CHAPTER 2005-222

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 1476

An act relating to the Department of Children and Family Services; providing definitions; requiring the department to allow all public postsecondary institutions to bid on contracts intended for any public postsecondary institution; authorizing the department to competitively procure and contract for systems of treatment or service that involve multiple providers; providing requirements if other governmental entities contribute matching funds; requiring that an entity providing matching funds must comply with certain procurement procedures; authorizing the department to independently procure and contract for treatment services; requiring multiyear contracts unless justification is provided; requiring that the department establish a contract management process; specifying the requirements for and components of the contract management process; providing requirements for resolving performance deficiencies and terminating a contract; requiring a corrective action plan under certain circumstances; requiring that the department establish contract monitoring units and a contract monitoring process; requiring written reports; requiring on site visits for contracts involving the provision of direct client services; amending s. 402.73, F.S.; authorizing the department to adopt incremental penalties by rule; requiring the Agency for Persons with Disabilities to implement systems to ensure quality and fiscal integrity of programs in the developmental services Medicaid waiver system; providing an exemption for health services from competitive bidding requirements; amending s. 409.1671, F.S.; conforming provisions to changes made by the act; requiring that the Office of Program Policy Analysis and Government Accountability conduct two reviews of the contract-management and accountability structures of the department and report to the Legislature and the Auditor General; authorizing the Department of Children and Family Services to enter into agreements with a private contractor to finance, design, and construct a secure facility; authorizing the contractor to sponsor issuance of certain financing certificates or securities; authorizing the state to enter into a lease-purchase agreement; requiring implementation by a time certain; providing for future repeal; repealing s. 402.72, F.S., relating to contract management requirements for the Department of Children and Family Services; providing an effective date.

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

Section 1. Department of Children and Family Services; procurement of contractual services; contract management.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Contract manager" means the department employee who is responsible for enforcing the compliance with administrative and programmatic

terms and conditions of a contract. The contract manager is the primary point of contact through which all contracting information flows between the department and the contractor. The contract manager is responsible for day-to-day contract oversight, including approval of contract deliverables and invoices. All actions related to the contract shall be initiated by or coordinated with the contract manager. The contract manager maintains the official contract files.

(b) "Contract monitor" means the department employee who is responsible for observing, recording, and reporting to the contract manager and other designated entities the information necessary to assist the contract manager and program management in determining whether the contractor is in compliance with the administrative and programmatic terms and conditions of the contract.

(c) "Department" means the Department of Children and Family Services.

(d) "Outsourcing" means the process of contracting with an external service provider to provide a service, in whole or in part, while the department retains the responsibility and accountability for the service.

(2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

(a) Notwithstanding section 287.057(5)(f)13., Florida Statutes, whenever the department intends to contract with a public postsecondary institution to provide a service, the department must allow all public postsecondary institutions in this state that are accredited by the Southern Association of Colleges and Schools to bid on the contract. Thereafter, notwithstanding any other provision to the contrary, if a public postsecondary institution intends to subcontract for any service awarded in the contract, the subcontracted service must be procured by competitive procedures.

(b) When it is in the best interest of a defined segment of its consumer population, the department may competitively procure and contract for systems of treatment or service that involve multiple providers, rather than procuring and contracting for treatment or services separately from each participating provider. The department must ensure that all providers that participate in the treatment or service system meet all applicable statutory, regulatory, service-quality, and cost-control requirements. If other governmental entities or units of special purpose government contribute matching funds to the support of a given system of treatment or service, the department shall formally request information from those funding entities in the procurement process and may take the information received into account in the selection process. If a local government contributes matching funds to support the system of treatment or contracted service and if the match constitutes at least 25 percent of the value of the contract, the department shall afford the governmental match contributor an opportunity to name an employee as one of the persons required by section 287.057(17), Florida Statutes, to evaluate or negotiate certain contracts, unless the department sets forth in writing the reason why the inclusion would be contrary to the best interest of the state. Any employee so named by the governmental

match contributor shall qualify as one of the persons required by section 287.057(17), Florida Statutes. A governmental entity or unit of special purpose government may not name an employee as one of the persons required by section 287.057(17), Florida Statutes, if it, or any of its political subdivisions, executive agencies, or special districts, intends to compete for the contract to be awarded. The governmental funding entity or contributor of matching funds must comply with all procurement procedures set forth in section 287.057, Florida Statutes, when appropriate and required.

(c) The department may procure and contract for or provide assessment and case-management services independently from treatment services.

(3) CONTRACT-MANAGEMENT REQUIREMENTS AND PROCESS.—The Department of Children and Family Services shall review the time period for which the department executes contracts and shall execute multiyear contracts to make the most efficient use of the resources devoted to contract processing and execution. Whenever the department chooses not to use a multiyear contract, a justification for that decision must be contained in the contract. Notwithstanding section 287.057(15), Florida Statutes, the department is responsible for establishing a contract-management process that requires a member of the department's Senior Management or Select Exempt Service to assign in writing the responsibility of a contract to a contract manager. The department shall maintain a set of procedures describing its contract-management process which must minimally include the following requirements:

(a) The contract manager shall maintain the official contract file throughout the duration of the contract and for a period not less than 6 years after the termination of the contract.

