

1                                   A bill to be entitled  
2           An act relating to the Department of Children  
3           and Family Services; providing definitions;  
4           requiring the department to allow all public  
5           postsecondary institutions to bid on contracts  
6           intended for any public postsecondary  
7           institution; authorizing the department to  
8           competitively procure and contract for systems  
9           of treatment or service that involve multiple  
10          providers; providing requirements if other  
11          governmental entities contribute matching  
12          funds; requiring that an entity providing  
13          matching funds must comply with certain  
14          procurement procedures; authorizing the  
15          department to independently procure and  
16          contract for treatment services; requiring  
17          multiyear contracts unless justification is  
18          provided; requiring that the department  
19          establish a contract management process;  
20          specifying the requirements for and components  
21          of the contract management process; providing  
22          requirements for resolving performance  
23          deficiencies and terminating a contract;  
24          requiring a corrective action plan under  
25          certain circumstances; requiring that the  
26          department establish contract monitoring units  
27          and a contract monitoring process; requiring  
28          written reports; requiring on site visits for  
29          contracts involving the provision of direct  
30          client services; amending s. 402.73, F.S.;  
31          authorizing the department to adopt incremental

1 penalties by rule; requiring the Agency for  
2 Persons with Disabilities to implement systems  
3 to ensure quality and fiscal integrity of  
4 programs in the developmental services Medicaid  
5 waiver system; providing an exemption for  
6 health services from competitive bidding  
7 requirements; amending s. 409.1671, F.S.;  
8 conforming provisions to changes made by the  
9 act; requiring that the Office of Program  
10 Policy Analysis and Government Accountability  
11 conduct two reviews of the contract-management  
12 and accountability structures of the department  
13 and report to the Legislature and the Auditor  
14 General; authorizing the Department of Children  
15 and Family Services to enter into agreements  
16 with a private contractor to finance, design,  
17 and construct a secure facility; authorizing  
18 the contractor to sponsor issuance of certain  
19 financing certificates or securities;  
20 authorizing the state to enter into a  
21 lease-purchase agreement; requiring  
22 implementation by a time certain; providing for  
23 future repeal; repealing s. 402.72, F.S.,  
24 relating to contract management requirements  
25 for the Department of Children and Family  
26 Services; providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:  
29

30 Section 1. Department of Children and Family Services;  
31 procurement of contractual services; contract management.--

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

2           (a) "Contract manager" means the department employee  
3 who is responsible for enforcing the compliance with  
4 administrative and programmatic terms and conditions of a  
5 contract. The contract manager is the primary point of contact  
6 through which all contracting information flows between the  
7 department and the contractor. The contract manager is  
8 responsible for day-to-day contract oversight, including  
9 approval of contract deliverables and invoices. All actions  
10 related to the contract shall be initiated by or coordinated  
11 with the contract manager. The contract manager maintains the  
12 official contract files.

13           (b) "Contract monitor" means the department employee  
14 who is responsible for observing, recording, and reporting to  
15 the contract manager and other designated entities the  
16 information necessary to assist the contract manager and  
17 program management in determining whether the contractor is in  
18 compliance with the administrative and programmatic terms and  
19 conditions of the contract.

20           (c) "Department" means the Department of Children and  
21 Family Services.

22           (d) "Outsourcing" means the process of contracting  
23 with an external service provider to provide a service, in  
24 whole or in part, while the department retains the  
25 responsibility and accountability for the service.

26           (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL  
27 SERVICES.--

28           (a) Notwithstanding section 287.057(5)(f)13., Florida  
29 Statutes, whenever the department intends to contract with a  
30 public postsecondary institution to provide a service, the  
31 department must allow all public postsecondary institutions in

1 this state that are accredited by the Southern Association of  
2 Colleges and Schools to bid on the contract. Thereafter,  
3 notwithstanding any other provision to the contrary, if a  
4 public postsecondary institution intends to subcontract for  
5 any service awarded in the contract, the subcontracted service  
6 must be procured by competitive procedures.

