

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7039 PCB CFS 21-01 Child Welfare  
**SPONSOR(S):** Children, Families & Seniors Subcommittee, Altman  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee	17 Y, 0 N	Woodruff	Brazzell
1) Health Care Appropriations Subcommittee	15 Y, 0 N	Fontaine	Clark
2) Health & Human Services Committee			

### SUMMARY ANALYSIS

The Department of Children and Families (DCF) mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency. DCF must also deliver services by contract through private providers, including community-based care lead agencies (CBCs) delivering child welfare services and managing entities (MEs) delivering behavioral health services.

Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline (hotline) and child protective investigations. DCF and CBCs work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children. Current law requires everyone to report known or suspected child abuse or neglect and subjects a person to penalties for failing to report. Except as provided in ch. 39, F.S., DCF must keep confidential all records relating to any reports of child abuse, abandonment, or neglect, including any report made to the hotline and all records generated because of such report.

The bill makes several changes related to DCF contracts with CBCs and MEs to increase transparency regarding salaries and use of funding and address conflicts of interest. The bill also creates a process for an alternative plan for providing community-based services if DCF cannot competitively contract with a CBC in a service area.

The bill reorganizes, relocates, and amends current law related to the hotline by separating provisions on the hotline's operation and maintenance from those related to reporting requirements, adding an animal control officer or agent to those who must disclose his or her name when making a report, and requiring DCF to comply with new requirements relating to reports of juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior. The bill also includes the Agency for Health Care Administration as an agency permitted to receive reports of abuse and neglect and requires DCF to grant access to confidential and exempt records to a legislative committee within seven days, upon request.

The bill increases supports for foster parents and kinship caregivers by requiring DCF to establish a Foster Information Center. It also allows the Office of Criminal Conflict and Civil Regional Counsels to establish a multidisciplinary legal representation model program to serve families who are in the dependency system as long as the program meets certain requirements.

The bill includes in statute a description of children's advocacy center services and specifies that critical incident rapid response teams can include an expert in sexual abuse for certain cases.

The bill also makes changes to statute to align with federal requirements regarding Title IV-E funding.

The bill has an indeterminate fiscal impact on state government and no impact on local government. The bill provides an effective date of July 1, 2021.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### **Department of Children and Families**

The Department of Children and Families (DCF) mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.<sup>1</sup> DCF must develop a strategic plan to fulfill its mission and establish measureable goals, objectives, performance standards, and quality assurance requirements to ensure the department is accountable to taxpayers.<sup>2</sup>

Under s. 20.19(4), F.S., DCF must provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

DCF must also deliver services by contract through private providers to the extent allowed by law and funding.<sup>3</sup> These private providers include community-based care lead agencies (CBCs) delivering child welfare services and managing entities (MEs) delivering behavioral health services.

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

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. DCF and CBCs work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment.

DCF contracts for case management, out-of-home services, and related services with CBCs. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.

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<sup>1</sup> S. 20.19(1), F.S.

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

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

DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline.<sup>4</sup> Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.<sup>5</sup>

### Dependency System Process

When a child is in danger of, or has suffered from, abuse, abandonment or neglect, the dependency system is set up to protect the child's welfare. The dependency process includes, among other things:

- A report to the central abuse hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent.
- Case planning to address the problems resulting in the child's dependency.
- Reunification with the child's parent or another option to establish permanency, such as adoption.

### *Central Abuse Hotline*

DCF operates the Florida central abuse hotline (hotline), which accepts reports 24 hours a day, seven days a week, of known or suspected child abuse, abandonment or neglect.<sup>6</sup> Statute mandates any person who knows or suspects that a child is abused, abandoned, or neglected to report such knowledge or suspicion to the hotline.<sup>7</sup> A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse, abandonment or neglect.<sup>8</sup> A child protective investigator either verifies,<sup>9</sup> does not substantiate,<sup>10</sup> or finds no indicators of abuse or neglect after a child protective investigation.<sup>11</sup> When a report made to the hotline does not allege abuse, neglect, or abandonment, DCF refers the reporter to other organizations that may better resolve the reporter's concerns. The following graphic displays the total number of hotline reports, how many reports were accepted for an investigation and how many children were served, either in-home or out-of-home, after an investigation during FY 2019-20.<sup>12</sup>

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<sup>4</sup> OPPAGA, report 06-50.

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

<sup>6</sup> S. 39.201(5), F.S.

<sup>7</sup> S. 39.201(1)(a), F.S.

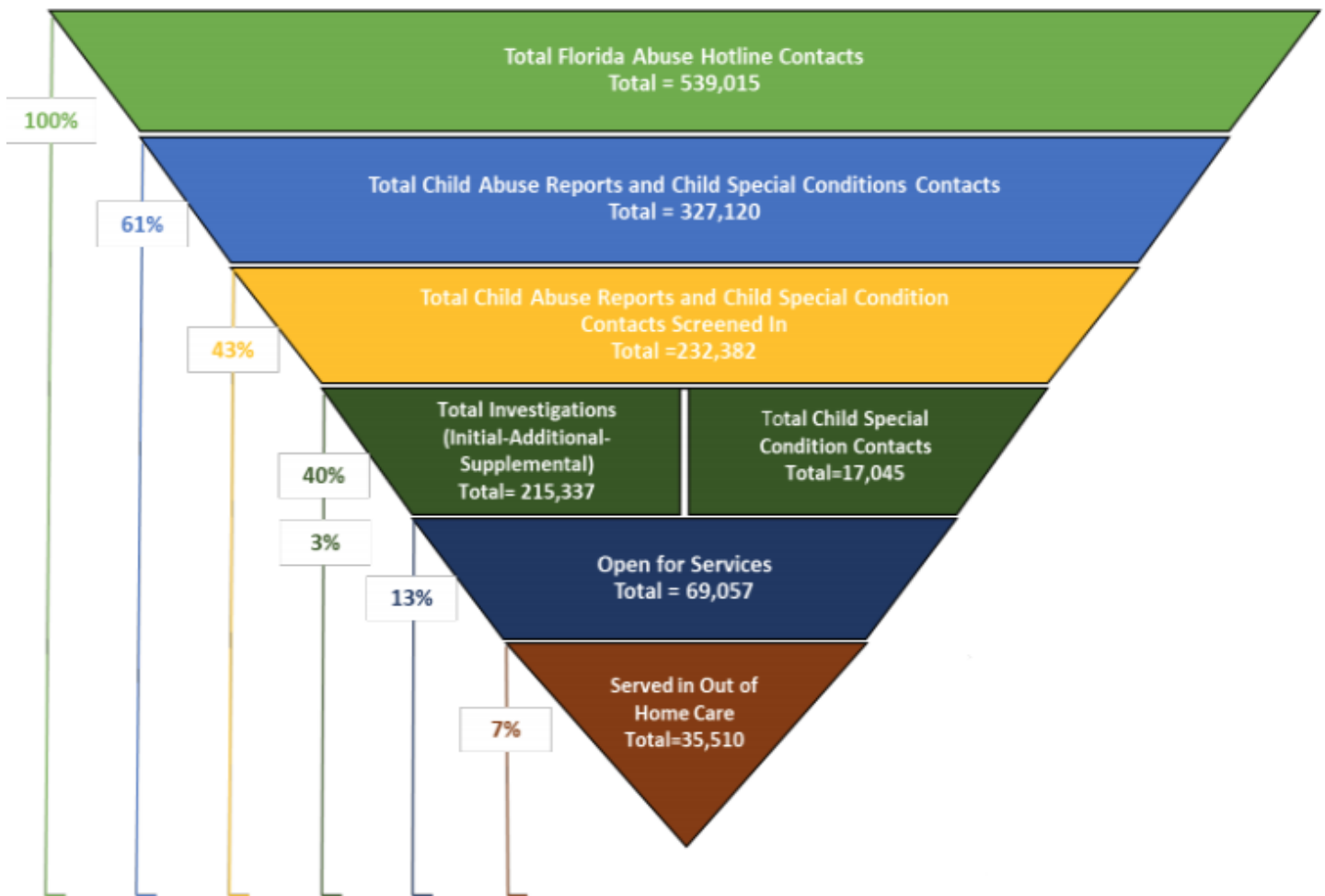
<sup>8</sup> S. 39.201(2)(a), F.S.

<sup>9</sup> "Verified" findings are when a preponderance the evidence results in a determination the specific harm or threat of harm was the result of abuse, abandonment or neglect. These findings require the investigator to take action to protect the child. See Florida Department of Children and Families, CF Operating Procedure No. 170-5.

<sup>10</sup> "Not substantiated" findings result from an investigation when there is credible evidence which does not meet the standard or being a preponderance to support that the specific harm was the result of abuse, abandonment, or neglect. See Florida Department of Children and Families, CF Operating Procedure No. 170-5.

<sup>11</sup> "No indicators" findings result when there is no credible evidence to support the allegations of abuse, abandonment, or neglect. See Florida Department of Children and Families, CF Operating Procedure No. 170-5.

<sup>12</sup> Florida Department of Children and Families, *Child Welfare Key Indicators Monthly Report* (Feb. 2021), [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_Feb%202021.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_Feb%202021.pdf) (last visited Mar. 11, 2021).



The hotline must operate in a manner that will allow DCF to:

- Immediately identify prior cases or reports through utilizing a tracking system.
- Monitor and evaluate the effectiveness of DCF's reporting and investigation program through the development and use of statistical and other information.
- Track critical steps in the investigative process to ensure compliance with all reporting requirements.
- Collect, analyze, and produce statistical reports, including an aggregate report on patterns of child abuse, abandonment, and neglect, including child-on-child sexual abuse.
- Prepare separate reports, as required under s. 39.201(4)(d), F.S., of child abuse and sexual abuse which are reported from or occurred on the campus of any Florida College System institution,<sup>13</sup> state university,<sup>14</sup> or nonpublic college, university, or school, as defined in ss. 1000.21 and 1005.02, F.S.
- Provide resources for the evaluation, management, and planning of preventive and remedial services for children who are have been subject to abuse, abandonment, or neglect.
- Initiate and enter into agreements with other states to gather and share information contained in reports on child maltreatment.<sup>15</sup>

<sup>13</sup> S. 1000.21(3), F.S., provides "Florida College System institution" except as otherwise specifically provided, includes a list of specified public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of the institution, including, for instance, Eastern Florida State College, which serves Brevard County, and Broward College, which serves Broward County.

<sup>14</sup> S. 1000.21(6), F.S., provides "State University", except as otherwise specifically provided, includes a list of specified institutions and any branch campuses, centers, or other affiliates of the institution, including, for instance, The University of Florida, The Florida State University and The Florida Agricultural and Mechanical University.

<sup>15</sup> S. 39.201(4)(a) to (f), F.S.

Information received by the hotline may not be used for employment screening except in specified instances.<sup>16</sup> As part of DCF's quality assurance program, it must review hotline reports to analyze when there are three or more unaccepted reports to identify patterns and initiate a case for investigation, if warranted.<sup>17</sup>

Current law requires an individual to make a report to the hotline if he or she knows or has reasonable cause to suspect that:

- A child has been abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare or that a child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;<sup>18</sup>
- A child has been abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare;<sup>19</sup> or
- A child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender.<sup>20</sup>

Florida law provides exceptions to reporting requirement in specified circumstances:<sup>21</sup>

- Professionals who are hired or contracted with DCF to provide treatment or counseling services to a child that are the subject of the abuse, abandonment, or neglect;<sup>22</sup>
- An officer or employee of the judicial branch when the child is currently being investigated, is the subject of an existing dependency case, or the matter has previously been reported to the DCF;<sup>23</sup> or
- An officer or employee of law enforcement when the incident under investigation was reported to the law enforcement by the hotline.<sup>24</sup>

Chapter 39, F.S., does not require a reporter to disclose his or her identity to the hotline, but hotline personnel receive training in encouraging them to do so.<sup>25</sup> However, there are specified reporters that must disclose his or her name, including:

- Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons.
- Health or mental health professional other than those listed above.
- Practitioner who relies solely on spiritual means for healing.
- School teacher or other school official or personnel.
- Social worker, day care center worker, or other professional childcare, foster care, residential, or institutional worker.
- Law enforcement officer.
- Judge.<sup>26</sup>

DCF is required to have technology, which allows it to obtain the number from which the reporter calls or faxes the report, or the internet protocol address from which the report is made.<sup>27</sup> Reporter names and numbers are entered into the record of the report, but are held confidential.<sup>28</sup> Hotline counselors must inform reporters about these confidentiality provisions.<sup>29</sup>

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<sup>16</sup> S. 39.201(6), F.S.

<sup>17</sup> S. 39.201(7), F.S.

<sup>18</sup> S. 39.201(1)(a), F.S.

<sup>19</sup> S. 39.201(1)(b), F.S.

<sup>20</sup> S. 39.201(1)(c), F.S.

<sup>21</sup> S. 39.201(1)(g), F.S., provides that nothing in ch. 39, F.S., may be construed to remove or reduce any person's reporting requirement, including any employee of a community-based care provider.

<sup>22</sup> S. 39.201(1)(e), F.S.

