislature does not intend by
28 its outsourcing ~~privatization~~ of foster care and related
29 services that any county, municipality, or special district be
30 required to assist in funding programs that previously have
31 been funded by the state. Counties that provide children and

1 family services with at least 40 licensed residential group
2 care beds by July 1, 2003, and provide at least \$2 million
3 annually in county general revenue funds to supplement foster
4 and family care services shall continue to contract directly
5 with the state and shall be exempt from the provisions of this
6 section. Nothing in this paragraph prohibits any county,
7 municipality, or special district from future voluntary
8 funding participation in foster care and related services. As
9 used in this section, the term "outsource" ~~"privatize"~~ means
10 to contract with competent, community-based agencies. The
11 department shall submit a plan to accomplish outsourcing
12 ~~privatization~~ statewide, through a competitive process, phased
13 in over a 3-year period beginning January 1, 2000. This plan
14 must be developed with local community participation,
15 including, but not limited to, input from community-based
16 providers that are currently under contract with the
17 department to furnish community-based foster care and related
18 services, and must include a methodology for determining and
19 transferring all available funds, including federal funds that
20 the provider is eligible for and agrees to earn and that
21 portion of general revenue funds which is currently associated
22 with the services that are being furnished under contract. The
23 methodology must provide for the transfer of funds
24 appropriated and budgeted for all services and programs that
25 have been incorporated into the project, including all
26 management, capital (including current furniture and
27 equipment), and administrative funds to accomplish the
28 transfer of these programs. This methodology must address
29 expected workload and at least the 3 previous years'
30 experience in expenses and workload. With respect to any
31 district or portion of a district in which outsourcing

1 ~~privatization~~ cannot be accomplished within the 3-year
2 timeframe, the department must clearly state in its plan the
3 reasons the timeframe cannot be met and the efforts that
4 should be made to remediate the obstacles, which may include
5 alternatives to total outsourcing ~~privatization~~, such as
6 public-private partnerships. As used in this section, the term
7 "related services" includes, but is not limited to, family
8 preservation, independent living, emergency shelter,
9 residential group care, foster care, therapeutic foster care,
10 intensive residential treatment, foster care supervision, case
11 management, postplacement supervision, permanent foster care,
12 and family reunification. Unless otherwise provided for, the
13 state attorney shall provide child welfare legal services,
14 pursuant to chapter 39 and other relevant provisions, in
15 Pinellas and Pasco Counties. When a private nonprofit agency
16 has received case management responsibilities, transferred
17 from the state under this section, for a child who is
18 sheltered or found to be dependent and who is assigned to the
19 care of the outsourcing ~~privatization~~ project, the agency may
20 act as the child's guardian for the purpose of registering the
21 child in school if a parent or guardian of the child is
22 unavailable and his or her whereabouts cannot reasonably be
23 ascertained. The private nonprofit agency may also seek
24 emergency medical attention for such a child, but only if a
25 parent or guardian of the child is unavailable, his or her
26 whereabouts cannot reasonably be ascertained, and a court
27 order for such emergency medical services cannot be obtained
28 because of the severity of the emergency or because it is
29 after normal working hours. However, the provider may not
30 consent to sterilization, abortion, or termination of life
31 support. If a child's parents' rights have been terminated,

1 the nonprofit agency shall act as guardian of the child in all
2 circumstances.

3 (b) It is the intent of the Legislature that the
4 department will continue to work towards full outsourcing
5 ~~privatization~~ in a manner that assures the viability of the
6 community-based system of care and best provides for the
7 safety of children in the child protection system. To this
8 end, the department is directed to continue the process of
9 outsourcing ~~privatizing~~ services in those counties in which
10 signed startup contracts have been executed. The department
11 may also continue to enter into startup contracts with
12 additional counties. However, no services shall be transferred
13 to a community-based care lead agency until the department, in
14 consultation with the local community alliance, has determined
15 and certified in writing to the Governor and the Legislature
16 that the district is prepared to transition the provision of
17 services to the lead agency and that the lead agency is ready
18 to deliver and be accountable for such service provision. In
19 making this determination, the department shall conduct a
20 readiness assessment of the district and the lead agency.

