

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

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1 A bill to be entitled
2 An act relating to community-based child welfare
3 agencies; amending s. 409.016, F.S.; defining the term
4 "management functions"; amending s. 409.987, F.S.;
5 revising requirements for contracts the Department of
6 Children and Families has with community-based care
7 lead agencies; providing duties for board members of
8 lead agencies; requiring that lead agencies ensure
9 that board members participate in certain annual
10 training; requiring the posting of a fidelity bond;
11 revising the definition of the term "conflict of
12 interest"; defining the term "related party";
13 requiring the lead agency's board of directors to
14 disclose to the department any known actual or
15 potential conflicts of interest; prohibiting a lead
16 agency from entering into a contract or being a party
17 to any transaction with related parties if a conflict
18 of interest is not properly disclosed; prohibiting a
19 lead agency from entering into a contract or being a
20 party to any transaction with related parties for
21 officer-level or director-level staffing to perform
22 management functions; requiring the contract with the
23 department and the lead agency to specify the
24 administrative functions and services that the lead
25 agency may subcontract; authorizing a lead agency to
26 enter into certain contracts or be a party to certain
27 transactions, provided that a certain requirement for
28 fees, rates, and prices paid is met and any conflict
29 of interest is properly disclosed; requiring

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30 department contracts to impose contractual penalties
31 on lead agencies for undisclosed conflicts of
32 interest; providing applicability; requiring certain
33 contracts to be reprocured; authorizing the department
34 to recoup lead agency expenses for the execution of
35 certain contracts; amending s. 409.988, F.S.; revising
36 lead agency duties; repealing s. 409.991, F.S.,
37 relating to allocation of funds for community-based
38 care lead agencies; creating s. 409.9913, F.S.;
39 defining the terms "core services funding" and
40 "operational and fixed costs"; requiring the
41 department, in collaboration with the lead agencies
42 and providers of child welfare services, to develop a
43 specific funding methodology for the allocation of
44 core services which must meet certain criteria;
45 requiring the lead agencies and providers of child
46 welfare services to submit to the department certain
47 financial information; requiring the department to
48 submit to the Governor and the Legislature certain
49 reports by specified dates; providing construction;
50 authorizing the department to include certain rates
51 and total allocations in certain reports; requiring
52 the Legislature to allocate funding to the lead
53 agencies with due consideration of the specified
54 funding methodology, beginning with a specified fiscal
55 year; prohibiting the department from changing a lead
56 agency's allocation of funds provided in the General
57 Appropriations Act without legislative approval;
58 authorizing the department to approve certain risk

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59 pool funding for a lead agency; requiring the
60 department to submit to the Governor and the
61 Legislature certain monthly reports for a specified
62 period of time; amending s. 409.992, F.S.; revising
63 requirements for lead agency practices in the
64 procurement of commodities and contractual services;
65 requiring the department to impose certain penalties
66 for a lead agency's noncompliance with applicable
67 procurement law; requiring the contract between the
68 department and the lead agency to specify the rights
69 and obligations with regard to real property held by
70 the lead agency during the term of the contract;
71 providing applicability of certain limitations on the
72 salaries of community-based care lead agency
73 administrative employees; amending s. 409.994, F.S.;
74 revising the conditions under which the department may
75 petition a court for the appointment of a receiver for
76 a community-based care lead agency; amending s.
77 409.996, F.S.; revising requirements for contracts
78 between the department and lead agencies; revising the
79 actions the department may take under certain
80 circumstances; making a technical change; providing
81 duties of the department; requiring the department, by
82 specified dates, to submit certain reports to the
83 Governor and the Legislature; providing an effective
84 date.

85
86 Be It Enacted by the Legislature of the State of Florida:
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88 Section 1. Present subsections (3) and (4) of section
89 409.016, Florida Statutes, are redesignated as subsections (4)
90 and (5), respectively, and a new subsection (3) is added to that
91 section, to read:

92 409.016 Definitions.—As used in this chapter:

93 (3) "Management functions" means:

94 (a) Planning, directing, organizing, coordinating, and
95 carrying out oversight duties of the lead agency;

96 (b) Contracting for officer or director level staffing in
97 performance of the planning, directing, organizing,
98 coordinating, and carrying out oversight duties of the lead
99 agency.

