HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 893 Child Welfare Placement
SPONSOR(S): Health & Human Services Committee, Children, Families & Seniors Subcommittee, Melo
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Committee	19 Y, 0 N, As CS	Woodruff	Calamas

SUMMARY ANALYSIS

Florida's child welfare system, administered by the Department of Children and Families (DCF), finds safe out-of-home placements for children who cannot safely remain at home with parents. 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 a residential setting.

The federal Family First Prevention Services Act (FFPSA) of 2018 reformed the federal child welfare funding streams, in part, limiting federal funding for placements in group homes. Such funding is now only available for the first 14 days from placement, unless the child is in a specified setting. One such setting is a Qualified Residential Treatment Program (QRTP), which provides trauma-informed treatment to children with serious emotional or behavioral disorders or disturbances in a residential setting.

In Florida, Residential Treatment Centers (RTCs) include Specialized Therapeutic Group Homes (STGHs), Psychiatric Residential Treatment Facilities (PRTFs), and the new federally defined QRTPs (licensed as a STGH). Section 39.407(6), F.S., authorizes DCF to place a child in an RTC or a hospital for residential mental health treatment if DCF believes the child is emotionally disturbed and needs residential treatment. Before the child is admitted to an RTC, he or she must be assessed for suitability for residential treatment by a qualified evaluator (QE), who must be a psychiatrist or a psychologist licensed in Florida with at least three years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents. The QE cannot have any actual or perceived conflict of interest with any inpatient facility or residential treatment center program.

The bill changes residential treatment placement by:

- requiring a QE for a STGH and QRTP to be a licensed clinician with at least two years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, as opposed to stricter QE requirements for placement in a PRTF.
- requiring DCF to appoint the QE instead of the Agency for Health Care Administration (AHCA).
- removing AHCA's rulemaking authority related to the QE network.
- requiring DCF to provide the guardian ad litem and the court a copy of the assessment within five days after receipt of an assessment.

If a child cannot be reunified with parents after placement in out-of-home care, adoption is a method of achieving permanency for the child. DCF provides financial assistance to adoptive families who adopt a foster child with "special needs", which is the federal term for a child unlikely to be adopted without such assistance. The bill changes adoption assistance program terminology from "special needs" to "difficult to place" and references one such characteristic based on demographic disproportionality rather than the current race-specific reference.

The bill has no fiscal impact on state or local governments.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 community-based care lead agencies (CBC's) 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. When children cannot safely remain at home with parents, Florida's child welfare system finds them safe out-of-home placements. 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 a residential setting.[1] If a child cannot be reunified with parents after placement in out-of-home care, adoption is a method of achieving permanency for the child.

The child welfare system is funded by a combination of state General Revenue and several streams of federal funding. DCF must comply with federal child welfare laws to maintain these federal funding streams.

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.

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.[2] 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. States can now receive 50% reimbursement for evidence-based prevention services for children and their families, including mental health, substance abuse, family counseling, and parent skills training.

In order to pay for the increased funding for prevention services, federal funding is limited for children placed in group care. Specifically, Title IV-E reimbursement is only available for the first 14 days unless a child is an FFPSA approved placement, and FFPSA approved group care placements are limited to specialty homes. FFPSA approved placements include:

- Relative/non-relative caregivers.
- Licensed foster care placements.

[1] R. 65C-28.004, F.A.C.
[2] H.R. 1862 of 2018. P.L. 115-123.

- Specialized programs (at-risk human trafficking homes, safe homes, and maternity homes).
- Supervised independent living for youth over 18.
- A new federally defined Qualified Residential Treatment Program (QRTP).

Provisions related to FFPSA took effect in Florida on October 1, 2021. Therefore, the state can no longer receive federal reimbursement for a child in a non-FFPSA approved placement after 14 days.

Residential Treatment Centers

Residential Treatment Centers (RTCs) are licensed under s. 394.875, F.S., and provide residential mental health treatment. Section 39.407(6), F.S., authorizes DCF to place a child in its custody in an RTC or a hospital for residential mental health treatment if DCF believes the child is emotionally disturbed and needs residential treatment. RTCs include hospitals licensed under Ch. 395, F.S., Specialized Therapeutic Group Homes (STGHs), Psychiatric Residential Treatment Facilities (PRFTs), and a new federally defined Qualified Residential Treatment Program (QRTPs).

Qualified Residential Treatment Programs

A QRTP is a new designation of a non-family-based placement created by the FFPSA. QRTPs provide trauma-informed treatment to children in the child welfare system with serious emotional or behavioral disorders or disturbances in a residential setting. FFPSA requires QRTPs to[3]:

- Be licensed and nationally accredited.[4]
- Use a trauma-informed treatment model.
- Have registered or licensed nursing or licensed clinical staff on-site and available at all times.
- Be inclusive of family members in the treatment process.
- Offer at least six months of support after discharge.

