

By the Appropriations Committee on Health and Human Services;
the Committee on Children, Families, and Elder Affairs; and
Senator Garcia

603-03303-24

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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 lead agencies to 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, actual, or potential conflicts
13 of interest; prohibiting a lead agency from entering
14 into 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 that contracts for which a
20 conflict of interest was not disclosed be reprocured;
21 authorizing the department to prohibit execution of
22 certain contracts; amending s. 409.988, F.S.; revising
23 community-based care lead agencies duties to include
24 compliance with regular, independent auditing;
25 requiring that contracts valued at more than a
26 specified amount comply with the competitive
27 procurement process; prohibiting lead agencies from
28 subcontracting for management and oversight functions
29 required by its contract; limiting the approval period

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30 for which the lead agency may provide more than 35
31 percent of child welfare services to 2 years;
32 requiring the lead agency to submit quarterly reports
33 to the department and community alliance showing
34 specified efforts; requiring the lead agency to
35 reprocure such services at the end of a specified
36 period; providing that, in a certain circumstance,
37 review and approval or denial of a lead agency's
38 request for an exemption from the services threshold
39 is within the sole purview of the department; revising
40 the information that lead agencies must publish on
41 their website; amending s. 409.992, F.S.; revising
42 requirements for lead agency practices in the
43 procurement of commodities and contractual services;
44 requiring the department to impose certain penalties
45 for a lead agency's noncompliance with applicable
46 procurement law; requiring lead agencies to comply
47 with established purchasing practices for the
48 procurement of real property and professional
49 services; requiring the department to retain all
50 rights to and ownership of real property procured upon
51 termination of contracts; requiring that certain funds
52 be returned to the department; providing applicability
53 of certain limitations on the salaries of community-
54 based care lead agency administrative employees;
55 amending s. 409.994, F.S.; revising the conditions
56 under which the department may petition a court for
57 the appointment of a receiver for a community-based
58 care lead agency; amending s. 409.996, F.S.; revising

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59 requirements for contracts between the department and
60 lead agencies; revising the actions the department may
61 take in certain circumstances; making a technical
62 change; providing duties of the department; providing
63 an effective date.

64

65 Be It Enacted by the Legislature of the State of Florida:

66

67 Section 1. Subsections (3) and (4) and paragraphs (a) and
68 (b) of subsection (7) of section 409.987, Florida Statutes, are
69 amended, and paragraph (g) is added to subsection (7) of that
70 section, to read:

71 409.987 Lead agency procurement; boards; conflicts of
72 interest.—

73 (3) Notwithstanding s. 287.057, the department shall use 5-
74 year contracts with lead agencies. The 5-year contract must be
75 reprocured at the end of each 5-year contract term. The contract
76 may be extended at the discretion of the department for up to 1
77 year, based on department needs.

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

79 (a) Be organized as a Florida corporation or a governmental
80 entity.

81 (b) Be governed by a board of directors or a board
82 committee composed of board members. Board members shall provide
83 oversight and ensure accountability and transparency for the
84 system of care. The board of directors shall provide fiduciary
85 oversight to prevent conflicts of interest, promote
86 accountability and transparency, and protect state and federal
87 funding from misuse. The lead agency shall ensure that board

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88 members participate in annual training, as approved by the
89 department, related to their responsibilities. The membership of
90 the board of directors or board committee must be described in
91 the bylaws or articles of incorporation of each lead agency,
92 which must provide that at least 75 percent of the membership of
93 the board of directors or board committee must be composed
94 ~~consist~~ of persons residing in this state, and at least 51
95 percent of the state residents on the board of directors must
96 reside within the service area of the lead agency. However, for
97 procurements of lead agency contracts initiated on or after July
98 1, 2014:

99 1. At least 75 percent of the membership of the board of
100 directors must be composed ~~consist~~ of persons residing in this
101 state, and at least 51 percent of the membership of the board of
102 directors must be composed ~~consist~~ of persons residing within
103 the service area of the lead agency. If a board committee
104 governs the lead agency, 100 percent of its membership must be
105 composed ~~consist~~ of persons residing within the service area of
106 the lead agency.