100 Section 2. Subsections (3) and (4) and paragraphs (a) and
101 (b) of subsection (7) of section 409.987, Florida Statutes, are
102 amended, and paragraph (g) is added to subsection (7) of that
103 section, to read:

104 409.987 Lead agency procurement; boards; conflicts of
105 interest.—

106 (3) Notwithstanding s. 287.057, the department shall use 5-
107 year contracts with lead agencies. The department may only
108 extend a contract for a period of 1 to 5 years, in accordance
109 with s. 287.057, if the lead agency has met performance
110 expectations within the monitoring evaluation.

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

112 (a) Be organized as a Florida corporation or a governmental
113 entity.

114 (b) Be governed by a board of directors or a board
115 committee composed of board members. Board members shall provide
116 oversight and ensure accountability and transparency for the

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117 system of care. The board of directors shall provide fiduciary
118 oversight to prevent conflicts of interest, promote
119 accountability and transparency, and protect state and federal
120 funding from misuse. The board of directors shall act in
121 accordance with s. 617.0830. The membership of the board of
122 directors or board committee must be described in the bylaws or
123 articles of incorporation of each lead agency, which must
124 provide that at least 75 percent of the membership of the board
125 of directors or board committee must be composed ~~consist~~ of
126 persons residing in this state, and at least 51 percent of the
127 state residents on the board of directors must reside within the
128 service area of the lead agency. The lead agency shall ensure
129 that board members participate in annual training related to
130 their responsibilities. The department shall set forth minimum
131 training criteria in the contracts with the lead agencies.
132 However, for procurements of lead agency contracts initiated on
133 or after July 1, 2014:

134 1. At least 75 percent of the membership of the board of
135 directors must be composed ~~consist~~ of persons residing in this
136 state, and at least 51 percent of the membership of the board of
137 directors must be composed ~~consist~~ of persons residing within
138 the service area of the lead agency. If a board committee
139 governs the lead agency, 100 percent of its membership must be
140 composed ~~consist~~ of persons residing within the service area of
141 the lead agency.

142 2. The powers of the board of directors or board committee
143 include, but are not limited to, approving the lead agency's
144 budget and setting the lead agency's operational policy and
145 procedures. A board of directors must additionally have the

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146 power to hire the lead agency's executive director, unless a
147 board committee governs the lead agency, in which case the board
148 committee must have the power to confirm the selection of the
149 lead agency's executive director.

150 (c) Demonstrate financial responsibility through an
151 organized plan for regular fiscal audits; ~~and~~ the posting of a
152 performance bond; and the posting of a fidelity bond to cover
153 any costs associated with procurement and the assessed
154 penalties related to a failure to disclose a conflict of
155 interest under subsection (7).

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

157 1. "Activity" includes, but is not limited to, a contract
158 for goods and services, a contract for the purchase of any real
159 or tangible property, or an agreement to engage with a lead
160 agency for the benefit of a third party in exchange for an
161 interest in real or tangible property, a monetary benefit, or an
162 in-kind contribution.

163 2. "Conflict of interest" means when a board member,
164 director, or ~~an~~ officer, or a relative of a board member,
165 director, or ~~an~~ officer, of a lead agency does any of the
166 following:

167 a. Enters into a contract or other transaction for goods or
168 services with the lead agency.

169 b. Holds a direct or indirect interest in a corporation,
170 limited liability corporation, partnership, limited liability
171 partnership, or other business entity that conducts business
172 with the lead agency or proposes to enter into a contract or
173 other transaction with the lead agency. For purposes of this
174 paragraph, the term "indirect interest" has the same meaning as

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175 in s. 112.312.

176 c. Knowingly obtains a direct or indirect personal,
177 financial, professional, or other benefit as a result of the
178 relationship of such board member, director, or officer, or
179 relative of the board member, director, or officer, with the
180 lead agency. For purposes of this paragraph, the term "benefit"
181 does not include per diem and travel expenses paid or reimbursed
182 to board members or officers of the lead agency in connection
183 with their service on the board.

