

1 A bill to be entitled
2 An act relating to community-based child welfare
3 agencies; amending s. 409.987, F.S.; revising
4 requirements for contracts the Department of Children
5 and Families has with community-based care lead
6 agencies; revising requirements for an entity to serve
7 as a lead agency; requiring that lead agencies ensure
8 that board members participate in certain annual
9 training; revising the definition of the term
10 "conflict of interest"; defining the term "related
11 party"; requiring the lead agency's board of directors
12 to disclose any known or potential conflicts of
13 interest; prohibiting a lead agency from entering into
14 a contract or being a party to a transaction that
15 creates a conflict of interest; requiring a lead
16 agency to competitively procure certain contracts;
17 imposing civil penalties on lead agencies for
18 undisclosed conflicts of interest; providing
19 applicability; requiring certain contracts to be
20 reprocured; authorizing the department to prohibit
21 execution of certain contracts; amending s. 409.988,
22 F.S.; revising community-based care lead agency
23 duties; amending s. 409.991, F.S.; revising the
24 definition of the term "core services funds"; removing
25 definitions; requiring that the allocation of core

26 services funds be based on a three-tiered payment
27 model; providing specifications for the payment model;
28 requiring that reports be submitted annually to the
29 Governor and the Legislature by a specified date;
30 requiring that all funding for core services be based
31 on the department's methodology; amending s. 409.992,
32 F.S.; revising requirements for lead agency practices
33 in the procurement of commodities and contractual
34 services; requiring the department to impose certain
35 penalties for a lead agency's noncompliance with
36 applicable procurement law; requiring lead agencies to
37 comply with established purchasing practices for the
38 procurement of real property and professional
39 services; requiring the department to retain all
40 rights to and ownership of real property procured upon
41 termination of contracts; requiring certain funds to
42 be returned to the department; providing applicability
43 of certain limitations on the salaries of community-
44 based care lead agency administrative employees;
45 amending s. 409.994, F.S.; revising the conditions
46 under which the department may petition a court for
47 the appointment of a receiver for a community-based
48 care lead agency; amending s. 409.996, F.S.; revising
49 requirements for contracts between the department and
50 lead agencies; revising the actions the department may

51 take under certain circumstances; making a technical
 52 change; providing duties of the department; providing
 53 an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Subsections (3) and (4) and paragraphs (a) and
 58 (b) of subsection (7) of section 409.987, Florida Statutes, are
 59 amended, and paragraph (g) is added to subsection (7) of that
 60 section, to read:

61 409.987 Lead agency procurement; boards; conflicts of
 62 interest.—

63 (3) Notwithstanding s. 287.057, the department shall use
 64 5-year contracts with lead agencies. The 5-year contract must be
 65 reprocured at the end of each 5-year contract term. The contract
 66 may be extended at the discretion of the department for up to 1
 67 year, based on department needs.

68 (4) In order to serve as a lead agency, an entity must:

69 (a) Be organized as a Florida corporation or a
 70 governmental entity.

71 (b) Be governed by a board of directors or a board
 72 committee composed of board members. Board members shall provide
 73 oversight and ensure accountability and transparency for the
 74 system of care. The board of directors shall provide fiduciary
 75 oversight to prevent conflicts of interest, promote

76 accountability and transparency, and protect state and federal
77 funding from misuse. The membership of the board of directors or
78 board committee must be described in the bylaws or articles of
79 incorporation of each lead agency, which must provide that at
80 least 75 percent of the membership of the board of directors or
81 board committee must be composed ~~consist~~ of persons residing in
82 this state, and at least 51 percent of the state residents on
83 the board of directors must reside within the service area of
84 the lead agency. The lead agency shall ensure that board members
85 participate in annual training related to their
86 responsibilities. However, for procurements of lead agency
87 contracts initiated on or after July 1, 2014:

88 1. At least 75 percent of the membership of the board of
89 directors must be composed ~~consist~~ of persons residing in this
90 state, and at least 51 percent of the membership of the board of
91 directors must be composed ~~consist~~ of persons residing within
92 the service area of the lead agency. If a board committee
93 governs the lead agency, 100 percent of its membership must be
94 composed ~~consist~~ of persons residing within the service area of
95 the lead agency.