<sup>23</sup> S. 39.201(1)(g), F.S.

<sup>24</sup> S. 39.201(1)(h), F.S.

<sup>25</sup> S. 39.201(2)(h), F.S.

<sup>26</sup> S. 39.201(1)(d), F.S.

<sup>27</sup> S. 39.201(2)(h), F.S.

<sup>28</sup> *Id.* See also s. 39.202, F.S., which is discussed in more detail below. Section 39.201(2)(i), F.S., provides that the DCF must record all incoming and outgoing calls to the hotline, and must keep an electronic copy which must only be disclosed to law enforcement, state attorney, or the DCF for purposes of conducting investigations pursuant to s. 39.205, F.S., or s. 39.206, F.S., respectively.

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

Any person who is required to report or investigate child abuse, abandonment or neglect cases and who has reasonable cause to suspect that a child died as a result of such treatment must report his or her suspicion to the medical examiner, who must accept the report for investigation and report his or her findings to designated agencies.<sup>30</sup> Autopsy reports are not subject to confidentiality requirements provided for in s. 39.202, F.S.<sup>31</sup>

A report to the hotline is the first step in the safety assessment and investigation process.<sup>32</sup> The type of alleged abuse and whether the allegation is against a parent, legal custodian, caregiver, or other person responsible for the child's welfare will determine the steps that DCF is required to take.<sup>33</sup>

When allegations are made against a parent, legal custodian, caregiver,<sup>34</sup> or other person responsible for the child's welfare,<sup>35</sup> the hotline counselor must assess whether the report meets the statutory definition of abuse, abandonment, or neglect.<sup>36</sup> If they do, the report is accepted for a protective investigation.<sup>37</sup> All reports made by an emergency room physician must be investigated.<sup>38</sup> At the same time, DCF makes a determination regarding the timeline for which a protective investigation must be initiated. An investigation must be commenced within 24 hours in all child abuse, abandonment, or neglect cases, unless it requires an immediate investigation.<sup>39</sup> An immediate investigation is required if:

- It appears the child's immediate safety or well-being is endangered;
- The family may flee or the child will be unavailable for purposes of conducting a child protective investigation; or
- The facts otherwise so warrant.<sup>40</sup>

There are instances when DCF is required to immediately refer the report to local law enforcement,<sup>41</sup> and other instances when DCF is required to offer voluntary community services.<sup>42</sup> DCF has other specific requirements with respect to reports including:

- Reports involving juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior, including to:
  - Immediately electronically transfer the report to the appropriate county sheriff's office.
  - Conduct an assessment and assist the family with receiving appropriate services.
  - Submit a written report within 48 hours to county sheriff's office.
  - Inform the court of the allegations if the child is in the custody or under the protective supervision of the DCF.
- Reports of abuse, abandonment, or neglect which occur out-of-state and the alleged perpetrator and victim child are out of state.<sup>43</sup>

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<sup>30</sup> S. 39.201(3), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> S. 39.201(4), F.S.

<sup>33</sup> *See* S. 39.201(2)(a) and (b), F.S.

<sup>34</sup> S. 39.01(10), F.S., defines "caregiver" as the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (54).

<sup>35</sup> S. 39.01(54), F.S., defines "other person responsible for a child's welfare" to include the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice, with exceptions of specified personnel working in their official capacity. Section 39.201(2)(f), F.S., requires reports of known or suspected institutional child abuse or neglect to be made in the same manner as other reports under s. 39.201, F.S.

<sup>36</sup> S. 39.201(2)(a), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> S. 39.201(2)(l), F.S.

<sup>39</sup> S. 39.201(5), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> *See* s. 39.201(2)(b) and (e), F.S., which provides that reports of abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, and reports involving impregnation of a child under 16 years old by a person 21 years of age or older, must be immediately reported to the appropriate county sheriff.

<sup>42</sup> *See* s. 39.201(2)(a), F.S., which permits the hotline to accept a call from a parent or legal custodian seeking assistance which does not meet one of these statutory definitions to prevent a future risk of harm to a child and the DCF may provide voluntary community services if a need for them exists.

<sup>43</sup> S. 39.201(2)(d), F.S., provides that unless the child is currently being evaluated in a medical facility in Florida, the hotline must not accept the report but is required to transfer the information to the appropriate state or country. If the child is being currently evaluated in a medical facility in Florida, the hotline must accept the report or call for an investigation and transfer the information to the appropriate state or country.

- Reports of a surrendered newborn infant.<sup>44, 45</sup>

### Confidentiality of Reports

Except as provided in ch. 39, F.S., DCF must keep confidential all records relating to any reports of child abuse, abandonment, or neglect, including any report made to the hotline and all records generated as a result of such report.<sup>46</sup> DCF and any entity granted access to such records are exempt from the public disclosure requirements in s. 119.07(1), F.S.

Section 39.202(2), F.S., provides that copies of reports and records, except for the reporter's name and other identifying information, may be disclosed, to the following entities or individuals:

- Employees, authorized agents, or contract providers of DCF, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out certain functions.
- Criminal justice agencies of appropriate jurisdictions.
- The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.
- The parent or legal custodian of any child and their attorneys, including any attorney representing a child in a civil or criminal proceedings.
- Any person alleged to have caused the child's abuse, abandonment, or neglect.
- An appropriate official of DCF or the Agency for Persons with Disabilities who is responsible for carrying out certain functions.

Chapter 39, F.S., does not address whether the legislative committees may have access to the confidential reports or records. Section 11.143(2), F.S., however, provides that each committee has the right and authority to inspect and investigate the books, records, papers, documents, data, and operation of any public agency in Florida, including confidential information, to carry out its duty.

### Penalties for Failing to Report

Current law subjects a person to penalties for failing to report known or suspected child abuse, abandonment, or neglect, or for willfully preventing another person from making such report.<sup>47</sup> Any person who violates this law commits a third degree felony.<sup>48</sup>

Florida law also provides that a person who is 18 years of age or older and lives in the same house as a child who is known or suspected to be a victim of child abuse, neglect, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a third degree felony, unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist.<sup>49</sup>

Educational entities, including Florida College System institutions, state universities, or nonpublic colleges, universities or schools, and their administrators, are also subject to penalties for failing to report child abuse, neglect or abandonment.<sup>50</sup> These schools or their administrators who knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the school or

<sup>44</sup> S. 383.50, F.S., provides that "newborn infant" means a child who a licensed physician reasonably believes is approximately 7 days old or younger at the time the child is left at a hospital, emergency medical services station, or fire station.

<sup>45</sup> S. 39.201(2)(g), F.S., provides that the DCF must make and receive reports of surrendered newborn infants, refer the caller to a licensed child-placing agency on a rotating basis, and comply with the requirements under s. 39.395, F.S., including, in part, immediately beginning an investigation if there is evidence of any abuse or neglect beyond the child being left at one of the designated facilities; if there is no other evidence, the report will not be considered abuse, abandonment or neglect under ch. 39, F.S.

<sup>46</sup> S. 39.202(1), F.S.

<sup>47</sup> S. 39.205(1), F.S.

<sup>48</sup> S. 39.205(1), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>49</sup> S. 39.205(2), F.S.

<sup>50</sup> S. 39.205(3), F.S.

during an event sponsored by the school, or who knowingly and willfully prevents another person from doing so, are subject to fines of \$1 million for each such failure.<sup>51</sup>

Current law provides the Education Practices Commission (EPC) with authority to discipline specified instructional personnel<sup>52</sup> and school administrators<sup>53</sup> in various circumstances.<sup>54</sup> The EPC may, for instance, suspend the educator certificate for up to 5 years which would deny him or her the right to teach or be employed in any capacity by a district school board or public school that would require direct contact with students for that time period.<sup>55</sup> There are a number of circumstances that are grounds for suspending an educator certificate.<sup>56</sup>

Florida law is currently silent on whether the EPC must suspend an instructional personnel's or school administrator's educator certificate for failing to report child abuse, abandonment, or neglect as required under s. 39.201, F.S.

### *Child Protective Investigations*

DCF conducts a child protective investigation if a hotline report meets the statutory definition of child abuse, abandonment, or neglect. An investigation must be commenced immediately or within 24 hours after the report is received, depending on the nature of the allegation.<sup>57</sup> The child protective investigator assesses the safety and perceived needs of the child and family, and if services are needed, whether the child should receive in-home or out-of-home services.

### *Institutional Child Abuse, Abandonment, or Neglect*

Institutional child abuse or neglect includes situations of known or suspected child abuse in which the person allegedly perpetrating the child abuse or neglect is an employee of a public or private school, public or private day care center, residential home, institution, facilitator, or agency or any other person at such institution responsible for the child's welfare.<sup>58</sup> Under current law, DCF must conduct a child protective investigation of any report of institutional child abuse, abandonment, or neglect.<sup>59</sup> Upon receipt of such report, DCF must initiate an investigation within the time provided in s. 39.201(5), F.S., and must notify the state attorney, law enforcement agency, and licensing agency that must conduct a joint investigation, unless independent investigations are more feasible.<sup>60</sup>

DCF must give each agency who is conducting a joint investigation full access to the information it has gathered and provide an oral and written report to the state attorney.<sup>61</sup> The state attorney must also provide DCF with a copy of its report and conclusion on whether prosecution is justified and appropriate within 15 days after the investigation is completed.<sup>62</sup>

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<sup>51</sup> *Id.* Current law also provides that any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02, whose law enforcement agency fails to report known or suspected child abuse, abandonment, or neglect committed on the property of such schools or during an event sponsored by such schools are subject to fines of \$1 million for each such failure to report. Section 39.205(4), F.S.

<sup>52</sup> S. 1012.01(2), F.S., defines "instructional personnel" as any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Instructional personnel include a specified list of personnel of K-12.

<sup>53</sup> S. 1012.01(3)(c), F.S., provides that "school administrators" include 1. school principals or school directors who are staff members performing the assigned activities as the administrative head of a school and to whom have been delegated responsibility for the coordination and administrative direction of the instructional and noninstructional activities of the school. This classification also includes career center directors and assistance principals who are staff members assisting the administrative head of the school. This classification also includes assistant principals for curriculum and administration.

<sup>54</sup> S. 1012.795(1), F.S.

<sup>55</sup> *Id.*

<sup>56</sup> See s. 1012.795(1), F.S., for a list of circumstances.

<sup>57</sup> S. 39.301(1), F.S.

<sup>58</sup> S. 39.01(37), F.S.

<sup>59</sup> S. 39.302(1), F.S.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> S. 39.302(1), F.S.



If the person who is the subject of the report constitutes a threatened harm to the welfare of children by continued contact with them, DCF may restrict his or her access by the least restrictive means necessary to ensure the children's safety which may be effective, for no more than 90 days without a judicial review.<sup>63</sup> The subject may petition the court for a judicial review, and the court would be required to make specified findings.<sup>64</sup> Upon completion of its protective investigation, DCF may motion the court to continue the restrictive action against the subject to ensure the children's safety.<sup>65</sup>

### Critical Incident Rapid Response Team

In 2014, the Legislature created critical incident rapid response teams (CIRRT) to identify root causes and to quickly determine any necessary changes needed to existing policies and practices related to child protection and welfare.<sup>66</sup> The CIRRT must immediately investigate certain child deaths or other serious incidents.<sup>67</sup> The CIRRT is required to immediately respond to conduct an onsite investigation for any child deaths reported to DCF if the child or another child in the family was the subject of a verified report of suspected abuse or neglect during the previous 12 months.<sup>68</sup> DCF's secretary has the discretion to direct an immediate investigation for other cases involving death or serious injury to a child.<sup>69</sup>

Florida law outlines the duties and composition of the teams, which require cooperative agreements with other entities and organizations to facilitate the teams' work.<sup>70</sup> DCF is required to develop guidelines and provide training to the CIRRT, and direct them to conduct a root-cause analysis for each incident.<sup>71</sup> In addition, DCF's secretary is directed to appoint an advisory committee to conduct an independent review of the CIRRT reports and submit quarterly reports to DCF's secretary, who is required to provide the reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>72</sup>

This section also requires that the reports of the team be published on the DCF website.<sup>73</sup> In 2021, the CIRRT began investigations of four deaths of children who have verified prior reports of the child or family in the past 12 months.<sup>74</sup> Of the four investigations, a 1 ½ year old child's cause of death was determined to be drowning but the report is pending,<sup>75</sup> The other three children's death remain under investigation.<sup>76</sup>

### Out-of-Home Placements

When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for children. As of January 21, 2021, there were 22,473 children in out-of-home care.<sup>77</sup> After a placement assessment to determine the most appropriate out-of-home placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or residential setting.<sup>78</sup> The graph below provides information on the out-of-home placements of children in the child welfare system.<sup>79</sup>

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<sup>63</sup> S. 39.302(2)(b), F.S.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> S. 39.2015(1), F.S.

<sup>67</sup> *Id.*

<sup>68</sup> S. 39.2015(2), F.S.

<sup>69</sup> *Id.*

<sup>70</sup> S. 39.2015(7), F.S.