(b) The contract manager shall review all invoices for compliance with the criteria and payment schedule provided for in the contract and shall approve payment of all invoices before their transmission to the Department of Financial Services for payment.

(c) The contract manager shall maintain a schedule of payments and total amounts disbursed and shall periodically reconcile the records with the state's official accounting records.

(d) For contracts involving the provision of direct client services, the contract manager shall periodically visit the physical location where the services are delivered and speak directly to clients receiving the services and the staff responsible for delivering the services.

(e) The contract manager shall meet at least once a month directly with the contractor's representative and maintain records of such meetings.

(f) The contract manager shall periodically document any differences between the required performance measures and the actual performance measures. If a contractor fails to meet and comply with the performance measures established in the contract, the department may allow a reasonable period for the contractor to correct performance deficiencies. If performance deficiencies are not resolved to the satisfaction of the department

within the prescribed time, and if no extenuating circumstances can be documented by the contractor to the department's satisfaction, the department must terminate the contract. The department may not enter into a new contract with that same contractor for the services for which the contract was previously terminated for a period of at least 24 months after the date of termination. The contract manager shall obtain and enforce corrective-action plans, if appropriate, and maintain records regarding the completion or failure to complete corrective-action items.

(g) The contract manager shall document any contract modifications, which shall include recording any contract amendments as provided for in this section.

(h) The contract manager shall be properly trained before being assigned responsibility for any contract.

(4) CONTRACT MONITORING REQUIREMENTS AND PROCESS.—The department shall establish contract monitoring units staffed by career service employees who report to a member of the Select Exempt Service or Senior Management Service and who have been properly trained to perform contract monitoring, with at least one member of the contract monitoring unit possessing specific knowledge and experience in the contract's program area. The department shall establish a contract-monitoring process that must include, but need not be limited to, the following requirements:

(a) Performing a risk assessment at the start of each fiscal year and preparing an annual contract monitoring schedule that includes consideration for the level of risk assigned. The department may monitor any contract at any time regardless of whether such monitoring was originally included in the annual contract-monitoring schedule.

(b) Preparing a contract monitoring plan, including sampling procedures, before performing on site monitoring at external locations of a service provider. The plan must include a description of the programmatic, fiscal, and administrative components that will be monitored on site. If appropriate, clinical and therapeutic components may be included.

(c) Conducting analyses of the performance and compliance of an external service provider by means of desk reviews if the external service provider will not be monitored on site during a fiscal year.

(d) Unless the department sets forth in writing the need for an extension, providing a written report presenting the results of the monitoring within 30 days after the completion of the on-site monitoring or desk review.

(e) Developing and maintaining a set of procedures describing the contract-monitoring process.

Section 2. Section 402.73, Florida Statutes, is amended to read:

402.73 Contracting and performance standards.—

~~(1) The Department of Children and Family Services shall establish performance standards for all contracted client services. Notwithstanding s.~~

~~287.057(5)(f), the department must competitively procure any contract for client services when any of the following occurs:~~

~~(a) The provider fails to meet appropriate performance standards established by the department after the provider has been given a reasonable opportunity to achieve the established standards.~~

~~(b) A new program or service has been authorized and funded by the Legislature and the annual value of the contract for such program or service is $300,000 or more.~~

~~(c) The department has concluded, after reviewing market prices and available treatment options, that there is evidence that the department can improve the performance outcomes produced by its contract resources. At a minimum, the department shall review market prices and available treatment options biennially. The department shall compile the results of the biennial review and include the results in its annual performance report to the Legislature pursuant to chapter 94-249, Laws of Florida. The department shall provide notice and an opportunity for public comment on its review of market prices and available treatment options.~~

~~(2) The competitive requirements of subsection (1) must be initiated for each contract that meets the criteria of this subsection, unless the secretary makes a written determination that particular facts and circumstances require deferral of the competitive process. Facts and circumstances must be specifically described for each individual contract proposed for deferral and must include one or more of the following:~~

~~(a) An immediate threat to the health, safety, or welfare of the department's clients.~~

~~(b) A threat to appropriate use or disposition of facilities that have been financed in whole, or in substantial part, through contracts or agreements with a state agency.~~

~~(c) A threat to the service infrastructure of a community which could endanger the well-being of the department's clients.~~

~~Competitive procurement of client services contracts that meet the criteria in subsection (1) may not be deferred for longer than 1 year.~~

~~(3) The Legislature intends that the department obtain services in the manner that is most cost-effective for the state, that provides the greatest long-term benefits to the clients receiving services, and that minimizes the disruption of client services. In order to meet these legislative goals, the department may adopt rules providing procedures for the competitive procurement of contracted client services which represent an alternative to the request-for-proposal or invitation-to-bid process. The alternative competitive procedures shall permit the department to solicit professional qualifications from prospective providers and to evaluate such statements of qualification before requesting service proposals. The department may limit the firms invited to submit service proposals to only those firms that have demonstrated the highest level of professional capability to provide the~~

