

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1650

INTRODUCER: Children, Families, and Elder Affairs Committee; Health Policy Committee; and Senator Albritton

SUBJECT: Child Welfare

DATE: April 17, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Williams</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u>Sneed</u>	<u>Kynoch</u>	<u>AP</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1650 makes a number of changes to the Florida child welfare laws primarily to ensure compliance with federal regulations for implementation of the federal Family First Prevention Services Act and to align with the federal Title IV-E and the Guardianship Assistance Program (GAP) requirements. Specifically, the bill:

- Amends provisions relating to the Relative Caregiver Program (RCP) to require that the Department of Children and Families (DCF) inform relative and nonrelative caregivers of the benefits and program requirements of the RCP and GAP Programs and that caregivers may choose which program is most appropriate for them.
- Provides that guardianship assistance benefits under the GAP will be terminated if the guardian is no longer providing support for the child.
- Clarifies provisions relating to the extended foster care program, including requiring a young adult participating in the program to provide specified documentation of eligibility and granting the DCF rulemaking authority.
- Amends provisions relating to judicial reviews for young adults who are leaving and re-entering extended care.
- Clarifies provisions relating to financial assistance and other benefits available to children and young adults.

- Amends requirements relating to the licensure of family foster homes, residential child-caring agencies, and child-placing agencies, to either meet federal requirements or to streamline requirements for level I licensing.
- Reduces from three months to 60 days the period of time for a court review following a child's placement in a residential treatment program.

The bill provides that, in questions regarding whether the DCF may provide psychotropic medications to a child in its custody, an advanced practice registered nurse whose specialty is psychiatric nursing and who has prescribing authority under a supervisory protocol established with a physician as provided pursuant to the Nurse Practice Act, may perform certain medical, psychiatric, and psychological examinations of and provide treatment to children in care, and may perform physical, mental, and substance abuse examinations of a person with or requesting child custody services. Under current law, such services must be performed by a physician.

The bill requires the DCF to establish a direct-support organization to support the Florida Children and Youth Cabinet and revises the Cabinet membership.

The bill provides new requirements for reports of child abuse and neglect related to children who are being treated in medical facilities in the state.

The bill provides the DCF with rulemaking authority to administer the extended foster care and GAP Programs.

The bill will have a significant negative, yet indeterminate fiscal impact on state government. See Section V.

The bill takes effect July 1, 2019.

## **II. Present Situation:**

### **The Children and Youth Cabinet**

The Children and Youth Cabinet (Cabinet) was established in 2007 in the Executive Office of the Governor to ensure that Florida's public policy relating to children and youth is developed to promote interdepartmental collaboration and program implementation in order that services designed for children and youth are planned, managed, and delivered in a holistic and integrated manner to improve children's self-sufficiency, safety, economic stability, health, and quality of life.<sup>1</sup>

The Cabinet consists of the Governor and 15 other members, including:

- The secretary of the Department of Children and Families;
- The secretary of the Department of Juvenile Justice;
- The director of the Agency for Persons with Disabilities;
- The director of the Office of Early Learning;
- The State Surgeon General;

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<sup>1</sup> Section 402.56(4)(a), F.S.

- The secretary of the Agency for Health Care Administration;
- The Commissioner of Education;
- The director of the Statewide Guardian Ad Litem Office;
- The director of the Office of Adoption and Child Protection;
- A superintendent of schools, appointed by the Governor; and
- Five members who represent children and youth advocacy organizations and who are not service providers, appointed by the Governor.<sup>2</sup>

The President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Attorney General, and the Chief Financial Officer, or their appointed designees, serve as ex officio members.<sup>3</sup>

The cabinet shall meet at least four times each year, but no more than six times each year, in different regions of the state in order to solicit input from the public and any other individual offering testimony relevant to the issues considered.<sup>4</sup>

Nongovernmental members of the cabinet shall serve without compensation but are entitled to receive per diem and travel expenses in accordance with s. 112.061, F.S., while in performance of their duties.<sup>5</sup>

### **Florida's Child Welfare System**

Florida's 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 addressed, the child welfare system finds safe out-of-home placements for these children.

### **Community-Based Care Lead Agencies**

In Florida, the DCF contracts for case management, out-of-home services and related services with Community Based Care Lead Agencies (CBCs). The CBCs contract with a number of subcontractors for case management and direct care services to children and their families in the child welfare system. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.<sup>6</sup>

### **Child Protective Investigations**

A child protective investigation by the DCF is required if a report is made that meets the statutory definition of child abuse or neglect. An investigation must be commenced either immediately or within 24 hours after the report is received, depending on the nature of the

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<sup>2</sup> Section 402.56, F.S.

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Department of Children and Families, Community Based Care Lead Agency Map, <http://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml> (last visited Apr. 13, 2019).

allegation.<sup>7</sup> The investigator assesses the safety and perceived needs of the child and family and whether the child should receive in-home or out-of-home services.