7 (b) When it is in the best interest of a defined  
8 segment of its consumer population, the department may  
9 competitively procure and contract for systems of treatment or  
10 service that involve multiple providers, rather than procuring  
11 and contracting for treatment or services separately from each  
12 participating provider. The department must ensure that all  
13 providers that participate in the treatment or service system  
14 meet all applicable statutory, regulatory, service-quality,  
15 and cost-control requirements. If other governmental entities  
16 or units of special purpose government contribute matching  
17 funds to the support of a given system of treatment or  
18 service, the department shall formally request information  
19 from those funding entities in the procurement process and may  
20 take the information received into account in the selection  
21 process. If a local government contributes matching funds to  
22 support the system of treatment or contracted service and if  
23 the match constitutes at least 25 percent of the value of the  
24 contract, the department shall afford the governmental match  
25 contributor an opportunity to name an employee as one of the  
26 persons required by section 287.057(17), Florida Statutes, to  
27 evaluate or negotiate certain contracts, unless the department  
28 sets forth in writing the reason why the inclusion would be  
29 contrary to the best interest of the state. Any employee so  
30 named by the governmental match contributor shall qualify as  
31 one of the persons required by section 287.057(17), Florida

1 Statutes. A governmental entity or unit of special purpose  
2 government may not name an employee as one of the persons  
3 required by section 287.057(17), Florida Statutes, if it, or  
4 any of its political subdivisions, executive agencies, or  
5 special districts, intends to compete for the contract to be  
6 awarded. The governmental funding entity or contributor of  
7 matching funds must comply with all procurement procedures set  
8 forth in section 287.057, Florida Statutes, when appropriate  
9 and required.

10 (c) The department may procure and contract for or  
11 provide assessment and case-management services independently  
12 from treatment services.

13 (3) CONTRACT-MANAGEMENT REQUIREMENTS AND PROCESS.--The  
14 Department of Children and Family Services shall review the  
15 time period for which the department executes contracts and  
16 shall execute multiyear contracts to make the most efficient  
17 use of the resources devoted to contract processing and  
18 execution. Whenever the department chooses not to use a  
19 multiyear contract, a justification for that decision must be  
20 contained in the contract. Notwithstanding section  
21 287.057(15), Florida Statutes, the department is responsible  
22 for establishing a contract-management process that requires a  
23 member of the department's Senior Management or Select Exempt  
24 Service to assign in writing the responsibility of a contract  
25 to a contract manager. The department shall maintain a set of  
26 procedures describing its contract-management process which  
27 must minimally include the following requirements:

28 (a) The contract manager shall maintain the official  
29 contract file throughout the duration of the contract and for  
30 a period not less than 6 years after the termination of the  
31 contract.

1       (b) The contract manager shall review all invoices for  
2 compliance with the criteria and payment schedule provided for  
3 in the contract and shall approve payment of all invoices  
4 before their transmission to the Department of Financial  
5 Services for payment.

6       (c) The contract manager shall maintain a schedule of  
7 payments and total amounts disbursed and shall periodically  
8 reconcile the records with the state's official accounting  
9 records.

10       (d) For contracts involving the provision of direct  
11 client services, the contract manager shall periodically visit  
12 the physical location where the services are delivered and  
13 speak directly to clients receiving the services and the staff  
14 responsible for delivering the services.

15       (e) The contract manager shall meet at least once a  
16 month directly with the contractor's representative and  
17 maintain records of such meetings.

18       (f) The contract manager shall periodically document  
19 any differences between the required performance measures and  
20 the actual performance measures. If a contractor fails to meet  
21 and comply with the performance measures established in the  
22 contract, the department may allow a reasonable period for the  
23 contractor to correct performance deficiencies. If performance  
24 deficiencies are not resolved to the satisfaction of the  
25 department within the prescribed time, and if no extenuating  
26 circumstances can be documented by the contractor to the  
27 department's satisfaction, the department must terminate the  
28 contract. The department may not enter into a new contract  
29 with that same contractor for the services for which the  
30 contract was previously terminated for a period of at least 24  
31 months after the date of termination. The contract manager

1 shall obtain and enforce corrective-action plans, if  
2 appropriate, and maintain records regarding the completion or  
3 failure to complete corrective-action items.

4 (g) The contract manager shall document any contract  
5 modifications, which shall include recording any contract  
6 amendments as provided for in this section.

7 (h) The contract manager shall be properly trained  
8 before being assigned responsibility for any contract.