96 2. The powers of the board of directors or board committee
97 include, but are not limited to, approving the lead agency's
98 budget and setting the lead agency's operational policy and
99 procedures. A board of directors must additionally have the
100 power to hire the lead agency's executive director, unless a

101 board committee governs the lead agency, in which case the board
 102 committee must have the power to confirm the selection of the
 103 lead agency's executive director.

104 (c) Demonstrate financial responsibility through an
 105 organized plan for regular fiscal audits and the posting of a
 106 performance bond.

107 (7)(a) As used in this subsection, the term:

108 1. "Activity" includes, but is not limited to, a contract
 109 for goods and services, a contract for the purchase of any real
 110 or tangible property, or an agreement to engage with a lead
 111 agency for the benefit of a third party in exchange for an
 112 interest in real or tangible property, a monetary benefit, or an
 113 in-kind contribution.

114 2. "Conflict of interest" means when a board member or an
 115 officer, or a relative of a board member, director, or ~~an~~
 116 officer, or a relative of a board member, director, or officer,
 117 of a lead agency does any of the following:

118 a. Enters into a contract or other transaction for goods
 119 or services with the lead agency.

120 b. Holds a direct or indirect interest in a corporation,
 121 limited liability corporation, partnership, limited liability
 122 partnership, or other business entity that conducts business
 123 with the lead agency or proposes to enter into a contract or
 124 other transaction with the lead agency. For purposes of this
 125 paragraph, the term "indirect interest" has the same meaning as

126 in s. 112.312.

127 c. Knowingly obtains a direct or indirect personal,
128 financial, professional, or other benefit as a result of the
129 relationship of such board member, director, or officer, or
130 relative of the board member, director, or officer, with the
131 lead agency. For purposes of this paragraph, the term "benefit"
132 does not include per diem and travel expenses paid or reimbursed
133 to board members or officers of the lead agency in connection
134 with their service on the board.

135 3. "Related party" means any entity of which a director or
136 an executive of the entity is also directly or indirectly
137 related to, or has a direct or indirect financial or other
138 material interest in, the lead agency. The term also includes
139 any subsidiary, parent entity, associate firm, or joint venture,
140 or any entity that is controlled, influenced, or managed by
141 another entity or an individual related to such entity,
142 including an individual who is, or was within the immediately
143 preceding 3 years, an executive officer or a board member of the
144 entity.

145 4.3. "Relative" means a relative within the third degree
146 of consanguinity by blood or marriage.

147 (b)1. For any activity that is presented to the board of a
148 lead agency for its initial consideration and approval ~~after~~
149 ~~July 1, 2021~~, or any activity that involves a contract that is
150 being considered for renewal ~~on or after July 1, 2021, but~~

151 ~~before January 1, 2022, a board member, a director, or an~~
152 ~~officer of a lead agency shall disclose to the board any~~
153 ~~activity that may reasonably be construed to be a conflict of~~
154 ~~interest before such activity is initially considered and~~
155 ~~approved or a contract is renewed by the board. A rebuttable~~
156 ~~presumption of a conflict of interest exists if the activity was~~
157 ~~acted on by the board without prior notice as required under~~
158 ~~paragraph (c). The board shall disclose any known actual or~~
159 ~~potential conflicts to the department.~~

160 2. A lead agency may not enter into a contract or be a
161 party to any transaction that creates a conflict of interest,
162 including with related parties for the provision of management
163 or administrative services or oversight. The lead agency shall
164 competitively procure all contracts with related parties in
165 excess of \$35,000 ~~For contracts with a lead agency which are in~~
166 ~~existence on July 1, 2021, and are not subject to renewal before~~
167 ~~January 1, 2022, a board member or an officer of the lead agency~~
168 ~~shall disclose to the board any activity that may reasonably be~~
169 ~~construed to be a conflict of interest under this section by~~
170 ~~December 31, 2021.~~

171 (g)1. Civil penalties in the amount of \$5,000 per
172 occurrence shall be imposed for each known and potential
173 conflict of interest, as described in paragraph (b), which is
174 not disclosed to the department.