### **Institutional Child Abuse or Neglect**

Section 39.202, F.S., specifies how allegations of institutional child abuse or neglect are to be investigated. “Institutional child abuse or neglect” is a situation of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child’s care as defined in s. 39.01(54), F.S. An investigation of institutional child abuse or neglect must be commenced immediately unless the institution is not open and the child cannot be located. The investigator must notify the state attorney, law enforcement agency, and licensing agency of the institution to conduct a joint investigation, if feasible.

Currently, the definition of “institutional child abuse or neglect” in s. 39.01(37), F.S., does not specifically list public school employees as possible perpetrators for cases of alleged institutional child abuse or neglect, but such employees are captured in the definition of an “other person responsible for a child’s welfare,” in s. 39.01(54), F.S., which is referenced regarding possible perpetrators in the definition of “institutional child abuse or neglect”. Thus public school employees can be perpetrators of institutional child abuse and neglect even though the plain text of s. 39.01(37), F.S., does not specifically list them but only lists private school employees. If misinterpretation leads to the inaccurate conclusion that a public school employee cannot legally be a perpetrator of institutional child abuse or neglect, then children may be at risk from abusive or neglectful public school employees who would not be subject to investigations of institutional child abuse or neglect.

### **Placement of Children in the Child Welfare System**

The DCF is required to administer a system of care that endeavors to keep children with their families. Protective investigators and Community-based Care lead agencies (CBC) case managers can refer families for in-home services to allow children who would otherwise be unsafe to remain in their own homes.<sup>8</sup>

When a child protective investigator determines that a child cannot receive in-home services, the investigator removes the child from the home and places the child with a safe and appropriate temporary placement. These temporary placements, referred to as out-of-home care, provide housing and services to children until they can return home to their families or achieve permanency with other families through adoption or guardianship. Out-of-home placements include temporary placements with family members, family foster homes, residential child-caring agencies, and permanent adoptive placements with a family previously unknown to the child.<sup>9</sup>

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<sup>7</sup> Section 39.201(2)(a), F.S.

<sup>8</sup> Department of Children and Families, *Child Welfare Key Indicators Monthly Report, February 2019*, p. 31, [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_FEB\\_2019.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_FEB_2019.pdf) (last visited Mar. 14, 2019).

<sup>9</sup> Section 409.175, F.S.

CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.<sup>10</sup> Legislative intent is to place children in a family-like environment when they are removed from their homes.<sup>11</sup> When possible, child protective investigators and CBC case managers place children with relatives or responsible adults whom they know and with whom they have a relationship. These out-of-home placements are referred to as relative and nonrelative caregivers. When a relative or nonrelative caregiver placement is not possible, case managers try to place children in family foster homes licensed by the DCF.

As of January 1, 2019, there were 23,726 children in Florida who were in out of-home care. Of those children, 13,449 or 56.7 percent were in kinship care foster care placements and 10,277 or 43.3 percent were in licensed foster care placements.<sup>12</sup>

### **Relative and Nonrelative Caregivers**

When children cannot remain safely with their parents, placement with relatives is preferred over placement in foster care with nonrelatives. Caseworkers try to identify and locate a relative or relatives who can safely care for the children while parents receive services to help them address the issues that brought the children to the attention of child welfare. Placement with relatives – or kinship care – provides permanency for children and helps them maintain family connections. Kinship care is the raising of children by grandparents, other extended family members, and adults with whom they have a close family-like relationship, such as godparents and close family friends.<sup>13, 14</sup>

Kinship care may be formal and involve a training and licensure process for the caregivers, as well as monthly stipend payments to the caregiver to help defray the costs of caring for the child, and support services. Kinship care may also be informal and involve only an assessment process to ensure the safety and suitability of the home along with supportive services for the child and the caregiver(s). Approximately 25 percent of the children in out-of-home care are living with relatives.<sup>15</sup>

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<sup>10</sup> Fla. Admin. Code R. 65C-28.004(1). Child specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.

<sup>11</sup> Section 39.001(1), F.S.

<sup>12</sup> Foster care includes all children who have been removed from their homes due to abuse, neglect or abandonment. Kinship foster care is a subset that includes children who are placed with relatives or other person(s) deemed to be a significant person in the child's life. Licensed foster care is a subset that includes traditional family foster homes, therapeutic foster homes, group homes, residential placements and other settings requiring a license.

<sup>13</sup> "Fictive kin" is a term used to refer to individuals that are unrelated by either birth or marriage, but have an emotionally significant relationship with another individual that would take on the characteristics of a family relationship.

<sup>14</sup> U.S. Department of Health & Human Services, Administration for Children & Families, Children's Bureau, Child Welfare Information Gateway, About Kinship Care, available at <https://www.childwelfare.gov/topics/outofhome/kinship/about/> (last visited Mar. 17, 2019).