21 1. The assessment shall evaluate the operational
22 readiness of the district and the lead agency based on:

23 a. A set of uniform criteria, developed in
24 consultation with currently operating community-based care
25 lead agencies and reflecting national accreditation standards,
26 that evaluate programmatic, financial, technical assistance,
27 training and organizational competencies; and

28 b. Local criteria reflective of the local
29 community-based care design and the community alliance
30 priorities.

31

1 2. The readiness assessment shall be conducted by a
2 joint team of district and lead agency staff with direct
3 experience with the start up and operation of a
4 community-based care service program and representatives from
5 the appropriate community alliance. Within resources available
6 for this purpose, the department may secure outside audit
7 expertise when necessary to assist a readiness assessment
8 team.

9 3. Upon completion of a readiness assessment, the
10 assessment team shall conduct an exit conference with the
11 district and lead agency staff responsible for the transition.

12 4. Within 30 days following the exit conference with
13 staff of each district and lead agency, the secretary shall
14 certify in writing to the Governor and the Legislature that
15 both the district and the lead agency are prepared to begin
16 the transition of service provision based on the results of
17 the readiness assessment and the exit conference. The document
18 of certification must include specific evidence of readiness
19 on each element of the readiness instrument utilized by the
20 assessment team as well as a description of each element of
21 readiness needing improvement and strategies being implemented
22 to address each one.

23 (c) The Auditor General and the Office of Program
24 Policy Analysis and Government Accountability (OPPAGA), in
25 consultation with The Child Welfare League of America and the
26 Louis de la Parte Florida Mental Health Institute, shall
27 jointly review and assess the department's process for
28 determining district and lead agency readiness.

29 1. The review must, at a minimum, address the
30 appropriateness of the readiness criteria and instruments
31 applied, the appropriateness of the qualifications of

1 participants on each readiness assessment team, the degree to
2 which the department accurately determined each district and
3 lead agency's compliance with the readiness criteria, the
4 quality of the technical assistance provided by the department
5 to a lead agency in correcting any weaknesses identified in
6 the readiness assessment, and the degree to which each lead
7 agency overcame any identified weaknesses.

8 2. Reports of these reviews must be submitted to the
9 appropriate substantive and appropriations committees in the
10 Senate and the House of Representatives on March 1 and
11 September 1 of each year until full transition to
12 community-based care has been accomplished statewide, except
13 that the first report must be submitted by February 1, 2004,
14 and must address all readiness activities undertaken through
15 June 30, 2003. The perspectives of all participants in this
16 review process must be included in each report.

17 (d) In communities where economic or demographic
18 constraints make it impossible or not feasible to
19 competitively contract with a lead agency, the department
20 shall develop an alternative plan in collaboration with the
21 local community alliance, which may include establishing
22 innovative geographical configurations or consortia of
23 agencies. The plan must detail how the community will continue
24 to implement community-based care through competitively
25 procuring either the specific components of foster care and
26 related services or comprehensive services for defined
27 eligible populations of children and families from qualified
28 licensed agencies as part of its efforts to develop the local
29 capacity for a community-based system of coordinated care. The
30 plan must ensure local control over the management and
31 administration of the service provision in accordance with the

1 intent of this section and may include recognized best
2 business practices, including some form of public or private
3 partnerships.

4 (e) As used in this section, the term "eligible lead
5 community-based provider" means a single agency with which the
6 department shall contract for the provision of child
7 protective services in a community that is no smaller than a
8 county. The secretary of the department may authorize more
9 than one eligible lead community-based provider within a
10 single county when to do so will result in more effective
11 delivery of foster care and related services. To compete for
12 an outsourcing ~~a privatization~~ project, such agency must have:

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

16 2. The ability to ensure continuity of care from entry
17 to exit for all children referred from the protective
18 investigation and court systems.

19 3. The ability to provide directly, or contract for
20 through a local network of providers, all necessary child
21 protective services. Such agencies should directly provide no
22 more than 35 percent of all child protective services
23 provided.

24 4. The willingness to accept accountability for
25 meeting the outcomes and performance standards related to
26 child protective services established by the Legislature and
27 the Federal Government.

