

House Bill No. 5011

An act relating to foster care and related services; amending s. 409.1671, F.S.; removing provisions requiring the Department of Children and Family Services to develop a statewide plan for outsourcing foster care and related services; removing certain plan requirements; removing an obsolete date; removing a requirement to issue certain loans; requiring a community-based risk pool initiative for certain purposes; providing for the components of the initiative; establishing a risk pool peer review committee; requiring a report to the secretary of the department; authorizing expenditures from the risk pool under certain circumstances; providing for uses of the risk pool; removing certain provisions relating to the sources of future funding; making conforming changes; removing authority of the Florida Coalition for Children, Inc., or its subcontractors to manage certain risk pool funds; authorizing the department to issue an interest-free loan to the Florida Coalition for Children, Inc., to establish a self-insurance program based on certain appropriations; providing terms for repayment of the loan; establishing a 3-year pilot program in Miami-Dade, Monroe, and Broward Counties; providing for the transfer of certain responsibilities from the Department of Children and Family Services to specified community-based care lead agencies; requiring review of the proposed contract by the Chief Financial Officer by a certain date; providing for funding the pilot program from grants and federal funds; requiring that annual financial statements regarding the pilot program be provided to the Governor, the Legislature, the department, and certain local community-based care alliances; prohibiting the department from using certain funds; requiring that fiscal, administrative, and programmatic monitoring be conducted by third-party entities; requiring the department to fund the cost of the third-party monitoring; exempting the selection of the third-party entities from the provisions of s. 287.057, F.S., for a specified period of time; requiring such entities to submit reports to the Governor, the Legislature, and certain local community-based care alliances; defining "parties"; requiring that the department, the lead agencies implementing the pilot program, and the Agency for Health Care Administration develop a plan for integrating certain Medicaid health services; specifying that the annual evaluation required in s. 409.1671, F.S., include an evaluation of the pilot program; directing the Office of Program Policy Analysis and Government Accountability and the Office of the Auditor General to complete an evaluation of the pilot program and to report to the Legislature; providing for certain provisions to be included in the contract; requiring the department to enter into fixed-price contracts; authorizing increased contract payments under certain circumstances; requiring fiscal reporting and reconciliation; providing for certain expenditures by lead agencies; providing for a compliance supplement applicable to all community-based lead agencies; requiring the department to submit a plan by July 1, 2006, to the Governor and Legislature for the efficient use of resources;

providing for distribution of savings resulting from the plan; providing for future repeal; providing effective dates.

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

Section 1. Subsection (7) of section 409.1671, Florida Statutes, is amended to read:

409.1671 Foster care and related services; outsourcing.—

~~(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 department, in consultation with the Florida Coalition for Children, Inc., shall develop and implement a community-based care risk pool initiative to mitigate the financial risk to eligible lead community-based providers. This initiative shall include:

1. A risk pool application and protocol developed by the department that outline submission criteria, including, but not limited to, financial and program management, descriptive data requirements, and timeframes for submission of applications. Requests for funding from risk pool applicants shall be based on relevant and verifiable service trends and changes that have occurred during the current fiscal year. The application shall confirm that expenditure of approved risk pool funds by the lead community-based provider shall be completed within the current fiscal year.

2. A risk pool peer review committee, appointed by the secretary and consisting of department staff and representatives from at least three non-applicant community-based care providers, that reviews and assesses all risk pool applications. Upon completion of each application review, the peer review committee shall report its findings and recommendations to the secretary providing, at a minimum, the following information:

a. Justification for the specific funding amount required by the risk pool applicant based on current year service trend data, including validation that the applicant's financial need was caused by circumstances beyond the control of the lead agency management;

b. Verification that the proposed use of risk pool funds meets at least one of the criteria in paragraph (c); and

c. Evidence of technical assistance provided in an effort to avoid the need to access the risk pool and recommendations for technical assistance to the lead agency to ensure that risk pool funds are expended effectively and that the agency's need for future risk pool funding is diminished.

(b) Upon approval by the secretary of a risk pool application, the department may request funds from the risk pool in accordance with s. 216.181(6)(a).

(c)(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.

3.6. 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.

4.9. Significant changes in the mix of available funds.

(d)(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 (c) (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 request the allocation of transfer funds from to the community-based care risk pool in accordance with s. 216.181(6)(a) 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. Funds Money from this pool 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.

(e) The department may issue an interest-free loan to the Florida Coalition for Children, Inc., for the purpose of creating a self-insurance program pursuant to law. The loan shall be secured by the cumulative contractual revenue of the community-based care lead agencies participating in the self-insurance program. The amount of the loan shall be in an amount equal to the amount appropriated by the Legislature for this purpose. The terms of the repayment of the loan shall be based on the economic viability of the self-insurance program.

Section 2. Pilot project and financial issues.—

(1) A 3-year pilot program is established for the community-based care lead agencies serving Miami-Dade, Monroe, and Broward Counties. This pilot program shall allow for the transfer of the current lead agency oversight responsibilities of the Department of Children and Family Services to independent entities and for funding the program through a grant that enhances funding flexibility. The pilot program shall expand the responsibilities and services provided by these lead agencies.