<sup>15</sup> *Id.*

### **Relative Caregiver Program (RCP)**

The Relative Caregiver Program was established in 1998<sup>16</sup> for the purpose of recognizing the importance of family relationships and providing additional placement options and incentives to help achieve permanency and stability for many children who are otherwise at risk of foster care placement. The program provides financial assistance to qualified relatives. Within available funding, the Relative Caregiver Program is also required to provide caregivers with family support and preservation services, school readiness assistance, and other available services in order to support the child's safety, growth, and healthy development. Children living with caregivers who are receiving assistance under the program are also eligible for Medicaid coverage.<sup>17</sup>

In 2014, the Legislature expanded the program to include nonrelatives who a child may have a close relationship with but who are not a blood relative or a relative by marriage. Those nonrelatives are eligible for financial assistance if they are able and willing to care for the child and provide a safe, stable home environment. Before such placement is made, a court must find that the proposed placement is in the best interest of the child.<sup>18</sup>

Current law provides that the statewide average monthly rate for children placed by a court with relatives or nonrelatives who are not licensed as foster homes may not exceed 82 percent of the statewide average foster care rate, and the cost of providing the assistance to any caregiver in the program may not exceed the cost of providing out-of-home care in emergency shelter or foster care.<sup>19</sup>

This program provides monthly cash assistance to relatives who meet eligibility rules and have custody of a child under age 18 who has been declared dependent by a Florida court and placed in their home by the DCF, a CBC, or other authorized contracted provider. The monthly cash assistance amount is higher than the Temporary Cash Assistance payment for one child but less than the amount paid for a child in the foster care program.

### **Fostering Connections to Success and Increasing Adoptions Act**

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) was enacted into federal law in October 2008. Among its many provisions, it gave states the option to use funds through federal Title IV-E of the Social Security Act (Title IV-E) for financing guardianship assistance programs (GAP). Otherwise known as subsidized guardianship, the programs enabled children in the care of grandparents and other relatives to exit foster care into permanent homes.<sup>20</sup>

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<sup>16</sup> Ch. 98-78, Laws of Fla.

<sup>17</sup> Ch. 2014-224, Laws of Fla.

<sup>18</sup> Section 39.5085, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Public Law No. 110-351.

## **Guardianship Assistance Program (GAP)**

Florida established its GAP program in law in 2018.<sup>21</sup> The program will begin July 1, 2019. The GAP allows the DCF to provide caregivers who establish legal guardianship with a larger monthly stipend compared to existing state programs.

Under the federal requirements, if a child meets select Title IV-E eligibility standards, the child's caregiver may also be eligible for a monthly GAP subsidy if:

- The child has been removed from his or her family's home pursuant to a voluntary placement agreement or as a result of a judicial determination that allowing the child to remain in the home would be contrary to the child's welfare;
- The child is eligible for federal foster care maintenance payments under Title IV-E of the Social Security Act for at least six consecutive months while residing in the home of the prospective relative guardian who is licensed or approved as meeting the licensure requirements as a foster family home;
- Returning home or adoption are not appropriate permanency options for the child;
- The guardian demonstrates a strong commitment to caring permanently for the child; and,
- The child has been consulted regarding the guardianship arrangement (applicable to children age 14 and older).<sup>22</sup>

A prospective guardian must meet certain conditions to qualify for a GAP subsidy. He or she must:

- Be the eligible child's relative or close fictive kin;
- Have undergone fingerprint-based criminal record checks and child abuse and neglect registry checks;
- Be a licensed foster parent and approved for guardianship assistance by the relevant state department;
- Display a strong commitment to caring permanently for the child; and,
- Have obtained legal guardianship of the child after the guardianship assistance agreement has been negotiated and finalized with the state.

Nonrelative caregivers currently receive monthly assistance supported by the state General Revenue Fund. Until the Legislature authorized the GAP effective July 1, 2019, the RCP provided the only financial assistance available to relative and nonrelative caregivers who have children placed with them. The RCP and GAP programs will run concurrently starting July 1, 2019. Under current law, effective July 1, 2019, relative and nonrelative caregivers must first fail to meet the requirements of the GAP before being admitted into the RCP.

## **Title IV-E Waivers**

In 1994, the U.S. Department of Health and Human Services (HHS) was authorized 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

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<sup>21</sup> Section 39.6225, F.S.

<sup>22</sup> 42 U.S.C. s. 673(d)(3)(A).

permanency for children in the child welfare system.<sup>23</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. Currently, 26 states have approved projects, including Florida.

### **Florida's Title IV-E Waiver**

Florida's original Title IV-E waiver was effective October 1, 2006. Key features of the waiver were:

- A capped allocation of funds, similar to a block grant, distributed to CBCs 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.

The original waiver tested the hypotheses that under this approach:

- An expanded array of CBC 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.

Florida's waiver is due to end September 30, 2019. Florida will revert to the more restrictive Title IV-E federal funding requirements beginning the next day. When the waiver expires, the state will be required to revert to a traditional Title IV-E service model, which will both eliminate federal support for many current services, forcing the state to either end those services or pay for them without federal funds. The DCF estimates that under the latter option, expiration of the waiver will lead to an operating deficit of roughly \$70-90 million per year over the next five fiscal years.