<sup>71</sup> S. 39.2015(10), F.S.

<sup>72</sup> S. 39.2015(11), F.S.

<sup>73</sup> S. 39.2015(9), F.S.

<sup>74</sup> Florida Department of Children and Families, *Total Child Fatalities with a Critical Incident Rapid Response Team Response in 2021: 4*, <https://www.myflfamilies.com/childfatality/cirrtresults.shtml?minage=0&maxage=18&year=2021&cause=&prior12=&verified> (last visited Mar. 10, 2021).

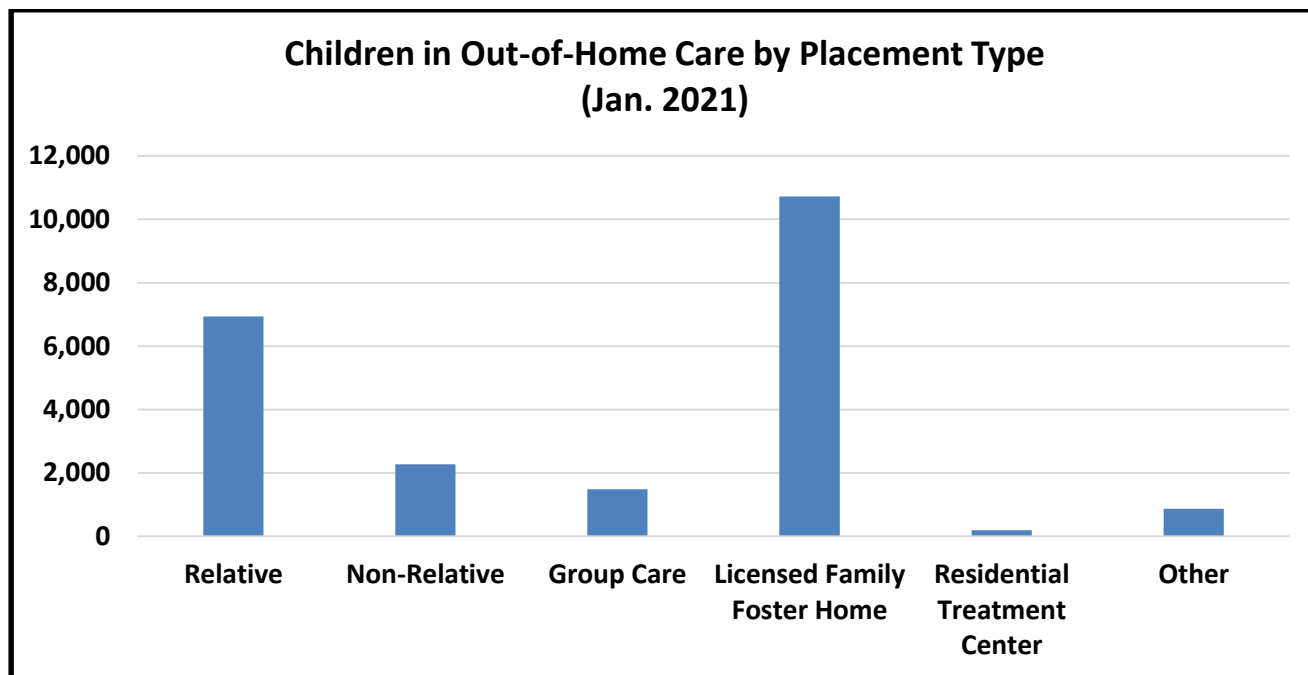
<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Supra* note 12, p. 31.

<sup>78</sup> R. 65C-28.004, F.A.C.

<sup>79</sup> *Id.*



#### *Licensed Family Foster Homes*

Children who are receiving care out-of-home can be placed in a foster home with foster parents licensed by CBCs or its subcontractors. As part of the licensure process, all prospective caregivers must complete criminal background checks before a child is placed in their care.<sup>80</sup> As of January 2021, there were 8,493 licensed foster homes in Florida.<sup>81</sup>

Foster parents care for the children placed in their home and serve as role models for the biological parents working to reunify with their children. To qualify as a potential foster parent, applications must go through a rigorous interview process, complete a training program, and participate in a home inspection and background check.<sup>82</sup>

Section 409.1415, F.S., provides for parenting partnerships among caregivers and birth or legal parents when children are in out-of-home care to provide quality support and encourage reunification. DCF and CBCs are required to support parenting partnerships when it is safe and in the child's best interest by taking specific steps to facilitate, develop plans, and support contact between caregivers and birth or legal parents.<sup>83</sup> Section 409.1415(2)(b), F.S., requires DCF, CBCs, caregivers, and birth or legal parents to work cooperatively and comply with specified requirements.

Section 409.1453, F.S., requires DCF in collaboration with the Florida Foster and Adoptive Parent Association (FAPA)<sup>84</sup> and the Quality Parenting Initiative (QPI)<sup>85</sup> to design training for caregivers on life

<sup>80</sup> S. 39.0138, F.S.

<sup>81</sup> Florida Department of Children and Families, *Child Welfare, Placement in Out-of-Home Care Data*, <https://www.myflfamilies.com/programs/childwelfare/placement.shtml#2> (last visited Mar. 11, 2021).

<sup>82</sup> Florida Department of Children and Families, *How Do I Become a Foster Parent*, <https://www.myflfamilies.com/service-programs/foster-care/how-do-i.shtml>

<sup>83</sup> S. 409.1415(2)(a), F.S.

<sup>84</sup> FAPA is a membership organization for foster, adoptive, and other caregivers in Florida. Its aim is to educate caregivers and parents, and promote a spirit of cooperation of all entities involved in the child welfare system. FAPA provides support and resources to caregivers to help develop healthy families. Florida Department of Children and Families, *Foster Care*, <https://www.myflfamilies.com/service-programs/foster-care/support-fostering.shtml>. Florida FAPA, About Florida FAPA, <http://floridafapa.org/about-us/> (all sites last visited Mar. 10, 2021).

<sup>85</sup> The QPI is a national movement for foster care change which focuses on creating a system that gives parents the tools to provide excellent parenting every day. The QPI system requires the support and involvement of birth families, relative caregivers, foster families, young people, and others in the child welfare system. It consists of a network of states, including Florida, as well as counties and private agencies that are committed to ensuring all children in care have excellent parenting and lasting relationships so they can thrive and grow. Florida implement this program as a pilot in 2008. The QPI, *What is QPI*, Jan. 2021, <https://www.qpi4kids.org/what-is-qpi/>; The QPI Florida, *No Place Like Home*, October 22, 2010, <http://centerforchildwelfare.fmhi.usf.edu/qpi1/docs/ReviewOfQPI2011.pdf>. Florida Department of Children and Families, *Independent*

skills necessary for youth in out-of-home care. This section of law was enacted in 2013 as part of the bill establishing extended foster care and postsecondary services and supports programs.

In September 2020, DCF launched Florida's Foster Information Center. It is staffed by current or former foster parents to answer questions and provide guidance to individuals interested in becoming foster parents. By the end of October 2020, 747 individuals inquired about fostering, and of those, 413 prospective foster parents were connected with their local licensing specialist to discuss next steps.<sup>86</sup>

Section 409.175, F.S., limits the total number of children that can be placed in each licensed family foster home. The total number of children placed in each home is based on the recommendation of DCF or CBC based on the:

- Needs of each child in care.
- Ability of the foster family to meet the individual needs of each child, including any adoptive or biological children or young adults remaining in foster care living in the home.
- Amount of safe physical plant space.
- Ratio of active and appropriate adult supervision.
- Background, experience, and skills of the family foster parents.<sup>87</sup>

If the total number of children in a family foster home will exceed five, including the family's own children, an assessment of each child to be placed in the home must be completed and approved prior to placement of any additional children in the home.<sup>88</sup> Federal language allows for six children to be placed in a family foster home excluding the foster parents own children, prior to being considered for an over-capacity assessment.<sup>89</sup> Federal law only allows a home to exceed its capacity to allow:

- A parenting youth in foster care to remain with the child of the parenting you.
- Siblings to remain together.
- A child with an established meaningful relationship with the family to remain with the family.
- A family with special training or skills to provide care to a child who has a severe disability.<sup>90</sup>

### *Residential Group Care*

DCF licenses residential group care (RGC) placements as residential child-caring agencies<sup>91</sup> that provide staffed 24-hour care for children in facilities maintained for that purpose.<sup>92</sup> These include maternity homes, runaway shelters, group homes, and emergency shelters.<sup>93</sup> As of January 2021, 1,406 children were in a RGC placement.<sup>94</sup>

An employee of a residential group home must meet the same background screening requirements under 39.0138, F.S., and the level 2 screening standards for screening under ch. 435, F.S.<sup>95</sup> An employee of a residential group home who works directly with a child as a caregiver must meet, at minimum, the same education, training, background, and other screening requirements as caregivers in family foster homes.<sup>96</sup>

The Children's Bureau within the United States Department of Health and Human Services conducted a technical assistance review of DCF in November 2018, showing that several cases failed the review

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*Living, The Quality Parenting Initiative, Frequently Asked Questions*, <https://www.myflfamilies.com/service-programs/independent-living/myfuturemychoice-fp-faqs.shtml> (all sites last visited Mar. 10, 2021).

<sup>86</sup> Email from Florida Department of Children and Families, *DCF Secretary Chad Poppell Outlines Transformative Successes Achieved Under Governor Ron DeSantis' Leadership in 2020* (Dec, 23, 2020)(on file with the Children, Families, Seniors Subcommittee staff).

<sup>87</sup> S. 409.175(3)(a), F.S.

<sup>88</sup> S. 409.175(3)(b), F.S.

<sup>89</sup> 42 U.S.C. §672(c)(1)(A)(III)

<sup>90</sup> 42 U.S.C. §(c)(1)(B)

<sup>91</sup> S. 409.175, F.S.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Supra* note 12, p. 31.

<sup>95</sup> S. 409.1415(2)(c), F.S.

<sup>96</sup> *Id.*

due to a lack of complete background screenings of employees in group homes.<sup>97</sup> If the review would have been an actual audit, the assessed penalties would have been approximately \$2 million.<sup>98</sup> In response, DCF developed a corrective action plan.<sup>99</sup> One requirement for foster parents' background screening entails "911 calls to service" (report on the number of times law enforcement responds to a call) to a foster parent's home. Children in group care settings are not located at the employee's home; therefore, their home is not a safety factor like it would be in a foster home.

A decrease in workload for law enforcement and delays in completing the requested checks could result by eliminating the "911 calls to service" for group care providers. In addition, DCF could increase compliance with employee screening of group homes.

### *Residential Treatment Centers*

Residential Treatment Centers (RTCs) are licensed by the Agency for Health Care Administration (AHCA) under s. 394.875, F.S., and include hospitals licensed under ch. 395, F.S., that provide residential mental health treatment.

Section 39.407(6), F.S., authorizes DCF to place a child who is in its custody in an RTC or a hospital for residential mental health treatment under certain circumstances and allows the court to place the child in an RTC or a hospital for residential mental health treatment. Before admittance, the child must be assessed for suitability for residential treatment by a qualified evaluator appointed by AHCA. The qualified evaluator must do personal examination and assessment. As of January 2021, 189 children were in a RTC placement.

Section 409.202(2), F.S., does not provide AHCA the capability to complete child abuse and neglect record checks for employees who work in direct contact with children placed by DCF in facilities licensed by AHCA.

### Extended Foster Care

Young adults who turn 18 years of age while in foster care have the option to enter the extended foster care program (EFC) and receive foster care services until turning 21, or 22 with a disability.<sup>100</sup> One requirement of the EFC is that the young adult must be living in a supervised living arrangement approved by DCF.<sup>101</sup>

Current law allows young adults who are incarcerated to enter or continue in the EFC program. States are not reimbursed by the federal government for involuntary placements because they are not considered a supervised living arrangement. DCF is required to use state funding for children who are in the EFC program with a living arrangement of incarceration if current laws are in place.

Currently, there are 62 children, age 17, under the care and supervision of the Department who are in a correctional placement.<sup>102</sup> Upon turning 18, the young adult may be eligible for the EFC program and if enrolled, would have to be paid with general revenue funds. Young adults can receive other services offered by DCF in lieu of EFC to cover such things as tutoring, parenting, job and career skills training and temporary financial assistance for necessities while in an involuntary placement along with case management services. Young adults have the option of re-entering EFC upon release or discharge from their involuntary placement if they meet the criteria.

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<sup>97</sup> Florida Department of Children and Families, *2021 Agency Bill Analysis* (July 17, 2020)(on file with the Children, Families, and Seniors Subcommittee).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> S. 39.6251, F.S.

<sup>101</sup> *Id.*

<sup>102</sup> *Supra* note 97.

## 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 established in 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.

### Family First Prevention Services Act

The Family First Prevention Services Act (FFPSA) was passed into law as part of the Bipartisan Budget Act on February 9, 2018.<sup>103</sup> The FFPSA reformed the federal child welfare funding streams. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA 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 an out-of-home placement for children without regard to family income. The services that states can be reimbursed for providing to children and their families meeting eligibility requirements address mental health, substance abuse, family counseling, and parent skills training. The FFPSA also introduces new limits on federal funding for placements in group homes. The FFPSA also provides federal funding for legal representation and advocacy for eligible children in foster care and their parents.<sup>104</sup>

FFPSA gave states the opportunity to delay implementation of select provisions of the law. Florida has opted to delay the effective date until October 2021.

