

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Revenue Maximization

Congress appropriates funds annually to individual states for specific health and human service needs. Most of these funds are made available to the states on a matching basis. In some instances, the federal government may double the matching funds certified by the states. If the federal funds are appropriated on a matching basis and the states do not take advantage of the match, donor states like Florida return the funds to the federal government and the funds are reverted back to the federal government or redirected to better-performing states. While the Legislature has implemented strategies to draw down federal funds, nonetheless, the state of Florida has lost millions in federal funding because the state general revenue match is not available.

The concept of “revenue maximization” involves the development of strategies for the identification of federal matching dollars and the reimbursement for the broadest scope of eligible services and clients. Basically, revenue maximization results in a coordinated effort to use local matching dollars to draw down as much federal funding as possible to meet critical human service needs in local communities. The 2000 Census figures show that Florida receives a lower amount per person in federal revenue as compared to several other southeastern states. The state of Florida receives \$642.68 per person in federal funding as compared to \$789.05 per person in Georgia, \$1,091.48 per person in South Carolina, and \$1,067.30 per person in North Carolina.

In Florida, efforts to maximize revenue or increase federal matching requires legislative approval or budgetary authority. In addition, agencies incur administrative costs in their efforts to obtain federal matching funds. Some other states have implemented statewide revenue maximization legislation that requires state agencies to work collaboratively with local fund providers to achieve the maximum federal match for as many clients and human service needs as possible. The process for revenue maximization using local funds involves the following:

- A local government receives funds from private donors and funders;
- A local government then submits the information necessary to secure a match to a state agency;
- The state agency bills a federal agency showing the local funds as a required state match;
- The federal agency pays the federal share to the state agency; and
- The state agency retains 5% for administrative costs and then forwards the funds to the local government for distribution.

Section 409.26731, Florida Statutes, currently authorizes the Department of Children and Family Services to certify local funds as state match for eligible Title IV-E expenditures. The bill extends current law to include all federal programs supporting the department.

In order to increase the ability of state agencies and local political subdivisions to achieve maximum federal matching of funds for local preventive services and local child development programs, the bill does the following:

- defines “agency” as any state agency involved in providing health, social, or human services, including, but not limited to, the Agency for Health Care Administration, the Agency for Workforce Innovation, the Department of Children and Family Services, the Department of Elderly Affairs, the Department of Juvenile Justice, and the Florida Board of Education and requires each agency to establish programs and mechanisms designed to maximize the use of local funding for federal programs in accordance with section 1. of the bill;
- requires that the use of local matching funds for purposes of section 1. of the bill is limited to public revenue funds of local political subdivisions, including, but not limited to, counties, municipalities, and special districts and that funds donated to local political subdivisions by private entities will be considered as public revenue funds for the purpose of matching federal funding to the extent permitted by federal law;
- provides that any federal reimbursement received as a result of certification of local matching funds must, unless specifically prohibited by federal law, be returned by check or wire transfer to the local political subdivision that provided the funding and provides that the local political subdivision must be provided with a specified annual accounting of federal reimbursements;
- provides that a state agency may not consider the receipt of local funds as a factor in developing that agency’s annual operating budget allocation methodology or formula or any subsequent budget amendment allocations or formula;
- requires each agency to work with the local political subdivisions to modify any state plans to seek and implement federal waivers, as necessary, to implement the act. If modifications or waivers require legislative approval, the agency shall draft the legislation and present it to the Speaker of the House of Representatives, the President of the Senate, and the respective committee chairs of the Senate and House of Representatives by January 1, 2004, and, as necessary, annually thereafter;
- allows each agency to deduct not more than 5 percent of the total federal reimbursement funding to be provided to the local political subdivision for administrative costs before those funds are distributed to a local political subdivision, except as otherwise provided by law; and
- requires a report documenting the specific activities undertaken during the previous fiscal year under this act to be submitted by an agency on an annual basis to the Governor, the Speaker of the House of Representatives, and the President of the Senate no later than January 1 and specifies what is to be included in the report.

Automobile Liability Insurance

Florida law states the following related to liability coverage required to be carried by lead community-based care providers, their subcontractors, and any staff who transport children in their personal automobiles in order to carry out the responsibilities of their job:

§409.1671(1)(d)3., Florida Statutes, provides:

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.

