

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 817 Renewal of Title IV-E Waivers for Child Welfare Services

**SPONSOR(S):** Harrell

**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Darden	Miller
2) Health & Human Services Committee	20 Y, 0 N	Grabowski	Calamas
3) Government Accountability Committee			

### SUMMARY ANALYSIS

HM 817 is a memorial to the U.S. Congress requesting legislation under which Florida's existing Title IV-E waiver for child welfare services could be renewed in lieu of a return to traditional federal Title IV-E funding.

Title IV-E of the federal Social Security Act provides entitlement funding for out-of-home services for certain children eligible due to family income, placement setting, and vulnerability to maltreatment as well as for certain related purposes. However, Florida currently has a waiver to allow it instead to receive Title IV-E funding as a capped allocation and distribute it to community-based care lead agencies providing child welfare services, which may then use that funding for a wider array of services than otherwise specified in law. This waiver expires September 30, 2018, and federal law bars the operation of any Title IV-E waiver projects after September 30, 2019, which means Florida will have to revert to meeting more restrictive federal requirements for Title IV-E funding in the near future.

The memorial presents the rationale for continuing the existing Title IV-E waiver beyond September 30, 2019. The waiver allows the state to provide an expanded range of community-based services and supports to children and families that might otherwise be jeopardized by a reversion to the traditional Title IV-E funding model.

HM 817 also directs that copies of the memorial be provided to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

The memorial does not have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be ameliorated, the child welfare system finds safe out-of-home placements for such children, such as relative and non-relative caregivers, foster families, or adoptive families.

To serve families and children, the Department of Children and Families (DCF) contracts for foster care and related services with lead agencies, also known as community-based care organizations (CBCs). The transition to outsourced provision of child welfare services was intended to increase local community ownership of service delivery and design.<sup>1</sup> DCF, through the CBCs, administers a system of care for children to:<sup>2</sup>

- Prevent children's separation from their families;
- Intervene to allow children to remain safely in their own homes;
- Reunify families who have had children removed from their care, if possible and appropriate;
- Ensure safety and normalcy for children who are separated from their families;
- Enhance the well-being of children through educational stability and timely health care;
- Provide permanency; and
- Develop their independence and self-sufficiency.

As of October 31, 2017, 11,911 children were receiving services in their home, while 24,318 children were in out-of-home care.<sup>3</sup> Out-of-home placements range from temporary placement with a family member to a family foster home to a residential child-caring agency to a permanent adoptive placement with a family previously unknown to the child.<sup>4</sup>

Florida uses funds from a variety of sources for child welfare services, such as the Social Services Block Grant, the Temporary Assistance to Needy Families block grant, Title XIX Medicaid administration, Title IV-B, Title IV-E, various other child welfare grants, and general revenue.

##### Title IV-E Funding for Child Welfare

While states bear primary responsibility for child welfare, Congress appropriates funds to states through a variety of funding streams for services to children who have suffered maltreatment. One of these funding streams is Title IV-E of the Social Security Act. Title IV-E provides federal reimbursement to states for a portion of the cost of foster care, adoption assistance, and (in states electing to provide this kind of support) kinship guardianship assistance on behalf of each child who meets federal eligibility criteria. Title IV-E also authorizes funding to support services to youth who "age out" of foster care, or are expected to age out without placement in a permanent family. While Title IV-E funding is an entitlement, eligibility is limited to those children who:

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<sup>1</sup> DEPARTMENT OF CHILDREN AND FAMILIES, *Community-Based Care*, <http://www.myflfamilies.com/service-programs/community-based-care> (last accessed Dec. 20, 2017).

<sup>2</sup> Section 409.145(1), F.S.

<sup>3</sup> DEPARTMENT OF CHILDREN AND FAMILIES, *Child Welfare Key Indicators Monthly Report*, November 2017, p. 29, available at [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_Nov2017.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_Nov2017.pdf) (last accessed Dec. 20, 2017).

<sup>4</sup> Section 409.175, F.S.

- Are from a home with very low income (less than 50% of federal poverty level in most states),
- Have been determined by a judge to need to be in care,
- Are living in a licensed family foster home or a “child care institution”, and
- Be under 18 years old, unless the state has included older youth in its Title IV-E plan.

A Congressional Research Service analysis estimates that less than half of the children in foster care met Title IV-E foster care eligibility criteria in 2015.<sup>5</sup>

Eligible Title IV-E expenditures include:

- Foster care maintenance payments (for the child’s room and board);
- Caseworker time to perform required activities on behalf of eligible children in foster care or children at imminent risk of entering foster care (e.g., finding a foster care placement for a child and planning services necessary to ensure a child does not need to enter care, is reunited with his or her parents, has a new permanent home, or is otherwise prepared to leave foster care);
- Program-related data system development and operation, training, and recruitment of foster care providers; and
- Other program administration costs.