### **Family First Prevention Services Act**

The Family First Prevention Services Act (Family First) was enacted by Congress and signed into law on February 9, 2018 as part of H.R. 1862, also known as the Bipartisan Budget Act of 2018.<sup>24</sup> Family First amended Title IV-E and Title IV-B of the Social Security Act to make significant changes to child welfare laws in an effort to help keep children safely with their families and avoid having to enter the foster care system, to emphasize the importance of children growing up in families, and to help ensure that children are placed in the least restrictive, most family-like setting appropriate to their needs when out-of-home care is needed.<sup>25</sup>

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<sup>23</sup> Amy C Vargo et al., *IV-E Waiver Demonstration Evaluation, Final Evaluation Report, SFY 11-12*, (Mar. 15, 2012), available at <http://centerforchildwelfare.org/kb/LegislativeMandatedRpts/IV-EWaiverFinalReport3-28-12.pdf> (last visited Mar. 19, 2019).

<sup>24</sup> Public Law No. 115-123

<sup>25</sup> Children's Defense Fund, *Family First Prevention Services Act*, available at <https://www.childrensdefense.org/policy/policy-priorities/child-welfare/family-first/> (last visited Mar. 19, 2019).

Family First has provisions impacting federal support for child welfare and foster care. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, Family First gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid the out-of-home placement of children, without regard to family income. The services that states can be reimbursed for, providing the children and their families meeting eligibility requirements, address mental health and substance abuse services, family counseling services, and parenting skills training. However, it is important to note that Family First places limits on federal funding for placements in group homes.

Family First also includes funding opportunities for states that establish and operate kinship navigator programs.<sup>26</sup> These programs offer information to help relative caregivers and fictive kin learn about and access the range of support services available to them and children in their care provided by public, private, community, and faith-based organizations.<sup>27</sup>

As Florida provides these types of preventative services to families in the child welfare system, the state may be able to offset some of the costs associated with the expiration of its Title IV-E waiver by taking advantage of the new and enhanced federal funds available under Family First. Florida also uses Title IV-E funds for placements in group care. How much additional federal IV-E funds the state will be able to earn under family First is presently unknown. The Congressional Budget Office estimates that Family First will result in new federal outlays nationally over the next ten years of \$1.5 billion for foster care prevention services or an average of \$150 million per year, and approximately \$125 million in Title IV-E payments during the next ten years for evidence-based kinship navigator programs.<sup>28</sup> Family First may partially reduce the amount of the deficit Florida will experience with the loss of its Title IV-E waiver.

Family First includes other requirements affecting child welfare practice, such as that the court must conduct an initial hearing to review a child's treatment plan within 60 days after the child's admission to a residential treatment program.

Family First recognizes adjustments will be needed to establish prevention services to keep children safely in families and in care that meets their special treatment needs. States have flexibility in defining the safety services they provide to children and families and how they will ensure quality residential treatment for children with emotional and behavioral needs.<sup>29</sup>

Florida has requested a 2-year extension in implementing Family First.

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<sup>26</sup> *Id.*

<sup>27</sup> See Grandfamilies.org, *Kinship Navigator Programs – Summary & Analysis*, <http://www.grandfamilies.org/Topics/Kinship-Navigator-Programs/Kinship-Navigator-Programs-Summary-Analysis> (last visited Mar. 15, 2019).

<sup>28</sup> Congressional Budget Office, *Estimated Direct Spending and Revenue Effects of Division E of Senate Amendment 1930, the Bipartisan Budget Act of 2018*, (Feb. 8, 2018), <https://www.cbo.gov/publication/53557> (last visited Mar. 17, 2019).

<sup>29</sup> *Id.*

## Extended Foster Care

The Legislature established the framework for the extended foster care program, which applies to young adults age 18 to 21 who did not achieve permanency prior to age 18.<sup>30</sup> The program builds on independent living assistance services that were previously available to young adults who “aged-out” of the foster care system.<sup>31</sup> The extended foster care program qualifies for federal Title IV-E reimbursement.

Section 39.6251(2), F.S., sets the criteria for extended foster care services, which are available to young adults who are living in licensed care on their 18<sup>th</sup> birthday and who are:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed for at least 80 hours per month; or
- Unable to participate in programs or activities listed above full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.<sup>32</sup>

Currently, the Florida Statutes do not require a young adult to furnish documentation regarding whether his or her participation meets these requirements.

## Regulation of Nursing

As authorized under s. 20.43, F.S., the Department of Health (DOH) and its Division of Medical Quality Assurance is responsible for regulating 30 health care professions. Among those professions is nursing and the Board of Nursing (BON), as created under Part I of Ch. 464, F.S., the Nurse Practice Act, which governs the licensure and regulation of nurses in Florida. Nurses are licensed by the DOH<sup>33</sup> and regulated by the BON.<sup>34</sup> A person desiring to practice nursing in Florida must obtain a Florida license by examination,<sup>35</sup> endorsement,<sup>36</sup> or hold an active multistate license pursuant to s. 464.0095, F.S., the Nurse Licensure Compact.<sup>37</sup>

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<sup>30</sup> Ch. 2013-178, Laws of Fla.

<sup>31</sup> See Bill Analysis and Fiscal Impact Statement of CS/SB 1036, Senate Appropriations Committee (Apr. 21, 2013) <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=2013s1036.ap.DOCX&DocumentType=Analysis&BillNumber=1036&Session=2013>

<sup>32</sup> Section 39.6251(2), F.S.