9 (4) CONTRACT MONITORING REQUIREMENTS AND PROCESS.--The  
10 department shall establish contract monitoring units staffed  
11 by career service employees who report to a member of the  
12 Select Exempt Service or Senior Management Service and who  
13 have been properly trained to perform contract monitoring,  
14 with at least one member of the contract monitoring unit  
15 possessing specific knowledge and experience in the contract's  
16 program area. The department shall establish a  
17 contract-monitoring process that must include, but need not be  
18 limited to, the following requirements:

19 (a) Performing a risk assessment at the start of each  
20 fiscal year and preparing an annual contract monitoring  
21 schedule that includes consideration for the level of risk  
22 assigned. The department may monitor any contract at any time  
23 regardless of whether such monitoring was originally included  
24 in the annual contract-monitoring schedule.

25 (b) Preparing a contract monitoring plan, including  
26 sampling procedures, before performing on site monitoring at  
27 external locations of a service provider. The plan must  
28 include a description of the programmatic, fiscal, and  
29 administrative components that will be monitored on site. If  
30 appropriate, clinical and therapeutic components may be  
31 included.

1       (c) Conducting analyses of the performance and  
 2 compliance of an external service provider by means of desk  
 3 reviews if the external service provider will not be monitored  
 4 on site during a fiscal year.

5       (d) Unless the department sets forth in writing the  
 6 need for an extension, providing a written report presenting  
 7 the results of the monitoring within 30 days after the  
 8 completion of the on-site monitoring or desk review.

9       (e) Developing and maintaining a set of procedures  
 10 describing the contract-monitoring process.

11       Section 2. Section 402.73, Florida Statutes, is  
 12 amended to read:

13       402.73 Contracting and performance standards.--

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

19       ~~(a) The provider fails to meet appropriate performance~~  
 20 ~~standards established by the department after the provider has~~  
 21 ~~been given a reasonable opportunity to achieve the established~~  
 22 ~~standards.~~

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

26       ~~(c) The department has concluded, after reviewing~~  
 27 ~~market prices and available treatment options, that there is~~  
 28 ~~evidence that the department can improve the performance~~  
 29 ~~outcomes produced by its contract resources. At a minimum, the~~  
 30 ~~department shall review market prices and available treatment~~  
 31 ~~options biennially. The department shall compile the results~~



1 ~~of the biennial review and include the results in its annual~~  
2 ~~performance report to the Legislature pursuant to chapter~~  
3 ~~94-249, Laws of Florida. The department shall provide notice~~  
4 ~~and an opportunity for public comment on its review of market~~  
5 ~~prices and available treatment options.~~

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

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

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

19 ~~(c) A threat to the service infrastructure of a~~  
20 ~~community which could endanger the well being of the~~  
21 ~~department's clients.~~

22  
23 ~~Competitive procurement of client services contracts that meet~~  
24 ~~the criteria in subsection (1) may not be deferred for longer~~  
25 ~~than 1 year.~~

26 ~~(3) The Legislature intends that the department obtain~~  
27 ~~services in the manner that is most cost effective for the~~  
28 ~~state, that provides the greatest long term benefits to the~~  
29 ~~clients receiving services, and that minimizes the disruption~~  
30 ~~of client services. In order to meet these legislative goals,~~  
31 ~~the department may adopt rules providing procedures for the~~

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

26 ~~(4) The department shall review the period for which~~  
27 ~~it executes contracts and, to the greatest extent practicable,~~  
28 ~~shall execute multiyear contracts to make the most efficient~~  
29 ~~use of the resources devoted to contract processing and~~  
30 ~~execution.~~

31

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

1 ~~established by the department. The department may also involve~~  
2 ~~nongovernmental funding entities in the procurement process~~  
3 ~~when appropriate.~~