~~services under consideration, but may not invite fewer than three firms to submit service proposals, unless fewer than three firms submitted satisfactory statements of qualification. The alternative procedures must, at a minimum, allow the department to evaluate competing proposals and select the proposal that provides the greatest benefit to the state while considering the quality of the services, dependability, and integrity of the provider, the dependability of the provider's services, the experience of the provider in serving target populations or client groups substantially identical to members of the target population for the contract in question, and the ability of the provider to secure local funds to support the delivery of services, including, but not limited to, funds derived from local governments. These alternative procedures need not conform to the requirements of s. 287.042 or s. 287.057(1) or (2).~~

~~(4) The department shall review the period for which it executes contracts and, to the greatest extent practicable, shall execute multiyear contracts to make the most efficient use of the resources devoted to contract processing and execution.~~

~~(5) When it is in the best interest of a defined segment of its consumer population, the department may competitively procure and contract for systems of treatment or service that involve multiple providers, rather than procuring and contracting for treatment or services separately from each participating provider. The department must ensure that all providers that participate in the treatment or service system meet all applicable statutory, regulatory, service-quality, and cost-control requirements. If other governmental entities or units of special purpose government contribute matching funds to the support of a given system of treatment or service, the department shall formally request information from those funding entities in the procurement process and may take the information received into account in the selection process. If a local government contributes match to support the system of treatment or contracted service and if the match constitutes at least 25 percent of the value of the contract, the department shall afford the governmental match contributor an opportunity to name an employee as one of the persons required by s. 287.057(17) to evaluate or negotiate certain contracts, unless the department sets forth in writing the reason why such inclusion would be contrary to the best interest of the state. Any employee so named by the governmental match contributor shall qualify as one of the persons required by s. 287.057(17). No governmental entity or unit of special purpose government may name an employee as one of the persons required by s. 287.057(17) if it, or any of its political subdivisions, executive agencies, or special districts, intends to compete for the contract to be awarded. The governmental funding entity or match contributor shall comply with any deadlines and procurement procedures established by the department. The department may also involve nongovernmental funding entities in the procurement process when appropriate.~~

~~(6) The department may contract for or provide assessment and case management services independently from treatment services.~~

(1)~~(7)~~ The Department of Children and Family Services shall adopt, by rule, provisions for including in its contracts incremental penalties to be

imposed by its contract managers on a service provider due to the provider's failure to comply with a requirement for corrective action. Any financial penalty that is imposed upon a provider may not be paid from funds being used to provide services to clients, and the provider may not reduce the amount of services being delivered to clients as a method for offsetting the impact of the penalty. If a financial penalty is imposed upon a provider that is a corporation, the department shall notify, at a minimum, the board of directors of the corporation. The department may notify, at its discretion, any additional parties that the department believes may be helpful in obtaining the corrective action that is being sought. Further, the rules adopted by the department must include provisions that permit the department to deduct the financial penalties from funds that would otherwise be due to the provider, not to exceed 10 percent of the amount that otherwise would be due to the provider for the period of noncompliance. If the department imposes a financial penalty, it shall advise the provider in writing of the cause for the penalty. A failure to include such deductions in a request for payment constitutes a ground for the department to reject that request for payment. The remedies identified in this subsection do not limit or restrict the department's application of any other remedy available to it in the contract or under law. The remedies described in this subsection may be cumulative and may be assessed upon each separate failure to comply with instructions from the department to complete corrective action.

~~(8) The department shall develop standards of conduct and a range of disciplinary actions for its employees which are specifically related to carrying out contracting responsibilities.~~

(2)~~(9)~~ The Agency for Persons with Disabilities ~~department~~ must implement systems and controls to ensure financial integrity and service provision quality in the developmental services Medicaid waiver service system.

~~(10) If a provider fails to meet the performance standards established in the contract, the department may allow a reasonable period for the provider to correct performance deficiencies. If performance deficiencies are not resolved to the satisfaction of the department within the prescribed time, and if no extenuating circumstances can be documented by the provider to the department's satisfaction, the department must cancel the contract with the provider. The department may not enter into a new contract with that same provider for the services for which the contract was previously canceled for a period of at least 24 months after the date of cancellation. If an adult substance abuse services provider fails to meet the performance standards established in the contract, the department may allow a reasonable period, not to exceed 6 months, for the provider to correct performance deficiencies. If the performance deficiencies are not resolved to the satisfaction of the department within 6 months, the department must cancel the contract with the adult substance abuse provider, unless there is no other qualified provider in the service district.~~

(3)~~(11)~~ The department shall include in its standard contract document a requirement that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the

amount of the state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law. The contract must include a provision that, as a condition of receipt of state funding for this purpose, the provider agrees that, if it disposes of the property before the department's interest is vacated, the provider will refund the proportionate share of the state's initial investment, as adjusted by depreciation.

~~(12) The department shall develop and refine contracting and accountability methods that are administratively efficient and that provide for optimal provider performance.~~

~~(13) The department may competitively procure any contract when it deems it is in the best interest of the state to do so. The requirements described in subsection (1) do not, and may not be construed to, limit in any way the department's ability to competitively procure any contract it executes, and the absence of any or all of the criteria described in subsection (1) may not be used as the basis for an administrative or judicial protest of the department's determination to conduct competition, make an award, or execute any contract.~~

~~(14) A contract may include cost-neutral, performance-based incentives that may vary according to the extent a provider achieves or surpasses the performance standards set forth in the contract. Such incentives may be weighted proportionally to reflect the extent to which the provider has demonstrated that it has consistently met or exceeded the contractual requirements and the department's performance standards.~~

(4)~~(15)~~ Nothing contained in chapter 287 shall require competitive bids for health services involving examination, diagnosis, or treatment.

