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HB 5011, Engrossed 2

2006 Legislature

1 A bill to be entitled
2 An act relating to foster care and related services;
3 amending s. 409.1671, F.S.; removing provisions requiring
4 the Department of Children and Family Services to develop
5 a statewide plan for outsourcing foster care and related
6 services; removing certain plan requirements; removing an
7 obsolete date; removing a requirement to issue certain
8 loans; requiring a community-based risk pool initiative
9 for certain purposes; providing for the components of the
10 initiative; establishing a risk pool peer review
11 committee; requiring a report to the secretary of the
12 department; authorizing expenditures from the risk pool
13 under certain circumstances; providing for uses of the
14 risk pool; removing certain provisions relating to the
15 sources of future funding; making conforming changes;
16 removing authority of the Florida Coalition for Children,
17 Inc., or its subcontractors to manage certain risk pool
18 funds; authorizing the department to issue an interest-
19 free loan to the Florida Coalition for Children, Inc., to
20 establish a self-insurance program based on certain
21 appropriations; providing terms for repayment of the loan;
22 establishing a 3-year pilot program in Miami-Dade, Monroe,
23 and Broward Counties; providing for the transfer of
24 certain responsibilities from the Department of Children
25 and Family Services to specified community-based care lead
26 agencies; requiring review of the proposed contract by the
27 Chief Financial Officer by a certain date; providing for
28 funding the pilot program from grants and federal funds;

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29 requiring that annual financial statements regarding the
30 pilot program be provided to the Governor, the
31 Legislature, the department, and certain local community-
32 based care alliances; prohibiting the department from
33 using certain funds; requiring that fiscal,
34 administrative, and programmatic monitoring be conducted
35 by third-party entities; requiring the department to fund
36 the cost of the third-party monitoring; exempting the
37 selection of the third-party entities from the provisions
38 of s. 287.057, F.S., for a specified period of time;
39 requiring such entities to submit reports to the Governor,
40 the Legislature, and certain local community-based care
41 alliances; defining "parties"; requiring that the
42 department, the lead agencies implementing the pilot
43 program, and the Agency for Health Care Administration
44 develop a plan for integrating certain Medicaid health
45 services; specifying that the annual evaluation required
46 in s. 409.1671, F.S., include an evaluation of the pilot
47 program; directing the Office of Program Policy Analysis
48 and Government Accountability and the Office of the
49 Auditor General to complete an evaluation of the pilot
50 program and to report to the Legislature; providing for
51 certain provisions to be included in the contract;
52 requiring the department to enter into fixed-price
53 contracts; authorizing increased contract payments under
54 certain circumstances; requiring fiscal reporting and
55 reconciliation; providing for certain expenditures by lead
56 agencies; providing for a compliance supplement applicable

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57 to all community-based lead agencies; requiring the
 58 department to submit a plan by July 1, 2006, to the
 59 Governor and Legislature for the efficient use of
 60 resources; providing for distribution of savings resulting
 61 from the plan; providing for future repeal; providing
 62 effective dates.

63

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

65

66 Section 1. Subsection (7) of section 409.1671, Florida
 67 Statutes, is amended to read:

68 409.1671 Foster care and related services; outsourcing.--

69 ~~(7) The Florida Coalition for Children, Inc., in~~
 70 ~~consultation with the department, shall develop a plan based on~~
 71 ~~an independent actuarial study regarding the long term use and~~
 72 ~~structure of a statewide community based care risk pool for the~~
 73 ~~protection of eligible lead community based providers, their~~
 74 ~~subcontractors, and providers of other social services who~~
 75 ~~contract directly with the department. The plan must also~~
 76 ~~outline strategies to maximize federal earnings as they relate~~
 77 ~~to the community based care risk pool. At a minimum, the plan~~
 78 ~~must allow for the use of federal earnings received from child~~
 79 ~~welfare programs to be allocated to the community based care~~
 80 ~~risk pool by the department, which earnings are determined by~~
 81 ~~the department to be in excess of the amount appropriated in the~~
 82 ~~General Appropriations Act. The plan must specify the necessary~~
 83 ~~steps to ensure the financial integrity and industry standard~~
 84 ~~risk management practices of the community based care risk pool~~