All entities operating as an RTC must first obtain a license from the Agency for Health Care Administration (AHCA).[5] In Florida, a QRTP is licensed as a STGH by AHCA and then credentialed as a QRTP by DCF after DCF confirms it meets all federal requirements.[6]

For QRTP placement, the FFPSA requires a "qualified individual" to assess the appropriateness of the placement. A "qualified individual" is a trained professional or licensed clinician who is not employed by the state child welfare agency and who is not connected to, or affiliated with, any placement setting in which children are placed by the state child welfare agency.[7] The Children's Bureau within the United States Department of Health and Human Services stated that a "qualified individual" could include a licensed social worker or a trained child welfare worker.[8]

Florida currently has five QRTP providers and a 50-bed capacity.[9]

Suitability Assessments

When a child is in the child welfare system, a Qualified Evaluator (QE), appointed by AHCA, must assess the child in person for suitability before placement in residential treatment. Section 39.407(6)(b), F.S, requires the QE to be a psychiatrist or a psychologist licensed in Florida, who has at least three

[3] H.R. 1862 of 2018. P.L. 115-123; 42 U.S.C. §672(g).
[4] FFPSA requires QRTP's to be accredited by either the Commission on Accreditation of Rehabilitation Facilities; the Joint Comm ission on Accreditation of Healthcare Organizations; the Commission on Accreditation; or any other independent, not-for-profit accrediting organization approved by the Secretary of the United States Department of Health and Health Services.
[5] R. 65E-9.003, F.A.C.
[6] R. 65C-46.021, F.A.C.
[7] S. 39.407(6)(b), F.S.
[8] ACYF-CB-PI-18-07, p. 10-11.
[9] Email from John Paul Fiore, Legislative Director, Florida Department of Children and Families, Re; QRTPs, Jan. 20, 2022 (on file with the Children, Families, and Seniors Subcommittee).

years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.[10] Florida statutes regarding the QE qualifications exceed that required by the FFPSA for QRTP placements.

Pursuant to s. 39.407(6)(c), F.S., the QE must conduct a personal examination and assessment of the child and make written findings that:

- The child appears to have an emotional disturbance serious enough to require residential treatment.
- The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.
- All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.

Immediately upon placing the child in an RTC, DCF must notify and provide a copy of the assessment to the guardian ad litem and the dependency court having jurisdiction over the child.[11]

Children whom DCF believes would be best served by residential treatment have to wait for an appointment with a QE so an assessment can be completed.[12] At this time, there are only 18 QEs statewide, and providers estimate 400 children currently need a suitability assessment completed before placement in a QRTP.[13]

Prior to 2016, AHCA managed a network of QEs through a contract with Magellan Health.[14] In 2016, the Legislature transferred the contract to DCF,[15] and now DCF manages this contract. However, the Legislature did not amend s. 39.407(6)(b), F.S., to reflect this change; thus the statute still requires AHCA to appoint the QEs, and AHCA continues to have statutory authority to adopt rules for QE registration and payment.

Adoption Assistance

Federal law authorizes Title IV-E funds for adoption assistance for foster children with special needs.[16] A special needs child is one for whom the state:

- Determines the child cannot or should not be returned home to the birth parents (i.e., parental rights have been terminated).
- Finds a specific factor or condition, or combination of factors and conditions, that make the child more difficult to place for adoption.
- Made reasonable efforts to place the child without adoption assistance.

States determine what constitutes "special needs", but federal law includes examples of categories for states to use:

- Age;
- Sibling group status;
- Medical condition;
- Physical, mental, or emotional disabilities;
- Ethnic background; and

[10] S. 39.407(6)(b), F.S.
[11] S. 39.407(6)(d), F.S.
[12] Florida Department of Children and Families, *Agency Bill Analysis for HB 893* (Dec. 10, 2021).
[13] *Id*.
[14] Magellan Healthcare, Qualified Evaluator Network (QEN), https://www.magellanofflorida.com/documents/2019/09/florida-qen-overview.pdf/ (last visited Jan. 20, 2022).
[15] Ch. No. 2016-241, L.O.F.
[16] 42 U.S.C. 673. Authority for this adoption assistance began in 1980.

- Membership in a minority group.

Under Florida law,[17] a special needs child is one not likely to be adopted because he or she is:

- Age 8 or older,
- In a sibling group of any age (if two or more siblings remain together for purposes of adoption);
- Developmentally disabled;
- Physical or emotional handicapped; or
- Of black or racially mixed percentage.

Like Florida, a majority of states use the federal term "special needs" when referring to the population of children eligible for adoption subsidies in law; some states use "hard to place". Federal law uses both "special needs" and "difficult to place". States are not required to use the federal language in law or rule to draw down Title IV-E funding for adoption assistance.

