The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/CS/SB 1366
INTRODUCER:	Health Regulation Committee; Children, Families, and Elder Affairs Committee; and Senator Storms
SUBJECT:	Child Welfare/Mental Health/Substance Abuse
DATE:	April 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Fav/CS**
2.	O'Callaghan	Stovall	HR	**Fav/CS**
3.	Carpenter	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill includes managing entities and the agencies that have contracted with monitoring agents among the entities who must identify and implement changes that improve the efficiency of administrative monitoring of child welfare services and the efficiency of administrative, licensure, and programmatic monitoring of mental health and substance abuse service providers.

To improve efficiency, these entities must limit administrative monitoring to once every three years if the provider of child welfare services is accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA), and must limit administrative, licensure, and programmatic monitoring to once every three years if the provider of mental health or substance abuse services is accredited by these entities.

The bill provides that the limitations on administrative, licensure, and programmatic monitoring apply only to providers of mental health or substance abuse services that are accredited for the services being monitored and, despite the limitations on such monitoring, these entities may continue to monitor the service provider as to specified areas of concern.

These entities must also allow the private sector to develop and implement an Internet-based, secure, and consolidated data warehouse and archive for maintaining certain records of providers of child welfare, mental health, or substance abuse services and the entities must use the data warehouse to request documents.

This bill has no direct fiscal impact on state or local government.

This bill substantially amends the following section of the Florida Statutes: 402.7306.

II. Present Situation:

Contract Monitoring

State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

From November 1, 2008, to October 31, 2009, the Children's Home Society of Florida (CHS) surveyed[1] 174 programs,[2] in an effort to "assess the quantity of external contract monitoring of CHS programs" and "identify any potential areas of duplication across monitoring by state and designated lead agencies." According to the responses:

- The 174 CHS programs were monitored 222 times by state and community-based agencies, and 1,348 documents were requested in advance of site monitoring visits.
- Of the document requests, 417 were requested by other state agencies or other divisions within a state agency.
- Professional program staff spent 966 cumulative hours on duplicative requests.

To address these concerns, in 2010, the Legislature enacted HB 5305,[3] which required that health and human services contracting agencies[4] limit administrative monitoring to once every three years, if the contracted provider of child welfare services is accredited by the Joint Commission, the CARF, or the COA.

In addition, the bill authorized private-sector development and implementation of an Internet-based, secure, and consolidated data warehouse for maintaining corporate, fiscal, and administrative records related to child welfare provider contracts, and required state agencies that contract with child welfare providers to access records from this database.

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[1] CHS, *Case Study- Contract Monitoring Survey*, (November 30, 2009), on file with the Senate Health Regulation Committee.
[2] There was a 100% response rate.
[3] Chapter 2010-158, Laws of Florida.
[4] "Contracting or funding agencies" are defined as a state agency or other non-profit organization (including community-based organizations) that contract state funds to a program. The contracting agencies include the Department of Children and Families, Department of Health, Agency for Persons with Disabilities, Agency for Health Care Administration, and community-based care lead agencies. *See* CHS, *Case Study- Contract Monitoring Survey*, (November 30, 2009).

Entities not covered by the newly-enacted law — that is, entities other than child welfare providers — have expressed similar concerns about excessive monitoring and auditing by human services agencies. Meridian Behavioral Healthcare advises[5] that in a 12-month period ending February 2011, they were the subject of 17 audits, 14 of which were by state agencies. Other than contract-specific data, all audited items are reviewed by CARF prior to Meridian's accreditation.[6]

Mental Health and Substance Abuse

Section 394.66(16), F.S., expresses the Legislature's intent that "the state agencies licensing and monitoring contracted [substance abuse and mental health service] providers perform in the most cost-efficient and effective manner with limited duplication and disruption to organizations providing services."