Section 3. Section 409.1671, Florida Statutes, is amended to read:

409.1671 Foster care and related services; outsourcing ~~privatization~~.—

(1)(a) It is the intent of the Legislature that the Department of Children and Family Services shall outsource ~~privatize~~ the provision of foster care and related services statewide. It is further the Legislature's intent to encourage communities and other stakeholders in the well-being of children to participate in assuring that children are safe and well-nurtured. However, while recognizing that some local governments are presently funding portions of certain foster care and related services programs and may choose to expand such funding in the future, the Legislature does not intend by its outsourcing ~~privatization~~ of foster care and related services that any county, municipality, or special district be required to assist in funding programs that previously have been funded by the state. Counties that provide children and family services with at least 40 licensed residential group care beds by July 1, 2003, and provide at least $2 million annually in county general revenue funds to supplement foster and family care services shall continue to contract directly with the state and shall be exempt from the provisions of this section. Nothing in this paragraph prohibits any county, municipality, or special district from future voluntary funding participation in foster care and related services. As used in this section, the term "outsource"

~~"privatize"~~ means to contract with competent, community-based agencies. The department shall submit a plan to accomplish outsourcing ~~privatization~~ statewide, through a competitive process, phased in over a 3-year period beginning January 1, 2000. This plan must be developed with local community participation, including, but not limited to, input from community-based providers that are currently under contract with the department to furnish community-based foster care and related services, and must include a methodology for determining and transferring all available funds, including federal funds that the provider is eligible for and agrees to earn and that portion of general revenue funds which is currently associated with the services that are being furnished under contract. The methodology must provide for the transfer of funds appropriated and budgeted for all services and programs that have been incorporated into the project, including all management, capital (including current furniture and equipment), and administrative funds to accomplish the transfer of these programs. This methodology must address expected workload and at least the 3 previous years' experience in expenses and workload. With respect to any district or portion of a district in which outsourcing ~~privatization~~ cannot be accomplished within the 3-year timeframe, the department must clearly state in its plan the reasons the timeframe cannot be met and the efforts that should be made to remediate the obstacles, which may include alternatives to total outsourcing ~~privatization~~, such as public-private partnerships. As used in this section, the term "related services" includes, but is not limited to, family preservation, independent living, emergency shelter, residential group care, foster care, therapeutic foster care, intensive residential treatment, foster care supervision, case management, postplacement supervision, permanent foster care, and family reunification. Unless otherwise provided for, the state attorney shall provide child welfare legal services, pursuant to chapter 39 and other relevant provisions, in Pinellas and Pasco Counties. When a private nonprofit agency has received case management responsibilities, transferred from the state under this section, for a child who is sheltered or found to be dependent and who is assigned to the care of the outsourcing ~~privatization~~ project, the agency may act as the child's guardian for the purpose of registering the child in school if a parent or guardian of the child is unavailable and his or her whereabouts cannot reasonably be ascertained. The private nonprofit agency may also seek emergency medical attention for such a child, but only if a parent or guardian of the child is unavailable, his or her whereabouts cannot reasonably be ascertained, and a court order for such emergency medical services cannot be obtained because of the severity of the emergency or because it is after normal working hours. However, the provider may not consent to sterilization, abortion, or termination of life support. If a child's parents' rights have been terminated, the nonprofit agency shall act as guardian of the child in all circumstances.

(b) It is the intent of the Legislature that the department will continue to work towards full outsourcing ~~privatization~~ in a manner that assures the viability of the community-based system of care and best provides for the safety of children in the child protection system. To this end, the department is directed to continue the process of outsourcing ~~privatizing~~ services in those counties in which signed startup contracts have been executed. The department may also continue to enter into startup contracts with additional counties. However, no services shall be transferred to a community-

based care lead agency until the department, in consultation with the local community alliance, has determined and certified in writing to the Governor and the Legislature that the district is prepared to transition the provision of services to the lead agency and that the lead agency is ready to deliver and be accountable for such service provision. In making this determination, the department shall conduct a readiness assessment of the district and the lead agency.

1. The assessment shall evaluate the operational readiness of the district and the lead agency based on:

a. A set of uniform criteria, developed in consultation with currently operating community-based care lead agencies and reflecting national accreditation standards, that evaluate programmatic, financial, technical assistance, training and organizational competencies; and

b. Local criteria reflective of the local community-based care design and the community alliance priorities.

2. The readiness assessment shall be conducted by a joint team of district and lead agency staff with direct experience with the start up and operation of a community-based care service program and representatives from the appropriate community alliance. Within resources available for this purpose, the department may secure outside audit expertise when necessary to assist a readiness assessment team.

3. Upon completion of a readiness assessment, the assessment team shall conduct an exit conference with the district and lead agency staff responsible for the transition.