(2) The Department of Children and Family Services shall enter into a 3-year contract with the designated community-based care lead agency serving Miami-Dade and Monroe Counties and with the designated community-based care lead agency serving Broward County, which have been established in accordance with s. 409.1671, Florida Statutes. The department and the lead agencies in this pilot program shall submit to the Chief Financial Officer proposed contract language no later than June 1, 2006. The Chief Financial Officer shall review the contracts for sufficiency and respond to the parties no later than June 15, 2006. This subsection shall take effect upon this act becoming a law.

(3) The amount of federal Title IV-E funding allocated in each year of the 3-year pilot program shall be equal to the amount earned by each of the lead agencies and by the department's district or zone community-based care activities during the 2005-2006 fiscal year that is transitioned to the lead agencies as part of this pilot program. The lead agencies shall annually provide certified audited financial statements to the Governor, the Department of Children and Family Services, the appropriations committees of the Legislature, and the local community-based care alliances of Broward, Miami-Dade, and Monroe Counties. In implementing the pilot program, the department shall not use funds appropriated or allocated to community-based care lead agencies located outside of the pilot program area.

(4) Fiscal monitoring, administrative monitoring, and programmatic monitoring shall be conducted by independent, nongovernmental third-party entities under contract with the department and shall be conducted in a manner jointly agreed to by the lead agencies and the department. The department shall fund the cost of contracting with these entities. Notwithstanding any other provision to the contrary, the pilot program may not be implemented until the parties have agreed to the selection of these entities and the manner in which they are to carry out their responsibilities. Such agreement must be reached by the parties no later than July 1, 2006. The selection of the third-party entities under this subsection shall be exempt from s. 287.057, Florida Statutes, from the effective date of this subsection through June 30, 2007. Fiscal oversight shall be conducted in a manner similar to the model used by the department during the 2005-2006 fiscal year in Miami-Dade and Monroe Counties. This subsection shall take effect upon this act becoming a law.

(5) To compare the performance of the pilot program's lead agencies with that of other lead agencies, the programmatic performance of the pilot program's lead agencies shall be measured and monitored by outcome measures contained in their contracts with the department that are in effect on the effective date of this section and other outcomes designed to best determine

the quality of performance of the lead agencies and developed by the parties in conjunction with the independent, nongovernmental third-party entities as part of the agreement on programmatic monitoring. The independent entities shall submit their reports directly to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the community-based care alliances of Broward, Miami-Dade, and Monroe Counties.

(6) For purposes of this section, the term “parties” means the two lead agencies implementing this pilot program and the Department of Children and Family Services.

(7) The department and the lead agencies implementing the pilot program shall develop an implementation plan with the Agency for Health Care Administration regarding the pending Medicaid mental health reform for the purpose of implementing a local model that allows for the integration of behavioral health and physical health with the local child welfare systems of care.

(8) The annual evaluation required by s. 409.1671(4)(a), Florida Statutes, shall include an evaluation of the pilot program described in this section that compares performance and fiscal management of the community-based care lead agencies in the pilot program to those that are not in the pilot program. In addition, the Office of Program Policy Analysis and Government Accountability and the Office of the Auditor General shall jointly complete an evaluation of the pilot program and provide an interim report to the President of the Senate and the Speaker of the House of Representatives no later than February 1, 2008, and a final report no later than February 1, 2009.

(9) The provisions of this subsection shall be included in the contracts with the lead agencies in the pilot program and may be implemented with other community-based care lead agencies established under s. 409.1671, Florida Statutes. The contracts must be fixed-price funded in 36 equal monthly installments. The first 2 months shall be paid in advance on July 10, 2006. The contracts shall be funded by a grant of general revenue and by applicable federal funding sources. The lead agencies are responsible for documenting federal earnings, and federal earnings not documented shall be returned to the department. Notwithstanding s. 409.1671(8), Florida Statutes, the lead agencies’ annual contract amounts may be increased by excess federal earnings in accordance with s. 216.181(11), Florida Statutes. Monthly reporting requirements shall be limited to only the reports required to support monthly federal expenditure reporting and statutorily restricted state expenditures as defined in the lead agencies’ approved cost allocation plan. Quarterly reconciliation shall be required from the participating lead agencies. All other required fiscal reporting shall be determined by the independent fiscal monitors. Notwithstanding any other provision of law, the following lead agency expenditures are permissible: staff cellular telephone allowances; contracts requiring deferred payments and maintenance agreements; security deposits for office leases; related professional membership dues and professional state license fees; food and refreshment; promotional materials; and costs associated with fundraising personnel either employed or contracted with by the lead agency.

(10) The department, in consultation with the Department of Financial Services, shall develop a compliance supplement for the state financial assistance regarding flexibility of allowable expenditures in accordance with s. 215.97, Florida Statutes, which shall be applicable to all community-based lead agencies.

(11) The department shall submit a plan to the Executive Office of the Governor, the chair of the Senate Ways and Means Committee, and the chair of the House of Representatives Fiscal Council describing the most efficient use of resources relating to community-based care in the district administration and the program management and compliance budget entities. Any cost savings achieved as a result of this plan shall be distributed to the lead agencies by a methodology described in the plan. The department's plan shall be submitted no later than July 1, 2006. This subsection shall take effect upon this act becoming a law.

(12) This section is repealed July 1, 2009.

Section 3. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2006.

Approved by the Governor May 25, 2006.

Filed in Office Secretary of State May 25, 2006.