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

7 ~~(1)(7)~~ The Department of Children and Family Services  
8 shall adopt, by rule, provisions for including in its  
9 contracts incremental penalties to be imposed by its contract  
10 managers on a service provider due to the provider's failure  
11 to comply with a requirement for corrective action. Any  
12 financial penalty that is imposed upon a provider may not be  
13 paid from funds being used to provide services to clients, and  
14 the provider may not reduce the amount of services being  
15 delivered to clients as a method for offsetting the impact of  
16 the penalty. If a financial penalty is imposed upon a provider  
17 that is a corporation, the department shall notify, at a  
18 minimum, the board of directors of the corporation. The  
19 department may notify, at its discretion, any additional  
20 parties that the department believes may be helpful in  
21 obtaining the corrective action that is being sought. Further,  
22 the rules adopted by the department must include provisions  
23 that permit the department to deduct the financial penalties  
24 from funds that would otherwise be due to the provider, not to  
25 exceed 10 percent of the amount that otherwise would be due to  
26 the provider for the period of noncompliance. If the  
27 department imposes a financial penalty, it shall advise the  
28 provider in writing of the cause for the penalty. A failure to  
29 include such deductions in a request for payment constitutes a  
30 ground for the department to reject that request for payment.  
31 The remedies identified in this subsection do not limit or

1 restrict the department's application of any other remedy  
2 available to it in the contract or under law. The remedies  
3 described in this subsection may be cumulative and may be  
4 assessed upon each separate failure to comply with  
5 instructions from the department to complete corrective  
6 action.

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

11 (2)(9) The Agency for Persons with Disabilities  
12 ~~department~~ must implement systems and controls to ensure  
13 financial integrity and service provision quality in the  
14 developmental services Medicaid waiver service system.

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

1 ~~months, the department must cancel the contract with the adult~~  
2 ~~substance abuse provider, unless there is no other qualified~~  
3 ~~provider in the service district.~~

4 (3)~~(11)~~ The department shall include in its standard  
5 contract document a requirement that any state funds provided  
6 for the purchase of or improvements to real property are  
7 contingent upon the contractor or political subdivision  
8 granting to the state a security interest in the property at  
9 least to the amount of the state funds provided for at least 5  
10 years from the date of purchase or the completion of the  
11 improvements or as further required by law. The contract must  
12 include a provision that, as a condition of receipt of state  
13 funding for this purpose, the provider agrees that, if it  
14 disposes of the property before the department's interest is  
15 vacated, the provider will refund the proportionate share of  
16 the state's initial investment, as adjusted by depreciation.

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

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

31

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

9           ~~(4)(15)~~ Nothing contained in chapter 287 shall require  
10 competitive bids for health services involving examination,  
11 diagnosis, or treatment.

12           Section 3. Section 409.1671, Florida Statutes, is  
13 amended to read:

14           409.1671 Foster care and related services; outsourcing  
15 ~~privatization~~.--

16           (1)(a) It is the intent of the Legislature that the  
17 Department of Children and Family Services shall outsource  
18 ~~privatize~~ the provision of foster care and related services  
19 statewide. It is further the Legislature's intent to encourage  
20 communities and other stakeholders in the well-being of  
21 children to participate in assuring that children are safe and  
22 well-nurtured. However, while recognizing that some local  
23 governments are presently funding portions of certain foster  
24 care and related services programs and may choose to expand  
25 such funding in the future, the Legislature does not intend by  
26 its outsourcing ~~privatization~~ of foster care and related  
27 services that any county, municipality, or special district be  
28 required to assist in funding programs that previously have  
29 been funded by the state. Counties that provide children and  
30 family services with at least 40 licensed residential group  
31 care beds by July 1, 2003, and provide at least \$2 million

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



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

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

19 1. The assessment shall evaluate the operational  
20 readiness of the district and the lead agency based on:  
21 a. A set of uniform criteria, developed in  
22 consultation with currently operating community-based care  
23 lead agencies and reflecting national accreditation standards,  
24 that evaluate programmatic, financial, technical assistance,  
25 training and organizational competencies; and  
26 b. Local criteria reflective of the local  
27 community-based care design and the community alliance  
28 priorities.

29 2. The readiness assessment shall be conducted by a  
30 joint team of district and lead agency staff with direct  
31 experience with the start up and operation of a

1 community-based care service program and representatives from  
2 the appropriate community alliance. Within resources available  
3 for this purpose, the department may secure outside audit  
4 expertise when necessary to assist a readiness assessment  
5 team.