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85 ~~and the continued availability of funding from federal, state,~~
86 ~~and local sources. The plan must also include recommendations~~
87 ~~that permit the program to be available to entities of the~~
88 ~~department providing child welfare services until full~~
89 ~~conversion to community-based care takes place. The final plan~~
90 ~~shall be submitted to the department and then to the Executive~~
91 ~~Office of the Governor and the Legislative Budget Commission for~~
92 ~~formal adoption before January 1, 2005. Upon approval of the~~
93 ~~plan by all parties, the department shall issue an interest free~~
94 ~~loan that is secured by the cumulative contractual revenue of~~
95 ~~the community-based care risk pool membership, and the amount of~~
96 ~~the loan shall equal the amount appropriated by the Legislature~~
97 ~~for this purpose. The plan shall provide for a governance~~
98 ~~structure that assures the department the ability to oversee the~~
99 ~~operation of the community based care risk pool at least until~~
100 ~~this loan is repaid in full.~~

101 (a) The department, in consultation with the Florida
102 Coalition for Children, Inc., shall develop and implement a
103 community-based care risk pool initiative to mitigate the
104 financial risk to eligible lead community-based providers. This
105 initiative shall include:

106 1. A risk pool application and protocol developed by the
107 department that outline submission criteria, including, but not
108 limited to, financial and program management, descriptive data
109 requirements, and timeframes for submission of applications.
110 Requests for funding from risk pool applicants shall be based on
111 relevant and verifiable service trends and changes that have
112 occurred during the current fiscal year. The application shall

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113 confirm that expenditure of approved risk pool funds by the lead
 114 community-based provider shall be completed within the current
 115 fiscal year.

116 2. A risk pool peer review committee, appointed by the
 117 secretary and consisting of department staff and representatives
 118 from at least three nonapplicant community-based care providers,
 119 that reviews and assesses all risk pool applications. Upon
 120 completion of each application review, the peer review committee
 121 shall report its findings and recommendations to the secretary
 122 providing, at a minimum, the following information:

123 a. Justification for the specific funding amount required
 124 by the risk pool applicant based on current year service trend
 125 data, including validation that the applicant's financial need
 126 was caused by circumstances beyond the control of the lead
 127 agency management;

128 b. Verification that the proposed use of risk pool funds
 129 meets at least one of the criteria in paragraph (c); and

130 c. Evidence of technical assistance provided in an effort
 131 to avoid the need to access the risk pool and recommendations
 132 for technical assistance to the lead agency to ensure that risk
 133 pool funds are expended effectively and that the agency's need
 134 for future risk pool funding is diminished.

135 (b) Upon approval by the secretary of a risk pool
 136 application, the department may request funds from the risk pool
 137 in accordance with s. 216.181(6) (a).

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

140 1. Significant changes in the number or composition of

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141 clients eligible to receive services.

142 2. Significant changes in the services that are eligible
 143 for reimbursement.

144 ~~3. Scheduled or unanticipated, but necessary, advances to~~
 145 ~~providers or other cash-flow issues.~~

146 ~~4. Proposals to participate in optional Medicaid services~~
 147 ~~or other federal grant opportunities.~~

148 ~~5. Appropriate incentive structures.~~

149 3.6. Continuity of care in the event of failure,
 150 discontinuance of service, or financial misconduct by a lead
 151 agency.

152 ~~7. Payment for time limited technical assistance and~~
 153 ~~consultation to lead agencies in the event of serious~~
 154 ~~performance or management problems.~~

155 ~~8. Payment for meeting all traditional and nontraditional~~
 156 ~~insurance needs of eligible members.~~

157 4.9. Significant changes in the mix of available funds.

158 ~~(d)(b) After approval of the plan in the 2004-2005 fiscal~~
 159 ~~year and annually thereafter,~~ The department may also request in
 160 its annual legislative budget request, and the Governor may
 161 recommend, that the funding necessary to carry out paragraph (c)
 162 ~~(a)~~ be appropriated to the department. ~~Subsequent funding of the~~
 163 ~~community based care risk pool shall be supported by premiums~~
 164 ~~assessed to members of the community-based care risk pool on a~~
 165 ~~recurring basis. The community based care risk pool may invest~~
 166 ~~and retain interest earned on these funds. In addition, the~~
 167 department may request the allocation of transfer funds from ~~to~~
 168 the community-based care risk pool in accordance with s.