The federal government pays a share of these costs ranging from 50-83%, depending on the nature of the expenditure. Regarding foster care maintenance payments, an additional consideration is the state’s per capita income.<sup>6</sup>

### Title IV-E Waivers

In 1994, Congress authorized the U.S. Department of Health and Human Services (HHS) to approve state demonstration projects made possible by waiving certain provisions of Title IV-E. This provided states flexibility in using federal funds for services promoting safety, well-being, and permanency for children in the child welfare system.<sup>7</sup> HHS may waive compliance with standard Title IV-E requirements and instead allow states to establish projects that allow them to serve children and provide services that are not typically eligible. To do so, states must enter into an agreement with the federal government outlining the terms and conditions to which the state will adhere in using the federal funds. The states also agree to evaluate the projects.<sup>8</sup> Currently 26 states have approved projects, including Florida.<sup>9</sup>

### Florida’s Title IV-E Waivers

Florida’s original Title IV-E waiver was effective on October 1, 2006, and was to extend for five years. Key features of the original waiver were:

- A capped allocation of funds, similar to a block grant, distributed to community-based care lead agencies for service provision;
- Flexibility to use funds for a broader array of services beyond out-of-home care; and
- Ability to serve children who did not meet Title IV-E criteria.<sup>10</sup>

<sup>5</sup> Emelie Stoltzfus, *Child Welfare: An Overview of Federal Programs and their Current Funding*, CONGRESSIONAL RESEARCH SERVICE, January 10, 2017, p. 13-15, available at <https://fas.org/sgp/crs/misc/R43458.pdf> (last accessed Dec. 20, 2017).

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

<sup>7</sup> Amy C. Vargo et al., *Final Evaluation Report, IV-E Waiver Demonstration Evaluation, SFY 11-12*, March 15, 2012, p. 5, available at <http://www.centerforchildwelfare.org/kb/LegislativeMandatedRpts/IV-EWaiverFinalReport3-28-12.pdf> (last accessed Dec. 20, 2017).

<sup>8</sup> 42 U.S.C. §1320a-9(f).

<sup>9</sup> Stoltzfus, *supra* note 6, at 15.

<sup>10</sup> Vargo, *supra* note 7, at 5-6.

The original waiver tested the hypotheses that under this approach:

- An expanded array of community-based care services would become available,
- Fewer children would need to enter out-of-home care,
- Child outcomes would improve, and
- Out-of-home care costs would decrease while expenditures for in-home and preventive services would increase.

Results indicated that the waiver generally achieved these goals, though evaluators noted areas of improvement available regarding the ongoing assessment of fathers' needs; assessment of children's dental, educational, and physical health needs and provision of needed services; frequency of case manager visits with parents; and engagement of fathers in services.<sup>11</sup>

The federal government extended Florida's original waiver to 2014, then approved a renewal retroactively beginning October 1, 2013. The renewal is authorized until September 30, 2018. The renewal waiver's terms and conditions include the following goals:

- Improving child and family outcomes through flexible use of Title IV-E funds;
- Providing a broader array of community-based services and increasing the number of children eligible for services; and
- Reducing administrative costs associated with the provision of child welfare services by removing current restrictions on Title IV-E eligibility and on the types of services that may be paid for using Title IV-E funds.<sup>12</sup>

Like the original waiver, the renewal waiver also involves a capped allocation of funds, flexibility to use funds for a wider array of services, and expanded eligibility for children.<sup>13</sup> The renewal waiver also required that the state procure an independent evaluation of the processes and outcomes under the waiver. The University of South Florida was chosen to complete these evaluations, which are available on the DCF website.<sup>14</sup> Florida was projected to expend an estimated \$182 million in Title IV-E waiver funds in 2016-17, about 15% of total child welfare spending.<sup>15</sup>

### Sunset of Waiver and Non-Renewal

As stated above, Florida's waiver is due to end September 30, 2018. Federal law prohibits the federal government from establishing new waivers or allowing current waivers to operate after September 30, 2019.<sup>16</sup> Thus Florida will revert to more restrictive Title IV-E federal funding requirements beginning in 2018, or in 2019 if the waiver is renewed for an additional year.

### Child and Family Services Review

HHS, through the Children's Bureau, conducts periodic Child and Family Services Reviews in each state. As authorized by federal law, these reviews assess states' compliance with the federal requirements for child welfare systems in Title IV-B and Title IV-E of the Social Security Act. In particular, the Children's Bureau examines whether desired child outcomes are being achieved and whether the child welfare system is structured appropriately and its processes operate effectively.

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<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> *Demonstration Project Terms and Conditions*, p. 4, available at <http://www.centerforchildwelfare.org/kb/GenIVE/WaiverTErms2013-2018.pdf> (last accessed Dec. 20, 2017).

<sup>13</sup> *Waiver Authority*, p.1, available at <http://www.centerforchildwelfare.org/kb/GenIVE/WaiverTErms2013-2018.pdf> (last accessed Dec. 20, 2017).