4. Within 30 days following the exit conference with staff of each district and lead agency, the secretary shall certify in writing to the Governor and the Legislature that both the district and the lead agency are prepared to begin the transition of service provision based on the results of the readiness assessment and the exit conference. The document of certification must include specific evidence of readiness on each element of the readiness instrument utilized by the assessment team as well as a description of each element of readiness needing improvement and strategies being implemented to address each one.

(c) The Auditor General and the Office of Program Policy Analysis and Government Accountability (OPPAGA), in consultation with The Child Welfare League of America and the Louis de la Parte Florida Mental Health Institute, shall jointly review and assess the department's process for determining district and lead agency readiness.

1. The review must, at a minimum, address the appropriateness of the readiness criteria and instruments applied, the appropriateness of the qualifications of participants on each readiness assessment team, the degree to which the department accurately determined each district and lead agency's compliance with the readiness criteria, the quality of the technical assistance provided by the department to a lead agency in correcting any weak-

nesses identified in the readiness assessment, and the degree to which each lead agency overcame any identified weaknesses.

2. Reports of these reviews must be submitted to the appropriate substantive and appropriations committees in the Senate and the House of Representatives on March 1 and September 1 of each year until full transition to community-based care has been accomplished statewide, except that the first report must be submitted by February 1, 2004, and must address all readiness activities undertaken through June 30, 2003. The perspectives of all participants in this review process must be included in each report.

(d) In communities where economic or demographic constraints make it impossible or not feasible to competitively contract with a lead agency, the department shall develop an alternative plan in collaboration with the local community alliance, which may include establishing innovative geographical configurations or consortia of agencies. The plan must detail how the community will continue to implement community-based care through competitively procuring either the specific components of foster care and related services or comprehensive services for defined eligible populations of children and families from qualified licensed agencies as part of its efforts to develop the local capacity for a community-based system of coordinated care. The plan must ensure local control over the management and administration of the service provision in accordance with the intent of this section and may include recognized best business practices, including some form of public or private partnerships.

(e) As used in this section, the term "eligible lead community-based provider" means a single agency with which the department shall contract for the provision of child protective services in a community that is no smaller than a county. The secretary of the department may authorize more than one eligible lead community-based provider within a single county when to do so will result in more effective delivery of foster care and related services. To compete for <u>an outsourcing</u> ~~a privatization~~ project, such agency must have:

1. The ability to coordinate, integrate, and manage all child protective services in the designated community in cooperation with child protective investigations.

2. The ability to ensure continuity of care from entry to exit for all children referred from the protective investigation and court systems.

3. The ability to provide directly, or contract for through a local network of providers, all necessary child protective services. Such agencies should directly provide no more than 35 percent of all child protective services provided.

4. The willingness to accept accountability for meeting the outcomes and performance standards related to child protective services established by the Legislature and the Federal Government.

5. The capability and the willingness to serve all children referred to it from the protective investigation and court systems, regardless of the level

of funding allocated to the community by the state, provided all related funding is transferred.

6. The willingness to ensure that each individual who provides child protective services completes the training required of child protective service workers by the Department of Children and Family Services.

7. The ability to maintain eligibility to receive all federal child welfare funds, including Title IV-E and IV-A funds, currently being used by the Department of Children and Family Services.

8. Written agreements with Healthy Families Florida lead entities in their community, pursuant to s. 409.153, to promote cooperative planning for the provision of prevention and intervention services.

9. A board of directors, of which at least 51 percent of the membership is comprised of persons residing in this state. Of the state residents, at least 51 percent must also reside within the service area of the lead community-based provider.

(f)1. The Legislature finds that the state has traditionally provided foster care services to children who have been the responsibility of the state. As such, foster children have not had the right to recover for injuries beyond the limitations specified in s. 768.28. The Legislature has determined that foster care and related services need to be outsourced ~~privatized~~ pursuant to this section and that the provision of such services is of paramount importance to the state. The purpose for such outsourcing ~~privatization~~ is to increase the level of safety, security, and stability of children who are or become the responsibility of the state. One of the components necessary to secure a safe and stable environment for such children is that private providers maintain liability insurance. As such, insurance needs to be available and remain available to nongovernmental foster care and related services providers without the resources of such providers being significantly reduced by the cost of maintaining such insurance.

2. The Legislature further finds that, by requiring the following minimum levels of insurance, children in outsourced ~~privatized~~ foster care and related services will gain increased protection and rights of recovery in the event of injury than provided for in s. 768.28.

(g) In any county in which a service contract has not been executed by December 31, 2004, the department shall ensure access to a model comprehensive residential services program as described in s. 409.1677 which, without imposing undue financial, geographic, or other barriers, ensures reasonable and appropriate participation by the family in the child's program.

1. In order to ensure that the program is operational by December 31, 2004, the department must, by December 31, 2003, begin the process of establishing access to a program in any county in which the department has not either entered into a transition contract or approved a community plan, as described in paragraph (d), which ensures full outsourcing ~~privatization~~ by the statutory deadline.

2. The program must be procured through a competitive process.

3. The Legislature does not intend for the provisions of this paragraph to substitute for the requirement that full conversion to community-based care be accomplished.