"Mental health services" are those therapeutic interventions and activities that help to eliminate, reduce, or manage symptoms or distress for persons who have severe emotional distress or a mental illness and to effectively manage the disability that often accompanies a mental illness so that the person can recover from the mental illness, become appropriately self-sufficient for his or her age, and live in a stable family or in the community. The term also includes those preventive interventions and activities that reduce the risk for, or delay, the onset of mental disorders, including treatment, rehabilitative, support, and case management services.[7]

"Substance abuse services" are those services designed to prevent or remediate the consequences of substance abuse, improve an individual's quality of life and self-sufficiency, and support long-term recovery. They include prevention, assessment, intervention, rehabilitation, and other ancillary services.[8]

In establishing behavioral health managing entities, the Legislature intended that:

> A management structure that places the responsibility for publicly financed behavioral health treatment and prevention services[9] within a single private, nonprofit entity at the local level will promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. [In addition] streamlining administrative processes will create cost efficiencies and provide flexibility to better match available services to consumers' identified needs.[10]

A managing entity is a nonprofit organization under contract with the Department of Children and Family Services (DCF) to manage the day-to-day operational delivery of behavioral health

[5] Audit Data. Meridian Behavioral Healthcare, on file with the Senate Health Regulation Committee.
[6] *Id.*
[7] Section 394.67(15), F.S.
[8] Section 394.67(24), F.S.
[9] Behavioral health services are mental health services and substance abuse prevention and treatment services provided using state and federal funds. Section 394.9082(2)(a), F.S.
[10] Section 394.9082(1), F.S.

services through an organized system of care.[11] Their goal is to effectively coordinate, integrate, and manage the delivery of effective behavioral health services to persons who are experiencing a mental health or substance abuse crisis, who have a disabling disorder, and require extended services in order to recover, or who need brief treatment or longer-term supportive interventions to avoid a crisis or disability. In addition, the system enhances the continuity of care for all children, adolescents, and adults who enter the publicly funded behavioral health service system.[12]

Licensure Review

Child-placing agencies and residential child-caring agencies are licensed by the DCF.[13] Those entities may be monitored only once per year, and that monitoring may not duplicate the administrative monitoring conducted by their accreditation agency.[14]

Section 394,741, F.S., requires the DCF and the Agency for Health Care Administration (AHCA) to accept accreditation as a substitute for facility onsite licensure review and administrative and programmatic requirements for mental health and behavioral health services.

Section 397.411, F.S., requires DCF to accept, in lieu of its own inspections for licensure, the survey or inspection of an accrediting organization, if the provider is accredited according to the provisions of s. 394.741, F.S., and the DCF receives the report of the accrediting organization.

Substance abuse and mental health facilities are subject to licensure by the AHCA.[15] Section 408.811(2), F.S., provides that

> Inspections conducted in conjunction with certification, comparable licensure requirements, or a recognized or approved accreditation organization may be accepted in lieu of a complete licensure inspection. However, a licensure inspection may also be conducted to review any licensure requirements that are not also requirements for certification. (emphasis supplied)

III. Effect of Proposed Changes:

The bill includes managing entities and the agencies that have contracted with monitoring agents among the entities who must identify and implement changes that improve the efficiency of administrative monitoring of child welfare services and the efficiency of administrative, licensure, and programmatic monitoring of mental health and substance abuse service providers.

The bill defines "mental health and substance abuse service providers" as providers who provide services to Florida's "priority population." Under s. 394.674, F.S., to which the bill refers, a priority population consists of:

- For adult mental health services:

[11] Section 394.9082(2)(d), F.S.
[12] Section 394.9082(5), F.S.
[13] Section 409.175, F.S.
[14] Section 402.7305(4), F.S.
[15] Section 408.801, F.S., *et seq*.