### Multidisciplinary Legal Representation

Other states have adopted multidisciplinary legal representation models (MLRM), including Vermont, New York, and Michigan.<sup>105</sup> While the traditional legal practice in the United States is to have a solo attorney represent a client, the MLRM promotes a team of individuals, including social workers and parent advocates.<sup>106</sup> A study by the Bronx Defenders that examined more than 28,000 New York dependency cases between 2007 and 2014 suggests that representation that utilized the multidisciplinary model were able to safely reunify children to their families 43% more often in their first year than solo practitioners, and 25% more often in the second year.<sup>107</sup>

The Office of Criminal Conflict and Civil Regional Counsel (OCCCRC) represents indigent parents in dependency cases. The OCCCRC in the Fourth District of Florida currently has a Social Services Unit (SSU) it employs to enhance the legal representation to indigent parents in dependency cases.<sup>108</sup> The SSU includes a forensic social worker or forensic family advocate who are on the legal team to engage parents and guide them through the reunification process.<sup>109</sup> The OCCCRC reports the SSU assists

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<sup>103</sup> H.R. 1862 of 2018. P.L. 115-123.

<sup>104</sup> U.S. Department of Health and Human Services, Administration for Children and Families, *High Quality Memo*, p. 10-11, Jan. 14, 2021, [https://www.courts.ca.gov/documents/ffdrp\\_acf2021\\_high\\_quality\\_memo.pdf](https://www.courts.ca.gov/documents/ffdrp_acf2021_high_quality_memo.pdf) (last visited Mar. 10, 2021).

<sup>105</sup> The Children’s Bureau Express, *Collaborating to Build Multidisciplinary, Family-Centered, Strengths-Based Courts*, May 2020, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=216&sectionid=17&articleid=5558> (last visited Mar. 10, 2021).

<sup>106</sup> See *Id.* Children’s Bureau Express, *New Study Shows Providing Parents with Multidisciplinary Legal Representation in Child Welfare Cases Furthers Everyone’s Interests*, July/August 2019, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=208&sectionid=2&articleid=5378> (last visited March 1, 2021).

<sup>107</sup> NYU Law, *Providing Parents with the Right Kind of Legal Representation in Child Welfare Cases Significantly Reduces the Time Children Stay in Foster Care, New Study Finds*, May 7, 2009, [Providing Parents with the Right Kind of Legal Representation in Child Welfare Cases Significantly Reduces the Time Children Stay in Foster Care, New Study Finds | NYU School of Law](https://www.nyu.edu/school-of-law/news-events/news-releases/2009/05/07-providing-parents-with-the-right-kind-of-legal-representation-in-child-welfare-cases-significantly-reduces-the-time-children-stay-in-foster-care-new-study-finds/) (last visited Mar. 1, 2021).

<sup>108</sup> The OCCCRC Fourth District of Florida, *Social Services Unit*, <http://www.rc-4.com/social-services.shtml> (last visited Mar. 1, 2021).

<sup>109</sup> *Id.*

clients with tasks such as providing information to and interacting with providers, and overall describes the SSU's inclusion in the legal team as beneficial.<sup>110</sup>

## Community-Based Care Organizations and Services

DCF remains responsible for providing child welfare and support services in accordance with federal and state law.<sup>111</sup> However, DCF contracts for the delivery, administration, or management of care for child welfare services. DCF must ensure contracts with CBCs:

- Provide for the services as required under s. 409.988, F.S.
- Provide relevant information to DCF related to the quality assurance program and the child welfare results-oriented accountability system.
- Include tiered interventions and graduated penalties for failure to comply with the contract or performance deficiencies.
- Require CBCs to provide current and accurate information about their activities related to case records in the statewide automated child welfare information system.
- Specify the procedures to resolve differences in interpreting the contract or to resolve a disagreement amongst the parties regarding compliance with the contract.<sup>112</sup>

DCF must develop and maintain written policies and procedures for monitoring compliance with the services CBCs provide under their contracts. DCF is required to evaluate CBCs programmatic, operations, and fiscal operations at least once annually.<sup>113</sup>

DCF contracts for case management, out-of-home care, and related services with CBCs. Using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.<sup>114</sup> DCF, through CBCs, administers a system of care for children with the goals of:

- Prevention of separation of children from their families.
- Intervention to allow children to remain safely in their own homes.
- Reunification of families who have had children removed from their care.
- Safety for children who are separated from their families.
- Well-being of children through emphasis on educational stability and timely health care.
- Achievement of permanency.
- Effective transition to independence and self-sufficiency.

CBCs provide foster care and related services, including, but not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.<sup>115</sup> CBCs contract with a number of subcontractors for case management and direct care services to children and their families.<sup>116</sup> There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.<sup>117</sup>

DCF enters into 5-year contracts with CBCs for the procurement of services.<sup>118</sup> There are minimum requirements with which CBC's must comply to be eligible to contract with DCF, including:

- Being organized as a Florida corporation or a governmental entity.<sup>119</sup>
- Having a board of directors or board committee with authority to approve CBCs budget and hire a CBC executive director.<sup>120</sup>

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<sup>110</sup> *Id.*

<sup>111</sup> S. 409.996, F.S.

<sup>112</sup> S. 409.996(1)(a), F.S.

<sup>113</sup> S. 409.996(19)(a), F.S.

<sup>114</sup> Florida Department of Children and Families, *Community-Based Care*, <https://www.myflfamilies.com/service-programs/community-based-care/> (last visited Mar. 9, 2021).

<sup>115</sup> S. 409.145(1), F.S.

<sup>116</sup> *Id.*

<sup>117</sup> Florida Department of Children and Families, *Community-Based Care Lead Agency Map*, <http://www.myflfamilies.com/service-programs/community-based-care/cbc-map> (last visited Mar. 10, 2020).

<sup>118</sup> S. 409.987(3), F.S.

<sup>119</sup> S. 409.987(4)(a), F.S.

<sup>120</sup> S. 409.987(4)(b), F.S.



- Demonstrating financial responsibility by having a plan for regular fiscal audits and securing a performance bond.<sup>121</sup>

DCF's procurement team for CBC contracts must include individuals from the community alliance in the area to be served under the contract.<sup>122</sup>

CBCs are obligated to perform several duties including to:

- Serve the children who are referred as a result of abuse, neglect, or abandonment reports to DCF's central abuse hotline.
- Provide DCF with accurate and timely information necessary for oversight by DCF pursuant to the child welfare results-oriented accountability system.
- Follow financial guidelines developed by DCF and provide for regular independent audits.
- Post its current budget, including the salaries, bonuses and other compensation paid to the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents, on the CBC's website.
- Prepare and file all necessary court documents and attend dependency court proceedings.
- Ensure all individuals providing care to dependent children receive training and specified information and meet employment requirements.
- Maintain eligibility to receive all available federal child welfare funds.
- Maintain written agreements with Healthy Families Florida entities in its service area.
- Comply with federal and state statutory requirements and agency rules in the provision of contractual rules.
- Use authority to subcontract for the provision of services provided CBCs contribute to services and meet specified criteria.
- Post information regarding case management services on its website by a specified date.<sup>123</sup>

DCF contracts with the following CBCs as illustrated in the table and map below:<sup>124</sup>

<b>Lead Agency</b>	<b>Circuit(s)</b>
Lakeview Center, Families First Network	1
Big Bend Community Based Care, Inc.	2 & 14
Partnership for Strong Families	3 & 8
Family Support Services of North Florida, Inc.	4 (Duval and Nassau)
Kids First of Florida, Inc.	4 (Clay)
Kids Central, Inc.	5
Eckerd Community Alternatives	6 and 13
St Johns County Board of County Commissioners	7 (St Johns)
Community Partnership for Children, Inc.	7 (Flagler, Volusia, Putnam)
Embrace Families	9 and 18 (Seminole)
Heartland for Children	10
Citrus Family Care Network	11 and 16
Safe Children Coalition	12
ChildNet Inc.	15 and 17
Brevard Family Partnership	18 (Brevard)
Communities Connected for Kids	19
Children's Network of SW Florida	20

<sup>121</sup> S. 409.987(4)(c), F.S.

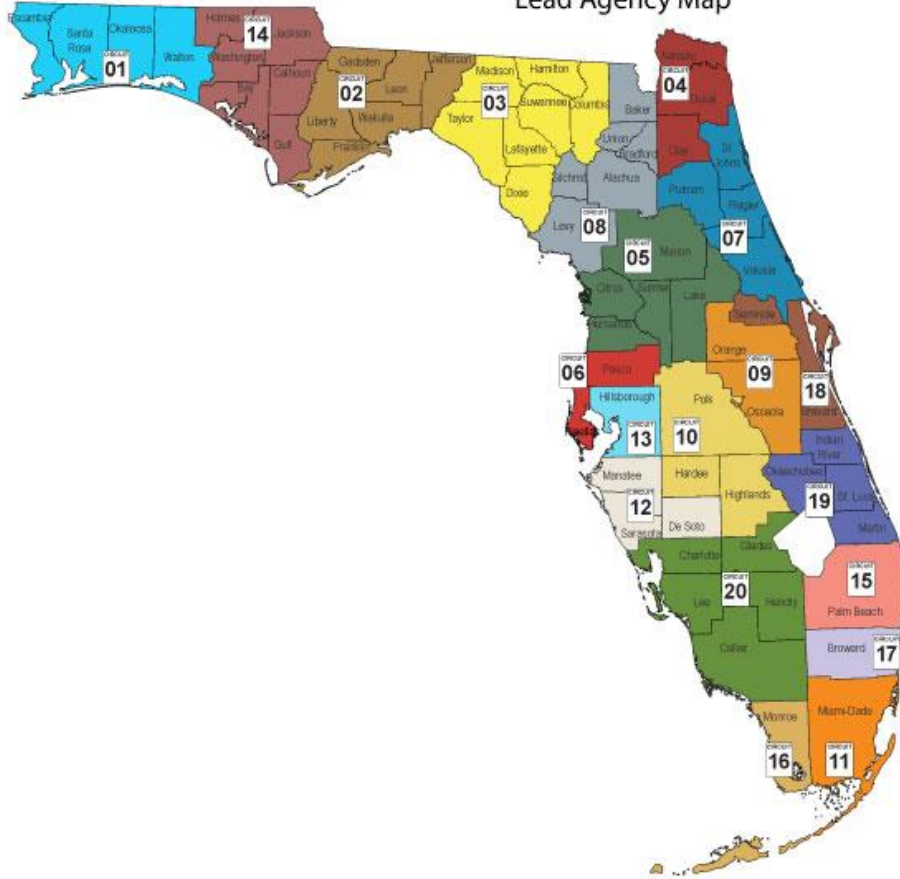
<sup>122</sup> S. 409.987(5), F.S.

<sup>123</sup> S. 409.988(1), F.S. Further, s. 409.988(1)(k), F.S., provides that CBCs and subcontracted case management providers must disclose the average caseload of case managers for filled positions, the turnover rate for case managers and their supervisors for the previous 12 months, the percentage of required home visits completed, and performance on outcome measures required under s. 409.997, F.S., for the previous 12 months.

<sup>124</sup> Florida Department of Children and Families, *Lead Agency Map, Community-Based Care*, <https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml> (last visited Mar. 10, 2021).

# Community-Based Care

## Lead Agency Map



### Funding

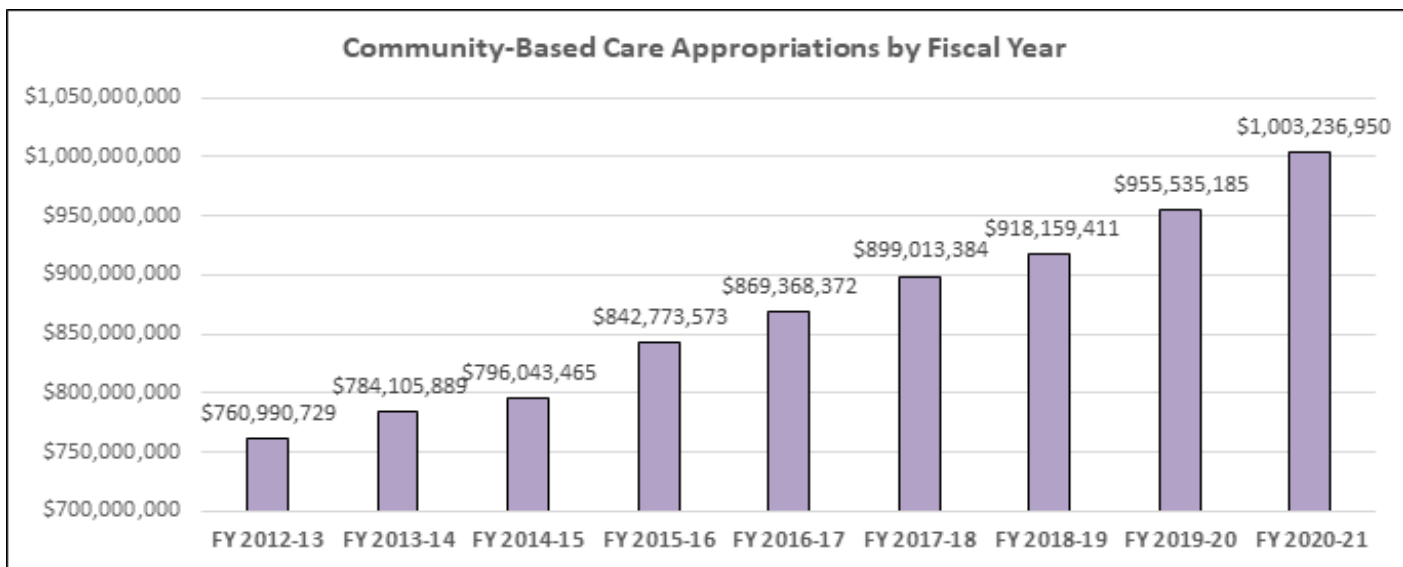
Section 409.990, F.S., requires that a contract between DCF and CBC be funded through general revenue, or other applicable state or federal funding sources.<sup>125</sup> DCF allocates funding to CBCs according to a statutory formula, which considers the proportion of child population, child abuse hotline workload, and children in care.<sup>126</sup>

The following graph provides information on total CBC funding by fiscal year.