107 2. The powers of the board of directors or board committee
108 include, but are not limited to, approving the lead agency's
109 budget and setting the lead agency's operational policy and
110 procedures. A board of directors must additionally have the
111 power to hire the lead agency's executive director, unless a
112 board committee governs the lead agency, in which case the board
113 committee must have the power to confirm the selection of the
114 lead agency's executive director.

115 (c) Demonstrate financial responsibility through an
116 organized plan for regular fiscal audits and the posting of a

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117 performance bond.

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

119 1. "Activity" includes, but is not limited to, a contract
120 for goods and services, a contract for the purchase of any real
121 or tangible property, or an agreement to engage with a lead
122 agency for the benefit of a third party in exchange for an
123 interest in real or tangible property, a monetary benefit, or an
124 in-kind contribution.

125 2. "Conflict of interest" means when a board member, a
126 director, or an officer, or a relative of a board member, a
127 director, or an officer, of a lead agency does any of the
128 following:

129 a. Enters into a contract or other transaction for goods or
130 services with the lead agency.

131 b. Holds a direct or indirect interest in a corporation,
132 limited liability corporation, partnership, limited liability
133 partnership, or other business entity that conducts business
134 with the lead agency or proposes to enter into a contract or
135 other transaction with the lead agency. For purposes of this
136 paragraph, the term "indirect interest" has the same meaning as
137 in s. 112.312.

138 c. Knowingly obtains a direct or indirect personal,
139 financial, professional, or other benefit as a result of the
140 relationship of such board member, director, or officer, or
141 relative of the board member, director, or officer, with the
142 lead agency. For purposes of this paragraph, the term "benefit"
143 does not include per diem and travel expenses paid or reimbursed
144 to board members or officers of the lead agency in connection
145 with their service on the board.

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146 3. "Related party" means any entity of which a director or
147 an executive of the entity is also directly or indirectly
148 related to, or has a direct or indirect financial or other
149 material interest in, the lead agency. The term also includes
150 any subsidiary, parent entity, associate firm, or joint venture,
151 or any entity that is controlled, influenced, or managed by
152 another entity or an individual related to such entity,
153 including an individual who is, or was within the immediately
154 preceding 3 years, an executive officer or a board member of the
155 entity.

156 ~~4.3.~~ "Relative" means a relative within the third degree of
157 consanguinity by blood or marriage.

158 (b)1. For any activity that is presented to the board of a
159 lead agency for its initial consideration and approval ~~after~~
160 ~~July 1, 2021,~~ or any activity that involves a contract that is
161 being considered for renewal ~~on or after July 1, 2021, but~~
162 ~~before January 1, 2022,~~ a board member, a director, or an
163 officer of a lead agency shall disclose to the board any
164 activity that may reasonably be construed to be a conflict of
165 interest before such activity is initially considered and
166 approved or a contract is renewed by the board. A rebuttable
167 presumption of a conflict of interest exists if the activity was
168 acted on by the board without prior notice as required under
169 paragraph (c). The board shall disclose any known, actual, or
170 potential conflicts to the department.

171 2. A lead agency may not enter into a contract or be a
172 party to any transaction that creates a conflict of interest,
173 including with related parties for the provision of management
174 or administrative services or oversight. The lead agency shall

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175 competitively procure all contracts with related parties in
176 excess of \$35,000 ~~For contracts with a lead agency which are in~~
177 ~~existence on July 1, 2021, and are not subject to renewal before~~
178 ~~January 1, 2022, a board member or an officer of the lead agency~~
179 ~~shall disclose to the board any activity that may reasonably be~~
180 ~~construed to be a conflict of interest under this section by~~
181 ~~December 31, 2021.~~

182 (g)1. Civil penalties in the amount of \$5,000 per
183 occurrence shall be imposed for each known and potential
184 conflict of interest, as described in paragraph (b), which is
185 not disclosed to the department. Civil penalties must be paid by
186 the board and not from any state or federal funds.

187 2. If a contract is executed for which a conflict of
188 interest was not disclosed to the department before execution of
189 the contract, the following penalties apply:

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

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

194 3. The civil penalties for failure to disclose a conflict
195 of interest under subparagraphs 1. and 2. apply to any contract
196 entered into, regardless of the method of procurement,
197 including, but not limited to, formal procurement, single-source
198 contracts, and contracts that do not meet the minimum threshold
199 for formal procurement.

