

CHAPTER 99-206

Committee Substitute for Committee Substitute for Senate Bill No. 660

An act relating to foster care and related services; amending s. 216.136, F.S.; requiring the Child Welfare System Estimating Conference to include forecasts of child welfare caseloads within the information it generates; providing for inclusion of additional classes of children in need of care among estimates; amending s. 409.1671, F.S.; providing that the Legislature does not intend to require local governments to fund foster care and related services previously funded by the state; providing for distribution of documented federal funds in excess of amounts appropriated by the Legislature; providing uses for such funds; providing for a review of the distribution program and a report; designating Broward County for either the state attorney or Attorney General to provide child welfare legal services; requiring community-based providers and their subcontractors to obtain certain liability insurance; prescribing limits on liability; prescribing immunity of employees of providers and their subcontractors; defining the term “culpable negligence”; declaring legislative intent with respect to inflationary increases in liability amounts; providing for hiring preference for state employees; prescribing requirements for preschool foster homes; changing the date for privatization of foster care and related services in district 5; amending s. 409.906, F.S.; authorizing the Agency for Health Care Administration to establish a targeted case-management pilot project within certain counties; providing for the pilot project to determine the impact of targeted case-management services; providing for eligibility for coverage under the pilot project; providing certain limitations on funding; providing for severability; creating s. 39.4085, F.S.; providing legislative intent; specifying goals for dependent children in shelter or foster care; clarifying that the establishment of goals does not create rights; prohibiting certain causes of action; providing an effective date.

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

Section 1. Subsection (8) of section 216.136, Florida Statutes, 1998 Supplement, is amended to read:

216.136 Consensus estimating conferences; duties and principals.—

(8) CHILD WELFARE SYSTEM ESTIMATING CONFERENCE.—

(a) Duties.—The Child Welfare System Estimating Conference shall develop such official ~~the following~~ information relating to the child welfare system of the state, including forecasts of child welfare caseloads, as the conference determines is needed for the state planning and budgeting system. Such official information may include, but is not limited to:

1. Estimates and projections of the number of initial and additional reports of child abuse, abandonment, or neglect made to the central abuse hotline maintained by the Department of Children and Family Services as established in s. 39.201(4). Projections may take into account other factors that may influence the number of future reports to the abuse hotline.

2. Estimates and projections of the number of children who are alleged to be victims of child abuse, abandonment, or neglect and are in need of emergency shelter, foster care, residential group care, adoptive services, or other appropriate care placement in a shelter.

In addition, the conference shall develop other official information relating to the child welfare system of the state which the conference determines is needed for the state planning and budgeting system. The Department of Children and Family Services shall provide information on the child welfare system requested by the Child Welfare System Estimating Conference, or individual conference principals, in a timely manner.

(b) Principals.—The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff who have forecasting expertise from the Department of Health and Rehabilitative Services, the Senate, and the House of Representatives, or their designees, are the principals of the Child Welfare System Estimating Conference. The principal representing the Executive Office of the Governor shall preside over sessions of the conference.

Section 2. Section 409.1671, Florida Statutes, 1998 Supplement, is amended to read:

409.1671 Foster care and related services; privatization.—

(1)(a) It is the intent of the Legislature that the Department of Children and Family Services shall 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 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. 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 "privatize" means to contract with competent, community-based agencies. The department shall submit a plan to accomplish privatization statewide, through a competitive process, phased in over a 3-year period beginning January 1, 2000. This plan is to be submitted by July 1, 1999, to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the minority leaders of both houses. 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. 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 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. The distribution program applies only to entities that were under privatization contracts as of July 1, 1999. This program is authorized for a period of 3 years beginning July 1, 1999, and ending June 30, 2002. The Office of Program Policy Analysis and Government Accountability shall review this program and report to the Legislature by December 31, 2001. The review shall assess the program to determine how the additional resources were used, the number of additional clients served, the improvements in quality of service attained, the performance outcomes associated with the additional resources, and the feasibility of continuing or expanding this program. 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 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 privatization, such as public-private partnerships. As used in this section, the term "related services" means 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, beginning in fiscal year 1999-2000, either the state attorney or the Office of the Attorney General shall provide child welfare legal services, pursuant to chapter 39 and other relevant provisions, in Sarasota, Pinellas, Pasco, Broward, and Manatee Counties. Such legal services shall commence and be effective, as soon as determined reasonably feasible by the respective state attorney or the Office of the Attorney General, after the privatization of associated programs and child protective investigations has occurred. 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 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) 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. To compete for 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.