<sup>125</sup> S. 409.990, F.S.

<sup>126</sup> S. 409.991(2), F.S., provides that core services funds are calculated based on the proportion of the (a) child population weighted as 5 percent of the total; (b) child abuse hotline workload weighted as 35 percent of the total; and (c) children in care weighted as 60 percent of the total. Section 409.991(3), F.S., provides that beginning in the 2015-2016 FY, 100 percent of the recurring core services funding must be based on the prior year recurring base core services funds, and any new funding be allocated as: (a) seventy percent of new funding amongst all lead agencies and (b) thirty percent of new funding to lead agencies that are funded below their equitable share.





Some CBCs have operated at a deficit and accessed special risk pool funding appropriate by the Legislature. CBCs can apply to DCF for risk pool funding. A committee made up of DCF’s secretary and three nonapplicant CBCs reviews the CBC risk pool applications.<sup>127</sup> DCF may authorize risk pool funding to address:

- Significant changes in the number or composition of clients eligible to receive services.
- Significant changes in the services that are eligible for reimbursement.
- Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a CBC.
- Significant changes in the mix of available funds.

Once DCF’s secretary approves a risk pool application, it can request funds from the risk pool from the Legislative Budget Commission.<sup>128</sup>

### *Compensation*

CBC expenditures must comply with financial guidelines developed by DCF, comply with federal and state law, and follow good business practices.<sup>129</sup> The Internal Revenue Code sets the rules governing compensation at public nonprofits, including those known as 501(c)(3) organizations, and specifies that no part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual.<sup>130</sup> However, the Internal Revenue Service (IRS) gives each nonprofit’s board of directors latitude in determining how much to pay top employees. The IRS requires a nonprofit board to have an objective process for setting executives’ salaries, including use of comparisons with salaries paid by similar organizations for similar service. However, a nonprofit that normally pays no taxes may be taxed for paying excess benefits to an insider.<sup>131</sup>

In 2015, during an operational audit of CBCs, the Florida Auditor General found instances where salary payments, including bonuses, and leave balances, did not appear to be properly supported or calculated in accordance with established CBC policy or state law.<sup>132</sup> During the 2017, CS/CS/HB 1121 was passed and signed into law, which limited the CBCs’ administrative employees’ salaries to 150

<sup>127</sup> S. 409.990(7)(a), F.S.

<sup>128</sup> S. 216.181(1), F.S.

<sup>129</sup> S. 409.992(1), F.S.

<sup>130</sup> 26 U.S.C. §501. Exemption from tax on corporations, certain trusts, etc. Subject to some exemptions, corporations and other eligible entities that are organized and operate exclusively for religious, charitable, scientific and other specified purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise conducting exempted activities, are exempt from taxation.

<sup>131</sup> *Id.*

<sup>132</sup> The Office of the Auditor General, *Department of Children and Families and Selected Community-Based Care Lead Agencies Oversight of Foster Care and Related Service*, Report No. 2015-156, p. 1 (Mar. 2015) [https://flauditor.gov/pages/pdf\\_files/2015-156.pdf](https://flauditor.gov/pages/pdf_files/2015-156.pdf) (last visited Mar. 10, 2021).

percent of the annual salary paid to DCF's Secretary from state-appropriated funds.<sup>133</sup> Administrative employees is not defined in s. 409.992(3), F.S.

In a January 2019 operational audit, the Florida Auditor General conducted a new independent audit and followed up on the findings noted in the 2015 report related to CBCs. The 2019 report stated that as of March 31, 2017, which is prior to the implementation of CS/CS/HB 1121 (2017), CBCs' executive officer annual salaries, before bonuses, averaged \$210,863, and the average allocated to DCF contracts with CBCs was \$160,000.<sup>134</sup> The only finding related to CBCs on compensation benefits stated that two of the DCF's subcontracted entities did not require salaried employees to record annual leave used in increments of less than 8 hours.<sup>135</sup>

### Managing Entities

DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.<sup>136</sup>

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (MEs) as the management structure for the delivery of local mental health and substance abuse services.<sup>137</sup> The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.<sup>138</sup> Full implementation of the statewide ME system occurred in 2013 and all geographic regions are now served by a ME.<sup>139</sup>

DCF must comply with duties with respect to the MEs, including to:

- Contract and conduct readiness reviews before any new MEs assume responsibilities.
- Specify data reporting requirements and use of shared data systems.
- Define the priority populations that will benefit from receiving care coordination.
- Support the development and implementation of a coordinated system of care.
- Contract to support efficient and effective administration and ensure accountability for performance.<sup>140</sup>
- Periodically review contract and reporting requirements and reduce costly, duplicative, and unnecessary administrative requirements.<sup>141</sup>

The MEs are required to comply with various statutory duties, including to:

- Maintain a governing board.
- Promote and support care coordination.<sup>142</sup>
- Develop a comprehensive list of qualified providers.
- Monitor network providers' performances.
- Manage and allocate funds for services in accordance with federal and state laws, rules, regulations and grant requirements.

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<sup>133</sup> Ch. 2017-151, s. 31, L.O.F. (amending s. 409.992, F.S., effective July 1, 2017).

<sup>134</sup> The Office of the Auditor General, *Department of Children and Families Oversight and Administration of Community-Based Care Lead Agencies and Behavioral Health Managing Entities and Selected Department Administrative Activities*, Report No. 2019-111, p. 6 and 54-55 (Jan. 2019) [https://flauditor.gov/pages/pdf\\_files/2019-111.pdf](https://flauditor.gov/pages/pdf_files/2019-111.pdf) (last visited Mar. 10, 2021).

<sup>135</sup> *Id.* at p. 3.

<sup>136</sup> See chs. 394 and 397, F.S.

<sup>137</sup> Ch. 2001-191, L.O.F.

<sup>138</sup> Ch. 2008-243, L.O.F.

<sup>139</sup> Florida Tax Watch, *Analysis of Florida's Behavioral Health Managing Entity Models*, p. 4 (Mar. 2015)

<https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model> (last visited Mar. 9, 2021).

<sup>140</sup> S. 394.9082(7), F.S., details the performance measurements and accountability requirements of MEs.

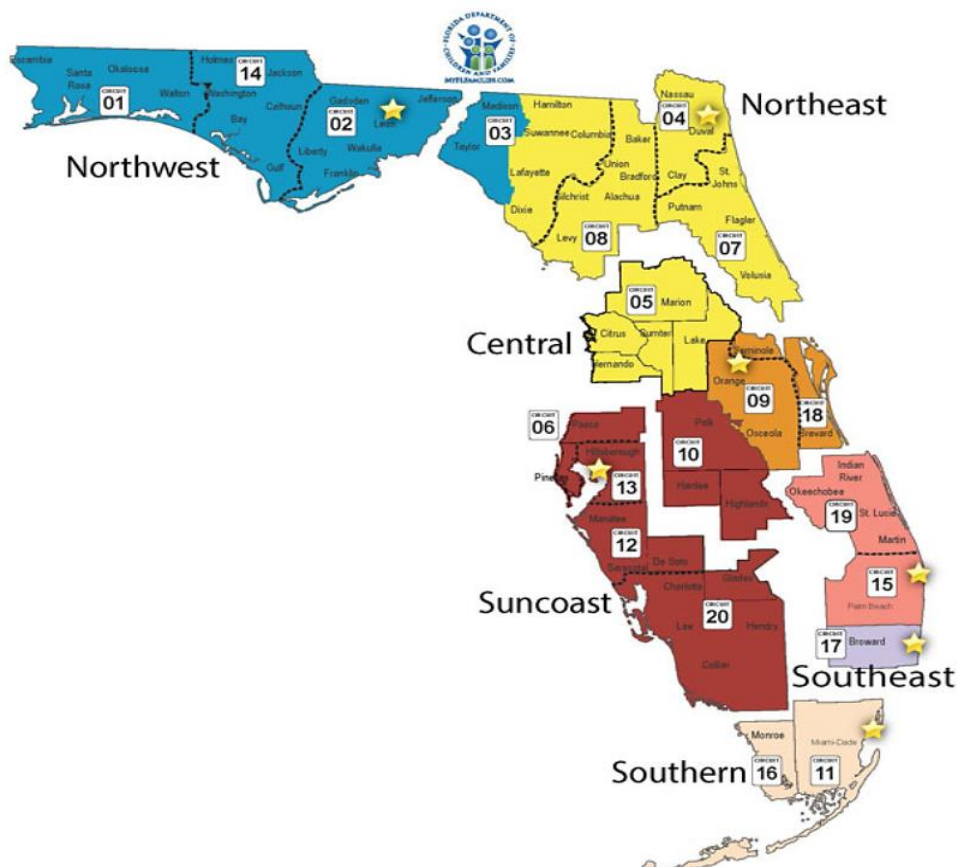
<sup>141</sup> S.394.9082(3), F.S.

<sup>142</sup> S. 394.9082(6), F.S., sets out the network accreditation and systems coordination agreement requirements.

- Operate in a transparent manner, providing access to information, notice of meetings, and opportunities for public participation in ME decision making.<sup>143</sup>

DCF contracts with seven MEs as shown in the map below and summarized as follows:

- North West Florida Health Network (blue).
- Lutheran Services Florida (yellow).
- Central Florida Cares Health System (orange).
- Central Florida Behavioral Health Network, Inc. (red).
- Southeast Florida Behavioral Health (pink).
- Broward Behavioral Health Network, Inc. (purple).
- South Florida Behavioral Health Network, Inc. (beige).<sup>144</sup>



The MEs in turn contract with local service providers for the delivery of mental health and substance abuse services.<sup>145</sup> In FY 2018-19, the network service providers under contract with the MEs served 339,093 individuals.<sup>146</sup>

### *Coordinated System of Care*

MEs are required to promote the development and implementation of a coordinated system of care.<sup>147</sup> Coordinated system of care is a full array of behavioral and related services in a region or community

<sup>143</sup> S. 394.9082(5), F.S.

<sup>144</sup> Florida Department of Children and Families, *Managing Entities*, <https://www.myflfamilies.com/service-programs/samh/managing-entities/> (last visited Mar. 10, 2021).

<sup>145</sup> MEs create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.

<sup>146</sup> Florida Department of Children and Families, *Substance Abuse and Mental Health Triennial Plan Update for Fiscal Year*, (Dec. 6, 2019) <https://www.myflfamilies.com/service-programs/samh/publications/docs/SAMH%20Services%20Plan%202018%20Update.pdf> (last visited Mar. 10, 2021).

<sup>147</sup> S. 394.9082(5)(d), F.S.

offered by all service providers, participating either under contract with a ME or by another method of community partnership or mutual agreement.<sup>148</sup> A community or region provides a coordinated system of care for those suffering from mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to MEs.<sup>149</sup> MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.<sup>150</sup> DCF must use performance-based contracts to award grants.<sup>151</sup>

There are several essential elements that make up a coordinated system of care, including:

- Community interventions.
- Case management.
- Care coordination.
- Outpatient services.
- Residential services.
- Hospital inpatient care.
- Aftercare and post-discharge services.
- Medication assisted treatment and medication management.
- Recovery support.<sup>152</sup>

A coordinated system of care must include, but is not limited to, the following array of services:

- Prevention services.
- Home-based services.
- School-based services.
- Family therapy.
- Family support.
- Respite services.
- Outpatient treatment.
- Crisis stabilization.
- Therapeutic foster care.
- Residential treatment.
- Inpatient hospitalization.
- Case management.
- Services for victims of sex offenses.
- Transitional services.
- Trauma-informed services for children who have suffered sexual exploitation.<sup>153</sup>

Current law requires DCF to define the priority populations that would benefit from receiving care coordination, including considerations when defining such population.<sup>154</sup> Considerations include the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

MEs provide specialty services to families involved in the child welfare system, including:

- Community Act Treatment Team, which are multidisciplinary clinical teams that provide comprehensive, intensive community-based treatment to families with youth and young adults, ages 11 up to 21, who are at risk of out-of-home placement due to a mental or co-occurring

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<sup>148</sup> S. 394.4573(1)(c), F.S.