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

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

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

26 1. The review must, at a minimum, address the  
27 appropriateness of the readiness criteria and instruments  
28 applied, the appropriateness of the qualifications of  
29 participants on each readiness assessment team, the degree to  
30 which the department accurately determined each district and  
31 lead agency's compliance with the readiness criteria, the

1 quality of the technical assistance provided by the department  
2 to a lead agency in correcting any weaknesses identified in  
3 the readiness assessment, and the degree to which each lead  
4 agency overcame any identified weaknesses.

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

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

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

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

13 2. The ability to ensure continuity of care from entry  
14 to exit for all children referred from the protective  
15 investigation and court systems.

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

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

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

30 6. The willingness to ensure that each individual who  
31 provides child protective services completes the training

1 required of child protective service workers by the Department  
2 of Children and Family Services.

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

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

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

16 (f)1. The Legislature finds that the state has  
17 traditionally provided foster care services to children who  
18 have been the responsibility of the state. As such, foster  
19 children have not had the right to recover for injuries beyond  
20 the limitations specified in s. 768.28. The Legislature has  
21 determined that foster care and related services need to be  
22 outsourced ~~privatized~~ pursuant to this section and that the  
23 provision of such services is of paramount importance to the  
24 state. The purpose for such outsourcing ~~privatization~~ is to  
25 increase the level of safety, security, and stability of  
26 children who are or become the responsibility of the state.  
27 One of the components necessary to secure a safe and stable  
28 environment for such children is that private providers  
29 maintain liability insurance. As such, insurance needs to be  
30 available and remain available to nongovernmental foster care  
31 and related services providers without the resources of such

1 providers being significantly reduced by the cost of  
2 maintaining such insurance.

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

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

15           1. In order to ensure that the program is operational  
16 by December 31, 2004, the department must, by December 31,  
17 2003, begin the process of establishing access to a program in  
18 any county in which the department has not either entered into  
19 a transition contract or approved a community plan, as  
20 described in paragraph (d), which ensures full outsourcing  
21 ~~privatization~~ by the statutory deadline.

22           2. The program must be procured through a competitive  
23 process.

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

27           (h) Other than an entity to which s. 768.28 applies,  
28 any eligible lead community-based provider, as defined in  
29 paragraph (e), or its employees or officers, except as  
30 otherwise provided in paragraph (i), must, as a part of its  
31 contract, obtain a minimum of \$1 million per claim/\$3 million

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

24 (i) The liability of an eligible lead community-based  
25 provider described in this section shall be exclusive and in  
26 place of all other liability of such provider. The same  
27 immunities from liability enjoyed by such providers shall  
28 extend as well to each employee of the provider when such  
29 employee is acting in furtherance of the provider's business,  
30 including the transportation of clients served, as described  
31 in this subsection, in privately owned vehicles. Such



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

18 (j) Any subcontractor of an eligible lead  
19 community-based provider, as defined in paragraph (e), which  
20 is a direct provider of foster care and related services to  
21 children and families, and its employees or officers, except  
22 as otherwise provided in paragraph (i), must, as a part of its  
23 contract, obtain a minimum of \$1 million per claim/\$3 million  
24 per incident in general liability insurance coverage. The  
25 subcontractor of an eligible lead community-based provider  
26 must also require that staff who transport client children and  
27 families in their personal automobiles in order to carry out  
28 their job responsibilities obtain minimum bodily injury  
29 liability insurance in the amount of \$100,000 per claim,  
30 \$300,000 per incident, on their personal automobiles. In any  
31 tort action brought against such subcontractor or employee,

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

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

1 partner, corporate officer or director, supervisor, or other  
2 person who in the course and scope of his or her duties acts  
3 in a managerial or policymaking capacity and the conduct that  
4 caused the alleged injury arose within the course and scope of  
5 those managerial or policymaking duties. Culpable negligence  
6 is defined as reckless indifference or grossly careless  
7 disregard of human life.