<sup>14</sup> Department of Children and Families, *IV-E Waiver Evaluation Reports*, available at <http://centerforchildwelfare.fmhi.usf.edu/IVEReport.shtml> (last accessed Dec. 20, 2017).

<sup>15</sup> Department of Children and Families, *Child Welfare Funding Basics for Florida in Light of Our Title IV-E Demonstration Waiver and the Family First Prevention Services Act of 2016 - HR 5456*, presented at the Florida Coalition for Children Foundation's 2016 Annual Conference, on file with Local, Federal & Veterans Affairs Subcommittee staff.

<sup>16</sup> 42 U.S.C. s. 1320a-9(d)(2).

In two previous rounds of reviews<sup>17</sup>, no state was assessed as meeting all requirements.<sup>18</sup> The third round began in 2015 and involves a comprehensive analysis of the child welfare system comprising a statewide assessment, interviews, focus groups, and reviews of 80 cases. Through this analysis, the Children's Bureau rates whether a state is in "substantial conformity" with each outcome or systemic factor. For a state to be in substantial conformity with a particular outcome, 95% or more of the cases reviewed must be rated as having substantially achieved the outcome. The substantial conformity assessment for the systemic factors considers information from the statewide assessment, interviews, and focus groups.<sup>19</sup>

The report summarizing Florida's results was issued in late 2016. The report indicated that Florida was not in substantial conformity of any of the 7 outcomes but was in substantial conformity with 3 of 7 systemic factors, including:

- Quality assurance system,
- Staff and provider training, and
- Agency responsiveness to the community.<sup>20</sup>

As the reviews are currently in progress, 24 states and the District of Columbia have a Final State Report for Round 3 posted to the Children's Bureau website.<sup>21</sup> Once a state's review is complete, the state formulates a Performance Improvement Plan to address those outcomes and systemic factors not in substantial conformity.<sup>22</sup> Florida's current Performance Improvement Plan is available on the DCF website.<sup>23</sup>

### **Effect of the Memorial**

The memorial requests that Congress amend federal law to allow for the extension of the existing Title IV-E waiver beyond September 30, 2019. An extension on the existing waiver program would give Florida the flexibility to continue alternative funding models and preserve the expanded array of services and supports that have been developed statewide. In the absence of an extension for the existing waiver, maintaining current service levels may require additional appropriations of state funds.

HM 817 also directs that copies of the memorial be provided to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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<sup>17</sup> U.S. Department of Health and Human Services, *Children's Bureau Fact Sheet: Child and Family Services Reviews*, available at [https://www.acf.hhs.gov/sites/default/files/cb/cfsr\\_general\\_factsheet.pdf](https://www.acf.hhs.gov/sites/default/files/cb/cfsr_general_factsheet.pdf) (last accessed Dec. 20, 2017). Note that because of differences in how the third round of reviews is being conducted, state performance cannot be compared across the reviews. See <http://www.centerforchildwelfare.org/qa/CFSRTools/2016%20CFSR%20Final%20Report.pdf> (last accessed Dec. 20, 2017).

<sup>18</sup> *Id.* The outcomes address safety (children are, first and foremost, protected from abuse and neglect and safely maintained in their homes whenever possible and appropriate), permanency (children have permanency and stability in their living situations, and the continuity of family relationships and connections is preserved for families), and family and child well-being (families have enhanced capacity to provide for their children's needs, and children receive appropriate services to meet their educational needs and adequate services to meet their physical and mental health needs). The systemic factors include the effectiveness of the statewide child welfare information system; the case review system; the quality assurance system; staff and provider training; the service array and resource development; the agency's responsiveness to the community; and foster and adoptive parent licensing, recruitment, and retention.

<sup>19</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau, *Child and Family Services Reviews, Florida Final Report, 2016*, p. 2, at <http://www.centerforchildwelfare.org/qa/CFSRTools/2016%20CFSR%20Final%20Report.pdf> (last accessed Dec. 20, 2017).

<sup>20</sup> *Id.* at 3.

<sup>21</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Reports and Results of the Child and Family Services Reviews (CFSRs)*, [https://library.childwelfare.gov/cwig/ws/cwmd/docs/cb\\_web/SearchForm](https://library.childwelfare.gov/cwig/ws/cwmd/docs/cb_web/SearchForm) (last accessed Dec. 20, 2017).

<sup>22</sup> *Supra* note 17.

<sup>23</sup> FLORIDA'S CENTER FOR CHILD WELFARE, *Child and Family Services Review*, <http://www.centerforchildwelfare.org/CFSRHome.shtml> (last accessed Dec. 20, 2017).

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

**B. SECTION DIRECTORY:**

Not applicable.

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

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This memorial does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The memorial does not provide rulemaking authority or require executive branch rulemaking.

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

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES