

CHAPTER 98-25

House Bill No. 2019

An act relating to program administration by the Department of Children and Family Services; amending s. 20.19, F.S.; providing additional duties for the department's Office of Standards and Evaluation with respect to measuring standards of performance and to reports due to the Legislature; providing duties of program offices; requiring an evaluation and a report from the Assistant Secretary for Administration; revising requirements for the department in procuring contracts for client services and in establishing standards for the delivery of those services; requiring the department to procure certain services competitively; authorizing deferral of the competitive contracting process under certain circumstances; limiting the duration of such deferrals; authorizing the department to adopt rules relating to an alternative competitive procurement process; providing intent that the department enter multiyear contracts; providing for procuring services from multiple sources; requiring that the department adopt rules for imposing penalties against a provider that fails to comply with a requirement for corrective action; requiring notice; requiring that the department develop, and incorporate into the department's Employee Handbook, standards of conduct and a range of disciplinary actions relating to certain staff functions; requiring the department to assure the accountability of each provider of client services; providing duties of the Auditor General and the Office of Program Policy Analysis and Government Accountability; providing for cancellation of contracts under specified circumstances; providing for department liens against certain property constructed or renovated using state funds; authorizing the department to competitively procure any contract under certain circumstances; providing for department contracts to include certain incentives; requiring the department to provide training for staff in negotiating contracts; requiring the department to ensure certain assistance to staff who are negotiating a contract; requiring the department to create contract management units at the district level; providing specifications for these units; specifying the date by which the contract management units must be in operation; requiring the department to evaluate contracting functions in the service districts; requiring reports to the Legislature by the department; providing an effective date.

WHEREAS, it is the intent of the Legislature that the Department of Children and Family Services achieve and maintain accountability from all providers of client services in order to assure a high level of quality and effectiveness of those services, and

WHEREAS, it is further the intent of the Legislature that the Office of Standards and Evaluation, in conjunction with the program offices at the headquarters of the department, play a central role in assuring that this accountability is achieved and maintained, NOW, THEREFORE,

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

Section 1. Subsections (3), (4), and (5) of section 20.19, Florida Statutes, are amended, present subsections (16), (17), (18), (19), and (20) are redesignated as subsections (17), (18), (19), (20), and (21), respectively, and a new subsection (16) is added to that section, to read:

20.19 Department of Children and Family Services.—There is created a Department of Children and Family Services.

(3) OFFICE OF STANDARDS AND EVALUATION.—There is created under the secretary the Office of Standards and Evaluation which has the following responsibilities:

(a) ~~With the assistance of the assistant secretaries, district administrators, and health and human services boards, Establishing systems and strategies to evaluate performance in achieving outcome measures and performance and productivity standards related to service delivery, program and financial administration, and support, with the assistance of the assistant secretaries, district administrators, and health and human services boards and procedures.~~

(b) Directing the development of monitoring and quality assurance systems for statewide and district services that will routinely assess the efficiency and effectiveness of departmental and provider staff and services.

(c) Validating the monitoring and quality assurance activities of statewide and district service providers and staff to ensure that these activities are being conducted routinely and that corrective action is being taken to eliminate deficiencies detected by these activities.

(d) Conducting evaluations, directly or by contract, of programs and services provided by the department to determine whether improvement in the condition of individuals, families, and communities has occurred as a result of these programs and services. The evaluations must include an assessment of the short-term effects on individuals and families and the long-term effects on communities and the state. Outcome evaluation studies shall be conducted in response to priorities determined by the department and the Legislature and to the extent that funding is provided by the Legislature.

(e) Consulting with the inspector general to ensure the integrity of the monitoring and evaluation process and the validity of the data derived from these activities.

(f) Developing procedures for the competitive procurement of external evaluations, including detailed specifications for all evaluation contracts.

(g) Developing the budget for the department's evaluation efforts and identifying future evaluation needs, including infrastructure needs to support the outcome evaluation function.

(h) Evaluating and reporting to the Legislature, beginning December 31, 1999, and by October 31 of each subsequent year, on the following issues:

1. The effectiveness of the department's performance contracting system in accomplishing program outcomes and in continuously improving performance.