  - Adults who have severe and persistent mental illness, as designated by the DCF using criteria that include severity of diagnosis, duration of the mental illness, ability to independently perform activities of daily living, and receipt of disability income for a psychiatric condition.
  - Persons who are experiencing an acute mental or emotional crisis as defined in s. 394.67(17), F.S.
- For children's mental health services:
  - Children who are at risk of emotional disturbance as defined in s. 394.492(4), F.S.
  - Children who have an emotional disturbance as defined in s. 394.492(5), F.S.
  - Children who have a serious emotional disturbance as defined in s. 394.492(6), F.S.
  - Children diagnosed as having a co-occurring substance abuse and emotional disturbance or serious emotional disturbance.
- For substance abuse treatment services:
  - Adults who have substance abuse disorders and a history of intravenous drug use.
  - Persons diagnosed as having co-occurring substance abuse and mental health disorders.
  - Parents who put children at risk due to a substance abuse disorder.
  - Persons who have a substance abuse disorder and have been ordered by the court to receive treatment.
  - Children at risk for initiating drug use.
  - Children under state supervision.
  - Children who have a substance abuse disorder but who are not under the supervision of a court or in the custody of a state agency.
  - Persons identified as being part of a priority population as a condition for receiving services funded through the Center for Mental Health Services and Substance Abuse Prevention and Treatment Block Grants.

To improve efficiency, these entities must limit administrative monitoring to once every three years if the provider of child welfare services is accredited by the Joint Commission, the CARF, or the COA and must limit administrative, licensure, and programmatic monitoring to once every three years if the provider of mental health or substance abuse services is accredited by these entities.

The bill provides that the limitations on administrative, licensure, and programmatic monitoring apply only to providers of mental health or substance abuse services that are accredited for the services being monitored and if the accrediting body does not require documentation that the state agency requires, that documentation must be requested by the agency and may be posted by the service provider on the data warehouse for the agency's review. Despite the limitations on such monitoring, the agency may continue to monitor the service provider as to the following:

- Ensuring that services for which the entity is paying are being provided.
- Investigating complaints, identifying problems that would affect the safety or viability of the service provider, and monitoring the service provider's compliance with any resulting negotiated terms and conditions, including provisions relating to consent decrees that are unique to a specific service and are not statements of general applicability.
- Ensuring compliance with federal and state laws, federal regulations, or state rules if such monitoring does not duplicate the accrediting organization's review pursuant to accreditation standards.

The bill also provides that Medicaid certification and precertification reviews of providers of child welfare, mental health, or substance abuse services are exempt from the monitoring limitations to ensure Medicaid compliance.

The monitoring entities must also allow the private sector to develop and implement an Internet-based, secure, and consolidated data warehouse and archive for maintaining certain records of providers of child welfare, mental health, or substance abuse services and the entities must use the data warehouse to request documents.

The bill provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector, i.e., child welfare, mental health, and substance abuse will experience fewer monitoring visits, thereby increasing the amount of time available to spend on providing direct services.

C. Government Sector Impact:

A limit on allowed administrative, licensure, and programmatic monitoring could potentially lead to a reduction in expenditures of certain state agencies and covered entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on April 4, 2011:

- Corrects the catch line;
- Clarifies that certain agencies and managing entities must identify and implement changes that improve the efficiency of not only administrative monitoring, but also licensure and programmatic monitoring of mental health and substance abuse service providers;
- Clarifies that the term "mental health and substance abuse service provider" means providers providing services to the state's priority population as defined in law;
- Updates names of accrediting bodies;
- Limits administrative, licensure, and programmatic monitoring to once every 3 years if the mental health or substance abuse service provider is accredited by the Joint Commission, Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation, unless the services being monitored are not those for which the provider is not accredited;
- Requires the mental health or substance abuse service provider to provide certain documentation to the agency if that documentation was not required for accreditation;
- Provides that despite being accredited, an agency may continue to monitor whether services that the agency is paying for are being provided; complaints, problems that would affect the safety or viability of the service provider, the service provider's compliance with any negotiated terms and conditions; and compliance with federal and state laws, federal regulations, or state rules if such monitoring does not duplicate the accrediting organization's review; and
- Exempts Medicaid certification and precertification reviews to ensure Medicaid compliance.

CS by Children, Families and Elder Affairs on March 14, 2011:
The Committee adopted an amendment which clarified that the limitations on monitoring do not apply to services for which the provider is not accredited, and deleted unnecessary directory language.

B. Amendments:

None.