<sup>149</sup> S. 394.4573(3), F.S. The Legislature has not funded system improvement grants.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> S. 394.4573(2), F.S.

<sup>153</sup> S. 394.495(4), F.S.

<sup>154</sup> S. 394.9082(3)(c), F.S.

disorder and related complex issues for whom traditional services are not or have not been adequate.

- Family Intensive Treatment (FIT), which is a program that provides intensive team-based, family-focused, comprehensive services to families where there is parental substance abuse. The program serves families that have been determined to be unsafe with children under the age of ten. Referrals for services can be made by the child welfare professional, including the child protective investigator, child welfare case manager, or CBC.

### *Funding and Expenses*

Contracts with MEs are funded with general revenue, other qualifying state funds, or applicable federal funding.<sup>155</sup> The MEs are required to develop and implement standards for collecting and reporting data related to crisis stabilization and detoxification and addictions receiving services.<sup>156</sup> The data is collected from entities who have received funds and operate under s. 394.875, F.S.<sup>157</sup> MEs are required to reconcile the data on a monthly basis, and submit the data to DCF on a monthly and annual basis. DCF is required to post data on its website regarding each ME's utilization of funds.<sup>158</sup>

In 2015, during an operational audit of the MEs, the Florida Auditor General found instances where some salary payments for leave used and ME employee leave balances did not appear to be supported or calculated accurately.<sup>159</sup>

In the January 2019 operational audit by the Florida Auditor General described above, as of March 31, 2017, the MEs' chief executive officer annual salaries, before bonuses, averaged \$226,216, and the average allocated to DCF contracts with the MEs was \$170,905.<sup>160</sup> The 2019 report also found that bonus payments of one ME did not appear reasonable and necessary to the performance of the ME's duties.<sup>161</sup> The Florida Auditor General recommended DCF amend ME contracts to require compliance with statutory provisions restricting state-funded bonus payments under the contract.<sup>162</sup>

Florida law does not currently require MEs to publish salary information of administrative employees.

### Child Advocacy Centers

A children's advocacy center (CAC) is a community-based, child-focused facility where children alleged to be victims of abuse or neglect are interviewed, receive medical exams, if necessary, therapy, and other critical services in a non-threatening and child-friendly environment. A CAC uses a multidisciplinary team model that brings together an array of professionals to confer and conduct investigations, treatment, and prosecution of child abuse cases. The primary goal of a CAC is to minimize the level of trauma experienced by child victims, improve prosecution, and provide efficient and thorough provision of necessary services to the child victim and the child's family.<sup>163</sup>

Florida's CACs provide services, including, but not limited to:

- Forensic interviews.
- Crisis intervention and support services.
- Medical evaluations.
- Multidisciplinary review of cases.
- Evidence-based prevention and intervention programs.

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<sup>155</sup> S. 394.9082(9), F.S.

<sup>156</sup> S. 394.9082(10), F.S.

<sup>157</sup> *Id.*

<sup>158</sup> S. 394.9082(10)(e) and (f), F.S.

<sup>159</sup> The Office of the Auditor General, *Department of Children and Families and Selected Behavioral Health Managing Entities*, Report No. 2015-155, p. 1-2 (Mar. 2015) [https://flauditor.gov/pages/pdf\\_files/2015-155.pdf](https://flauditor.gov/pages/pdf_files/2015-155.pdf) (last visited Mar. 10, 2021).

<sup>160</sup> 2019 Audit Report, at p. 6 and 57.

<sup>161</sup> *Id.* at p. 3.

<sup>162</sup> *Id.* at p. 28.

<sup>163</sup> The FNCAC, *What is a CAC*, available at <https://www.fncac.org/what-cac> (last visited Mar. 10, 2021).

- Professional training and community education.<sup>164</sup>

CACs must meet specified statutory criteria to become eligible for membership in the Florida Network of Children’s Advocacy Centers, Inc. (FNCAC),<sup>165</sup> a statewide nonprofit membership organization.<sup>166</sup> A CAC must:

- Be a private, nonprofit incorporated agency or a governmental entity.
- Be a child protection team,<sup>167</sup> or by written agreement incorporate the participation and services of a child protection team, with established community protocols which meet all of the requirements of the National Network of Children’s Advocacy Centers, Inc.
- Have a neutral, child-focused facility where joint DCF and law enforcement interviews take place with children in appropriate cases of suspected child sexual abuse or physical abuse.
- Have a minimum designated staff that is supervised and approved by the local board of directors or governmental entity.
- Have a multidisciplinary case review team that meets on a regular scheduled basis or as the caseload of the community requires. The team must consist of representatives from the Office of the State Attorney, DCF, the child protection team, mental health services providers, law enforcement, and the CAC staff.
- Track child abuse cases and collect relevant information on children served.
- Provide referrals for medical exams and mental health therapy.
- Provide child abuse training in the community.
- Have an interagency commitment covering those aspects of agency participation in a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.<sup>168</sup>

In addition, CAC’s staff must be trained and meet background screening requirements in accordance with s. 39.001(1), F.S.,<sup>169</sup> which the FNCAC is responsible for ensuring compliance.<sup>170</sup> State and federal funding of these centers is contingent on their meeting the eligibility criteria and the staff receiving the necessary training and screening, and Florida law includes provisions on allocation of funds and how they should be distributed to the centers.<sup>171</sup> CACs are required to prepare annual reports with specified information and submit them to the FNCAC, which is then required to compile reports from the centers and provide a report to the President of the Senate and the Speaker of the House of Representatives in August of each year.<sup>172</sup>

The FNCAC is an Accredited State Chapter of the National Children’s Alliance and represents all local CACs in Florida.<sup>173</sup> It reports that there are 27 CACs that serve 85 percent of the children and families in Florida.<sup>174</sup> The 27 CACs are shown in the map below and summarized as follows:<sup>175</sup>

- Nancy J. Cotterman Center and Embrace Families Solutions (blue).
- Children’s Advocacy Center of Southwest Florida, Lake/Sumter Children’s Advocacy Center, and Gulf Coast Children’s Advocacy Center (light blue).
- Suncoast Center, Inc. and Children’s Home Society of Florida North Central Division (maroon).
- University of Florida Child Advocacy Center, Children’s Advocacy Center of Hernando County, and Santa Rosa Kids’ Home, Inc. (purple).

<sup>164</sup> *Id.*

<sup>165</sup> S. 39.3035(1), F.S.

<sup>166</sup> The FNCAC, *About Us*, <https://www.fncac.org/about-us> (last visited Mar. 10, 2021).

<sup>167</sup> The Children’s Medical Services Program in the Department of Health (DOH) coordinates Child Protection Teams (CPTs). DCF and DOH oversee CPTs through an interagency agreement. CPTs supplement the assessment and protective supervision activities of DCF in child abuse cases. CACs contract with DOH because a CAC must be a CPT or incorporate the participation and services of a CPT.

<sup>168</sup> S. 39.3035(1), F.S.

<sup>169</sup> Employees must complete a level 2 background screening pursuant to ch. 435, F.S.

<sup>170</sup> S. 39.3035(2), F.S.

<sup>171</sup> S. 39.3035(3)(a) and (b), F.S.

<sup>172</sup> S. 39.3035(3)(c), F.S.

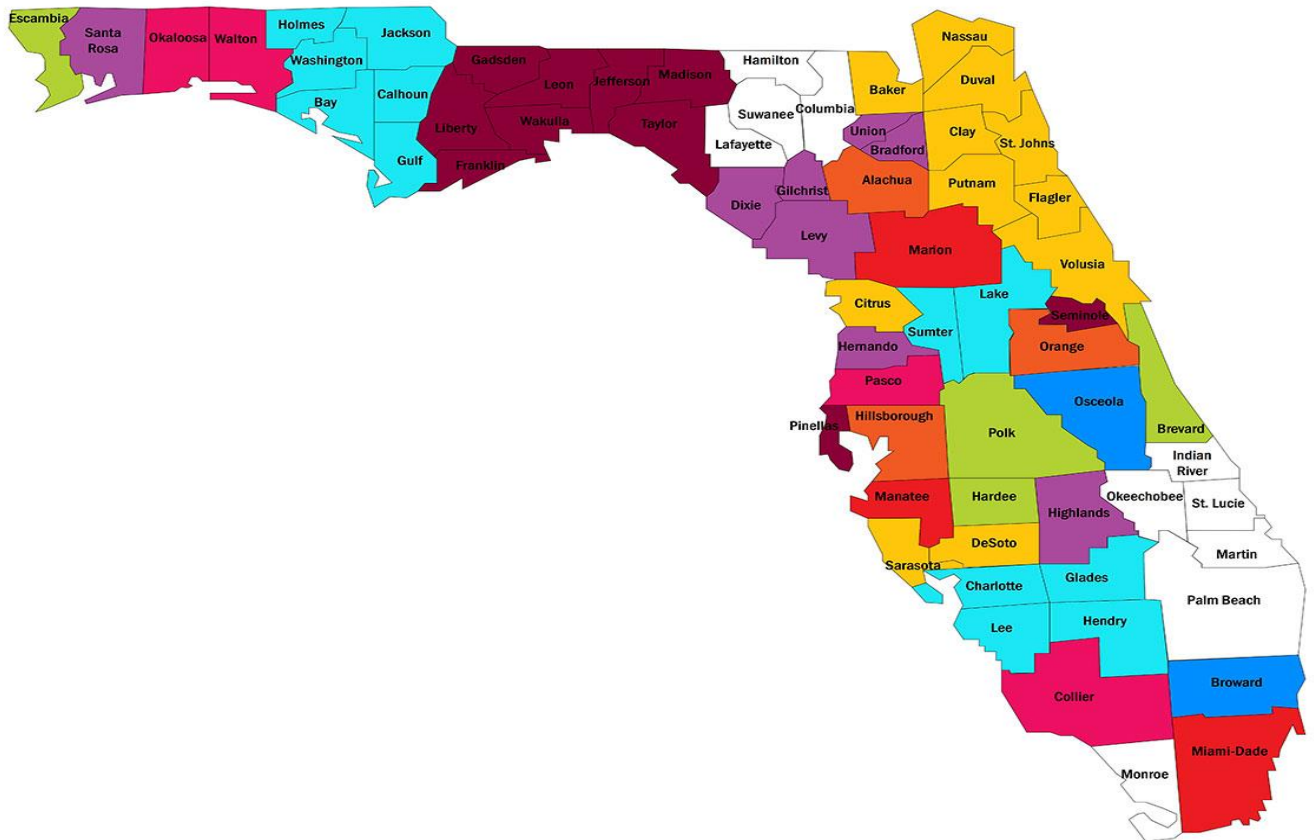
<sup>173</sup> *Supra* note 166.

<sup>174</sup> *Id.*

<sup>175</sup> FNCAC, *County Coverage Map*, <https://www.fncac.org/county-coverage-map> (last visited Mar. 10, 2021).



- Children’s Home Society of Florida’s Greater Lakeland, Children’s Advocacy Center of Brevard County, Gulf Coast Kid’s House, Inc., and Children’s Home Society of Florida Children’s Advocacy Center (green).
  - Pasco Kids First, Inc., Children’s Advocacy Center of Collier County, and Emerald Cost Children’s Advocacy Center, Inc. (pink).
  - Kristi House, Inc., Kimberly’s Center for Child Protection, and Manatee Children’s Services, Inc. (red).
  - Mary Lee’s House, Child Advocacy Center, Inc., and Howard Phillips Center for Children & Families (orange).
  - Jessie’s Place, First Coast Child Protection Team, and Child Protection Center, Inc. (yellow).
- There is currently no child advocacy center serving a county if that county is shaded white in the map.



In 2018, Florida’s CACs served over 34,000 children who were victims of child abuse and neglect as follows:

- 20,259 received therapy services;
- 17,297 received crisis intervention services;
- 11,120 medical evaluations; and
- 10,675 forensic/specialized interviews.<sup>176</sup>

An analysis conducted by the National Children’s Advocacy Center in 2015 suggests that the children’s advocacy center model saves approximately \$1,000 per case in services during the course of a child abuse investigation.<sup>177</sup>

<sup>176</sup> FNCAC, *Impact of Children’s Advocacy Centers on Child Abuse and Neglect*, <https://www.fncac.org/impact-childrens-advocacy-centers-child-abuse-and-neglect> (last visited Mar. 10, 2021).