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.

(c)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 privatized pursuant to this section and that the provision of such services is of paramount importance to the state. The purpose for such 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 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.

(d) Any eligible lead community-based provider, as defined in paragraph (b), or its employees or officers, except as otherwise provided in paragraph (e), must, as a part of its contract, obtain a minimum of \$1 million per claim/\$3 million per incident in general liability insurance coverage. In any tort action brought against such an eligible lead community-based provider, net economic damages shall be limited to \$1 million per 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.

(e) 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. 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.

(f) Any subcontractor of an eligible lead community-based provider, as defined in paragraph (b), 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 (e), must, as a part of its contract, obtain a minimum of \$1 million per claim/\$3 million per incident in general liability insurance coverage. In any tort action brought against such subcontractor,

net economic damages shall be limited to \$1 million per 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.

(g) 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. 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.

(h) 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.

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

(3)(a) The department shall establish a quality assurance program for privatized services. The quality assurance program may be performed by a

national accrediting organization such as the Council on Accreditation of Services for Families and Children, Inc. (COA) or the Council on Accreditation of Rehabilitation Facilities (CARF). The department shall develop a request for proposal for such oversight. This program must be developed and administered at a statewide level. The Legislature intends that the department be permitted to have limited flexibility to use funds for improving quality assurance. To this end, effective January 1, 2000, the department may transfer up to 0.125 percent of the total funds from categories used to pay for these contractually provided services, but the total amount of such transferred funds may not exceed \$300,000 in any fiscal year. When necessary, the department may establish, in accordance with s. 216.177, additional positions that will be exclusively devoted to these functions. Any positions required under this paragraph may be established, notwithstanding ss. 216.262(1)(a) and 216.351. The department, in consultation with the community-based agencies that are undertaking the privatized projects, shall establish minimum thresholds for each component of service, consistent with standards established by the Legislature. Each program operated under contract with a community-based agency must be evaluated annually by the department. 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.

(4)(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:

1. The requirements of s. 402.313; and
2. The requirements of s. 402.281 and has received Gold Seal Quality Care designation.

(c) A dually licensed home under this section shall be eligible to receive both the foster care board rate and the subsidized child care rate for the

same child only if care is provided 24 hours a day. The subsidized child care rate shall be no more than the approved full-time rate.

(5) Beginning January 1, 1999, and continuing at least through ~~June 30, 2000~~ December 31, 1999, the Department of Children and Family Services shall 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 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 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.

(6) Each district and subdistrict that participates in the model program effort or any future 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 privatization, including the cost of monitoring and evaluating the contracted services.

Section 3. Subsection (24) is added to section 409.906, Florida Statutes, 1998 Supplement, to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Optional services may include:

(24) CHILD-WELFARE-TARGETED CASE MANAGEMENT.—The Agency for Health Care Administration, in consultation with the Depart-

ment of Children and Family Services, may establish a targeted case-management pilot project in those counties identified by the Department of Children and Family Services and for the community-based child welfare project in Sarasota and Manatee counties, as authorized under s. 409.1671. These projects shall be established for the purpose of determining the impact of targeted case management on the child welfare program and the earnings from the child welfare program. Results of the pilot projects shall be reported to the Child Welfare Estimating Conference and the Social Services Estimating Conference established under s. 216.136. The number of projects may not be increased until requested by the Department of Children and Family Services, recommended by the Child Welfare Estimating Conference and the Social Services Estimating Conference, and approved by the Legislature. The covered group of individuals who are eligible to receive targeted case management include children who are eligible for Medicaid; who are between the ages of birth through 21; and who are under protective supervision or postplacement supervision, under foster-care supervision, or in shelter care or foster care. The number of individuals who are eligible to receive targeted case management shall be limited to the number for whom the Department of Children and Family Services has available matching funds to cover the costs. The general revenue funds required to match the funds for services provided by the community-based child welfare projects are limited to funds available for services described under s. 409.1671. The Department of Children and Family Services may transfer the general revenue matching funds as billed by the Agency for Health Care Administration.

