

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1181 Foster Care and Related Services  
**SPONSOR(S):** Healthcare Council and Hooper  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2916

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
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>11 Y, 2 N, As CS</u>	<u>Mitchell</u>	<u>Gormley</u>
3) <u>Policy &amp; Budget Council</u>	<u>21 Y, 11 N</u>	<u>Leznoff</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

CS/HB 1181 establishes in statute a framework for expanding statewide the Community Based Care innovations initiated in the three year contracting and oversight flexibility pilot started in 2006 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 Speaker Rubio's book of 100 innovative ideas for Florida's future.

The bill requires the Department of Children and Families to contract with Community Based Care lead agencies in multi-year, fixed price contracts, and contract with third-party entities for fiscal, administrative, and programmatic monitoring that is to replace department monitoring, except as required by federal law. The bill requires agreement between the department and CBC and provides for a one year exemption from competitive contracting until June 30, 2008 to allow for implementation of programmatic monitoring.

In addition, the bill requires a compliance supplement in consultation with the Department of Financial Services to provide for flexibility of allowable expenditures. The bill provides for automobile liability coverage under a provider's general liability coverage for staff transporting clients in their personal automobiles. It also provides for department approval of certain health standards to allow for more home-like foster care settings.

The bill provides for an appropriation of \$299,389 to supplement the department offset of \$2,365,000 through staff reductions to implement third-party monitoring statewide.

The effective date of the bill is July 1, 2007.

## 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 Speaker Rubio's book of 100 innovative ideas for Florida's future.

#### B. EFFECT OF PROPOSED CHANGES:

HB 1181 provides in statute a framework that allows for expanding statewide innovations initiated in the three year Community Based Care pilot established in Chapter 2006-30, L.O.F. The pilot was established in 2006, in Miami-Dade and Broward counties, to provide flexibility in contracting and monitoring. Expanding the pilot provisions statewide to enhance the independence and flexibility in community-based care is idea number 68 in Speaker Rubio's book of 100 innovative ideas.

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

#### CURRENT SITUATION

In 2006, the Legislature established a contracting and oversight flexibility pilot for Community Based Care in Miami-Dade and Broward counties, in Chapter 2006-30, L.O.F.

The key administrative changes provided in the pilot, include:

- Change of the lead agencies' contract payment method from cost reimbursement to fixed-price;
- Change of 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 of fiscal, administrative, and program monitoring responsibilities from the Department of Children and Families to independent, nongovernmental third-party oversight entities; and

- Requiring the third-party program monitor and lead agencies to develop new outcome measures to track lead agency performance.

## **Community Based Care**

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>

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>

## **Contracting and Monitoring**

In 2006, 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.

Chapter 2006-30, L.O.F., requires the CBCs in the pilot project 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.

## **Implementation of the Pilot**

### **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.)

<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.

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

### **Fixed method of payment**

OPPAGA reports that lead agency staff indicate 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 the CBCs 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. Examples include, recommending that ChildNet, the lead agency in Broward County, establish procedures to improve accounting practices for accruals, and that Our Kids, in Miami, 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 they 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 insurance 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 homes, group homes, and residential group care facilities for compliance. Department of Children and Families licensing is contingent on adherence to these rules by foster homes, group homes, and residential group care facilities. The CBCs prefer that the department have sole rulemaking authority for the facilities it licenses. They consider some of the Department of Health rules to be excessively restrictive, require expensive compliance, and not be 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 to provide for automobile liability coverage, multi-year, fixed price contract and third party monitoring.

**Section 2.** Amends s. 409.175, F.S., relating to licensure of foster care homes and residential facilities to provide for department approval of health standards.

**Section 3.** Provides an appropriation of \$299,389.

**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 statewide outsourcing of programmatic monitoring of Community Based Care.

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*
Less DCF Offset		(\$2,365,000)
Balance Needed		\$299,389

\*The department has estimated the cost of the provisions of the bill, and offset that figure with funds in its base budget that are currently used to carry out monitoring activities. (See fiscal comments below.)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Families estimates that 25% of the Contract Oversight Unit staff, or 14 FTEs, would no longer be required if administrative monitoring functions for CBCs were outsourced. Likewise, an estimated 50% of Quality Assurance staff, or 29 FTEs, would no longer be required if programmatic monitoring were outsourced. This results in an estimated offset of an average \$55,000 per person, times 43 FTEs, for a total offset of \$2,365,000. (The net dollars needed would be \$290,407 from the General Revenue Fund and \$8,982 from the Federal Grants Trust Fund.)

According to the department, it is currently in the process of reorganizing its management and oversight functions to establish more accountability and effectiveness in purchasing outsourced delivery of services. The department is concerned that outsourcing of programmatic 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 contracted for services.

### 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.

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

The Department of Children and Families 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.

#### D. STATEMENT OF THE SPONSOR

Based on issues identified by the CBCs and the department, I will offer an amendment to the Proposed Council Substitute.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

**On March 13, 2007**, the Committee on Healthy Families adopted a "strike-all" amendment by the bill sponsor and reported the bill favorably with the strike-all traveling with the bill.

#### **The strike-all amendment:**

- Amended s. 409.1671, F.S.; providing for general liability insurance coverage for community-based provider staff under certain circumstances;
- Required 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;
- Required a compliance supplement regarding flexibility of allowable expenditures;
- Amended s. 409.175, F.S.; providing for department approval of certain health standards; and
- Provided an enacting date of July 1, 2007.

The strike-all left 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.

**On March 27, 2007**, the Healthcare Council adopted four amendments to the strike-all amendment and reported the bill favorably as a Council Substitute.

**Amendments 2 & 3** to the strike-all are technical amendments that clean up the automobile liability insurance language that lets employees be covered under a Lead Agency policy.

**Amendment 4** added provisions to statute from the provisions in chapter law for the pilot project. The provisions allow the department an exemption from competitive contracting for one more year for statewide phase-in of program monitoring, and require the department and lead agencies agree on monitoring.

**Amendment 5** provided an appropriation of \$299,389 to meet the total cost of outsourcing the monitoring. The department will fund the contracts with \$2,365,000 that is offset from staff reductions, and needs the additional funds to meet total costs .

The analysis is drafted to the Council Substitute.