175 2. If a contract is procured for which a conflict of

176 interest was not disclosed to the department before execution of
 177 the contract, the following penalties apply:

178 a. A civil penalty in the amount of \$50,000 for a first
 179 offense.

180 b. A civil penalty in the amount of \$100,000 for a second
 181 or subsequent offense.

182 3. The civil penalties for failure to disclose a conflict
 183 of interest under subparagraphs 1. and 2. apply to any contract
 184 entered into, regardless of the method of procurement,
 185 including, but not limited to, formal procurement, single-source
 186 contracts, and contracts that do not meet the minimum threshold
 187 for formal procurement.

188 4. A contract procured for which a conflict of interest
 189 was not disclosed to the department before execution of the
 190 contract shall be reprocured.

191 5. The department may, at its sole discretion, prohibit
 192 execution of a contract for which a conflict of interest exists,
 193 or will exist after execution.

194 Section 2. Paragraphs (c), (i), (j), and (k) of subsection
 195 (1) of section 409.988, Florida Statutes, are amended to read:

196 409.988 Community-based care lead agency duties; general
 197 provisions.—

198 (1) DUTIES.—A lead agency:

199 (c) Shall follow the financial guidelines developed by the
 200 department and shall comply with regular, independent auditing

201 of its financial activities, including any requests for records
 202 associated with such financial audits within the timeframe
 203 established by the department or its contracted vendors ~~provide~~
 204 ~~for a regular independent auditing of its financial activities.~~
 205 The results of the financial audit must ~~Such financial~~
 206 ~~information shall~~ be provided to the community alliance
 207 established under s. 20.19(5).

208 (i) Shall comply with federal and state statutory
 209 requirements and agency rules in the provision of contractual
 210 services. Any subcontract in excess of \$250,000 must comply with
 211 the competitive procurement process.

212 (j) May subcontract for the provision of services, ,
 213 excluding administrative and management functions, required by
 214 the contract with the lead agency and the department; however,
 215 the subcontracts must specify how the provider will contribute
 216 to the lead agency meeting the performance standards established
 217 pursuant to the child welfare results-oriented accountability
 218 system required by s. 409.997. The lead agency shall directly
 219 provide no more than 35 percent of all child welfare services
 220 provided unless it can demonstrate a need, within the lead
 221 agency's geographic service area where there is a lack of viable
 222 providers available to perform the necessary services. The
 223 approval period to exceed the threshold shall be limited to 2
 224 years. The lead agency shall reprocure for these services before
 225 the end of the 2-year period, ~~to exceed this threshold.~~ The

226 local community alliance in the geographic service area in which
 227 the lead agency is seeking to exceed the threshold shall review
 228 the lead agency's justification for need and recommend to the
 229 department whether the department should approve or deny the
 230 lead agency's request for an exemption from the services
 231 threshold. If there is not a community alliance operating in the
 232 geographic service area in which the lead agency is seeking to
 233 exceed the threshold, such review and recommendation shall be
 234 made to the department. ~~by representatives of local~~
 235 ~~stakeholders, including at least one representative from each of~~
 236 ~~the following:~~

- 237 1. ~~The department.~~
- 238 2. ~~The county government.~~
- 239 3. ~~The school district.~~
- 240 4. ~~The county United Way.~~
- 241 5. ~~The county sheriff's office.~~
- 242 6. ~~The circuit court corresponding to the county.~~
- 243 7. ~~The county children's board, if one exists.~~

244 (k) Shall publish on its website by the 15th day of each
 245 month at a minimum the data specified in subparagraphs 1.-9. ~~1.-~~
 246 ~~5.~~, calculated using a standard methodology determined by the
 247 department, for the preceding calendar month regarding its case
 248 management services. The following information must ~~shall~~ be
 249 reported by each individual subcontracted case management
 250 provider, by the lead agency, if the lead agency provides case

251 management services, and in total for all case management
 252 services subcontracted or directly provided by the lead agency:

253 1. The average caseload of case managers, including only
 254 filled positions;

255 2. The total number and percentage of case managers who
 256 have 25 or more cases on their caseloads;

257 3. The turnover rate for case managers and case management
 258 supervisors for the previous 12 months;

259 4. The percentage of required home visits completed; ~~and~~

260 5. Performance on outcome measures required pursuant to s.
 261 409.997 for the previous 12 months; ~~and~~

262 6. The number of unlicensed placements for the previous
 263 month;

264 7. The percentages and trends for foster parent and group
 265 home recruitment and licensure for the previous month;

266 8. The percentage of families being served through family
 267 support, in-home, and out-of-home services for the previous
 268 month; and

269 9. The percentage of cases that converted from nonjudicial
 270 to judicial for the previous month.