(h) Other than an entity to which s. 768.28 applies, any eligible lead community-based provider, as defined in paragraph (e), or its employees or officers, except as otherwise provided in paragraph (i), must, as a part of its contract, obtain a minimum of $1 million per claim/$3 million per incident in general liability insurance coverage. The eligible lead community-based provider must also require that staff who transport client children and families in their personal automobiles in order to carry out their job responsibilities obtain minimum bodily injury liability insurance in the amount of $100,000 per claim, $300,000 per incident, on their personal automobiles. In any tort action brought against such an eligible lead community-based provider or employee, net economic damages shall be limited to $1 million per liability claim and $100,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In any tort action brought against such an eligible lead community-based provider, noneconomic damages shall be limited to $200,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76. The lead community-based provider shall not be liable in tort for the acts or omissions of its subcontractors or the officers, agents, or employees of its subcontractors.

(i) The liability of an eligible lead community-based provider described in this section shall be exclusive and in place of all other liability of such provider. The same immunities from liability enjoyed by such providers shall extend as well to each employee of the provider when such employee is acting in furtherance of the provider's business, including the transportation of clients served, as described in this subsection, in privately owned vehicles. Such immunities shall not be applicable to a provider or an employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression when such acts result in injury or death or such acts proximately cause such injury or death; nor shall such immunities be applicable to employees of the same provider when each is operating in the furtherance of the provider's business, but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by a provider shall also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who in the course and scope of his or her duties acts in a managerial or policymaking capacity and the conduct that caused the alleged injury arose within the course and scope of those managerial or policymaking duties. Culpable negligence is defined as reckless indifference or grossly careless disregard of human life.

(j) Any subcontractor of an eligible lead community-based provider, as defined in paragraph (e), which is a direct provider of foster care and related

services to children and families, and its employees or officers, except as otherwise provided in paragraph (i), must, as a part of its contract, obtain a minimum of $1 million per claim/$3 million per incident in general liability insurance coverage. The subcontractor of an eligible lead community-based provider must also require that staff who transport client children and families in their personal automobiles in order to carry out their job responsibilities obtain minimum bodily injury liability insurance in the amount of $100,000 per claim, $300,000 per incident, on their personal automobiles. In any tort action brought against such subcontractor or employee, net economic damages shall be limited to $1 million per liability claim and $100,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In any tort action brought against such subcontractor, noneconomic damages shall be limited to $200,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76.

(k) The liability of a subcontractor of an eligible lead community-based provider that is a direct provider of foster care and related services as described in this section shall be exclusive and in place of all other liability of such provider. The same immunities from liability enjoyed by such subcontractor provider shall extend as well to each employee of the subcontractor when such employee is acting in furtherance of the subcontractor's business, including the transportation of clients served, as described in this subsection, in privately owned vehicles. Such immunities shall not be applicable to a subcontractor or an employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression when such acts result in injury or death or such acts proximately cause such injury or death; nor shall such immunities be applicable to employees of the same subcontractor when each is operating in the furtherance of the subcontractor's business, but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by a subcontractor shall also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who in the course and scope of his or her duties acts in a managerial or policymaking capacity and the conduct that caused the alleged injury arose within the course and scope of those managerial or policymaking duties. Culpable negligence is defined as reckless indifference or grossly careless disregard of human life.

(l) The Legislature is cognizant of the increasing costs of goods and services each year and recognizes that fixing a set amount of compensation actually has the effect of a reduction in compensation each year. Accordingly, the conditional limitations on damages in this section shall be increased at the rate of 5 percent each year, prorated from the effective date of this paragraph to the date at which damages subject to such limitations are awarded by final judgment or settlement.

(2)(a) The department may contract for the delivery, administration, or management of protective services, the services specified in subsection (1)

relating to foster care, and other related services or programs, as appropriate. The department shall retain responsibility for the quality of contracted services and programs and shall ensure that services are delivered in accordance with applicable federal and state statutes and regulations. The department must adopt written policies and procedures for monitoring the contract for delivery of services by lead community-based providers. These policies and procedures must, at a minimum, address the evaluation of fiscal accountability and program operations, including provider achievement of performance standards, provider monitoring of subcontractors, and timely followup of corrective actions for significant monitoring findings related to providers and subcontractors. These policies and procedures must also include provisions for reducing the duplication of the department's program monitoring activities both internally and with other agencies, to the extent possible. The department's written procedures must ensure that the written findings, conclusions, and recommendations from monitoring the contract for services of lead community-based providers are communicated to the director of the provider agency as expeditiously as possible.

(b) Persons employed by the department in the provision of foster care and related services whose positions are being outsourced under ~~privatized pursuant to~~ this statute shall be given hiring preference by the provider, if provider qualifications are met.

(3)(a) In order to help ensure a seamless child protection system, the department shall ensure that contracts entered into with community-based agencies pursuant to this section include provisions for a case-transfer process to determine the date that the community-based agency will initiate the appropriate services for a child and family. This case-transfer process must clearly identify the closure of the protective investigation and the initiation of service provision. At the point of case transfer, and at the conclusion of an investigation, the department must provide a complete summary of the findings of the investigation to the community-based agency.

