

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1181

Foster Care and Related Services

**SPONSOR(S):** Hooper

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2916

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Committee on Healthy Families</u>	<u>5 Y, 3 N</u>	<u>Mitchell</u>	<u>Mitchell</u>
2) <u>Healthcare Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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**SUMMARY ANALYSIS**

HB 1181 codifies provisions for statewide flexibility in Community Based Care contracting and monitoring, initiated in 2006 as a pilot program in Miami-Dade and Broward counties. Expanding the pilot provisions statewide to enhance independence and flexibility in community-based care is idea number 68 in the Speaker's book of innovative ideas.

The flexibility provisions of the pilot program established in statute by the bill change the contract payment method from cost reimbursement to fixed-price; transfer fiscal, administrative, and program monitoring responsibilities from the department to independent, nongovernmental third-party oversight entities; and require development of new outcome measures to track lead agency performance.

Additional provisions of the bill provide for automobile liability coverage under a provider's general liability coverage for staff transporting clients in their personal automobiles. The bill also allows lead agencies to spend funds during the first year that they enter into a contract with the Department of Children and Families to establish mechanisms to raise local funds. It gives the department authority over health standards for foster care family and residential facilities instead of the Department of Health, to remove duplication of effort and conflicting licensure standards. The effective date of the bill is July 1, 2007.

Concerns raised by the community based care lead agencies and the department over elimination of current pilot provisions in chapter law are addressed by a strike-all amendment prepared by the bill's sponsor.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill provides for the Department of Children and Families to have multi-year, fixed-priced contracts with community based care lead agencies to allow for flexibility and efficiency in foster care and related services. It includes contracting for fiscal, administrative, and programmatic monitoring through independent, non-governmental, third-party entities for improved oversight. Enhancing independence and flexibility in community-based care through implementing the pilot provisions statewide, is idea number 68 in the Speaker's book of innovative ideas.

#### B. EFFECT OF PROPOSED CHANGES:

HB 1181 codifies provisions for statewide flexibility in Community Based Care contracting and monitoring that were initiated as a pilot program in Miami-Dade and Broward counties in 2006. The bill codifies provisions that were established in ch. 2006-30, L.O.F., and removes the limitations of a pilot.

The flexibility provisions of the pilot program established in statute by the bill:

- Change the lead agencies' contract payment method from cost reimbursement to fixed-price;
- Change lead agency funding from a system requiring them to return unspent funds each year, to a grant of general revenue and federal funds, with the ability to retain unspent general revenue;
- Transfer fiscal, administrative, and program monitoring responsibilities from the Department of Children and Families to independent, nongovernmental third-party oversight entities; and
- Require the third-party program monitor and lead agencies to develop new outcome measures to track lead agency performance.

The bill also provides for coverage of staff automobile liability under the general liability coverage of the provider, and removes the requirement for staff to have \$100,000/\$300,000 personal coverage. This reduces the cost of staff personal automobile liability coverage when transporting clients.

The bill allows lead agencies to spend funds for community resource development to establish mechanisms to raise local funds during their first contract year, and requires a report of funds used.

The bill gives the department authority over health standards for foster care family and residential facilities instead of the Department of Health, to remove duplication of effort and conflicting licensure standards.

The bill establishes the enacting date is July 1, 2007.

#### Current Situation

Community Based Care is a comprehensive redesign of Florida's child welfare system established by the Legislature in 1996. In December 2005, statewide implementation was complete. Community based care combines outsourcing foster care and related services to 20 lead agencies for increased local community ownership of service delivery and design. Accountability focuses on performance outcomes. Lead agencies served approximately 82,255 children during the 2005-2006 fiscal year.<sup>1</sup> The daily caseload served on June 30, 2006 was 48,951.<sup>2</sup>

<sup>1</sup> Source: HomeSafeNet Report: Number of Children Served by Primary, Secondary, and Courtesy Caseworkers, for the Period 7/2/05-6/30/06. Report run date: 7/13/06.

<sup>2</sup> Source: DCF Quick Facts: 1/19/07, page 20.

For Fiscal Year 2006-2007, the Legislature appropriated \$934,507,021 to the child protection program, 51 percent funded from federal revenues, and 49 percent from state funds, primarily general revenue. The department issued contracts with community-based care (CBC) lead agencies for a total of \$656,872,227 as of December 1, 2006. It retained the remaining child protection appropriation for functions not outsourced to the CBCs, such as child protective investigations and child welfare legal services. The lead agencies, usually through subcontractors, provide direct care services, including case management, foster care placement, and substance abuse and mental health services. In December 2005, the lead agencies held 500 subcontracts, including 64 subcontracts with case management organizations.<sup>3</sup>

In 2006, HB 5011 established a contracting and oversight flexibility pilot in Miami-Dade and Broward counties. Because of existing contracting flexibility, the department was able to implement multi-year, fixed price contracting statewide, and contract out fiscal monitoring. The pilot requires the department to fund the cost of these independent monitors. As the federally established single state agency responsible for child welfare services, the department must retain overall responsibility and maintain the contracts for third party monitoring. Section 471 (7) of the Social Security Act requires that the state agency monitor and conduct periodic evaluation of foster care and adoption assistance to be eligible for payment for these services. Section 471 (22) of the Social Security Act requires that the state agency implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of children.