271 Section 3. Section 409.991, Florida Statutes, is amended
 272 to read:

273 409.991 Allocation of funds for community-based care lead
 274 agencies.—

275 (1) As used in this section, the term ~~+~~

276 ~~(a)~~ "core services funds" means all funds allocated to
 277 ~~community-based care~~ lead agencies operating under contract with
 278 the department pursuant to s. 409.987. The term does not include
 279 any of, with the following exceptions:

280 (a)1. Funds appropriated for independent living services.†

281 (b)2. Funds appropriated for maintenance adoption
 282 subsidies.†

283 (c)3. Funds allocated by the department for child
 284 protective investigation service investigations training.†

285 (d)4. Nonrecurring funds.†

286 (e)5. Designated mental health wrap-around service
 287 services funds.†

288 (f)6. Funds for special projects for a designated
 289 ~~community-based care~~ lead agency.†; and

290 (g)7. Funds appropriated for the Guardianship Assistance
 291 Program established under s. 39.6225.

292 ~~(b) "Equity allocation model" means an allocation model~~
 293 ~~that uses the following factors:~~

294 ~~1. Proportion of the child population;~~

295 ~~2. Proportion of child abuse hotline workload; and~~

296 ~~3. Proportion of children in care.~~

297 ~~(c) "Proportion of child population" means the proportion~~
 298 ~~of children up to 18 years of age during the previous calendar~~
 299 ~~year in the geographic area served by the community-based care~~
 300 ~~lead agency.~~

301 ~~(d) "Proportion of child abuse hotline workload" means the~~
 302 ~~weighted average of the following subcomponents:~~

303 ~~1. The average number of initial and additional child~~
 304 ~~abuse reports received during the month for the most recent 12~~
 305 ~~months based on child protective investigations trend reports as~~
 306 ~~determined by the department. This subcomponent shall be~~
 307 ~~weighted as 20 percent of the factor.~~

308 ~~2. The average count of children in investigations in the~~
 309 ~~most recent 12 months based on child protective investigations~~
 310 ~~trend reports as determined by the department. This subcomponent~~
 311 ~~shall be weighted as 40 percent of the factor.~~

312 ~~3. The average count of children in investigations with a~~
 313 ~~most serious finding of verified abuse in the most recent 12~~
 314 ~~months based on child protective investigations trend reports as~~
 315 ~~determined by the department. This subcomponent shall be~~
 316 ~~weighted as 40 percent of the factor.~~

317 ~~(e) "Proportion of children in care" means the proportion~~
 318 ~~of the number of children in care receiving in-home services~~
 319 ~~over the most recent 12-month period, the number of children~~
 320 ~~whose families are receiving family support services over the~~
 321 ~~most recent 12-month period, and the number of children who have~~
 322 ~~entered into out-of-home care with a case management overlay~~
 323 ~~during the most recent 24-month period. This subcomponent shall~~
 324 ~~be weighted as follows:~~

325 ~~1. Fifteen percent shall be based on children whose~~

326 ~~families are receiving family support services.~~

327 ~~2. Fifty-five percent shall be based on children in out-~~
328 ~~of-home care.~~

329 ~~3. Thirty percent shall be based on children in in-home~~
330 ~~care.~~

331 (2) Effective July 1, 2025, allocation of core services
332 funds must be based on an actuarially sound, tiered payment
333 model. The tiered model's purpose is to achieve the overarching
334 goals of a stable payment model that adjusts to workload and
335 incentivizes prevention, family preservation, and permanency.

336 (a) Tier 1 provides operational base and fixed costs,
337 which do not vary based on the number of children and families
338 served. Tier 1 payments may vary by geographic catchment area
339 and cost of living differences. The department shall establish
340 and annually update Tier 1 payment rates to maintain cost
341 expectations that are aligned with the population served,
342 services provided, and environment. Tier 1 expenses may include:

343 1. Administrative expenditures.