<sup>177</sup> *Id.*

## Community Alliances

DCF is required to establish community alliances, which include local stakeholders and representatives in each county to encourage and maintain community participation, and governance of CBCs.<sup>178</sup> Each community alliance may encompass more than one county when such arrangement is determined to provide for more effective representation.<sup>179</sup> Community alliances have a duty, among other obligations, to serve as a catalyst for community resource development and promote prevention and early intervention.<sup>180</sup>

Community alliances are composed of representatives from:

- DCF.
- the county government.
- the school district.
- the county United Way.
- the county sheriff's office.
- the circuit court corresponding to the county.
- the county children's board, if one exists.
- a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, and promote adoption.<sup>181</sup>

The community alliance must adopt bylaws and may increase the membership of the alliance if such increase is necessary to adequately represent the diversity.<sup>182</sup> The additional members may include state attorneys, public defenders, their designees, or individuals from funding organizations, community leaders or individuals who have knowledge of community-based serve issues.<sup>183</sup>

Prior to 2014, s. 409.1671(1)(d), F.S., allowed DCF to develop an alternative plan to outsource services in an area if it was impossible or not feasible to competitively contract with a CBC.<sup>184</sup> DCF was required to develop a plan in collaboration with the local community alliance.<sup>185</sup> It was required to detail how the community would implement community-based care through local providers, and to ensure control over management and administration of services.<sup>186</sup> A plan developed under this former provision had to include best business practices, including some form of public and private partnerships.<sup>187</sup>

## **Conflicts of Interest**

There are several Florida statutes which address transactions or other situations in which a conflict of interest exists or may exist,<sup>188</sup> and define the term "conflict of interest" in context of the statute with which it relates.<sup>189</sup>

## Corporations

Florida laws on corporations define "director's conflict of interest transaction" as a transaction between a corporation and one or more of its directors, or another entity in which one or more of the corporation's directors is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a shareholder of the corporation, and has a direct or indirect material financial

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<sup>178</sup> S. 20.19(5)(a), F.S.

<sup>179</sup> *Id.*

<sup>180</sup> S. 20.19(5)(b), F.S.

<sup>181</sup> S. 20.19(5)(d), F.S.

<sup>182</sup> S. 20.19(5)(e), F.S.

<sup>183</sup> *Id.*

<sup>184</sup> Ch. 2014-224, s. 46, L.O.F.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> See ss. 112.312, 605.04092, 607.0832, and 617.0832, F.S.

<sup>189</sup> See ss. 112.312, and 605.0492, F.S.



interest or other material interest.<sup>190</sup> If a director's conflict of interest transaction is fair to the corporation at the time it is authorized, approved, effectuated, or ratified:

- Such transaction is not void or voidable.
- The fact that the transaction is a director's conflict of interest transaction is not grounds for any equitable relief, an award, or other sanctions.<sup>191</sup>

If proceedings challenging the validity of a director's conflict of interest transaction or proceedings seeking equitable relief, damages, or other sanction are brought, the person challenging the director's conflict of interest transaction has the burden to prove the lack of fairness of the transaction in specified situations.<sup>192</sup>

### Nonprofit Organizations

Chapter 617, F.S., governs corporations not for profit and does not define conflict of interest. It provides, however, that no contract or other transaction between a corporation and one of its directors or other corporation in which one or more directors have an interest shall be void or voidable because of the relationship or interest, or because the interested director is present at the meeting which authorizes or ratifies such contract if:

- The relationship is disclosed or known to the other directors which authorizes or ratifies the transaction by a vote which is sufficient to approve the transaction without the interested director's vote;<sup>193</sup>
- The relationship is known or disclosed and the members entitled to vote authorize or ratify it by vote or written consent;<sup>194</sup> or
- The contract or transaction is fair and reasonable to the operation at the time it is authorized by the board, a committee, or the members.<sup>195</sup>

The transactions must be approved by a majority vote of the members.<sup>196</sup>

### Public Officers and Employees

Public officers and employees must comply with standards of conduct provided for in s. 112.313, F.S. Chapter 112, F.S., restricts the type of business transactions that public officers and employees of an agency may have with a business entity in which the officer, employee, or the officer's or employee's specified family has a material interest.<sup>197</sup> Public officers and employees of agencies are also prohibited from having conflicting employment or contractual relationships with any business entity or regulation.<sup>198</sup> Section 112.312(8), F.S., defines "conflict" or "conflict of interest" as a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

### **Effect of Proposed Changes**

#### Community-Based Care Organizations

The bill amends s. 409.988, F.S., to require CBCs to adhere to all best child welfare practices pursuant to:

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<sup>190</sup> S. 607.0832, F.S.; *see also* s. 605.0492(1)(g), F.S., with respect to limited liability companies which defines "member's conflict of interest" as a transaction between a limited liability company and one or more of its members, or another entity in which one or more of the limited liability company's members is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member of the limited liability company, and has a direct or indirect material financial interest or other material interest.

<sup>191</sup> S. 607.0832(2), F.S. This is the case when because of the relationship or interest, because such director is present at the meeting in which the transaction was authorized, or because his or her votes are counted for such purpose.

<sup>192</sup> S. 607.0832(3), F.S. The presence of or a vote cast by a director with an interest does not affect the validity of an action if specified conditions are met.

<sup>193</sup> S. 617.0832(1)(a), F.S. The presence of a vote cast by a director having a relationship or interest does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized or ratified in this paragraph.

<sup>194</sup> S. 617.0832(1)(b), F.S.

<sup>195</sup> S. 617.0832(1)(c), F.S.

<sup>196</sup> S. 617.0832(2) and (3), F.S.

<sup>197</sup> S. 112.313(3), F.S.

<sup>198</sup> S. 112.313(7), F.S.

- s. 39.4087, F.S., related to treating caregivers with respect and ensuring delivery of child welfare services is focused on the child's best interest.
- s. 39.523, F.S., related to the placement of children in out-of-home care. Such placement must be in the least restrictive, most family-like setting available in close proximity to the child's home and the placement must meet the child's needs.
- s. 409.1415, F.S., related to providing supports to caregivers and birth or legal parents in order for them to build strong relationships that lead to more successful reunifications and stability for children.
- s. 409.145, F.S., related to empowering caregivers for children placed in foster care so children receive quality parenting while in out-of-home placement.

Further, s. 409.996, F.S., requires CBC contracts with DCF to include information that specifies how the CBC will adhere to the above requirement.

The bill amends s. 409.996, F.S., to require DCF to annually conduct a comprehensive, multi-year review of the revenues, expenditures, and financial position of all CBC agencies that covers the most recent two consecutive fiscal years. The review must include a comprehensive system-of-care analysis. The bill requires all CBCs to develop and maintain a plan to achieve financial viability to accompany DCF's submission. The bill requires DCF to submit its review to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year. This report is currently required in the 2020-2021 General Appropriations Act.

The bill amends s. 409.988, F.S., removing the requirement for CBCs to post specified budget information. Section 409.996, F.S., is amended to instead require DCF to collect and publish on its website, and annually update, all of the following information for each CBC under contract with DCF:

- Current salaries, bonuses, and other compensation paid, by position, for any employee who receives a salary from state-appropriated funds, including state-appropriated federal funds, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary of DCF's secretary. Under this paragraph, "employee" has the same meaning in s. 448.095.<sup>199</sup>
- All findings from the annual review of the CBCs by DCF.

The bill amends s. 409.987, F.S., to allow DCF to collaborate with the local community alliance to establish an alternative approach to providing community-based child welfare services in communities where conditions make it infeasible to competitively contract with a CBC. The bill requires DCF and the local community alliance to develop a plan that details how the community will continue to implement community-based care. The plan must ensure local control over the management and administration of service provision. The bill requires the plan to, at a minimum:

- Describe the reason for DCF's inability to competitively contract for CBC services.
- The proposed alternative approach to providing CBC services
- The entities that will be involved in service provision.
- How local control will be maintained.
- How services will be managed to ensure that federal and state requirements are met and child welfare outcome goals under s. 409.986, F.S., are achieved.
- Recommendations for increasing the ability of DCF to contract with a CBC in that area.

DCF must provide the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives prior to implementation. DCF must provide quarterly updates about the plan's implementation to the Governor, the President of the Senate, and the Speaker of the House of Representatives until two years after full implementation of the plan.

The bill amends s. 409.988(1)(k), F.S., to include the number and percent of case managers who have 25 or more cases on their caseloads in the information CBCs are required to publish on their websites by the 15<sup>th</sup> day of each month.

<sup>199</sup> S. 448.095(d), F.S., defines "employee" as any person filing an authorized and establish position who performs labor or services for a public or private employer in exchange for salary, wages, or other remuneration.

The bill amends s. 409.990, F.S., to require a CBC to fund the increased costs incurred by subcontracted providers if the subcontracted providers must provide services that are beyond the contract limits due to increased client need or caseload.

### Managing Entities

The bill amends s. 394.9082, F.S., to require DCF to collect and publish all of the following information on its website, updated annually, for each ME under contract with DCF:

- Current salaries, bonuses, and other compensation paid, by position, for any employee of the ME or an affiliated entity, who receives a salary from state-appropriated funds, including state-appropriated federal funds, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to DCF's secretary. Under this paragraph, "employee" has the same meaning in s. 448.095, F.S.<sup>200</sup>
- Form 990 and related documents filed with the IRS, auditor reports, and annual reports from the last three years for each ME.

### Conflicts of Interest

The bill addresses conflicts of interest with MEs and CBCs. The bill creates ss. 394.90825 and 409.987(7), F.S., establishing a process for disclosing and eliminating any transaction or activity that could reasonably be construed to be a conflict of interest for a member, officer, or relative of an ME or CBC. The bill defines the following terms:

- "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with the CBC or ME for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.
- "Conflict of interest" means when a board member or an officer, or a relative of a member of an officer, of the CBC or ME does any of the following:
  - Enters into a contract or other transaction for goods or services with the CBC or ME.
  - Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the CBC or ME or proposes to enter into a contract or other transaction with the CBC or ME. For purposes of this subparagraph "indirect interest" has the same meaning as provided in s. 112.312, F.S.
  - Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such member or officer, or relative of the member or officer, with the CBC or ME.
- "Relative" means a relative within the third degree of consanguinity by blood or marriage.

For any activity that is presented to the board of the CBC or ME for initial consideration and approval on or after July 1, 2021, or any contract being considered for renewal between July 1, 2021, and January 1, 2022, a board member or officer must disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or renewed by the board. A rebuttal presumption of a conflict of interest exists if the activity was acted upon by the board without prior notice.

If a contract is not subject to renewal before January 1, 2022, the board member or officer must disclose any information that could reasonably be construed to be a conflict of interest by December 31, 2021.

Any proposed activity or existing contract which does give rise to a disclosure obligation must be listed on the meeting agenda for the next general or special meeting of the members, and copies of all contracts and relevant documents related to the transaction must be included. The meeting agenda

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<sup>200</sup> *Id.*

must clearly state the potential conflict of interest. The board must be given an opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.

If the board votes against the proposed activity, the board member or officer must notify the board in writing of his or her intention, or the relative's intention, not to pursue the proposed activity or the board member or officer must resign. If the board finds an officer or member has violated this provision, the officer or member will be deemed removed from the office before the next scheduled board meeting. If the board votes against the renewal of an existing contract, which gives rise to a conflict of interest, the parties to the activity may opt to cancel the activity, or in the alternative, the member or officer must resign from the board before the next scheduled meeting. The bill provides for limitations on damages under existing contracts.

A board member, officer, or relative who has an interest in an activity that entails a possible conflict of interest may attend the meeting at which the activity is considered by the board, make a presentation, and then leave the meeting during any relevant discussion by the other board members. A member or officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

A contract entered into between a member, officer, or relative of a member or an officer in which there is a conflict of interest or potential conflict of interest, is voidable and terminates upon the filing of a written notice to the board, which involves at least 20 percent of the voting interest of the CBC or ME.

### Central Abuse Hotline

The bill reorganizes and relocates current s. 39.201, F.S., by:

- Creating s. 39.101, F.S., to contain provisions related to the hotline's operation and maintenance, timelines for initiating an investigation, use of information received by the hotline, and quality assurance.
- Amending current s. 39.201, F.S., to only contain provisions related to reporting requirements, including required reporting; exceptions to reporting; additional circumstances in relating to reporting; reports of child abuse, neglect, or abandonment by a parent or caregiver; reports of sexual abuse of a child, juvenile sexual abuse, or a child who has exhibited inappropriate sexual behavior; and mandatory reports of a child death.

In addition to incidents that occur at a Florida College System institution or a state university, the bill adds to the list of schools or school events regarding which DCF must collect and analyze data, and include in separate statistical reports, as follows:

- On school premises;
- On school transportation;
- At school-sponsored off-campus events;
- At any school readiness program provider determined to be eligible under s. 1002.88, F.S.;
- At a private prekindergarten provider or a public school prekindergarten provider;
- At a public K-12 school;
- At a private school; or
- At any school.

The bill amends s. 39.201(2)(c), F.S., relating to reports of juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior and relocates the law to a new s. 39.201(5), F.S., and requires DCF to comply with new requirements, including:

- Providing services in the least restrictive environment possible and must include, but are not limited to, child advocacy center services pursuant to s. 39.3035, F.S., and sexual abuse treatment programs developed and coordinated by the Children's Medical Services Program pursuant to s. 39.303, F.S.
- Conducting a protective investigation for allegations of childhood sexual abuse or juvenile sexual abuse which occur on or at the schools or school events listed in the newly created s. 39.101(3)(f)2., F.S., and requires that the investigation include an interview with the child's parent or legal guardian.