28 5. The capability and the willingness to serve all
29 children referred to it from the protective investigation and
30 court systems, regardless of the level of funding allocated to
31

1 the community by the state, provided all related funding is
2 transferred.

3 6. The willingness to ensure that each individual who
4 provides child protective services completes the training
5 required of child protective service workers by the Department
6 of Children and Family Services.

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

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

15 9. A board of directors, of which at least 51 percent
16 of the membership is comprised of persons residing in this
17 state. Of the state residents, at least 51 percent must also
18 reside within the service area of the lead community-based
19 provider.

20 (f)1. The Legislature finds that the state has
21 traditionally provided foster care services to children who
22 have been the responsibility of the state. As such, foster
23 children have not had the right to recover for injuries beyond
24 the limitations specified in s. 768.28. The Legislature has
25 determined that foster care and related services need to be
26 outsourced ~~privatized~~ pursuant to this section and that the
27 provision of such services is of paramount importance to the
28 state. The purpose for such outsourcing ~~privatization~~ is to
29 increase the level of safety, security, and stability of
30 children who are or become the responsibility of the state.
31 One of the components necessary to secure a safe and stable

1 environment for such children is that private providers
2 maintain liability insurance. As such, insurance needs to be
3 available and remain available to nongovernmental foster care
4 and related services providers without the resources of such
5 providers being significantly reduced by the cost of
6 maintaining such insurance.

7 2. The Legislature further finds that, by requiring
8 the following minimum levels of insurance, children in
9 outsourced ~~privatized~~ foster care and related services will
10 gain increased protection and rights of recovery in the event
11 of injury than provided for in s. 768.28.

12 (g) In any county in which a service contract has not
13 been executed by December 31, 2004, the department shall
14 ensure access to a model comprehensive residential services
15 program as described in s. 409.1677 which, without imposing
16 undue financial, geographic, or other barriers, ensures
17 reasonable and appropriate participation by the family in the
18 child's program.

19 1. In order to ensure that the program is operational
20 by December 31, 2004, the department must, by December 31,
21 2003, begin the process of establishing access to a program in
22 any county in which the department has not either entered into
23 a transition contract or approved a community plan, as
24 described in paragraph (d), which ensures full outsourcing
25 ~~privatization~~ by the statutory deadline.

26 2. The program must be procured through a competitive
27 process.

28 3. The Legislature does not intend for the provisions
29 of this paragraph to substitute for the requirement that full
30 conversion to community-based care be accomplished.

31

1 (h) Other than an entity to which s. 768.28 applies,
2 any eligible lead community-based provider, as defined in
3 paragraph (e), or its employees or officers, except as
4 otherwise provided in paragraph (i), must, as a part of its
5 contract, obtain a minimum of \$1 million per claim/\$3 million
6 per incident in general liability insurance coverage. The
7 eligible lead community-based provider must also require that
8 staff who transport client children and families in their
9 personal automobiles in order to carry out their job
10 responsibilities obtain minimum bodily injury liability
11 insurance in the amount of \$100,000 per claim, \$300,000 per
12 incident, on their personal automobiles. In any tort action
13 brought against such an eligible lead community-based provider
14 or employee, net economic damages shall be limited to \$1
15 million per liability claim and \$100,000 per automobile claim,
16 including, but not limited to, past and future medical
17 expenses, wage loss, and loss of earning capacity, offset by
18 any collateral source payment paid or payable. In any tort
19 action brought against such an eligible lead community-based
20 provider, noneconomic damages shall be limited to \$200,000 per
21 claim. A claims bill may be brought on behalf of a claimant
22 pursuant to s. 768.28 for any amount exceeding the limits
23 specified in this paragraph. Any offset of collateral source
24 payments made as of the date of the settlement or judgment
25 shall be in accordance with s. 768.76. The lead
26 community-based provider shall not be liable in tort for the
27 acts or omissions of its subcontractors or the officers,
28 agents, or employees of its subcontractors.