2. The adequacy of resources and internal controls used by each program and service district to ensure effectiveness and quality of client services provided through standard contracts and other agreements.

3. The effectiveness and quality of contracted services for each client target group, as determined by annual performance reporting and results of quality assurance monitoring.

4. The status of the department's progress in complying with the provisions of this act, including the work of the contract evaluation teams established pursuant to paragraph (9)(g).

~~(i)(h)~~ Such other duties relating to evaluation as may be assigned to the Office of Standards and Evaluation by the secretary.

(4) PROGRAM OFFICES.—

(a) There are created program offices, each of which shall be headed by an assistant secretary who shall be appointed by and serve at the pleasure of the secretary. Each program office shall have the following responsibilities:

1. Ensuring that family services programs are implemented according to legislative intent and as provided in state and federal laws, rules, and regulations.

2. Establishing program standards and performance objectives.

3. Reviewing, monitoring, and ensuring compliance with statewide standards and performance measures objectives.

4. Providing general statewide supervision of the administration of service programs, including, but not limited to:

a. Developing and coordinating training for service programs.

b. Coordinating program research.

c. Identifying statewide program needs and recommending solutions and priorities.

d. Providing technical assistance for the administrators and staff of the service districts.

e. Assisting district administrators in staff development and training.

f. Monitoring service programs to ensure program quality among service districts.

~~4.— Conducting outcome evaluations and ensuring program effectiveness.~~

5. Developing workload and productivity standards.
6. Developing resource allocation methodologies.
7. Compiling reports, analyses, and assessment of client needs on a state-wide basis.
8. Ensuring the continued interagency collaboration with the Department of Education for the development and integration of effective programs to serve children and their families.
9. Other duties as are assigned by the secretary.

(b) The following program offices are established and may be consolidated, restructured, or rearranged by the secretary; provided any such consolidation, restructuring, or rearranging is for the purpose of encouraging service integration through more effective and efficient performance of the program offices or parts thereof:

1. **Economic Self-Sufficiency Program Office.**—The responsibilities of this office encompass income support programs within the department, such as temporary assistance to families with dependent children, food stamps, welfare reform, and state supplementation of the supplemental security income (SSI) program.

2. **Developmental Services Program Office.**—The responsibilities of this office encompass programs operated by the department for developmentally disabled persons. Developmental disabilities include any disability defined in s. 393.063.

3. **Children and Families Program Office.**—The responsibilities of this program office encompass early intervention services for children and families at risk; intake services for protective investigation of abandoned, abused, and neglected children; interstate compact on the placement of children programs; adoption; child care; out-of-home care programs and other specialized services to families; and child protection and sexual abuse treatment teams created under chapter 415, excluding medical direction functions.

4. **Alcohol, Drug Abuse, and Mental Health Program Office.**—The responsibilities of this office encompass all alcohol, drug abuse, and mental health programs operated by the department.

(5) **ASSISTANT SECRETARY FOR ADMINISTRATION.**—

(a) The secretary shall appoint an Assistant Secretary for Administration who serves at the pleasure of the secretary. The Assistant Secretary for Administration is responsible for:

1. Supervising all of the budget management activities of the department and serving as the chief budget officer of the department.
2. Providing administrative and management support services above the district level.

3. Monitoring administrative and management support services in the districts.

4. Developing and implementing uniform policies, procedures, and guidelines with respect to personnel administration, finance and accounting, budget, grants management and disbursement, contract administration, procurement, information and communications systems, management evaluation and improvement, and general services, including housekeeping, maintenance, and leasing of facilities.

5. Performing such other administrative duties as are assigned by the secretary.

(b) If reductions in a district's operating budget become necessary during any fiscal year, the department shall develop a formula to be used in its recommendations to the Governor and Legislature which does not disproportionately reduce a district's operating budget because of voluntary county appropriations to department programs.

(c) The Assistant Secretary for Administration shall evaluate and report to the Legislature by July 1, 1999, and annually thereafter, on the methods used by each program to ensure the fiscal accountability of each provider of client services with whom the department contracts.

(d) The Assistant Secretary for Administration shall evaluate the administrative operations of the districts, and may require that districts develop and submit corrective action plans in those areas that do not conform to the department's uniform operating procedures.