- Notifying the Department of Education, the law enforcement agency having jurisdiction over the municipality or county in which the school is located and, as appropriate, the superintendent of the school district where the school is located, the administrative officer of the private school, or the owner of the private school readiness or pre-kindergarten provider.
- Preparing written report to the law enforcement agency within 3 working days after making the oral report. Any criminal investigation must be coordinated with DCF's child protective investigation, whenever possible. Any interested person who has relevant information relating to the abuse may forward a statement to DCF.

Section 39.201(1)(b)2.h., F.S., is created and adds an animal control officer defined in s. 828.27, F.S., or agent appointed under s. 828.03, F.S., to those who must disclose his or her name when making a report to the hotline.

#### *Confidentiality of Reports*

The bill amends s. 39.202(2), F.S., to include the Agency for Health Care Administration (AHCA) as an agency permitted to receive reports of abuse and neglect. This will allow AHCA to complete child abuse and neglect record checks for employees who work in direct contact with children placed by DCF in facilities licensed by AHCA. This brings the state in compliance with FFPSA provisions requiring such checks.

The bill creates 39.202(7), F.S., to grant access to confidential and exempt records to a legislative committee pursuant to s. 11.143, F.S., within seven business days if requested within that timeframe.

#### *Penalties for Non-Reporting*

The bill amends s. 1012.795, F.S., requiring the Education Practices Commission (EPC) to suspend for not less than one year the educator certificate of instructional personnel or school administrator if DCF finds that he or she knowingly failed to report child abuse pursuant to s. 39.201, F.S., and the EPC has issued a final order in accordance with ch. 120, F.S., for a previous instance of failure to report by the individual.

### Child Protective Investigations

#### *Institutional Child Abuse*

The bill amends s. 39.202, F.S., to provide that an alleged perpetrator may be represented by an attorney or accompanied by another person if specified conditions are met. It further provides the absence of such person does not prevent DCF from proceeding with other aspects of the investigation. If the institution is not operational and the child is unable to be located, the bill requires the investigation to be commence immediately upon the institution reopening. The bill requires DCF to provide copies of all investigative reports to a state attorney or law enforcement agency upon request. This is current law that the bill relocates to this section under the revision of s. 39.201.

#### *CIRRT*

The bill amends s. 39.2015, F.S., to include as an example of a situation where a CIRRT investigation could be conducted to include allegations of sexual abuse of a child. Further, it requires CIRRT teams to include a representative from a child advocacy center who has specialized training in sexual abuse, if sexual abuse is alleged, or a combination of specialists from a child advocacy center, if appropriate.

### Child Advocacy Centers

The bill amends s. 39.3035(1), F.S., to specify that:

- CAC's are facilities that offer multidisciplinary services in a community-based, child-focused environment to children who are alleged to be victims of abuse or neglect;

- the child served by such centers may have experienced a variety of types of abuse or neglect, including, but not limited to, sexual abuse or severe physical abuse; and that
- the centers bring together, often in one location, child protective investigators, law enforcement, prosecutors, and medical and mental health professionals to provide a coordinated, comprehensive response to victims and their caregivers.

This is consistent with how CAC's currently operate.

## Out-of-Home Placements

### *Family Foster Homes*

The bill amends s. 409.175, F.S., to increase the number of foster children who may be placed in a licensed foster home before a DCF must conduct an assessment and over-capacity waiver. The bill increases the number from five or more children, including the foster parents' own children, to eight or more, including the foster parents' own children. If the total number of children in a family foster home is eight or more, including the foster parents' own children, the bill requires DCF to grant an over-capacity waiver before placing another child in the home. Before granting a capacity waiver, the bill requires DCF to conduct an assessment of each child to be placed in the home and whether the child's needs will be met by the placement. This change gives DCF more flexibility when placing children in family foster homes and is within the requirements set by the FFPSA, which allows a child welfare agency to place six children in a licensed family foster home, excluding the foster parents' own children, prior to being considered over-capacity.

The bill amends s. 39.4087, F.S., to relocate language that a caregiver must maintain the confidentiality of any information required by law from s. 39.4087(1)(c), F.S., to new s. 39.4087(c)2., F.S. The bill also amends s. 39.4087(1)(l), F.S., to consider a caregiver as a placement option if a child who was formerly placed with the caregiver renters out-of-home only if the caregiver agrees to such placement.

The bill repeals s. 409.1453, F.S., which requires DCF to design and disseminate training for caregivers on life skills, and relocates it to s. 409.1415(2)(b)15., F.S.

### *Extended Foster Care*

The bill amends s. 39.6251(4)(a), F.S., to specify that young adults participating in EFC must reside in *voluntary*, supervised living environments. The bill requires that a supervised living arrangement may not include a detention facility, a forestry camp, a training school, or any other facility operated primarily for the detention of delinquent children. Further, the bill states that a young adult may not reside in any setting in which the young adult is involuntarily placed, unless the placement is through a court-appointed guardian. This ensures federal reimbursement to the state for all youth participating in EFC. Young adults will still have their needs meet while incarcerated through other available services.

## Foster Information Center

The bill amends s. 409.1415(2)(b)6., F.S., to specify that the services and supports provided to caregivers are addressed in a new subsection created in s. 409.1415(3), F.S. The new subsection requires DCF to establish the Foster Information Center to connect current and former foster parents, known as foster parent advocates, to prospective and current foster parents in order to provide information and services, including, but not limited to:

- Navigating the application and approval process, including timelines for each, preparing for transitioning from approval for placement to accepting a child into the home, and learning about and connecting with any available resources in the prospective foster parent's community.
- Accessing available resources and services, including but not limited to, those from the Florida Foster and Adoptive Parent Association, for any current foster parents who needs additional assistance.
- Providing information specific to a foster parent's individual needs.

This expands the purpose of the Foster Information Center that DCF currently operates by adding responsibilities related to current foster parents, not just prospective foster parents.

The bill also addresses supports to relative and non-relative caregivers, known as kinship caregivers, by requiring CBCs to provide a kinship caregiver with resources and supports that are available and discuss whether the caregiver meets any eligibility criteria. If the caregiver is unable to access resources and supports beneficial to the well-being of the child, the CBC or case management agency must assist the caregiver in initiating access to resources by:

- Providing referrals to kinship navigation services, if available.
- Assisting with linkages to community resources and completion of program applications.
- Scheduling appointments.
- Initiating contact with community service providers.

The CBC must provide each caregiver with a telephone number to call during normal working hours whenever immediate assistance is needed and the child's case manager is unavailable. The telephone number must be staffed and answered by individuals possessing knowledge and authority to assist caregivers. This may provide kinship caregivers greater access to resources, which will enable them to better care for the children living with them.

### Multidisciplinary Legal Representation

The bill creates s. 39.4092, F.S., to allow each Office of Criminal Conflict and Civil Regional Counsel (OCCCRC) to establish a multidisciplinary legal representation model program to serve families who are in the dependency system. DCF may collaborate with the OCCCRC to implement a program for eligible families involved in the dependency system, within available resources. The bill provides requirements if an OCCCRC establishes a multidisciplinary legal representation model program, including:

- Using a team that consists of a lawyer, a forensic social worker, and a parent-peer specialist. For purposes of the section, a "parent-peer" specialist means a person who has:
  - Previously had his or her child involved in the dependency system and the child was placed in out-of-home care.
  - Been successfully reunified with the child for more than 2 years.
  - Received specialized training to become a parent-peer specialist.
- Providing any necessary agreements to maximize financial resources and enable access to available federal matching funds.
- Providing specialized training and support for attorneys, social workers, and parent-peer specialists involved in the model program.
- Collecting sufficient, uniform data for purposes of quality improvement and program evaluation.
- Developing consistent operational program policies and procedures throughout each region that establishes the model program.
- Obtaining agreements with universities relating to approved placements for social work students to ensure the placement of social workers in the program.
- Executing conflict of interest agreements with each team member.

Each OCCCRC that establishes a multidisciplinary legal representation model program must provide an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA). The annual report must use the uniform data collected on each individual child whose parents are served by the program and must detail, at a minimum, all of the following:

- Reasons for the original involvement of the family in the dependency system.
- Length of time it takes to achieve a permanency goal for the children whose parents are served by the program.
- Frequency of each type of permanency goal achieved by children whose parents are served by the program.
- Rate of re-abuse or re-removal of children whose parents are served by the program.
- Any other relevant factors that tend to show the impact of the program on the outcomes for children in the dependency system, provided each region that has established such a program

agrees to uniform additional factors and how to collect data on such additional factors in the annual report.

By October 1, 2022, and annually thereafter through October 1, 2025, each OCCRC must submit its annual report to OPPAGA. The bill requires OPPAGA to compile the results of such reports and conduct an analysis comparing the reported outcomes from the multidisciplinary legal representation model to known outcomes of children in the dependency system whose parents are not served by the program. OCCRC's must provide any additional information or data requested by OPPAGA for its analysis. By December 1, 2022, and annually thereafter through December 1, 2025, OPPAGA must submit its analysis in a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

## B. SECTION DIRECTORY:

- Section 1:** Creating s. 39.101, F.S., relating to the central abuse hotline.
- Section 2:** Amending s. 39.201, F.S., relating to required reports of child abuse, abandonment, neglect, and juvenile sexual abuse; required reports of death; reports involving a child who has exhibited inappropriate sexual behavior.
- Section 3:** Amending s. 39.2015, F.S., relating to critical incident rapid response teams.
- Section 4:** Amending s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse and neglect.
- Section 5:** Amending s. 39.205, F.S., relating to penalties relating to reporting of child abuse, abandonment, or neglect.
- Section 6:** Amending s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.
- Section 7:** Amending s. 39.3035, F.S., relating to child advocacy centers; standards; state funding.
- Section 8:** Amending s. 39.4087, F.S., relating to department goals and requirements relating to caregivers; dispute resolution.
- Section 9:** Creating s. 39.4092, F.S., relating to multidisciplinary legal representation model program for parents of children in the dependency system.
- Section 10:** Amending s. 39.6251, F.S., relating to continuing care for young adults.
- Section 11:** Amending s. 394.9082, F.S., relating to behavioral health entities.
- Section 12:** Creating s. 394.90825, F.S., relating to boards of managing entities; conflicts of interest.
- Section 13:** Amending s. 409.1415, F.S., relating to parenting partnerships for children in out-of-home care; resources.
- Section 14:** Repealing s. 409.1453, F.S., relating to design and dissemination of training for foster care caregiver.
- Section 15:** Amending s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.
- Section 16:** Repealing s. 409.1753, F.S., relating to foster care; duties.
- Section 17:** Amending s. 409.987, F.S., relating to lead agency procurement; boards; conflicts of interest.
- Section 18:** Amending s. 409.988, F.S., relating to lead agency duties; general provisions.
- Section 19:** Amending s. 409.990, F.S., relating to funding for lead agencies.
- Section 20:** Amending s. 409.992, F.S., relating to lead agency expenditures.
- Section 21:** Amending s. 409.996, F.S., relating to duties of the Department of Children and Families.
- Section 22:** Amending s. 1012.795, F.S., relating to education practices commission; authority to discipline.
- Section 23:** Amending s. 39.6225, F.S., relating to guardianship assistance program.
- Section 24:** Amending s. 39.301, F.S., relating to initiation of protective investigations.
- Section 25:** Amending s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.
- Section 26:** Amending s. 322.09, F.S., relating to application of minors; responsibility for negligence or misconduct of minor.
- Section 27:** Amending s. 934.03, F.S., relating to interception and disclosure of wire, oral, or electronic communications prohibited.
- Section 28:** Provides an effective date.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill has indeterminate, but likely insignificant, fiscal impacts on DCF. The department may realize a positive impact to the extent that prohibiting incarcerated young adults from participating in the extended foster care program results in less program costs.

DCF may have a workload increase to implement the bill's provisions related to the collection and publication of information on CBCs and MEs, expanding the functions of the Foster Information Center, and providing records to legislative committees within seven days upon request. The impact is likely insignificant.

The bill permits, but does not require, the Offices of Criminal Conflict and Civil Regional Counsels to implement a multidisciplinary legal team representation model program with DCF that would be eligible for federal Title IV-E matching funds. The receipt of these funds would require budget authority. It is unknown how many teams would be created, if at all; thus, the required authority is indeterminate.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

There may be an indeterminate, negative fiscal impact on CBCs to implement provisions requiring services and support be provided to kinship caregivers.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

#### 2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

DCF has sufficient rulemaking authority to implement the bill's provisions.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 15, 2021, the Children, Families, and Seniors Subcommittee adopted an amendment to the bill. The amendment restores current law relating to the use of state funds for community-based care lead agency employee salaries.

The bill was reported favorably as amended. The analysis is drafted to the amended bill as passed by the Children, Families, and Seniors Subcommittee.