344 2. Lease payment.

345 3. Asset depreciation.

346 4. Utilities.

347 5. Select components of case management, including
348 administrative elements.

349 6. Mandated activities such as training, quality, and
350 contract management.

351 7. Activities performed for children and families which
352 are nonjudicial and not candidates for Title IV-E funding,
353 including true prevention and community-focused activities.

354 (b) Tier 2 is a per-child, per-month payment designed to
355 provide funding for lead agencies' expenses that vary based on
356 the number of children served for a particular month. The
357 payment rate blends out-of-home rates and in-home rates specific
358 to each lead agency to create a rate that provides a financial
359 incentive to lead agencies to provide services in the least
360 restrictive safe placement. The department shall establish and
361 annually update Tier 2 payment rates to maintain cost
362 expectations that are aligned with the population served,
363 services provided, and environment. Tier 2 rates must be set
364 annually.

365 (c) Tier 3 provides financial incentives that the
366 department shall establish to reward lead agencies that achieve
367 performance measures aligned with the department's goals of
368 prevention, family preservation, and permanency.

369 ~~(2) The equity allocation of core services funds shall be~~
370 ~~calculated based on the following weights:~~

371 ~~(a) Proportion of the child population shall be weighted~~
372 ~~as 5 percent of the total.~~

373 ~~(b) Proportion of child abuse hotline workload shall be~~
374 ~~weighted as 35 percent of the total.~~

375 ~~(c) Proportion of children in care shall be weighted as 60~~

376 ~~percent of the total.~~

377 (3) By December 1 of each year, beginning in 2024, the
378 department shall submit a report to the Governor, the President
379 of the Senate, and the Speaker of the House of Representatives
380 which includes each lead agency's actual performance in
381 attaining the previous fiscal year's targets, recommendations
382 for adjustments to lead agency funding, and adjustments to the
383 tiered payment model, if necessary ~~Beginning in the 2015-2016~~
384 ~~state fiscal year, 100 percent of the recurring core services~~
385 ~~funding for each community-based care lead agency shall be based~~
386 ~~on the prior year recurring base of core services funds.~~

387 (4) Effective July 1, 2025, unless otherwise specified in
388 the General Appropriations Act, the department shall allocate
389 all funding for core services, based on the department's
390 methodology ~~any new core services funds shall be allocated based~~
391 ~~on the equity allocation model as follows:~~

392 ~~(a) Seventy percent of new funding shall be allocated~~
393 ~~among all community-based care lead agencies.~~

394 ~~(b) Thirty percent of new funding shall be allocated among~~
395 ~~community-based care lead agencies that are funded below their~~
396 ~~equitable share. Funds allocated pursuant to this paragraph~~
397 ~~shall be weighted based on each community-based care lead~~
398 ~~agency's relative proportion of the total amount of funding~~
399 ~~below the equitable share.~~

400 Section 4. Subsections (1) and (3) of section 409.992,

401 Florida Statutes, are amended to read:

402 409.992 Lead agency expenditures.—

403 (1) The procurement of commodities or contractual services
 404 by lead agencies is ~~shall be~~ governed by the financial
 405 guidelines developed by the department and must comply with
 406 applicable state and federal law and follow good business
 407 practices. Pursuant to s. 11.45, the Auditor General may provide
 408 technical advice in the development of the financial guidelines.

409 (a) Lead agencies shall competitively procure all
 410 contracts, consistent with the simplified acquisition threshold
 411 as specified in 2 C.F.R. part 200. Financial penalties or
 412 sanctions, as established by the department and incorporated
 413 into the contract, shall be imposed by the department for
 414 noncompliance with applicable local, state, or federal law for
 415 the procurement of commodities or contractual services.

416 (b) Notwithstanding s. 402.73, for procurement of real
 417 property or professional services, lead agencies shall comply
 418 with established purchasing practices, including the provisions
 419 of s. 287.055, as required, for professional services, including
 420 engineering or construction design. Upon termination of the
 421 contract, the department shall immediately retain all rights to
 422 and ownership of real property procured. Any funds from the
 423 sale, transfer, or other dispossession of such property during
 424 the contract term shall be returned to the department.