200 4. A contract procured for which a conflict of interest was
201 not disclosed to the department before execution of the contract
202 must be reprocured.

203 5. The department may, at its sole discretion, prohibit

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204 execution of a contract for which a conflict of interest exists,
205 or will exist after execution.

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

208 409.988 Community-based care lead agency duties; general
209 provisions.—

210 (1) DUTIES.—A lead agency:

211 (c) Shall follow the financial guidelines developed by the
212 department and shall comply with regular, independent auditing
213 of its financial activities, including any requests for records
214 associated with such financial audits within the timeframe
215 established by the department or its contracted vendors ~~provide~~
216 ~~for a regular independent auditing of its financial activities.~~
217 The results of the financial audit must ~~Such financial~~
218 ~~information shall~~ be provided to the community alliance
219 established under s. 20.19(5).

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

224 (j) May subcontract for the provision of services,
225 excluding management and oversight functions, required by the
226 contract with the lead agency and the department; however, the
227 subcontracts must specify how the provider will contribute to
228 the lead agency meeting the performance standards established
229 pursuant to the child welfare results-oriented accountability
230 system required by s. 409.997. The contract with the department
231 must detail the administrative functions and services the lead
232 agency is allowed to subcontract. The lead agency shall directly

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233 provide no more than 35 percent of all child welfare services
234 provided unless it can demonstrate a need, within the lead
235 agency's geographic service area where there is a lack of viable
236 providers available to perform the necessary services. The
237 approval period to exceed the threshold is limited to 2 years.
238 During this 2-year period, the lead agency must submit quarterly
239 reports to the department and the community alliance showing its
240 efforts to recruit providers to the geographic service area. The
241 lead agency must reprocure these services before the end of the
242 2-year period, to exceed this threshold. The local community
243 alliance in the geographic service area in which the lead agency
244 is seeking to exceed the threshold shall review the lead
245 agency's justification for need and recommend to the department
246 whether the department should approve or deny the lead agency's
247 request for an exemption from the services threshold. If there
248 is not a community alliance operating in the geographic service
249 area in which the lead agency is seeking to exceed the
250 threshold, such review and approval or denial of the lead
251 agency's request for an exemption from the services threshold
252 must recommendation shall be made by the department. by
253 ~~representatives of local stakeholders, including at least one~~
254 ~~representative from each of the following:~~

- 255 ~~1. The department.~~
- 256 ~~2. The county government.~~
- 257 ~~3. The school district.~~
- 258 ~~4. The county United Way.~~
- 259 ~~5. The county sheriff's office.~~
- 260 ~~6. The circuit court corresponding to the county.~~
- 261 ~~7. The county children's board, if one exists.~~

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262 (k) Shall publish on its website by the 15th day of each
263 month at a minimum the data specified in subparagraphs 1.-9. ~~1.-~~
264 ~~5.~~, calculated using a standard methodology determined by the
265 department, for the preceding calendar month regarding its case
266 management services. The following information must ~~shall~~ be
267 reported by each individual subcontracted case management
268 provider, by the lead agency, if the lead agency provides case
269 management services, and in total for all case management
270 services subcontracted or directly provided by the lead agency:

- 271 1. The average caseload of case managers, including only
272 filled positions;
- 273 2. The total number and percentage of case managers who
274 have 25 or more cases on their caseloads;
- 275 3. The turnover rate for case managers and case management
276 supervisors for the previous 12 months;
- 277 4. The percentage of required home visits completed; ~~and~~
- 278 5. Performance on outcome measures required pursuant to s.
279 409.997 for the previous 12 months; ~~-~~
- 280 6. The number of unlicensed placements for the previous
281 month;
- 282 7. The percentage and trends for foster parent and group
283 home recruitment and licensure for the previous month;
- 284 8. The percentage of families being served through family
285 support, in-home, and out-of-home services for the previous
286 month; and
- 287 9. The percentage of cases that converted from nonjudicial
288 to judicial for the previous month.

289 Section 3. Subsections (1) and (3) of section 409.992,
290 Florida Statutes, are amended to read:

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291 409.992 Lead agency expenditures.—

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

298 (a) Lead agencies shall competitively procure all
299 contracts, consistent with the simplified acquisition threshold
300 as specified in 2 C.F.R. part 200. Financial penalties or
301 sanctions, as established by the department and incorporated
302 into the contract, shall be imposed by the department for
303 noncompliance with applicable local, state, or federal law for
304 the procurement of commodities or contractual services.