The pilot also requires the pilot project CBCs to be compared to other CBCs based on contract measures in place at the time the law was passed. The comparison is to be conducted by both the independent programmatic monitor as well as by an independent evaluator as part of the evaluation of CBCs under s. 408.1671 (4)(a) F.S.

### **First Year of Pilot Results**

In its review of the CBC pilot during its first year, the legislative Office of Program Policy Analysis and Government Accountability (OPPAGA) reports stakeholders indicate the pilot project has produced benefits. These include objective review by qualified entities, more frequent and meaningful fiscal monitoring reports, and streamlined administrative processes. (Report No. 07-03, January 2007.)

### **Fixed method of payment**

OPPAGA reports lead agency staff indicates the changes in funding and payment methods have streamlined administrative processes and enhanced lead agency financial viability. The fixed-price payment method simplifies the monthly invoicing process and documentation, and provides a predictable monthly cash flow for lead agencies. Grant funding allows them to develop a reserve account to help hedge against emergencies or expand services.

### **Fiscal monitoring**

According to OPPAGA, department and lead agency managers report that contracting with Abel and Associates as the fiscal and administrative monitor, has strengthened oversight. Certified public accountants now do financial monitoring and can act as internal auditors to help the lead agencies avoid financial risk. In the past, department staff that did financial monitoring often had no accounting background.

Abel and Associates' responsibilities include reviewing lead agency procurement and contracting practices, reviewing the lead agency's invoices prior to submission to the department's contract manager, assessing internal controls, determining whether personnel file requirements are met, and reviewing client eligibility determinations for federal funding.

The lead agencies report the firm's use of the same monitoring for each review is less intrusive and provides more consistent findings. The reports are more useful because they are business-oriented.

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<sup>3</sup> Source: OPPAGA Report No. 06-50, Appendix B.

Examples include recommending that ChildNet establish procedures to improve accounting practices for accruals, and that Our Kids obtain a bank line of credit or other ready source of operating capital.

The fiscal and administrative monitoring conducted by Abel and Associates focuses on the lead agencies' operations rather than their subcontracted providers. Instead of monitoring the subcontractors, Abel and Associates provides oversight of how the lead agencies' fulfill their responsibilities to monitor their subcontractors' compliance with the provisions of their contracts. The firm is assisting the lead agencies to draft monitoring tools designed to identify at-risk providers.

### **Programmatic monitoring**

The department contracted with Chapin Hall of the University of Chicago, through June 2009, for programmatic monitoring and performance measurement development. Chapin Hall is a nationally recognized child welfare research and demonstration institute. Administrators of the pilot lead agencies recommended Chapin Hall as the program monitor because of its strong national reputation for performance measurement and analysis. It will conduct programmatic monitoring and quality assurance reviews, and develop new performance measures for community based care. Chapin Hall will recommend new outcome measures and monitoring tools to determine lead agencies' performance quality.

### **Challenges to implementation**

The contract with Chapin Hall was not signed until November 2006. The delay was due to University of Chicago concerns about language in the department's standard contract that addresses insurance and indemnifying the state. The department revised these sections to the university's satisfaction to be more applicable to a contract with a university.

OPPAGA found there is some confusion about department and lead agency responsibilities because the pilot project is being implemented at the same time the department is changing its quality assurance procedures and data reporting systems. Department reviews have found that lead agency quality assurance staff does not consistently apply ratings required for department and federal oversight. Statewide, most lead agencies are not meeting deadlines to submit quarterly quality assurance data or submit incomplete information. Because the department's quality assurance database is not yet operational, lead agency staff cannot enter quality assurance data directly into the system. They have submitted quarterly data reports to the department in a variety of formats, which are difficult to aggregate for statewide analysis. (See "Additional Improvements Are Needed as DCF Redesigns Its Lead Agency Oversight Systems," OPPAGA Report No. 06-05, January 2006.)

The lack of a functioning quality assurance data system, limits the ability of the department and Chapin Hall to validate lead agencies' data and analyze statewide performance. Because ChildNet in Broward County has not reported required data that Chapin Hall needs for monitoring and development of performance measures, the department has threatened sanctions against the lead agency.