425 (3) Notwithstanding any other provision of law, a

426 community-based care lead agency administrative employee may not
 427 receive a salary, whether base pay or base pay combined with any
 428 bonus or incentive payments from the lead agency or any related
 429 party, in excess of 150 percent of the annual salary paid to the
 430 secretary of the Department of Children and Families from state-
 431 appropriated funds, including state-appropriated federal funds.
 432 This limitation applies regardless of the number of contracts a
 433 community-based care lead agency may execute with the
 434 department. This subsection does not prohibit any party from
 435 providing cash that is not from appropriated state funds to a
 436 community-based care lead agency administrative employee.

437 Section 5. Paragraphs (c) and (d) of subsection (1) of
 438 section 409.994, Florida Statutes, are amended to read:

439 409.994 Community-based care lead agencies; receivership.—

440 (1) The Department of Children and Families may petition a
 441 court of competent jurisdiction for the appointment of a
 442 receiver for a community-based care lead agency established
 443 pursuant to s. 409.987 if any of the following conditions exist:

444 (c) The department determines that conditions exist in the
 445 lead agency which present a ~~an imminent~~ danger to the health,
 446 safety, or welfare of the dependent children under that agency's
 447 care or supervision. Whenever possible, the department shall
 448 make a reasonable effort to facilitate the continued operation
 449 of the program.

450 (d) The lead agency cannot meet, or is unlikely to meet,

451 its current financial obligations to its employees, contractors,
 452 or foster parents. Issuance of bad checks or the existence of
 453 delinquent obligations for payment of salaries, utilities, or
 454 invoices for essential services or commodities constitutes ~~shall~~
 455 ~~constitute~~ prima facie evidence that the lead agency lacks the
 456 financial ability to meet its financial obligations.

457 Section 6. Paragraph (d) of subsection (1) of section
 458 409.996, Florida Statutes, is amended to read:

459 409.996 Duties of the Department of Children and
 460 Families.—The department shall contract for the delivery,
 461 administration, or management of care for children in the child
 462 protection and child welfare system. In doing so, the department
 463 retains responsibility for the quality of contracted services
 464 and programs and shall ensure that, at a minimum, services are
 465 delivered in accordance with applicable federal and state
 466 statutes and regulations and the performance standards and
 467 metrics specified in the strategic plan created under s.
 468 20.19(1).

469 (1) The department shall enter into contracts with lead
 470 agencies for the performance of the duties by the lead agencies
 471 established in s. 409.988. At a minimum, the contracts must do
 472 all of the following:

473 (d) Provide for contractual actions ~~tiered interventions~~
 474 ~~and graduated penalties~~ for failure to comply with contract
 475 terms or in the event of performance deficiencies, as determined

476 appropriate by the department.

477 1. Such contractual actions must interventions and
478 penalties shall include, but are not limited to:

479 1. Enhanced monitoring and reporting.

480 a.2. Corrective action plans.

481 b.3. Requirements to accept technical assistance and
482 consultation from the department under subsection (6).

483 c.4. Financial penalties, which shall require a lead
484 agency to direct reallocate funds from administrative costs to
485 the department. The department shall use the funds collected to
486 support service delivery of quality improvement activities for
487 children in the lead agency's care to direct care for children.
488 These penalties may be imposed for failure to provide timely,
489 sufficient resolution of deficiencies resulting in a corrective
490 action plan or other performance improvement plan issued by the
491 department. Financial penalties may include liquidated damages.

492 d.5. Early termination of contracts, as provided in s.
493 402.7305(3)(f) s. 402.1705(3)(f).

494 2. The department shall include in each lead agency
495 contract executed a provision that requires payment to the
496 department of sanctions or disincentives for failure to comply
497 with contractual obligations. The department shall establish a
498 schedule of daily monetary sanctions or disincentives for lead
499 agencies, which schedule shall be incorporated by reference into
500 the contract. The department is solely responsible for

HB 1061

2024

501 | determining the monetary value of liquidated damages.

502 | Section 7. This act shall take effect July 1, 2024.