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

17 (2)(a) The department may contract for the delivery,  
18 administration, or management of protective services, the  
19 services specified in subsection (1) relating to foster care,  
20 and other related services or programs, as appropriate. The  
21 department shall retain responsibility for the quality of  
22 contracted services and programs and shall ensure that  
23 services are delivered in accordance with applicable federal  
24 and state statutes and regulations. The department must adopt  
25 written policies and procedures for monitoring the contract  
26 for delivery of services by lead community-based providers.  
27 These policies and procedures must, at a minimum, address the  
28 evaluation of fiscal accountability and program operations,  
29 including provider achievement of performance standards,  
30 provider monitoring of subcontractors, and timely followup of  
31 corrective actions for significant monitoring findings related

1 to providers and subcontractors. These policies and procedures  
2 must also include provisions for reducing the duplication of  
3 the department's program monitoring activities both internally  
4 and with other agencies, to the extent possible. The  
5 department's written procedures must ensure that the written  
6 findings, conclusions, and recommendations from monitoring the  
7 contract for services of lead community-based providers are  
8 communicated to the director of the provider agency as  
9 expeditiously as possible.

10 (b) Persons employed by the department in the  
11 provision of foster care and related services whose positions  
12 are being outsourced under ~~privatized pursuant to~~ this statute  
13 shall be given hiring preference by the provider, if provider  
14 qualifications are met.

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

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

30 (c) The contract between the department and  
31 community-based agencies must include provisions that specify

1 the procedures to be used by the parties to resolve  
2 differences in interpreting the contract or to resolve  
3 disputes as to the adequacy of the parties' compliance with  
4 their respective obligations under the contract.

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

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

15 (4)(a) The department, in consultation with the  
16 community-based agencies that are undertaking the outsourced  
17 ~~privatized~~ projects, shall establish a quality assurance  
18 program for privatized services. The quality assurance program  
19 shall be based on standards established by the Adoption and  
20 Safe Families Act as well as by a national accrediting  
21 organization such as the Council on Accreditation of Services  
22 for Families and Children, Inc. (COA) or CARF--the  
23 Rehabilitation Accreditation Commission. Each program operated  
24 under contract with a community-based agency must be evaluated  
25 annually by the department. The department shall, to the  
26 extent possible, use independent financial audits provided by  
27 the community-based care agency to eliminate or reduce the  
28 ongoing contract and administrative reviews conducted by the  
29 department. The department may suggest additional items to be  
30 included in such independent financial audits to meet the  
31 department's needs. Should the department determine that such

1 independent financial audits are inadequate, then other  
2 audits, as necessary, may be conducted by the department.  
3 Nothing herein shall abrogate the requirements of s. 215.97.  
4 The department shall submit an annual report regarding quality  
5 performance, outcome measure attainment, and cost efficiency  
6 to the President of the Senate, the Speaker of the House of  
7 Representatives, the minority leader of each house of the  
8 Legislature, and the Governor no later than January 31 of each  
9 year for each project in operation during the preceding fiscal  
10 year.

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

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

26 (b) Substitute care providers who are licensed under  
27 s. 409.175 and have contracted with a lead agency authorized  
28 under this section shall also be authorized to provide  
29 registered or licensed family day care under s. 402.313, if  
30 consistent with federal law and if the home has met the  
31 requirements of s. 402.313.

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

6 (6) Beginning January 1, 1999, and continuing at least  
7 through June 30, 2000, the Department of Children and Family  
8 Services shall outsource ~~privatize~~ all foster care and related  
9 services in district 5 while continuing to contract with the  
10 current model programs in districts 1, 4, and 13, and in  
11 subdistrict 8A, and shall expand the subdistrict 8A pilot  
12 program to incorporate Manatee County. Planning for the  
13 district 5 outsourcing ~~privatization~~ shall be done by  
14 providers that are currently under contract with the  
15 department for foster care and related services and shall be  
16 done in consultation with the department. A lead provider of  
17 the district 5 program shall be competitively selected, must  
18 demonstrate the ability to provide necessary comprehensive  
19 services through a local network of providers, and must meet  
20 criteria established in this section. Contracts with  
21 organizations responsible for the model programs must include  
22 the management and administration of all outsourced ~~privatized~~  
23 services specified in subsection (1). However, the department  
24 may use funds for contract management only after obtaining  
25 written approval from the Executive Office of the Governor.  
26 The request for such approval must include, but is not limited  
27 to, a statement of the proposed amount of such funds and a  
28 description of the manner in which such funds will be used. If  
29 the community-based organization selected for a model program  
30 under this subsection is not a Medicaid provider, the  
31 organization shall be issued a Medicaid provider number

1 pursuant to s. 409.907 for the provision of services currently  
2 authorized under the state Medicaid plan to those children  
3 encompassed in this model and in a manner not to exceed the  
4 current level of state expenditure.