(b) The contracts must also ensure that each community-based agency shall furnish information on its activities in all cases in client case records.

(c) The contract between the department and community-based agencies must include provisions that specify the procedures to be used by the parties to resolve differences in interpreting the contract or to resolve disputes as to the adequacy of the parties' compliance with their respective obligations under the contract.

(d) Each contract with an eligible lead community-based provider shall provide for the payment by the department to the provider of a reasonable administrative cost in addition to funding for the provision of services.

(e) Each contract with an eligible lead community-based provider must include all performance outcome measures established by the Legislature and that are under the control of the lead agency. The standards must be adjusted annually by contract amendment to enable the department to meet the legislatively established statewide standards.

(4)(a) The department, in consultation with the community-based agencies that are undertaking the outsourced ~~privatized~~ projects, shall establish a quality assurance program for privatized services. The quality assurance program shall be based on standards established by the Adoption and Safe Families Act as well as by a national accrediting organization such as the Council on Accreditation of Services for Families and Children, Inc. (COA) or CARF—the Rehabilitation Accreditation Commission. Each program operated under contract with a community-based agency must be evaluated annually by the department. The department shall, to the extent possible, use independent financial audits provided by the community-based care agency to eliminate or reduce the ongoing contract and administrative reviews conducted by the department. The department may suggest additional items to be included in such independent financial audits to meet the department's needs. Should the department determine that such independent financial audits are inadequate, then other audits, as necessary, may be conducted by the department. Nothing herein shall abrogate the requirements of s. 215.97. The department shall submit an annual report regarding quality performance, outcome measure attainment, and cost efficiency to the President of the Senate, the Speaker of the House of Representatives, the minority leader of each house of the Legislature, and the Governor no later than January 31 of each year for each project in operation during the preceding fiscal year.

(b) The department shall use these findings in making recommendations to the Governor and the Legislature for future program and funding priorities in the child welfare system.

(5)(a) The community-based agency must comply with statutory requirements and agency rules in the provision of contractual services. Each foster home, therapeutic foster home, emergency shelter, or other placement facility operated by the community-based agency or agencies must be licensed by the Department of Children and Family Services under chapter 402 or this chapter. Each community-based agency must be licensed as a child-caring or child-placing agency by the department under this chapter. The department, in order to eliminate or reduce the number of duplicate inspections by various program offices, shall coordinate inspections required pursuant to licensure of agencies under this section.

(b) Substitute care providers who are licensed under s. 409.175 and have contracted with a lead agency authorized under this section shall also be authorized to provide registered or licensed family day care under s. 402.313, if consistent with federal law and if the home has met the requirements of s. 402.313.

(c) A dually licensed home under this section shall be eligible to receive both an out-of-home care payment and a subsidized child care payment for the same child pursuant to federal law. The department may adopt administrative rules necessary to administer this paragraph.

(6) Beginning January 1, 1999, and continuing at least through June 30, 2000, the Department of Children and Family Services shall outsource ~~privatize~~ all foster care and related services in district 5 while continuing

to contract with the current model programs in districts 1, 4, and 13, and in subdistrict 8A, and shall expand the subdistrict 8A pilot program to incorporate Manatee County. Planning for the district 5 outsourcing ~~privatization~~ shall be done by providers that are currently under contract with the department for foster care and related services and shall be done in consultation with the department. A lead provider of the district 5 program shall be competitively selected, must demonstrate the ability to provide necessary comprehensive services through a local network of providers, and must meet criteria established in this section. Contracts with organizations responsible for the model programs must include the management and administration of all outsourced ~~privatized~~ services specified in subsection (1). However, the department may use funds for contract management only after obtaining written approval from the Executive Office of the Governor. The request for such approval must include, but is not limited to, a statement of the proposed amount of such funds and a description of the manner in which such funds will be used. If the community-based organization selected for a model program under this subsection is not a Medicaid provider, the organization shall be issued a Medicaid provider number pursuant to s. 409.907 for the provision of services currently authorized under the state Medicaid plan to those children encompassed in this model and in a manner not to exceed the current level of state expenditure.

(7) The Florida Coalition for Children, Inc., in consultation with the department, shall develop a plan based on an independent actuarial study regarding the long-term use and structure of a statewide community-based care risk pool for the protection of eligible lead community-based providers, their subcontractors, and providers of other social services who contract directly with the department. The plan must also outline strategies to maximize federal earnings as they relate to the community-based care risk pool. At a minimum, the plan must allow for the use of federal earnings received from child welfare programs to be allocated to the community-based care risk pool by the department, which earnings are determined by the department to be in excess of the amount appropriated in the General Appropriations Act. The plan must specify the necessary steps to ensure the financial integrity and industry-standard risk management practices of the community-based care risk pool and the continued availability of funding from federal, state, and local sources. The plan must also include recommendations that permit the program to be available to entities of the department providing child welfare services until full conversion to community-based care takes place. The final plan shall be submitted to the department and then to the Executive Office of the Governor and the Legislative Budget Commission for formal adoption before January 1, 2005. Upon approval of the plan by all parties, the department shall issue an interest-free loan that is secured by the cumulative contractual revenue of the community-based care risk pool membership, and the amount of the loan shall equal the amount appropriated by the Legislature for this purpose. The plan shall provide for a governance structure that assures the department the ability to oversee the operation of the community-based care risk pool at least until this loan is repaid in full.