<sup>33</sup> Section 464.008, F.S.

<sup>34</sup> The Board of Nursing is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the BON must be 60 years of age or older. See s. 464.004, F.S.

<sup>35</sup> An individual must pass the National Council Licensure Examination (NCLEX), have graduated from an approved nursing education program, and pass applicable background screening. See s. 464.008, F.S.

<sup>36</sup> Licensed in another state or territory, actively practiced nursing for two of the previous 3 years prior to application without discipline, and meet the equivalent educational and examination qualifications.

<sup>37</sup> In 2016, the Legislature created s. 464.0095, F.S., which adopts the revised Nurse Licensure Compact (NLC) in its entirety into state law. This legislation allows licensed practical and professional nurses to practice in all member states by maintaining a single license in the nurse’s primary state of residence. The effective date of s. 464.0095, F.S., was December 31, 2018, or upon enactment of the revised NLC into law by 26 states, whichever occurs first. At least 26 states have enacted the revised NLC into law and the Enhanced Nurse Licensure Compact Interstate Commission set the

## Advanced Practice Registered Nurses

An “Advanced Practice Registered Nurse” (APRN) is a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, such as certified registered nurse anesthetists (CRNAs), psychiatric nurses, certified nurse midwives (CNM), and nurse practitioners.<sup>38</sup> The term “advanced or specialized nursing practice” is also defined.<sup>39</sup>

Advanced or specialized nursing practice means, in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the BON, which, by virtue of specialized education, training, and experience, are appropriately performed by an APRN. Within the context of advanced or specialized nursing practice, the APRN may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The APRN may also perform acts of medical diagnosis and treatment, prescription, and operation as authorized within the framework of an established protocol under the supervision of a physician.<sup>40</sup> In addition, within a supervisory protocol, an APRN may:

- Prescribe, dispense, administer, or order any drug; however, an APRN must have graduated from a program leading to a master’s or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills before being allowed to prescribe controlled substances;
- Order diagnostic tests and physical and occupational therapy;
- Order any medication for administration in a hospital, ambulatory surgical center, or nursing home; and
- Perform additional acts within his or her specialty.<sup>41</sup>

Subsection (6) of s. 464.012, F.S., directs the BON to establish a committee to recommend a formulary of controlled substances that an APRN may not prescribe or prescribe only for specific uses or limited quantities. The language goes on to indicate that the formulary must restrict the prescribing of psychiatric mental health controlled substances for children younger than 18 years of age to advanced practice registered nurses who also are psychiatric nurses as defined in s. 394.455, F.S. The formulary must also limit the prescribing of Schedule II controlled substances as listed in s. 893.0, F.S., to a 7-day supply, except that such restriction does not apply to controlled substances that are psychiatric medications prescribed by psychiatric nurses as defined in s. 394.455, F.S.

An APRN must maintain medical malpractice insurance or provide proof of financial responsibility, unless otherwise exempt.<sup>42</sup>

Any nurse desiring to obtain Florida certification as an APRN must submit to the DOH, among other information, proof that he or she holds a current Florida professional nursing license as

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implementation date as January 19, 2018. The DOH and the Florida BON have implemented the NLC. *See* <http://floridasnursing.gov/latest-news/the-enlc-was-implemented-on-january-19-2018> (last visited Jan. 25, 2018).

<sup>38</sup> *See* ss. 464.003(3) and 464.012(1)(a), F.S.

<sup>39</sup> Section 464.003(2), F.S.

<sup>40</sup> Section 464.003(2), F.S.

<sup>41</sup> Section 464.012(3) and (4), F.S.

<sup>42</sup> Section 456.048, F.S.

registered nurse or holds an active multistate license to practice professional nursing, and meets at least one of the following additional requirements:

- Certification by an appropriate specialty board such as a registered nurse anesthetist, psychiatric nurse, or nurse midwife; or
- Graduation from a nursing program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. An applicant graduating on or after October 1, 1998, must meet this requirement for initial certification as a nurse practitioner. An applicant graduating on or after October 1, 2001, must meet this requirement for initial certification as a Certified Registered Nurse Anesthetist (CRNA).<sup>43</sup>

### **The Florida Mental Health Act**

Chapter 394, F.S., is specific to mental health. Part I of ch. 394, F.S., is “The Florida Mental Health Act.” Consisting of ss. 394.451-394.47892, F.S., this part provides the statutory basis under which the DCF plans for, evaluates, and implements a statewide program of mental health, including community services, receiving and treatment facilities, child services, research, and training, as authorized and approved by the Legislature, based on the annual program budget of the DCF.

The DCF also coordinates its efforts with other departments and divisions of the state government, county and municipal governments, and private agencies concerned with and providing mental health services. The DCF establishes standards, provides technical assistance, and exercises supervision of mental health programs of, and the treatment of patients at, community facilities, other facilities for persons who have a mental illness, and any agency or facility providing services to patients pursuant to part I of ch. 394, F.S.