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169 ~~216.181(6)(a) as available in order to ensure an adequate~~
170 ~~funding level if the fund is declared to be insolvent and~~
171 ~~approval is granted by the Legislative Budget Commission. Such~~
172 ~~payments for insolvency shall be made only after a determination~~
173 ~~is made by the department or its actuary that all participants~~
174 ~~in the community-based care risk pool are current in their~~
175 ~~payments of premiums and that assessments have been made at an~~
176 ~~actuarially sound level. Such payments by participants in the~~
177 ~~community based care risk pool may not exceed reasonable~~
178 ~~industry standards, as determined by the actuary. Funds Money~~
179 ~~from this pool fund may be used to match available federal~~
180 ~~dollars. Dividends or other payments, with the exception of~~
181 ~~legitimate claims, may not be paid to members of the community-~~
182 ~~based care risk pool until the loan issued by the department is~~
183 ~~repaid in full. Dividends or other payments, with the exception~~
184 ~~of legitimate claims and other purposes contained in the~~
185 ~~approved plan, may not be paid to members of the community based~~
186 ~~care risk pool unless, at the time of distribution, the~~
187 ~~community-based care risk pool is deemed actuarially sound and~~
188 ~~solvent. Solvency shall be determined by an independent actuary~~
189 ~~contracted by the department. The plan shall be developed in~~
190 ~~consultation with the Office of Insurance Regulation.~~

191 1. Such funds shall constitute partial security for
192 contract performance by lead agencies and shall be used to
193 offset the need for a performance bond. ~~Subject to the approval~~
194 ~~of the plan, the community based care risk pool shall be managed~~
195 ~~by the Florida Coalition for Children, Inc., or the designated~~
196 ~~contractors of the Florida Coalition for Children, Inc.~~

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197 ~~Nonmembers of the community based care risk pool may continue to~~
 198 ~~contract with the department but must provide a letter of credit~~
 199 ~~equal to one-twelfth of the annual contract amount in lieu of~~
 200 ~~membership in the community based care risk pool.~~

201 2. The department may separately require a bond to
 202 mitigate the financial consequences of potential acts of
 203 malfeasance, misfeasance, or criminal violations by the
 204 provider.

205 (e) The department may issue an interest-free loan to the
 206 Florida Coalition for Children, Inc., for the purpose of
 207 creating a self-insurance program pursuant to law. The loan
 208 shall be secured by the cumulative contractual revenue of the
 209 community-based care lead agencies participating in the self-
 210 insurance program. The amount of the loan shall be in an amount
 211 equal to the amount appropriated by the Legislature for this
 212 purpose. The terms of the repayment of the loan shall be based
 213 on the economic viability of the self-insurance program.

214 Section 2. Pilot project and financial issues.--

215 (1) A 3-year pilot program is established for the
 216 community-based care lead agencies serving Miami-Dade, Monroe,
 217 and Broward Counties. This pilot program shall allow for the
 218 transfer of the current lead agency oversight responsibilities
 219 of the Department of Children and Family Services to independent
 220 entities and for funding the program through a grant that
 221 enhances funding flexibility. The pilot program shall expand the
 222 responsibilities and services provided by these lead agencies.

223 (2) The Department of Children and Family Services shall
 224 enter into a 3-year contract with the designated community-based

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225 care lead agency serving Miami-Dade and Monroe Counties and with
226 the designated community-based care lead agency serving Broward
227 County, which have been established in accordance with s.
228 409.1671, Florida Statutes. The department and the lead agencies
229 in this pilot program shall submit to the Chief Financial
230 Officer proposed contract language no later than June 1, 2006.
231 The Chief Financial Officer shall review the contracts for
232 sufficiency and respond to the parties no later than June 15,
233 2006. This subsection shall take effect upon this act becoming a
234 law.

235 (3) The amount of federal Title IV-E funding allocated in
236 each year of the 3-year pilot program shall be equal to the
237 amount earned by each of the lead agencies and by the
238 department's district or zone community-based care activities
239 during the 2005-2006 fiscal year that is transitioned to the
240 lead agencies as part of this pilot program. The lead agencies
241 shall annually provide certified audited financial statements to
242 the Governor, the Department of Children and Family Services,
243 the appropriations committees of the Legislature, and the local
244 community-based care alliances of Broward, Miami-Dade, and
245 Monroe Counties. In implementing the pilot program, the
246 department shall not use funds appropriated or allocated to
247 community-based care lead agencies located outside of the pilot
248 program area.

249 (4) Fiscal monitoring, administrative monitoring, and
250 programmatic monitoring shall be conducted by independent,
251 nongovernmental third-party entities under contract with the
252 department and shall be conducted in a manner jointly agreed to

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253 by the lead agencies and the department. The department shall
 254 fund the cost of contracting with these entities.
 255 Notwithstanding any other provision to the contrary, the pilot
 256 program may not be implemented until the parties have agreed to
 257 the selection of these entities and the manner in which they are
 258 to carry out their responsibilities. Such agreement must be
 259 reached by the parties no later than July 1, 2006. The selection
 260 of the third-party entities under this subsection shall be
 261 exempt from s. 287.057, Florida Statutes, from the effective
 262 date of this subsection through June 30, 2007. Fiscal oversight
 263 shall be conducted in a manner similar to the model used by the
 264 department during the 2005-2006 fiscal year in Miami-Dade and
 265 Monroe Counties. This subsection shall take effect upon this act
 266 becoming a law.