(a) The purposes for which the community-based care risk pool shall be used include, but are not limited to:

1. Significant changes in the number or composition of clients eligible to receive services.

2. Significant changes in the services that are eligible for reimbursement.

3. Scheduled or unanticipated, but necessary, advances to providers or other cash-flow issues.

4. Proposals to participate in optional Medicaid services or other federal grant opportunities.

5. Appropriate incentive structures.

6. Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a lead agency.

7. Payment for time-limited technical assistance and consultation to lead agencies in the event of serious performance or management problems.

8. Payment for meeting all traditional and nontraditional insurance needs of eligible members.

9. Significant changes in the mix of available funds.

(b) After approval of the plan in the 2004-2005 fiscal year and annually thereafter, the department may also request in its annual legislative budget request, and the Governor may recommend, that the funding necessary to carry out paragraph (a) be appropriated to the department. Subsequent funding of the community-based care risk pool shall be supported by premiums assessed to members of the community-based care risk pool on a recurring basis. The community-based care risk pool may invest and retain interest earned on these funds. In addition, the department may transfer funds to the community-based care risk pool as available in order to ensure an adequate funding level if the fund is declared to be insolvent and approval is granted by the Legislative Budget Commission. Such payments for insolvency shall be made only after a determination is made by the department or its actuary that all participants in the community-based care risk pool are current in their payments of premiums and that assessments have been made at an actuarially sound level. Such payments by participants in the community-based care risk pool may not exceed reasonable industry standards, as determined by the actuary. Money from this fund may be used to match available federal dollars. Dividends or other payments, with the exception of legitimate claims, may not be paid to members of the community-based care risk pool until the loan issued by the department is repaid in full. Dividends or other payments, with the exception of legitimate claims and other purposes contained in the approved plan, may not be paid to members of the community-based care risk pool unless, at the time of distribution, the community-based care risk pool is deemed actuarially sound and solvent. Solvency shall be determined by an independent actuary contracted by the department. The plan shall be developed in consultation with the Office of Insurance Regulation.

1. Such funds shall constitute partial security for contract performance by lead agencies and shall be used to offset the need for a performance bond. Subject to the approval of the plan, the community-based care risk pool shall be managed by the Florida Coalition for Children, Inc., or the designated contractors of the Florida Coalition for Children, Inc. Nonmembers of the community-based care risk pool may continue to contract with the department but must provide a letter of credit equal to one-twelfth of the annual contract amount in lieu of membership in the community-based care risk pool.

2. The department may separately require a bond to mitigate the financial consequences of potential acts of malfeasance, misfeasance, or criminal violations by the provider.

(8) Notwithstanding the provisions of s. 215.425, all documented federal funds earned for the current fiscal year by the department and community-based agencies which exceed the amount appropriated by the Legislature shall be distributed to all entities that contributed to the excess earnings based on a schedule and methodology developed by the department and approved by the Executive Office of the Governor. Distribution shall be pro rata based on total earnings and shall be made only to those entities that contributed to excess earnings. Excess earnings of community-based agencies shall be used only in the service district in which they were earned. Additional state funds appropriated by the Legislature for community-based agencies or made available pursuant to the budgetary amendment process described in s. 216.177 shall be transferred to the community-based agencies. The department shall amend a community-based agency's contract to permit expenditure of the funds.

(9) Each district and subdistrict that participates in the model program effort or any future outsourcing ~~privatization~~ effort as described in this section must thoroughly analyze and report the complete direct and indirect costs of delivering these services through the department and the full cost of outsourcing ~~privatization~~, including the cost of monitoring and evaluating the contracted services.

(10) The lead community-based providers and their subcontractors shall be exempt from state travel policies as set forth in s. 112.061(3)(a) for their travel expenses incurred in order to comply with the requirements of this section.

Section 4. The Office of Program Policy Analysis and Government Accountability shall conduct two reviews of the contract-management and accountability structures of the Department of Children and Family Services, including, but not limited to, whether the department is adequately monitoring and managing its outsourced or privatized functions and services. The office shall report its findings and recommendations to the President of the Senate, the Speaker of the House of Representatives, and the Auditor General by February 1 of 2006 and 2007, respectively.

Section 5. Notwithstanding section 287.057(14)(a), Florida Statutes, the Department of Children and Family Services may enter into agreements, not to exceed 23 years, with a private contractor to finance, design, and

construct a secure facility, as described in section 394.917, Florida Statutes, of at least 600 beds and to operate all aspects of daily operations within the secure facility. The contractor may sponsor the issuance of tax-exempt certificates of participation or other securities to finance the project, and the state may enter into a lease-purchase agreement for the secure facility. The department shall begin the implementation of this privatization initiative by July 1, 2005. This section is repealed July 1, 2006.

Section 6. Section 402.72, Florida Statutes, is repealed.

Section 7. This act shall take effect July 1, 2005.

Approved by the Governor June 14, 2005.

Filed in Office Secretary of State June 14, 2005.