Section 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 5. Section 39.4085, Florida Statutes, is created to read:

39.4085 Legislative findings and declaration of intent for goals for dependent children.—The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the following goals for children in shelter or foster care:

(1) To receive a copy of this act and have it fully explained to them when they are placed in the custody of the department.

(2) To enjoy individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as persons in the custody of the state.

(3) To have their privacy protected, have their personal belongings secure and transported with them, and, unless otherwise ordered by the court, have uncensored communication, including receiving and sending unopened communications and having access to a telephone.

(4) To have personnel providing services who are sufficiently qualified and experienced to assess the risk children face prior to removal from their

homes and to meet the needs of the children once they are in the custody of the department.

(5) To remain in the custody of their parents or legal custodians unless and until there has been a determination by a qualified person exercising competent professional judgment that removal is necessary to protect their physical, mental, or emotional health or safety.

(6) To have a full risk, health, educational, medical and psychological screening and, if needed, assessment and testing upon adjudication into foster care; and to have their photograph and fingerprints included in their case management file.

(7) To be referred to and receive services, including necessary medical, emotional, psychological, psychiatric and educational evaluations and treatment, as soon as practicable after identification of the need for such services by the screening and assessment process.

(8) To be placed in a home with no more than one other child, unless they are part of a sibling group.

(9) To be placed away from other children known to pose a threat of harm to them, either because of their own risk factors or those of the other child.

(10) To be placed in a home where the shelter or foster caregiver is aware of and understands the child's history, needs, and risk factors.

(11) To be the subject of a plan developed by the counselor and the shelter or foster caregiver to deal with identified behaviors that may present a risk to the child or others.

(12) To be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan which will address their specific needs, and to object to any of the provisions of the case plan.

(13) To receive meaningful case management and planning that will quickly return the child to his or her family or move the child on to other forms of permanency.

(14) To receive regular communication with a caseworker, at least once a month, which shall include meeting with the child alone and conferring with the shelter or foster caregiver.

(15) To enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise.

(16) To enjoy regular visitation with their parents, at least once a month, unless the court orders otherwise.

(17) To receive a free and appropriate education; minimal disruption to their education and retention in their home school, if appropriate; referral to the child study team; all special educational services, including, where appropriate, the appointment of a parent surrogate; the sharing of all neces-

sary information between the school board and the department, including information on attendance and educational progress.

(18) To be able to raise grievances with the department over the care they are receiving from their caregivers, caseworkers, or other service providers.

(19) To be heard by the court, if appropriate, at all review hearings.

(20) To have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests; the guardian ad litem and attorney ad litem shall have immediate and unlimited access to the children they represent.

(21) To have all their records available for review by their guardian ad litem and attorney ad litem if they deem such review necessary.

(22) To organize as a group for purposes of ensuring that they receive the services and living conditions to which they are entitled and to provide support for one another while in the custody of the department.

(23) To be afforded prompt access to all available state and federal programs, including, but not limited to: Early Periodic Screening, Diagnosis, and Testing (EPSDT) services, developmental services programs, Medicare and supplemental security income, Children's Medical Services, and programs for severely emotionally disturbed children.

The provisions of this section establish goals and not rights. Nothing in this section shall be interpreted as requiring the delivery of any particular service or level of service in excess of existing appropriations. No person shall have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing herein shall require the expenditure of funds to meet the goals established herein except funds specifically appropriated for such purpose.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor May 26, 1999.

Filed in Office Secretary of State May 26, 1999.