

**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 Governmental Oversight and Accountability Committee

**BILL:** CS/SB 374

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Bogdanoff

**SUBJECT:** Health and Human Services Contracts

**DATE:** April 6, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.			CF	
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill creates a Health and Human Services Contract Resource Council to promote interdepartmental coordination for the administrative and fiscal contract management of health and human services outsourced by the Department of Children and Family Services, the Department of Elderly Affairs, the Department of Health, the Agency for Persons with Disabilities, the Department of Juvenile Justice, and the Agency for Health Care Administration.

The bill also creates an exemption from competitive procurement requirements for services provided by an eligible lead community-based provider currently under contract with the Department of Children and Family Services and in compliance with the department's performance, fiscal, and administrative standards.

This bill substantially amends sections 287.057 and 287.0575 of the Florida Statutes.

## II. Present Situation:

### Contracting and Outsourcing

Privatization involves the provision of publicly funded services by nongovernment entities. Privatization can take several forms, including the cessation of services by government, the outsourcing of services by government, the divestiture of government assets, and the use of public-private partnerships. Outsourcing has become a common approach to providing human services as states and localities face budget crises and struggle to ensure the same level of services with limited resources. Government is increasingly turning to nonprofit groups, community-based organizations, faith-based organizations, charitable agencies, and private-sector companies to provide human services.<sup>1</sup>

Although the terms “privatization” and “outsourcing” are often used interchangeably, the two service structures are different. With privatization, program infrastructure is transferred entirely from the government to another service provider. The government ceases to provide those services. With outsourcing, the government competitively contracts with a vendor to provide specific services. Most outsourced functions involve transferring responsibilities for the management, operation, upgrade, and maintenance of some infrastructure to the contracted vendor, with the government agency retaining a central role in program oversight.<sup>2,3</sup> The Florida Statutes define “outsource” as the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources.<sup>4</sup>

Many factors drive government to outsource the delivery of human services, including the desire to improve service, increase efficiency, and ensure cost-effectiveness. 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.

#### *Department of Juvenile Justice (DJJ)*

The Department of Juvenile Justice contracts for residential, probation, prevention, and detention ancillary services pursuant to ch. 287, F.S., relating to procurement of personal property and services. All services are competitively procured, with the exception of medical and mental health care.<sup>5</sup>

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<sup>1</sup> Bandoh, E. *Outsourcing the Delivery of Human Services*, Welfare Information Network, Issue Notes. Vol. 7, No. 12 October 2003. Available at: <http://76.12.61.196/publications/outsourcinghumanservicesIN.htm> (Last visited March 14, 2010.)

<sup>2</sup> *Id.*

<sup>3</sup> In Florida law, the term “outsource” means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources. See s. 287.05721, F.S.

<sup>4</sup> Section 287.012(19), F.S.

<sup>5</sup> Department of Juvenile Justice. 2010 Legislative Session Bill Analysis, SB 1584, February 9, 2010.

Section 985.632, F.S., requires DJJ to conduct quality assurance reviews of all programs and services. Program monitors have been integrated with quality assurance reviewers to annually conduct programmatic monitoring as a team. Accreditation is not used to satisfy verification of contractual compliance or to determine whether programs are meeting appropriate health, safety, and treatment requirements. Program monitors provide oversight of contracted programs. A contract manager conducts administrative monitoring once per year for each provider. The department's administrative/fiscal monitoring focuses on the accounting for all contract funds/expenditures to determine that funds have been expended in accordance with the contract and all applicable laws, rules, and regulations. Programmatic monitoring focuses on the delivery of services to youth.<sup>6</sup>

#### ***Agency for Health Care Administration (AHCA)***

The Agency for Health Care Administration does not typically outsource human services related to mental health, substance abuse, child welfare, or juvenile justice. The agency purchases and reimburses providers and managed care plans for these services.<sup>7</sup>

#### ***Department of Children and Family Services (DCF)***

Section 20.19, and Chapters 287 and 402, F.S., require DCF, whenever possible in accordance with established program objectives and performance criteria, to contract for the provision of services by counties, municipalities, not-for-profit corporations, for-profit corporations, and other entities capable of providing needed services, if services so provided are more cost-efficient than those provided by the department.<sup>8</sup> In addition, the department conducts competitive procurements for child welfare services that have been outsourced pursuant to s. 409.1671, F.S.

### **Coordination of Contracted Services**

Section 287.0575, F.S., specifies duties relating to health and human services contracts and the Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, and the Department of Veterans' Affairs. The law requires certain contract service providers to supply specified information, and requires administrative coordinators to perform specified duties relating to contract management.

### **Payment Issues**

Current law provides payment procedures for invoices submitted to a state agency. Invoices must be filed with the Chief Financial Officer (CFO), recorded in the financial systems of the state, approved for payment by the agency, and filed with the CFO not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services. In the case of a

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<sup>6</sup> *Id.*

<sup>7</sup> Agency for Health Care Administration. 2010 Bill Analysis and Economic Impact Statement, SB 1584.

<sup>8</sup> Department of Children and Family Services, Procurement and Contract Management, Contract Management System For Contractual Services. CFOP 75-2. Available at: <http://www.dcf.state.fl.us/admin/publications/policies/075-2.pdf>. (Last visited March 13, 2010).

dispute, the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed.<sup>9</sup>

### **Executive Branch Organizational Structure**

Section 20.03(9), F.S., provides that a “coordinating council” is an interdepartmental advisory body created by law to coordinate programs and activities for which one department has primary responsibility but in which one or more other departments have an interest, and s. 20.052, F.S., specifies further requirements as to advisory bodies.