267 (5) To compare the performance of the pilot program's lead
 268 agencies with that of other lead agencies, the programmatic
 269 performance of the pilot program's lead agencies shall be
 270 measured and monitored by outcome measures contained in their
 271 contracts with the department that are in effect on the
 272 effective date of this section and other outcomes designed to
 273 best determine the quality of performance of the lead agencies
 274 and developed by the parties in conjunction with the
 275 independent, nongovernmental third-party entities as part of the
 276 agreement on programmatic monitoring. The independent entities
 277 shall submit their reports directly to the Governor, the
 278 President of the Senate, the Speaker of the House of
 279 Representatives, and the community-based care alliances of
 280 Broward, Miami-Dade, and Monroe Counties.

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281 (6) For purposes of this section, the term "parties" means
 282 the two lead agencies implementing this pilot program and the
 283 Department of Children and Family Services.

284 (7) The department and the lead agencies implementing the
 285 pilot program shall develop an implementation plan with the
 286 Agency for Health Care Administration regarding the pending
 287 Medicaid mental health reform for the purpose of implementing a
 288 local model that allows for the integration of behavioral health
 289 and physical health with the local child welfare systems of
 290 care.

291 (8) The annual evaluation required by s. 409.1671(4)(a),
 292 Florida Statutes, shall include an evaluation of the pilot
 293 program described in this section that compares performance and
 294 fiscal management of the community-based care lead agencies in
 295 the pilot program to those that are not in the pilot program. In
 296 addition, the Office of Program Policy Analysis and Government
 297 Accountability and the Office of the Auditor General shall
 298 jointly complete an evaluation of the pilot program and provide
 299 an interim report to the President of the Senate and the Speaker
 300 of the House of Representatives no later than February 1, 2008,
 301 and a final report no later than February 1, 2009.

302 (9) The provisions of this subsection shall be included in
 303 the contracts with the lead agencies in the pilot program and
 304 may be implemented with other community-based care lead agencies
 305 established under s. 409.1671, Florida Statutes. The contracts
 306 must be fixed-price funded in 36 equal monthly installments. The
 307 first 2 months shall be paid in advance on July 10, 2006. The
 308 contracts shall be funded by a grant of general revenue and by

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309 applicable federal funding sources. The lead agencies are
 310 responsible for documenting federal earnings, and federal
 311 earnings not documented shall be returned to the department.
 312 Notwithstanding s. 409.1671(8), Florida Statutes, the lead
 313 agencies' annual contract amounts may be increased by excess
 314 federal earnings in accordance with s. 216.181(11), Florida
 315 Statutes. Monthly reporting requirements shall be limited to
 316 only the reports required to support monthly federal expenditure
 317 reporting and statutorily restricted state expenditures as
 318 defined in the lead agencies' approved cost allocation plan.
 319 Quarterly reconciliation shall be required from the
 320 participating lead agencies. All other required fiscal reporting
 321 shall be determined by the independent fiscal monitors.
 322 Notwithstanding any other provision of law, the following lead
 323 agency expenditures are permissible: staff cellular telephone
 324 allowances; contracts requiring deferred payments and
 325 maintenance agreements; security deposits for office leases;
 326 related professional membership dues and professional state
 327 license fees; food and refreshment; promotional materials; and
 328 costs associated with fundraising personnel either employed or
 329 contracted with by the lead agency.

330 (10) The department, in consultation with the Department
 331 of Financial Services, shall develop a compliance supplement for
 332 the state financial assistance regarding flexibility of
 333 allowable expenditures in accordance with s. 215.97, Florida
 334 Statutes, which shall be applicable to all community-based lead
 335 agencies.

336 (11) The department shall submit a plan to the Executive

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337 Office of the Governor, the chair of the Senate Ways and Means
338 Committee, and the chair of the House of Representatives Fiscal
339 Council describing the most efficient use of resources relating
340 to community-based care in the district administration and the
341 program management and compliance budget entities. Any cost
342 savings achieved as a result of this plan shall be distributed
343 to the lead agencies by a methodology described in the plan. The
344 department's plan shall be submitted no later than July 1, 2006.
345 This subsection shall take effect upon this act becoming a law.

346 (12) This section is repealed July 1, 2009.

347 Section 3. Except as otherwise expressly provided in this
348 act and except for this section, which shall take effect upon
349 this act becoming a law, this act shall take effect July 1,
350 2006.