The following tables include Florida-specific information on the disproportionality of children free for adoption by racial group as of February 20, 2022,[18] and how many children in each special needs category were adopted in FY 2019-20 and FY 2020-21.[19]

Racial Representation in Children Available for Adoption in Florida

Race	2020 U.S. Census, Florida Population	Children Available for Adoption
Native American	0.50%	0.29%
Asian	3.00%	0.27%
Black	16.90%	31.22%
Hawaiian	0.10%	0.10%
White	77.30%	63.35%
Unable to Determine	0.00%	0.54%
Multi-racial	2.20%	4.24%

Florida Special Needs Adoptions

Primary[20] Category	FY 19-20	FY 20-21
Age 8 or older	316	355
Developmentally disabled	107	72
Physically or emotionally handicapped	1,450	1,269
Of black or racially mixed parentage	1,530	1,330
Sibling group member	1,192	878

[17] S. 409.166(2)(a), F.S. Codified in 1976, the special needs definition remains unchanged except that the original reference to "mentally retarded" was replaced with "developmentally disabled".
[18] Email from John Paul Fiore, Director of Legislative Affairs, Florida Department of Children and Families, Follow up –Special Needs, Feb. 21, 2022 (on file with the House Health and Human Services Committee).
[19] Email from John Paul Fiore, Director of Legislative Affairs, Florida Department of Children and Families, Special Need Adoptions, Feb. 17, 2022 (on file with the House Health and Human Services Committee).
[20] This unduplicated count is based on each child's primary special needs category; each child may also fit other categories.

Florida adoption assistance for a special needs child is $5,000 annually, unless a different amount is negotiated by the family; the average subsidy is $6,695 annually.[21]

Effect of Proposed Changes

Special Needs

The bill changes terminology from "special needs" to "difficult to place" to refer to a child who is not likely to be adopted because of certain characteristics. It also changes the terminology related to the characteristic "of black or racially mixed" to "a member of a racial group that is disproportionately represented" among children who are free for adoption from the child welfare system. These changes have no effect on eligibility for adoption subsidies; both changes are only nomenclature changes.

Residential Treatment Centers

The bill makes changes to Florida law to align with the new requirements of the FFPSA and maximize federal funding.

The bill amends s. 39.407, F.S., to differentiate between Psychiatric Residential Treatment Facilities (PRTFs) and Specialized Therapeutic Group Homes (STGHs)/Qualified Residential Treatment Programs (QRTPs) by setting different qualifications for the QE completing placement assessments. Under the bill, a "therapeutic group home" is a residential treatment center that offers a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492 (5) or (6) in a nonsecure, homelike setting. Distinguishing STGHs from other types of residential treatment allows for the QE to meet different qualifications and provide for a less intrusive assessment prior to placement in the residential setting.

The bill requires a QE for a STGH (this includes a QRTP which is licensed as a STGH) to be a psychiatrist, psychologist or a mental health counselor licensed in Florida with at least two years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, as opposed to the stricter requirements for a PRTF. This will increase the pool of QE beyond the 18 currently used for PRTF and creates a larger recruitment pool for STGH/QRTP assessors. The third-party vendor contracted by DCF for the management of the QE Network estimates this change will increase the pool of potential QE's by approximately 2,000.

The bill amends s. 39.407(6)(b), F.S., to require DCF to appoint the QE, as opposed to AHCA, to reflect current practice. It also removes AHCA's rulemaking authority related to the QE Network.

The bill amends s. 39. 407(6)(c), F.S., to remove the requirement that the QE examination of the child must be a personal examination. This will allow the examination by the QE to be through telehealth.

The bill amends s. 39.407(6)(d), F.S., to require DCF to provide the guardian ad litem and the dependency court a copy of the assessment within five days of DCF's receipt of the assessment. DCF will still be required to notify the guardian ad litem and the court when the child is placed in an RTC but gives more time to provide a copy of the assessment.

B. SECTION DIRECTORY:

Section 1: Amending s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requiring child custody.

Section 2: Amending s. 63.207, F.S., relating to out-of-state placements.

Section 3: Amending s. 258.0142, F.S., relating to foster and adoptive family state park fee discounts.

[21] In addition to adoption assistance, families that adopt a special needs foster child also receive a one-time family annual entrance pass at no charge and a one-time monetary benefit of $10,000 if the adoptive parent is a state employee, veteran, or service member.

Section 4: Amending s. 409.166, F.S., relating to children with the child welfare system; adoption assistance program.

Section 5: Amending s. 409.1664, F.S., adoption benefits for qualifying adoptive employees of state agencies, veterans, and servicemembers.

Section 6: Amending s. 414.045, F.S., relating to cash assistance program.

Section 7: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to effect 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 January 25, 2022, the Children, Families & Seniors Subcommittee adopted an amendment to the bill. The amendment removed the increase of bed capacity for a TGH, leaving the statutory cap at 14 beds. It also included psychiatrists licensed as osteopathic physicians as those who may be appointed as a QE.

On February 23, 2022, the Health & Human Services Committee adopted an amendment and reported the bill favorably. The amendment changes the effective date of the bill from July 1, 2022, to effective upon becoming a law.

The analysis is drafted to the amended bill as passed by the Health & Human Services Committee.