305 (b) Notwithstanding s. 402.73, for procurement of real
306 property or professional services, lead agencies shall comply
307 with established purchasing practices, including the provisions
308 of s. 287.055, as required, for professional services, including
309 engineering or construction design. Upon termination of the
310 contract, the department shall immediately retain all rights to
311 and ownership of real property procured. Any funds from the
312 sale, transfer, or other dispossession of such property during
313 the contract term shall be returned to the department.

314 (3) Notwithstanding any other provision of law, a
315 community-based care lead agency administrative employee may not
316 receive a salary, whether base pay or base pay combined with any
317 bonus or incentive payments from the lead agency or any related
318 party, in excess of 150 percent of the annual salary paid to the
319 secretary of the Department of Children and Families from state-

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320 appropriated funds, including state-appropriated federal funds.
321 This limitation applies regardless of the number of contracts a
322 community-based care lead agency may execute with the
323 department. This subsection does not prohibit any party from
324 providing cash that is not from appropriated state funds to a
325 community-based care lead agency administrative employee.

326 Section 4. Paragraphs (c) and (d) of subsection (1) of
327 section 409.994, Florida Statutes, are amended to read:

328 409.994 Community-based care lead agencies; receivership.—

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

333 (c) The department determines that conditions exist in the
334 lead agency which present a ~~an imminent~~ danger to the health,
335 safety, or welfare of the dependent children under that agency's
336 care or supervision. Whenever possible, the department shall
337 make a reasonable effort to facilitate the continued operation
338 of the program.

339 (d) The lead agency cannot meet, or is unlikely to meet,
340 its current financial obligations to its employees, contractors,
341 or foster parents. Issuance of bad checks or the existence of
342 delinquent obligations for payment of salaries, utilities, or
343 invoices for essential services or commodities constitutes ~~shall~~
344 ~~constitute~~ prima facie evidence that the lead agency lacks the
345 financial ability to meet its financial obligations.

346 Section 5. Paragraph (d) of subsection (1) of section
347 409.996, Florida Statutes, is amended to read:

348 409.996 Duties of the Department of Children and Families.—

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349 The department shall contract for the delivery, administration,
350 or management of care for children in the child protection and
351 child welfare system. In doing so, the department retains
352 responsibility for the quality of contracted services and
353 programs and shall ensure that, at a minimum, services are
354 delivered in accordance with applicable federal and state
355 statutes and regulations and the performance standards and
356 metrics specified in the strategic plan created under s.
357 20.19(1).

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

362 (d) Provide for contractual actions ~~tiered interventions~~
363 ~~and graduated penalties~~ for failure to comply with contract
364 terms or in the event of performance deficiencies, as determined
365 appropriate by the department.

366 1. Such contractual actions must ~~interventions and~~
367 ~~penalties shall include, but are not limited to:~~

368 ~~1. Enhanced monitoring and reporting.~~

369 ~~a.2.~~ Corrective action plans.

370 ~~b.3.~~ Requirements to accept technical assistance and
371 consultation from the department under subsection (6).

372 ~~c.4.~~ Financial penalties, which ~~shall~~ require a lead agency
373 to direct reallocate funds from administrative costs to the
374 department. The department shall use the funds collected to
375 support service delivery of quality improvement activities for
376 children in the lead agency's care ~~to direct care for children.~~

377 These penalties may be imposed for failure to provide timely,

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378 sufficient resolution of deficiencies resulting in a corrective
379 action plan or other performance improvement plan issued by the
380 department. Financial penalties may include liquidated damages.

381 d.5. Early termination of contracts, as provided in s.
382 402.7305(3)(f) ~~s. 402.1705(3)(f)~~.

383 2. The department shall include in each lead agency
384 contract executed a provision that requires payment to the
385 department of sanctions or disincentives for failure to comply
386 with contractual obligations. The department shall establish a
387 schedule of daily monetary sanctions or disincentives for lead
388 agencies, which must be incorporated by reference into the
389 contract. The department is solely responsible for determining
390 the monetary value of liquidated damages.

391 Section 6. This act shall take effect July 1, 2024.