Section 394.455, F.S., provides the definitions of 48 applicable terms used in part I of ch. 394, F.S. Subsection (35) defines “psychiatric nurse” to mean an advanced practice registered nurse licensed under s. 464.012, F.S., who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.

### **Child Welfare: Treating Practitioners**

Section 39.407, F.S., provides for the medical, psychiatric, and psychological examination and treatment of children in care and the physical, mental, and substance abuse examination of a person with or requesting child custody. Under these provisions, the determination of the use or continued use of a psychotropic medication in the treatment of a child in custody may be determined only by a prescribing physician. This must be done only after an attempt to obtain express and informed consent as defined in s. 394.455(15), F.S., and as described in s. 394.459(3)(a), F.S., from the child's parent or legal guardian. In instances where parental rights have been terminated or a parent cannot be located or is unknown, or the parent declines to provide consent, the DCF may, after consultation with a prescribing physician, seek court authorization to provide psychotropic medications to the child.

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<sup>43</sup> Section 464.012(1), F.S.

## Reports of Child Abuse, Abandonment, or Neglect Occurring Out of State

Current law requires all known or suspected child abuse, abandonment, or neglect to be reported to the hotline. However, if the report is of an instance that occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the hotline must not accept the report or call for investigation, but instead must transfer the information on the report to the appropriate state.<sup>44</sup>

## Child Protection Teams

A child protection team<sup>45</sup> (CPT) program is a medically directed, multidisciplinary program that works with local Sheriff's offices and the DCF in child abuse and child neglect cases to supplement investigation activities. The CPTs are tasked with the following:

- Providing expertise in evaluating alleged child abuse and neglect;
- Assessing risk and protective factors; and
- Providing recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.<sup>46</sup>

Current law requires the Children's Medical Services Program in the Department of Health to develop, maintain, and coordinate the services of the CPTs in each of the service districts of the DCF.<sup>47</sup> The role of a CPT is to support activities of the family safety and preservation program of the DCF and provide services deemed by the CPTs to be necessary and appropriate to abused, abandoned, and neglected children upon referral. A CPT must be capable of providing specialized diagnostic assessments, evaluations, coordination, consultation, and other supportive services.<sup>48</sup> Reports of child abuse, abandonment, and neglect made to the DCF that must be referred to CPTs include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age;
- Bruises anywhere on a child 5 years of age or younger;
- Any report alleging sexual abuse of a child;
- Any sexually transmitted disease in a prepubescent child;
- Reported malnutrition or failure of a child to thrive;
- Reported medical neglect of a child;
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival, or have been injured and later died as a result of suspected abuse, abandonment, or neglect; and

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<sup>44</sup> Section 39.201(2)(d), F.S.

<sup>45</sup> "Child protection team" is a team of professionals established by the DOH to receive referrals from the protective investigators and protective supervision staff of the DCF and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. Such team shall provide consultation to other programs of the DCF and other persons regarding child abuse, abandonment, or neglect cases. Section 39.01(13), F.S.

<sup>46</sup> Children's Medical Services, *Child Protection Teams*, available at [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html) (last visited February 25, 2019).

<sup>47</sup> Section 39.303(1), F.S.

<sup>48</sup> Section 39.303(3), F.S.

- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.<sup>49</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 39.0012, F.S., requiring the DCF to create a direct-support organization to assist the Children and Youth Cabinet in carrying out its duties primarily relating to fostering public awareness of children and youth issues and developing new partners in the effort to serve children and youth by raising money; submitting requests for and receiving grants from the federal, state and local government agencies, private foundations, and individuals; and making expenditures to or for the benefit of the cabinet. The bill specifies requirements for the incorporation and operation of the direct-support organization. The bill also requires the direct-support organization to have a board of directors consisting of seven members, each appointed by the Governor to serve a 4-year term. The bill also provides for the future repeal of the direct-support organization on October 1, 2024 unless reviewed and saved from repeal by the legislature.

**Section 2** amends s. 39.01, F.S., relating to definitions. The definition of the term “institutional child abuse or neglect” is amended to clarify that employees of public schools, as well as private schools, are part of the definition. The purpose is to bring the definition into agreement with s. 39.01(54), F.S., which provides the definition of “other person responsible for a child’s welfare.”

**Section 3** amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment or neglect, mandatory reports of death, and the central abuse hotline. The bill requires the central abuse hotline to accept calls for investigation of known or suspected child abuse, abandonment, or neglect, which occurred out of state and the alleged perpetrator and the child victim live out of state if the child is currently being evaluated in a medical facility in Florida. If the child is not currently being evaluated in a medical facility in Florida, the hotline must transfer the information or call to the appropriate state or country. The bill also requires the DCF to initiate an investigation when a report is received from an emergency room physician.

**Section 4** amends s. 39.303, F.S., relating to Child Protection Teams, to require that the DCF refer child abuse, abandonment, and neglect reports that involve a child who does not live in Florida but is currently being evaluated in a medical facility in Florida to Child Protection Teams.

**Section 5** amends s. 39.4015, F.S., to delete the definition of fictive kin. The definition of fictive kin in s. 39.01, F.S., meets the Title IV-E requirements, and a duplicative definition is unnecessary.