184 3. "Related party" means any entity of which a director or
185 an officer of the entity is also directly or indirectly related
186 to, or has a direct or indirect financial or other material
187 interest in, the lead agency. The term also includes any
188 subsidiary firm, parent entity, associate firm, or joint
189 venture.

190 ~~4.3.~~ "Relative" means a relative within the third degree of
191 consanguinity by blood or marriage.

192 (b)1. For any activity that is presented to the board of a
193 lead agency for its initial consideration and approval ~~after~~
194 ~~July 1, 2021~~, or any activity that involves a contract that is
195 being considered for renewal ~~on or after July 1, 2021, but~~
196 ~~before January 1, 2022~~, a board member, a director, or an
197 officer of a lead agency shall disclose to the board any
198 activity that may reasonably be construed to be a conflict of
199 interest before such activity is initially considered and
200 approved or a contract is renewed by the board. A rebuttable
201 presumption of a conflict of interest exists if the activity was
202 acted on by the board without prior notice as required under
203 paragraph (c). The board shall disclose any known actual or

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204 potential conflicts to the department.

205 2. A lead agency may not enter into a contract or be a
206 party to any transaction with related parties if a conflict of
207 interest is not properly disclosed. A lead agency may not enter
208 into a contract with a related party for officer-level or
209 director-level staffing to perform management functions. The
210 contract with the department and lead agency must specify the
211 administrative functions and services that the lead agency may
212 subcontract ~~For contracts with a lead agency which are in~~
213 ~~existence on July 1, 2021, and are not subject to renewal before~~
214 ~~January 1, 2022, a board member or an officer of the lead agency~~
215 ~~shall disclose to the board any activity that may reasonably be~~
216 ~~construed to be a conflict of interest under this section by~~
217 ~~December 31, 2021.~~

218 3. Subject to the requirements of subparagraph 2., a lead
219 agency may enter into a contract or be a party to any
220 transaction with related parties as long as the fee, rate, or
221 price paid by the lead agency for the commodities or services
222 being procured does not exceed the fair market value for such
223 commodities or services. The lead agency shall disclose any
224 known actual or potential conflicts to the department.

225 (g)1. All department contracts with lead agencies must
226 contain the following contractual penalty provisions:

227 a. Penalties in the amount of \$5,000 per occurrence must be
228 imposed for each known and potential conflict of interest, as
229 described in paragraph (b), which is not disclosed to the
230 department.

231 b. If a contract is executed for which a conflict of
232 interest was not disclosed to the department before execution of

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233 the contract, the following penalties apply:

234 (I) A penalty in the amount of \$25,000 for a first offense.

235 (II) A penalty in the amount of \$50,000 for a second or
236 subsequent offense.

237 (III) Removal of the board member who did not disclose a
238 known conflict of interest.

239 2. The penalties for failure to disclose a conflict of
240 interest under sub-subparagraphs a. and b. apply to any contract
241 entered into, regardless of the method of procurement,
242 including, but not limited to, formal procurement, single-source
243 contracts, and contracts that do not meet the minimum threshold
244 for formal procurement.

245 3. A contract procured for which a conflict of interest was
246 not disclosed to the department before execution of the contract
247 must be reprocured. The department shall recoup from the lead
248 agency expenses related to a contract that was executed without
249 disclosure of a conflict of interest.

250 Section 3. Paragraphs (c), (j), and (k) of subsection (1)
251 of section 409.988, Florida Statutes, are amended to read:

252 409.988 Community-based care lead agency duties; general
253 provisions.—

254 (1) DUTIES.—A lead agency:

255 (c) Shall follow the financial guidelines developed by the
256 department and shall comply with regular, independent auditing
257 of its financial activities, including any requests for records
258 associated with such financial audits within the timeframe
259 established by the department or its contracted vendors provide
260 for a regular independent auditing of its financial activities.
261 The results of the financial audit must ~~Such financial~~

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262 ~~information shall~~ be provided to the community alliance
263 established under s. 20.19(5).