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



1 community-based care risk pool membership, and the amount of  
2 the loan shall equal the amount appropriated by the  
3 Legislature for this purpose. The plan shall provide for a  
4 governance structure that assures the department the ability  
5 to oversee the operation of the community-based care risk pool  
6 at least until this loan is repaid in full.

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

9 1. Significant changes in the number or composition of  
10 clients eligible to receive services.

11 2. Significant changes in the services that are  
12 eligible for reimbursement.

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

15 4. Proposals to participate in optional Medicaid  
16 services or other federal grant opportunities.

17 5. Appropriate incentive structures.

18 6. Continuity of care in the event of failure,  
19 discontinuance of service, or financial misconduct by a lead  
20 agency.

21 7. Payment for time-limited technical assistance and  
22 consultation to lead agencies in the event of serious  
23 performance or management problems.

24 8. Payment for meeting all traditional and  
25 nontraditional insurance needs of eligible members.

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

27 (b) After approval of the plan in the 2004-2005 fiscal  
28 year and annually thereafter, the department may also request  
29 in its annual legislative budget request, and the Governor may  
30 recommend, that the funding necessary to carry out paragraph  
31 (a) be appropriated to the department. Subsequent funding of

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

29       1. Such funds shall constitute partial security for  
30 contract performance by lead agencies and shall be used to  
31 offset the need for a performance bond. Subject to the

1 approval of the plan, the community-based care risk pool shall  
2 be managed by the Florida Coalition for Children, Inc., or the  
3 designated contractors of the Florida Coalition for Children,  
4 Inc. Nonmembers of the community-based care risk pool may  
5 continue to contract with the department but must provide a  
6 letter of credit equal to one-twelfth of the annual contract  
7 amount in lieu of membership in the community-based care risk  
8 pool.

9           2. The department may separately require a bond to  
10 mitigate the financial consequences of potential acts of  
11 malfeasance, misfeasance, or criminal violations by the  
12 provider.

13           (8) Notwithstanding the provisions of s. 215.425, all  
14 documented federal funds earned for the current fiscal year by  
15 the department and community-based agencies which exceed the  
16 amount appropriated by the Legislature shall be distributed to  
17 all entities that contributed to the excess earnings based on  
18 a schedule and methodology developed by the department and  
19 approved by the Executive Office of the Governor. Distribution  
20 shall be pro rata based on total earnings and shall be made  
21 only to those entities that contributed to excess earnings.  
22 Excess earnings of community-based agencies shall be used only  
23 in the service district in which they were earned. Additional  
24 state funds appropriated by the Legislature for  
25 community-based agencies or made available pursuant to the  
26 budgetary amendment process described in s. 216.177 shall be  
27 transferred to the community-based agencies. The department  
28 shall amend a community-based agency's contract to permit  
29 expenditure of the funds.

30           (9) Each district and subdistrict that participates in  
31 the model program effort or any future outsourcing

1 ~~privatization~~ effort as described in this section must  
2 thoroughly analyze and report the complete direct and indirect  
3 costs of delivering these services through the department and  
4 the full cost of outsourcing ~~privatization~~, including the cost  
5 of monitoring and evaluating the contracted services.

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

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

21 Section 5. Notwithstanding section 287.057(14)(a),  
22 Florida Statutes, the Department of Children and Family  
23 Services may enter into agreements, not to exceed 23 years,  
24 with a private contractor to finance, design, and construct a  
25 secure facility, as described in section 394.917, Florida  
26 Statutes, of at least 600 beds and to operate all aspects of  
27 daily operations within the secure facility. The contractor  
28 may sponsor the issuance of tax-exempt certificates of  
29 participation or other securities to finance the project, and  
30 the state may enter into a lease-purchase agreement for the  
31 secure facility. The department shall begin the implementation

1 of this privatization initiative by July 1, 2005. This section  
2 is repealed July 1, 2006.  
3       Section 6. Section 402.72, Florida Statutes, is  
4 repealed.  
5       Section 7. This act shall take effect July 1, 2005.  
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