**Section 6** amends s. 39.402, F.S., relating to placement in a shelter, to require the order for placement of a child in shelter care contain a statement that the DCF has placement and care responsibility for any child who is not placed in the care of a parent at the conclusion of the shelter hearing. This brings the state into compliance with federal requirements.

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<sup>49</sup> Section 39.303(4)(a)-(h), F.S.

**Section 7** amends s. 39.407, F.S., relating to whether the DCF may provide psychotropic medications to a child in its custody. The bill provides that, in the process for making that determination, an advanced practice registered nurse whose specialty is psychiatric nursing and who has prescribing authority under a supervisory protocol established with a physician as provided pursuant to the Nurse Practice Act, may perform certain medical, psychiatric, and psychological examinations of and provide treatment to children in care, and may perform physical, mental, and substance abuse examinations of a person with or requesting child custody services. Under current law, such services must be performed by a physician.

The bill reduces from 3 months to 60 days the period of time for a court review following a child's placement in a residential treatment program.

**Section 8** amends s. 39.5085, F.S., relating to the Relative Caregiver Program, to require the DCF to inform relatives and nonrelatives of the requirements and benefits of the Relative Caregiver Program and the Guardianship Assistance Program and that they may choose which program is most appropriate for them.

**Section 9** amends s. 39.5086, F.S., relating to kinship navigator programs, to delete the unnecessary definition for the term "fictive kin".

**Section 10** amends s. 39.6225, F.S., relating to the Guardianship Assistance Program (GAP), to add a definition for the term "relative" and specify the circumstances under which guardianship assistance benefits will be terminated. This change was suggested by the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.<sup>50</sup>

The bill also provides that the case plan must describe information regarding permanent guardianship if the guardian is pursuing guardianship assistance payments. Current statute requires the case plan to include information regarding permanent guardianship if the guardian is receiving guardianship assistance payments.

**Section 11** amends s. 39.6251, F.S., relating to extended foster care for young adults, to make a number of changes, including:

- Requiring a young adult in the extended foster care program to either furnish documentation of participation in one of the required activities or execute a consent for release of records to the DCF or CBC to obtain the documentation.
- Amending the permanency goal for a young adult who chooses to remain in the extended foster care program past his or her 18th birthday to transition to independence.
- Allowing a young adult who is between the ages of 18 and 21 and who has left the extended foster care program, to apply with the CBC for readmission through the execution of a voluntary placement agreement. This change allows the state to request Title IV-E reimbursement.

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<sup>50</sup> Department of Children and Families, *Senate Bill 1650 Analysis* (February 16, 2019) (on file with the Senate Committee on Health Policy).

- Providing the DCF with rulemaking authority to establish processes and procedures to administer the extended foster care program to provide for consistent application of the program statewide.

**Section 12** amends s. 39.701, F.S., relating to judicial review, to make a number of changes including:

- Replacing the current provision that requires the court to return the child to the custody of the parent(s) if it is determined that the parent(s) have substantially complied with the case plan.
- Requiring that if the court determines at any judicial review that the child will remain in out-of-home care in a placement other than with a parent, the court must order that the DCF has placement and care responsibility for the child.
- Addressing additional ways to enter extended foster care while expanding the DCF's ability to seek reimbursement of Title IV-E funds. Section 39.701(4)(f), F.S., allows a young adult to elect to voluntarily leave extended foster care for the sole purpose of ending a removal episode and immediately executes a voluntary placement agreement with the DCF to reenroll in extended foster care, the court must enter an order finding that the prior removal episode ended. Under these circumstances, the court does not lose its jurisdiction and no petition to reinstate jurisdiction is required.
- Require that when a youth enters extended foster care by executing a voluntary placement agreement, the court is required to enter an order within 180 days of the agreement that determines whether the supervised living arrangement is in the best interest of the youth. The supervised living arrangement may include a licensed foster home, licensed group home, college dormitory, shared housing, apartment or another housing arrangement if approved by the CBC and is acceptable to the young adult. In addition, when a youth is in extended foster care, the court is required to include in each judicial review order that the DCF has placement and care responsibility for the youth. Lastly, when a youth is in extended foster care, the court is required to enter an order a minimum of every 12 months that includes a finding of whether the DCF has made reasonable efforts to finalize the permanency plan currently in effect. These changes align Florida Statutes with federal requirements.

**Section 13** amends s. 402.56, F.S., relating to the children's cabinet, to provide that a representative of, rather than the director of, the Office of Adoption and Child Protection, will serve as a member of the cabinet.

**Section 14** amends s. 409.1451, F.S., relating to the Road-to-Independence Program, to clarify that financial assistance to young adults receiving independent living services including Postsecondary Education Services and Support (PESS), Title IV-E extended foster care, and aftercare services may be disregarded for purposes of determining eligibility for, or the amount of, any other federal or federally supported assistance. This will ensure that young adults have access to all assistance programs, if they meet the other eligibility criteria, regardless of their participation in independent living services pursuant to ss. 39.6251 and 409.1451, F.S.