264 (j)1. May subcontract for the provision of services,
265 excluding subcontracts with a related party for officer-level or
266 director-level staffing to perform management functions,
267 required by the contract with the lead agency and the
268 department; however, the subcontracts must specify how the
269 provider will contribute to the lead agency meeting the
270 performance standards established pursuant to the child welfare
271 results-oriented accountability system required by s. 409.997.
272 Any contract with an unrelated entity for officer-level or
273 director-level staffing to perform management functions must
274 adhere to the executive compensation provision in s. 409.922(3).

275 2. The lead agency shall directly provide no more than 35
276 percent of all child welfare services provided unless it can
277 demonstrate a need, within the lead agency's geographic service
278 area, where there is a lack of qualified providers available to
279 perform necessary child welfare services. The approval period to
280 exceed the threshold is limited to 2 years ~~to exceed this~~
281 ~~threshold.~~ After the 2-year period, the lead agency may submit
282 annual 1-year extension requests with a detailed report of all
283 efforts to recruit a qualified provider to perform the necessary
284 services in that geographic service area. If the department
285 determines the lead agency is not making a good faith effort to
286 recruit a qualified provider, it must deny the extension request
287 and require reprocurement. The local community alliance in the
288 geographic service area in which the lead agency is seeking to
289 exceed the threshold shall review the lead agency's
290 justification for need and recommend to the department whether

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291 the department should approve or deny the lead agency's request
292 for an exemption from the services threshold. If there is not a
293 community alliance operating in the geographic service area in
294 which the lead agency is seeking to exceed the threshold, such
295 review and recommendation shall be made by representatives of
296 local stakeholders, including at least one representative from
297 each of the following:

- 298 1. The department.
- 299 2. The county government.
- 300 3. The school district.
- 301 4. The county United Way.
- 302 5. The county sheriff's office.
- 303 6. The circuit court corresponding to the county.
- 304 7. The county children's board, if one exists.

305 (k) Shall publish on its website by the 15th day of each
306 month at a minimum the data specified in subparagraphs 1.-10.
307 ~~subparagraphs 1.-5.~~, calculated using a standard methodology
308 determined by the department, for the preceding calendar month
309 regarding its case management services. The following
310 information shall be reported by each individual subcontracted
311 case management provider, by the lead agency, if the lead agency
312 provides case management services, and in total for all case
313 management services subcontracted or directly provided by the
314 lead agency:

- 315 1. The average caseload of case managers, including only
316 filled positions;
- 317 2. The total number and percentage of case managers who
318 have 25 or more cases on their caseloads;
- 319 3. The turnover rate for case managers and case management

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320 supervisors for the previous 12 months;

321 4. The percentage of required home visits completed; and

322 5. Performance on outcome measures required pursuant to s.

323 409.997 for the previous 12 months.

324 6. The number of unlicensed placements for the previous
325 month;

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

328 8. The percentage of families being served through family
329 support services, in-home services, and out-of-home services for
330 the previous month; and

331 9. The percentage of cases that were converted from
332 nonjudicial to judicial for the previous month.

333 10. Children's legal service staffing rates.

334 Section 4. Section 409.991, Florida Statutes, is repealed.

335 Section 5. Section 409.9913, Florida Statutes, is created
336 to read:

337 409.9913 Funding methodology to allocate funding to lead
338 agencies.—

339 (1) As used in this section, the term:

340 (a) "Core services funding" means all funds allocated to
341 lead agencies. The term does not include any of the following:

342 1. Funds appropriated for independent living services.

343 2. Funds appropriated for maintenance adoption subsidies.

344 3. Funds allocated by the department for child protective
345 investigation service training.

346 4. Nonrecurring funds.

347 5. Designated mental health wrap-around service funds.

348 6. Funds for special projects for a designated lead agency.

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349 7. Funds appropriated for the Guardianship Assistance
 350 Program established under s. 39.6225.

351 (b) "Operational and fixed costs" means:

352 1. Administrative expenditures, including, but not limited
 353 to, information technology and human resources functions.