### **Automobile liability coverage**

Individual employees who transport children in their personal automobiles must obtain their own coverage at the minimum level required by law (\$100,000 per claim/\$300,000 per incident) (s. 409.1671 (1) (h) F.S.). Several years ago, the CBCs received appropriated funding, which they passed along to their employees to help offset the additional cost of the coverage required by law. These funds have continued in the base funding for CBCs. There are no known analyses that estimate the costs borne by employees in response to this legislative requirement. This provision is extremely difficult to enforce, as it requires continual monitoring to ensure that every employee who transports children has the required insurance at all times.

CBCs would prefer to obtain this coverage through their own business insurance policies. Their position is that this approach offers several advantages:

- CBCs can more easily ensure that appropriate coverage is in place at all times;
- It offers a benefit for the employees and may help with retention, and

- CBCs can obtain this insurance through group coverage.

**Health inspections**

The Department of Children and Families relies on health standards established in the Florida Administrative Code by the Department of Health. Health inspectors assess foster and group homes, as well as residential group care facilities, for compliance. DCF licensing is contingent on adherence to these rules by foster and group homes and residential facilities. The CBCs would like the department to have sole rulemaking authority for facilities it license. They considers some of the DOH rules to be excessively restrictive, require expensive compliance, and not consistent with the desire for homes to be as “family like” as possible.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 409.1671, F.S., relating to foster care outsourcing.

**Section 2.** Amends s. 409.175(5)(a), F.S., relating to licensure of foster care homes and residential facilities.

**Section 3.** Repeals Section 2 of Chapter 2006-30 that established the pilot.

**Section 4.** Provides an enacting date of July 1, 2007.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Children and Families, there will be a significant fiscal impact from the bill as now written.

FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:	AMOUNT YEAR 1 (FY 2006-2007)	AMOUNT YEAR 2 (FY 2007-2008)
Recurring or Annualized Continuation Effects:		
Admin. Monitoring		\$383,996
Prog. Monitoring		\$2,280,393
Total Cost		\$2,664,389*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the department, it is currently in the process of reorganizing its management and oversight functions to establish more accountability and effectiveness in the purchase of services as it moves away from direct service provision. The department is concerned that outsourcing of monitoring of the CBCs, which account for approximately \$700 million of its contracted services, will leave too few resources to manage the rest of the \$1.5 billion it contracts for services. Use of available resources does not reflect the expansion of independent administrative or programmatic monitoring statewide. According to the department, significant position reductions would be required to accomplish this.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None. Bill requires no additional rule making authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The department has expressed concerns that repeal of provisions for the pilot removes an exemption from competitive procurement of fiscal and programmatic monitors, and will require competitive procurement for any statewide implementation of the flexibility provisions of the bill.

The department is concerned that the effective date of the bill, July 1, 2007, does not provide sufficient time to competitively procure independent, non-governmental entities to conduct the monitoring on a statewide basis.

The department is also concerned that it has no expertise to develop health standards in consultation with the Department of Health, and no resources or expertise to perform the health inspection functions as required in the bill as currently written.

Because of concerns about delays in implementation of mechanisms for performance monitoring and data reporting, both the department and the lead agencies have requested that provisions for the pilot in ch. 2006-30, L.O.F., be retained for the three years of the pilot.

A strike-all amendment is being prepared by the bill's sponsor to provide for multi-year, fixed-price contracts and fiscal, administrative and programmatic monitoring in statute to support community based care flexibility and efficiency, but to retain the provisions of the pilot in chapter law as performance measures and other programmatic monitoring procedures are developed and implemented.

#### D. STATEMENT OF THE SPONSOR

Based on changes being discussed and formulated, I will offer a strike-all amendment of the current legislation.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2007, the Committee on Healthy Families adopted a "strike-all" amendment by the bill sponsor that is traveling with the bill as Proposed Council Substitute:

The amendment addresses issues identified in the bill analysis and does the following:

- amends s. 409.1671, F.S.; providing for general liability insurance coverage for community-based provider staff under certain circumstances;
- requires multi-year, fixed price contracts; requiring the department to contract with third-party entities for fiscal, administrative, and programmatic monitoring to replace department monitoring except as required by federal law;
- requires a compliance supplement regarding flexibility of allowable expenditures;
- amends s. 409.175, F.S.; providing for department approval of certain health standards; and
- provides an enacting date of July 1, 2007.

The strike-all amendment provides a framework in statute that allows for expanding statewide the innovations developed in the three year pilot established in 2006 in Miami-Dade and Broward counties. The bill leaves the provisions of the pilot program in ch. 2006-30, L.O.F., to allow time for development of programmatic monitoring methods and implementation of effective and efficient statewide oversight.