29 (i) The liability of an eligible lead community-based
30 provider described in this section shall be exclusive and in
31 place of all other liability of such provider. The same

1 immunities from liability enjoyed by such providers shall
2 extend as well to each employee of the provider when such
3 employee is acting in furtherance of the provider's business,
4 including the transportation of clients served, as described
5 in this subsection, in privately owned vehicles. Such
6 immunities shall not be applicable to a provider or an
7 employee who acts in a culpably negligent manner or with
8 willful and wanton disregard or unprovoked physical aggression
9 when such acts result in injury or death or such acts
10 proximately cause such injury or death; nor shall such
11 immunities be applicable to employees of the same provider
12 when each is operating in the furtherance of the provider's
13 business, but they are assigned primarily to unrelated works
14 within private or public employment. The same immunity
15 provisions enjoyed by a provider shall also apply to any sole
16 proprietor, partner, corporate officer or director,
17 supervisor, or other person who in the course and scope of his
18 or her duties acts in a managerial or policymaking capacity
19 and the conduct that caused the alleged injury arose within
20 the course and scope of those managerial or policymaking
21 duties. Culpable negligence is defined as reckless
22 indifference or grossly careless disregard of human life.

23 (j) Any subcontractor of an eligible lead
24 community-based provider, as defined in paragraph (e), which
25 is a direct provider of foster care and related services to
26 children and families, and its employees or officers, except
27 as otherwise provided in paragraph (i), must, as a part of its
28 contract, obtain a minimum of \$1 million per claim/\$3 million
29 per incident in general liability insurance coverage. The
30 subcontractor of an eligible lead community-based provider
31 must also require that staff who transport client children and

1 families in their personal automobiles in order to carry out
2 their job responsibilities obtain minimum bodily injury
3 liability insurance in the amount of \$100,000 per claim,
4 \$300,000 per incident, on their personal automobiles. In any
5 tort action brought against such subcontractor or employee,
6 net economic damages shall be limited to \$1 million per
7 liability claim and \$100,000 per automobile claim, including,
8 but not limited to, past and future medical expenses, wage
9 loss, and loss of earning capacity, offset by any collateral
10 source payment paid or payable. In any tort action brought
11 against such subcontractor, noneconomic damages shall be
12 limited to \$200,000 per claim. A claims bill may be brought on
13 behalf of a claimant pursuant to s. 768.28 for any amount
14 exceeding the limits specified in this paragraph. Any offset
15 of collateral source payments made as of the date of the
16 settlement or judgment shall be in accordance with s. 768.76.

17 (k) The liability of a subcontractor of an eligible
18 lead community-based provider that is a direct provider of
19 foster care and related services as described in this section
20 shall be exclusive and in place of all other liability of such
21 provider. The same immunities from liability enjoyed by such
22 subcontractor provider shall extend as well to each employee
23 of the subcontractor when such employee is acting in
24 furtherance of the subcontractor's business, including the
25 transportation of clients served, as described in this
26 subsection, in privately owned vehicles. Such immunities shall
27 not be applicable to a subcontractor or an employee who acts
28 in a culpably negligent manner or with willful and wanton
29 disregard or unprovoked physical aggression when such acts
30 result in injury or death or such acts proximately cause such
31 injury or death; nor shall such immunities be applicable to

1 employees of the same subcontractor when each is operating in
2 the furtherance of the subcontractor's business, but they are
3 assigned primarily to unrelated works within private or public
4 employment. The same immunity provisions enjoyed by a
5 subcontractor shall also apply to any sole proprietor,
6 partner, corporate officer or director, supervisor, or other
7 person who in the course and scope of his or her duties acts
8 in a managerial or policymaking capacity and the conduct that
9 caused the alleged injury arose within the course and scope of
10 those managerial or policymaking duties. Culpable negligence
11 is defined as reckless indifference or grossly careless
12 disregard of human life.

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

22 (2)(a) The department may contract for the delivery,
23 administration, or management of protective services, the
24 services specified in subsection (1) relating to foster care,
25 and other related services or programs, as appropriate. The
26 department shall retain responsibility for the quality of
27 contracted services and programs and shall ensure that
28 services are delivered in accordance with applicable federal
29 and state statutes and regulations. The department must adopt
30 written policies and procedures for monitoring the contract
31 for delivery of services by lead community-based providers.