354 2. Lease payments.

355 3. Asset depreciation.

356 4. Utilities.

357 5. Administrative components of case management.

358 6. Mandated activities such as training, quality
 359 improvement, or contract management.

360 (2) The department shall develop, in collaboration with
 361 lead agencies and providers of child welfare services, a funding
 362 methodology for allocating core services funding to lead
 363 agencies which, at a minimum:

364 (a) Is actuarially sound.

365 (b) Is reimbursement-based.

366 (c) Is designed to incentivize efficient and effective lead
 367 agency operation, prevention, family preservation, and
 368 permanency.

369 (d) Considers variable costs, including, but not limited
 370 to:

371 1. Direct costs for in-home and out-of-home care for
 372 children served by the lead agencies.

373 2. Direct costs for prevention services.

374 3. Operational and fixed costs.

375 (e) Is scaled regionally for cost-of-living factors.

376 (3) The lead agencies and providers shall submit any
 377 detailed cost and expenditure data that the department requests

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378 for the development of the funding methodology.

379 (4) The department shall submit a report to the Governor,
380 the President of the Senate, and the Speaker of the House of
381 Representatives by December 1, 2024, which, at a minimum:

382 (a) Describes a proposed funding methodology and formula
383 that will provide for the annual budget of each lead agency,
384 including, but not limited to, how the proposed methodology will
385 meet the criteria specified in subsection (2).

386 (b) Describes the data used to develop the methodology and
387 the data that will be used to annually calculate the proposed
388 lead agency budget.

389 (c) Specifies proposed rates and total allocations for each
390 lead agency. The allocations must ensure that the total of all
391 amounts allocated to lead agencies under the funding methodology
392 does not exceed the total amount appropriated to lead agencies
393 in the 2024-2025 General Appropriations Act.

394 (d) Provides risk mitigation recommendations that ensure
395 that lead agencies do not experience a reduction in funding that
396 would be detrimental to operations or result in a reduction in
397 services to children.

398 (5) By October 31, 2025, and each October 31 thereafter,
399 the department shall submit a report to the Governor, the
400 President of the Senate, and the Speaker of the House of
401 Representatives which includes recommendations for adjustments
402 to the funding methodology for the next fiscal year, calculated
403 using the criteria in subsection (2). Such recommendations must,
404 at a minimum, be based on updated expenditure data, cost-of-
405 living adjustments, market dynamics, or other catchment area
406 variations. The total of all amounts proposed for allocation to

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407 lead agencies under the funding methodology for the subsequent
408 fiscal year may not exceed the total amount appropriated in the
409 General Appropriations Act for core services funding in the
410 present fiscal year. The funding methodology must include risk
411 mitigation strategies that ensure that lead agencies do not
412 experience a reduction in funding that would be detrimental to
413 operations or result in a reduction in services to children.

414 (6) (a) The requirements of this section do not replace, and
415 are in addition to, any requirements of chapter 216, including,
416 but not limited to, submission of final legislative budget
417 requests by the department under s. 216.023.

418 (b) The data and reports required under subsections (4) and
419 (5) may also include proposed rates and total allocations for
420 each lead agency which reflect any additional core services
421 funding for lead agencies which is requested by the department
422 under s. 216.023.

423 (7) (a) Beginning with the 2025-2026 fiscal year, the
424 Legislature shall allocate funding to lead agencies through the
425 General Appropriations Act with due consideration of the funding
426 methodology developed under this section.

427 (b) The department may not change the allocation of funds
428 to a lead agency as provided in the General Appropriations Act
429 without legislative approval. The department may approve
430 additional risk pool funding for a lead agency as provided under
431 s. 409.990.

432 (8) The department shall provide to the Governor, the
433 President of the Senate, and the Speaker of the House of
434 Representatives monthly reports from July through October 2024
435 which provide updates on activities and progress in developing

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436 the funding methodology.

437 Section 6. Subsections (1) and (3) of section 409.992,
438 Florida Statutes, are amended to read:

439 409.992 Lead agency expenditures.—

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

446 (a)1. Lead agencies shall competitively procure all
447 contracts, consistent with the federal simplified acquisition
448 threshold.