### **Coordination of Contracted Services**

Pursuant to s. 287.0575, F.S., certain duties and responsibilities of the Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, and the Department of Veterans’ Affairs, and service providers under contract to those agencies, are established:

- No later than August 1, 2010, or upon entering into any new contract for health and human services, state agencies contracting for health and human services must notify their contract service providers of the requirements of this section.
- No later than October 1, 2010, contract service providers that have more than one contract with one or more state agencies to provide health and human services must provide to each of their contract managers a comprehensive list of their health and human services contracts.
- With respect to contracts entered into on or after August 1, 2010, effective November 1, 2010, or 30 days after receiving the list provided above a single lead administrative coordinator for each contract service provider shall be designated as provided in this subsection from among the agencies having multiple contracts as provided in subsection above.
- The designated lead administrative coordinator shall be responsible for:
  - Establishing a coordinated schedule for administrative and fiscal monitoring;
  - Consulting with other case managers to establish a single unified set of required administrative and fiscal documentation;
  - Consulting with other case managers to establish a single unified schedule for periodic updates of administrative and fiscal information; and
  - Maintaining an accessible electronic file of up-to-date administrative and fiscal documents, including, but not limited to, corporate documents, membership records, audits, and monitoring reports.
- Contract managers for agency contracts other than the designated lead administrative coordinator must conduct administrative and fiscal monitoring activities in accordance with the coordinated schedule and must obtain any necessary administrative and fiscal documents from the designated lead administrative coordinator’s electronic file.
- This section does not apply to routine program performance monitoring or prohibit a contracting agency from directly and immediately contacting the service provider when the health or safety of clients is at risk.

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<sup>9</sup> s. 215.422, F.S.

- Each agency contracting for health and human services must annually evaluate the performance of its designated lead administrative coordinator and submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

### **III. Effect of Proposed Changes:**

#### **Health and Human Services Contract Resource Council**

The bill amends s. 287.0575, F.S., to create the Health and Human Services Contract Resource Council and houses it in the Department of Management Services, which must provide administrative support to the council. The council is intended to promote interdepartmental collaboration and program administration for contracts.

The council will consist of the agency heads, or designees, of the Department of Children and Family Services, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Agency for Health Care Administration, and the Department of Veterans' Affairs. The council will select a chair from among its members.

The council must:

- Develop and implement a shared and cohesive vision on how to deliver integrated services to eliminate administrative duplication and improve outcomes.
- Align, coordinate, and consolidate administrative and fiscal performance standards into model consolidated standards for vendors that provide health and human services. The model consolidated standards must be used by the agencies in monitoring contracts and as part of each agency's evaluation of competitive bids for health and human services.
- Review, align, coordinate, consolidate, and recommend uniform administrative rules and policies.
- Review the monitoring protocols related to the administrative and fiscal requirements of vendors that provide health and human services to ensure that the protocols are in compliance with this section.
- Design and implement actions that promote collaboration, creativity, increased efficiency, information sharing, and improved service delivery between and within state agencies and organizations that provide services.
- Make recommendations for the establishment of a consolidated data warehouse and archive to maintain the corporate, fiscal, and administrative records of vendors that provide health and human services, including recommendations to ensure that the administrative and fiscal data are up-to-date and accessible to other agencies, participating vendors, and the general public through web-based technology, and managed in a manner that allows contract information to be aggregated and assessed to determine the amount, value, and achievement of administrative standards by vendor, by agency, and by type of service.
- Identify to the greatest extent possible, existing and potential private and nonstate moneys and resources for improving contracting efficiencies.
- Engage in other activities that will improve collaboration of agencies in order to create, manage, and promote coordinated policies, programs, and service delivery systems.
- Designate the lead state agency for all administrative and fiscal matters related to contracts for health and human services.

The bill requires the council to designate lead administrative coordinators, and requires agencies to submit reports to the council.

#### **Procurement Exemption**

The bill amends the procurement exemption provisions of s. 287.057(3)(f), F.S., to specify that services provided by an eligible lead community-based provider as described in s. 409.1671(1)(e) currently under contract with the Department of Children and Family Services and in compliance with the department's performance, fiscal, and administrative standards are not subject to the competitive solicitation requirements of s. 287.057, F.S.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

A coordinating council is specified as an advisory body to coordinate programs and activities for which one department has primary responsibility. It is not clear that one agency has primary

responsibility in the creation of this council, since the contracting duties are within the purview of each individual agency.

The bill requires the council to make recommendations for the establishment of a “consolidated data warehouse.” The state has been moving for two years towards centralizing all state data centers, pursuant to legislative direction and the guidance of the Agency for Enterprise Information Technology, and agencies may not create new computing facilities or data centers unless authorized by the Legislature.<sup>10</sup> A bill moving through the Senate as of April 1, 2011, SB 7092, further specifies the consolidation of state data centers.

#### **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 Governmental Oversight and Accountability on April 5, 2011:**

The committee substitute changes the entity from a center to a coordinating council, and adjusts some of its duties accordingly.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>10</sup> See s. 282.201(4), F.S.