(16) CONTRACTING AND PERFORMANCE STANDARDS.—

(a) The department shall establish performance standards for all contracted client services. Notwithstanding s. 287.057(3)(f), the department must competitively procure any contract for client services when any of the following occurs:

1. 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.

2. 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.

3. 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.

(b) The competitive requirements of paragraph (a) 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:

1. An immediate threat to the health, safety, or welfare of the department's clients.
2. 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.
3. 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 paragraph (a) may not be deferred for longer than 1 year.

(c) The Legislature intends for the department to obtain services in the manner that is most cost-effective for the state, in the manner that provides the greatest long-term benefits to the clients receiving services, and in the manner 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 the 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, 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. 287.057(1) or (2) or s. 287.042.

(d) 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.

(e) When it is in the best interest of a defined segment of its consumer population, the department may competitively procure and contract for sys-

tems 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 from those funding entities 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 to the selection team required by s. 287.057(15). Any employee so named shall qualify as one of the employees required by s. 287.057(15). The selection team shall include the named employee unless the department sets forth in writing the reason such inclusion would be contrary to the best interests of the state. No governmental entity or unit of special purpose government may name an employee to the selection team 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.

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

(g) The department 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 additional remedies identified in this paragraph do not limit or restrict the department's application of any other remedy available to it in the contract or under law. The additional remedies described in this paragraph may be cumulative and may be

assessed upon each separate failure to comply with instructions from the department to complete corrective action.

(h) 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, and shall incorporate the standards and disciplinary actions in its Employee Handbook by December 31, 1998.

(i) The department must implement systems and controls to ensure financial integrity and service-provision quality in the developmental services Medicaid waiver service system no later than December 31, 1998. The Auditor General shall include specific reference to systems and controls related to financial integrity in the developmental services Medicaid waiver service system in his audit of the department for the 1998-1999 fiscal year, and for all subsequent fiscal years. The Office of Program Policy Analysis and Government Accountability shall review the department's systems and controls related to service-provision quality in the developmental services Medicaid waiver service system and submit a report to the Legislature by December 31, 1999.

(j) 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 area.

(k) The department shall include in its standard contract document a requirement that it file a lien against the property where facilities are located which have been constructed or substantially renovated, in whole or in part, through the use of state funds. However, the department is not required to file a lien if the amount of state funds does not exceed \$25,000 or 10 percent of the contract amount, whichever amount is less. The lien must be recorded in the county where the property is located upon the execution of the contract authorizing such construction or renovation. The lien must specify that the department has a financial interest in the property equal to the pro rata portion of the state's original investment of the then-fair-market value for renovations, or the proportionate share of the cost of the construction. The lien must also specify that the department's interest is proportionately reduced and subsequently vacated over a 20-year period of depreciation. 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.

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

(m) 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 paragraph (a) 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 paragraph (a) 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.

(n) 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.

Section 2. (1) The Department of Children and Family Services shall take steps to ensure that department contracts are negotiated in a manner that assures that the state's interests are well represented. In order to make this assurance, the department must request voluntary assistance from outside entities, including, but not limited to, other state agencies, to provide training for departmental employees who negotiate contracts. Further, employees who negotiate contracts must have available to them other department employees who have expertise in legal and fiscal matters and employees who are especially skilled in conducting contract negotiations to ensure that the interests of the state are well represented.

(2) The department shall create contract management units at the district level which must be staffed by individuals who are specifically trained to perform the functions related to contract management. The contract management units are responsible for monitoring the programmatic and administrative performance of the department's contracts for client services and shall report to the appropriate district administrator. To the greatest extent possible, the members of the contract management units shall be career service employees who are assigned to the same pay grade. The contract management units shall be in operation throughout the state no later than March 1, 1999.

(3) The department shall evaluate the effectiveness and efficiency of contracting functions in each service district and report to the Legislature by December 15, 1999. For districts where contracting functions have been centralized for at least 12 months, the department shall report on the effectiveness of such centralization. For districts that elected not to centralize contracting functions, the report must include the reasons for that decision and the steps a district has taken to improve contracting within the district.

Section 3. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval April 28, 1998.

Filed in Office Secretary of State April 27, 1998.