449 2. Lead agencies shall competitively procure all contracts
450 in excess of \$35,000 with related parties.

451 3. Financial penalties or sanctions, as established by the
452 department and incorporated into the contract, must be imposed
453 by the department for noncompliance with applicable local,
454 state, or federal law for the procurement of commodities or
455 contractual services.

456 (b) The contract between the department and the lead agency
457 must delineate the rights and obligations of the lead agency
458 concerning the acquisition, transfer, or other disposition of
459 real property. At a minimum, the contract must:

460 1. Require the lead agency to follow all federal law on the
461 acquisition, improvement, transfer, or disposition of real
462 property acquired by the lead agency using federal dollars.

463 2. Require the department to obtain the rights to and
464 ownership of all real property acquired by the lead agency using

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465 state funds.

466 3. Require the department to approve any sale, transfer, or
467 disposition of real property acquired and held by the lead
468 agency using state funds.

469 4. Require the department to retain all rights to and
470 ownership of all real property acquired with state funds and
471 held by the lead agency upon termination of the lead agency
472 contract.

473 (3) Notwithstanding any other provision of law, a
474 community-based care lead agency administrative employee may not
475 receive a salary, whether base pay or base pay combined with any
476 bonus or incentive payments, in excess of 150 percent of the
477 annual salary paid to the secretary of the Department of
478 Children and Families from state-appropriated funds, including
479 state-appropriated federal funds. This limitation applies
480 regardless of the number of contracts a community-based care
481 lead agency may execute with the department. This subsection
482 does not prohibit any party from providing cash that is not from
483 appropriated state funds to a community-based care lead agency
484 administrative employee.

485 Section 7. Paragraph (d) of subsection (1) of section
486 409.994, Florida Statutes, is amended to read:

487 409.994 Community-based care lead agencies; receivership.-

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

492 (d) The lead agency cannot meet, or is unlikely to meet,
493 its current financial obligations to its employees, contractors,

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494 or foster parents. Issuance of bad checks or the existence of
495 delinquent obligations for payment of salaries, utilities, or
496 invoices for essential services or commodities constitutes ~~shall~~
497 ~~constitute~~ prima facie evidence that the lead agency lacks the
498 financial ability to meet its financial obligations.

499 Section 8. Paragraph (d) of subsection (1) of section
500 409.996, Florida Statutes, is amended to read:

501 409.996 Duties of the Department of Children and Families.—
502 The department shall contract for the delivery, administration,
503 or management of care for children in the child protection and
504 child welfare system. In doing so, the department retains
505 responsibility for the quality of contracted services and
506 programs and shall ensure that, at a minimum, services are
507 delivered in accordance with applicable federal and state
508 statutes and regulations and the performance standards and
509 metrics specified in the strategic plan created under s.
510 20.19(1).

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

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

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

521 a.1. Enhanced monitoring and reporting.

522 b.2. Corrective action plans.

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523 ~~c.3.~~ Requirements to accept technical assistance and
524 consultation from the department under subsection (6).

525 ~~d.4.~~ Financial penalties, which shall require a lead agency
526 to direct ~~reallocate~~ funds from administrative costs to the
527 department. The department shall use collected funds to support
528 and provide services to children and families in the geographic
529 service area of the lead agency from which the funds were
530 obtained ~~direct care for children.~~

531 ~~e.5.~~ Early termination of contracts, as provided in s.
532 402.7305(3)(f) ~~s. 402.1705(3)(f).~~

533 2. No later than January 1, 2025, the department shall
534 ensure that each lead agency contract executed includes a list
535 of financial penalties for failure to comply with contractual
536 requirements.

537 Section 9. By September 30, 2024, and February 1, 2025,
538 respectively, the Department of Children and Families shall
539 submit a report to the Governor, the President of the Senate,
540 and the Speaker of the House of Representatives on rules and
541 policies adopted and other actions taken to implement this act.

542 Section 10. This act shall take effect July 1, 2024.