**Section 15** amends s. 409.175, F.S., relating to the licensure of family foster homes, residential child-caring agencies, and child-placing agencies, to either meet federal requirements or to streamline requirements for level I licensing. Changes made to meet federal requirements in order to receive Title IV-E reimbursement related to licensure include:

- Clarifying that a family foster home is a home licensed by the DCF.

- Screening household members in the renewal process for licensure if they have worked or resided on a continuous basis in the home since fingerprints were submitted to the DCF.
- Adding the ability to extend a license up to, but no more than, 30 days.
- Deleting the DCF's ability to provide a provisional license.

Changes made to streamline level I licensure include:

- Clarifying that the term "personnel" does not include a family foster home.
- Clarifying that background "screening" of personnel applies to levels II through V of family foster home licensing.
- Adding foster family homes in the screening requirements for good moral character.
- Adding actions by a family foster home or household members to the list of who the DCF may deny, suspend, or revoke a license due to removing family foster home from the definition of personnel.
- Adding family foster homes and household members to the list of those who willfully or intentionally fail to comply with the requirements for background screening.
- Requiring the DCF to post on its website a list of agencies authorized to conduct licensing studies.
- Deleting the specified number of preservice and in-service training hours and allowing the DCF to establish the hours by rule.

**Section 16** amends s. 409.903, F.S., relating to mandatory payments for medical assistance and related services to eligible individuals, to include children who receive GAP benefits as eligible for Medicaid. Changes to this section will bring the DCF into compliance with federal requirements.

**Section 17** amends s. 409.991, F.S., relating to allocation of funds for community-based care lead agencies. Core services funds are all funds allocated to community-based care lead agencies with a number of exceptions. The bill excludes GAP funding from core services funds in determining the allocations for the CBC lead agencies. This means that funding for the GAP is not eligible for distribution according to the equity formula and allows the funds to be distributed based on the projected population and the GAP payments made by the CBCs.

**Section 18** amends s. 414.045, F.S., relating to the cash assistance program, to add families in the GAP as a "child-only" case, which can be funded through TANF. Families in the Relative Caregiver Program are currently considered child-only cases.

**Section 19** amends s. 1009.25, F.S., relating to postsecondary fee exemptions.

Section 1009.25(1)(d), F.S., currently provides a tuition fee exemption to a student who is or was at the time he or she reached 18 years of age, in the custody of a relative or nonrelative. The change clarifies that children who are permanently placed with a relative have access to tuition exemptions until the age of 28, whether they are eligible for the GAP or the RCP.

**Section 20** provides an effective date of July, 1, 2019.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Department of Children and Families (DCF) reports the bill will have a significant negative, yet indeterminate fiscal impact on the department. The DCF is not able to determine the increase in workload associated with hotline calls from emergency room physicians that require additional investigations by child protection investigators. Also, the DCF estimates technology enhancements will be needed between DCF and the Department of Health (DOH) to authenticate calls received from emergency room physicians.<sup>51</sup> The DOH may incur costs associated with the additional reports involving children that must be referred to the child protection teams for assessment, however those costs are indeterminate, yet insignificant.

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<sup>51</sup> Department of Children and Families, *Senate Bill 1650 Analysis* (April 12, 2019) (on file with the Senate Appropriations Committee).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The section creating a direct-support organization for the Children and Youth Cabinet may be more appropriately located in chapter 402, F.S., which is where the provisions relating to the cabinet are currently located, rather than in chapter 39, F.S.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 39.01, 39.201, 39.303, 39.4015, 39.402, 39.407, 39.5085, 39.5086, 39.6225, 39.6251, 39.701, 402.56, 409.1451, 409.175, 409.903, 409.991, 414.045, and 1009.25.

This bill creates section 39.0012 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Children, Families, and Elder Affairs on April 8, 2019:**

The CS makes the following changes to the bill:

- Requires the DCF to establish a direct-support organization for the benefit of the Children and Youth Cabinet.
- Requires the DCF to accept abuse and neglect calls involving children from out of state and are being evaluated in medical facilities in this state. Requires the DCF to initiate an investigation of a report from an emergency room physician.
- Requires child abuse reports involving children from out of state who are currently being evaluated by a medical facility in this state to be referred to a child protection team.
- Amends provisions relating to the Relative Caregiver Program (RCP) to require that the DCF provide relatives and nonrelatives of the requirements and benefits of the Relative Caregiver Program and the Guardianship Assistance Program and that they may choose which program is most appropriate for them.
- Requires the DCF to post on its website a list of agencies authorized to conduct licensing studies.

**CS by Health Policy on March 25, 2019:**

The CS makes the following changes to the bill:

- Retains the definition of “fictive kin” in s. 39.01, F.S. The result is that multiple sections of statute which were modified in the underlying bill to conform cross-references are no longer necessary and have been removed from the bill.
- Modifies provisions under the Relative Caregiver Program such that relatives who are caring for a child and who do not meet the eligibility requirements for level I under s. 409.175, F.S., relating to licensure of child-placement programs, are authorized to

apply for the Relative Caregiver Program. The underlying bill required such caregivers to be denied under the Guardianship Assistance Program before applying to the Relative Caregiver Program.

**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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