1 These policies and procedures must, at a minimum, address the
2 evaluation of fiscal accountability and program operations,
3 including provider achievement of performance standards,
4 provider monitoring of subcontractors, and timely followup of
5 corrective actions for significant monitoring findings related
6 to providers and subcontractors. These policies and procedures
7 must also include provisions for reducing the duplication of
8 the department's program monitoring activities both internally
9 and with other agencies, to the extent possible. The
10 department's written procedures must ensure that the written
11 findings, conclusions, and recommendations from monitoring the
12 contract for services of lead community-based providers are
13 communicated to the director of the provider agency as
14 expeditiously as possible.

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

20 (3)(a) In order to help ensure a seamless child
21 protection system, the department shall ensure that contracts
22 entered into with community-based agencies pursuant to this
23 section include provisions for a case-transfer process to
24 determine the date that the community-based agency will
25 initiate the appropriate services for a child and family. This
26 case-transfer process must clearly identify the closure of the
27 protective investigation and the initiation of service
28 provision. At the point of case transfer, and at the
29 conclusion of an investigation, the department must provide a
30 complete summary of the findings of the investigation to the
31 community-based agency.

1 (b) The contracts must also ensure that each
2 community-based agency shall furnish information on its
3 activities in all cases in client case records.

4 (c) The contract between the department and
5 community-based agencies must include provisions that specify
6 the procedures to be used by the parties to resolve
7 differences in interpreting the contract or to resolve
8 disputes as to the adequacy of the parties' compliance with
9 their respective obligations under the contract.

10 (d) Each contract with an eligible lead
11 community-based provider shall provide for the payment by the
12 department to the provider of a reasonable administrative cost
13 in addition to funding for the provision of services.

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

20 (4)(a) The department, in consultation with the
21 community-based agencies that are undertaking the outsourced
22 ~~privatized~~ projects, shall establish a quality assurance
23 program for privatized services. The quality assurance program
24 shall be based on standards established by the Adoption and
25 Safe Families Act as well as by a national accrediting
26 organization such as the Council on Accreditation of Services
27 for Families and Children, Inc. (COA) or CARF--the
28 Rehabilitation Accreditation Commission. Each program operated
29 under contract with a community-based agency must be evaluated
30 annually by the department. The department shall, to the
31 extent possible, use independent financial audits provided by

1 the community-based care agency to eliminate or reduce the
2 ongoing contract and administrative reviews conducted by the
3 department. The department may suggest additional items to be
4 included in such independent financial audits to meet the
5 department's needs. Should the department determine that such
6 independent financial audits are inadequate, then other
7 audits, as necessary, may be conducted by the department.
8 Nothing herein shall abrogate the requirements of s. 215.97.
9 The department shall submit an annual report regarding quality
10 performance, outcome measure attainment, and cost efficiency
11 to the President of the Senate, the Speaker of the House of
12 Representatives, the minority leader of each house of the
13 Legislature, and the Governor no later than January 31 of each
14 year for each project in operation during the preceding fiscal
15 year.

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

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

31

1 (b) Substitute care providers who are licensed under
2 s. 409.175 and have contracted with a lead agency authorized
3 under this section shall also be authorized to provide
4 registered or licensed family day care under s. 402.313, if
5 consistent with federal law and if the home has met the
6 requirements of s. 402.313.

7 (c) A dually licensed home under this section shall be
8 eligible to receive both an out-of-home care payment and a
9 subsidized child care payment for the same child pursuant to
10 federal law. The department may adopt administrative rules
11 necessary to administer this paragraph.

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

1 The request for such approval must include, but is not limited
2 to, a statement of the proposed amount of such funds and a
3 description of the manner in which such funds will be used. If
4 the community-based organization selected for a model program
5 under this subsection is not a Medicaid provider, the
6 organization shall be issued a Medicaid provider number
7 pursuant to s. 409.907 for the provision of services currently
8 authorized under the state Medicaid plan to those children
9 encompassed in this model and in a manner not to exceed the
10 current level of state expenditure.

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

1 takes place. The final plan shall be submitted to the
2 department and then to the Executive Office of the Governor
3 and the Legislative Budget Commission for formal adoption
4 before January 1, 2005. Upon approval of the plan by all
5 parties, the department shall issue an interest-free loan that
6 is secured by the cumulative contractual revenue of the
7 community-based care risk pool membership, and the amount of
8 the loan shall equal the amount appropriated by the
9 Legislature for this purpose. The plan shall provide for a
10 governance structure that assures the department the ability
11 to oversee the operation of the community-based care risk pool
12 at least until this loan is repaid in full.

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

15 1. Significant changes in the number or composition of
16 clients eligible to receive services.

17 2. Significant changes in the services that are
18 eligible for reimbursement.

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

21 4. Proposals to participate in optional Medicaid
22 services or other federal grant opportunities.

23 5. Appropriate incentive structures.

24 6. Continuity of care in the event of failure,
25 discontinuance of service, or financial misconduct by a lead
26 agency.

27 7. Payment for time-limited technical assistance and
28 consultation to lead agencies in the event of serious
29 performance or management problems.

30 8. Payment for meeting all traditional and
31 nontraditional insurance needs of eligible members.

1 9. Significant changes in the mix of available funds.
2 (b) After approval of the plan in the 2004-2005 fiscal
3 year and annually thereafter, the department may also request
4 in its annual legislative budget request, and the Governor may
5 recommend, that the funding necessary to carry out paragraph
6 (a) be appropriated to the department. Subsequent funding of
7 the community-based care risk pool shall be supported by
8 premiums assessed to members of the community-based care risk
9 pool on a recurring basis. The community-based care risk pool
10 may invest and retain interest earned on these funds. In
11 addition, the department may transfer funds to the
12 community-based care risk pool as available in order to ensure
13 an adequate funding level if the fund is declared to be
14 insolvent and approval is granted by the Legislative Budget
15 Commission. Such payments for insolvency shall be made only
16 after a determination is made by the department or its actuary
17 that all participants in the community-based care risk pool
18 are current in their payments of premiums and that assessments
19 have been made at an actuarially sound level. Such payments by
20 participants in the community-based care risk pool may not
21 exceed reasonable industry standards, as determined by the
22 actuary. Money from this fund may be used to match available
23 federal dollars. Dividends or other payments, with the
24 exception of legitimate claims, may not be paid to members of
25 the community-based care risk pool until the loan issued by
26 the department is repaid in full. Dividends or other payments,
27 with the exception of legitimate claims and other purposes
28 contained in the approved plan, may not be paid to members of
29 the community-based care risk pool unless, at the time of
30 distribution, the community-based care risk pool is deemed
31 actuarially sound and solvent. Solvency shall be determined by

1 an independent actuary contracted by the department. The plan
2 shall be developed in consultation with the Office of
3 Insurance Regulation.

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

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

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

1 budgetary amendment process described in s. 216.177 shall be
2 transferred to the community-based agencies. The department
3 shall amend a community-based agency's contract to permit
4 expenditure of the funds.

5 (9) Each district and subdistrict that participates in
6 the model program effort or any future outsourcing
7 ~~privatization~~ effort as described in this section must
8 thoroughly analyze and report the complete direct and indirect
9 costs of delivering these services through the department and
10 the full cost of outsourcing ~~privatization~~, including the cost
11 of monitoring and evaluating the contracted services.

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

17 Section 4. The Office of Program Policy Analysis and
18 Government Accountability shall conduct two reviews of the
19 contract-management and accountability structures of the
20 Department of Children and Family Services, including, but not
21 limited to, whether the department is adequately monitoring
22 and managing its outsourced or privatized functions and
23 services. The office shall report its findings and
24 recommendations to the President of the Senate, the Speaker of
25 the House of Representatives, and the Auditor General by
26 February 1 of 2006 and 2007, respectively.

27 Section 5. Section 402.72, Florida Statutes, is
28 repealed.

29 Section 6. The nonrecurring sum of \$102,232 is
30 appropriated from the General Revenue Fund to the Department
31 of Children and Family Services for the 2005-2006 fiscal year,

1 to comply with the electronic-reporting requirements in
2 section 1 of this act.

3 Section 7. This act shall take effect July 1, 2005.
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