§409.1671(1)(h), Florida Statutes, provides:

Any subcontractor of an eligible lead community-based provider, as defined in paragraph (c), 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 (g), 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, 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 on 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 bill allows staff of either a lead community-based provider or a subcontractor of such provider who transport children and families in order to carry out job responsibilities to reduce the amount of automobile liability coverage they are required to carry to \$25,000 per claim, \$50,000 per incident.

Administrative Costs

Section 409.1671(i)(a), Florida Statutes, provides:

... 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...

The bill provides redundant language related to payments to the providers that include administrative costs.

Community-based Agency Audits

Section 409.1671, Florida Statutes, requires that each program that contracts with a community-based agency must undergo an annual evaluation by the department and that the department must submit an annual report to the Legislature, the minority leader of each house, and the Governor relating to quality performance, the attainment of outcome measures, and cost efficiency. The bill requires that community-based agencies be evaluated by an independent audit and that the annual report submitted by the department be based upon the findings of the independent audit.

Community Partnership Matching Grant

Section 409.16745, Florida Statutes, currently contains provisions requiring a children's services council or other local government entity to make a financial commitment to a community-based lead agency of at least \$825,000 in start up funds in order to be eligible for a community partnership matching grant. The bill reduces the level of commitment to \$250,000 and eliminates the requirement that the monies be used for start up.

Comprehensive Behavioral Health Assessment

Section 409.175, Florida Statutes, provides that in cases where the total number of children in a family foster home exceeds five, including the children of the family, a comprehensive behavioral health assessment of each child to be placed in that home must be completed prior to the placement of additional children in the home. The assessment must comply with Medicaid rules and regulations.

The department's operating procedure, CFOP 175-64, relating to Family Foster Home Waivers, states that the total number of children who may live in a family foster home is five (5). All children living in the home are to be considered, including biological and adopted children. The procedure also contains a process for a waiver to be obtained in order to allow more than a total of five (5) children in a family foster home, but there is no mention of a comprehensive behavioral health assessment.

The bill allows for a pre-placement assessment by a certified family counselor to be used instead of what is currently required by law.

C. SECTION DIRECTORY:

Section 1. Creates §409.033, Florida Statutes, relating to maximization of local matching revenues, to increase the ability of state agencies and local political subdivisions to achieve maximum federal matching of funds for local preventive services and local child development programs.

Section 2. Amends §409.1671, Florida Statutes, relating to foster care and related services, to provide for a reduction in the minimum amount of bodily injury liability insurance that staff of community-based care providers who transport children are required to carry on their personal automobiles; to remove the requirement that the department be notified and approve of a provider's intent to discontinue services on a voluntary case; to require that each contract with an eligible lead community-based provider include payment by the department of both administrative cost and funding for service provision; to provide for an independent audit of each program operated under contract with a community-based agency; and to specify that the annual report required of the department be based upon the results of that audit

Section 3. Amends §409.16745, Florida Statutes, relating to the community partnership grant program, to provide for a reduction in the amount of funding that must be provided to a lead agency by a children's services council or local government entity in order for the council or entity to be eligible for a matching grant and to remove the requirement that those funds be used for start up costs.

Section 4. Amends §409.175, Florida Statutes, related to licensure, to provide that when placement of a child in a family foster home will cause the total number of children in the home to exceed five, a pre-placement assessment must be completed by a certified family counselor, in lieu of the currently required comprehensive behavioral health assessment that complies with Medicaid rules and regulations.

Section 5. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The revenue maximization language allows a state agency to retain 5 percent of the total federal reimbursement funding to be provided to the local political subdivision to cover administrative costs.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The revenue maximization language contained in the bill has the potential to increase the amount of funds available to address critical, local health and human service needs. As more federal matching dollars are received as a result of certifying local funding, these funds will be distributed to eligible programs.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- It is not known whether or not the eligible lead community-based providers are required to provide proof of coverage for both the general liability insurance for the providers and/or their subcontractors and the minimum bodily injury liability insurance required for staff who are transporting children and families in their personal automobiles in order to carry out their job responsibilities. It does appear however, that staff who are transporting children and families in their personal automobiles are not complying with the statutory requirements for minimum coverage.

- It would appear that reducing the amount of liability coverage staff is required to carry on their personal automobiles will shift a greater share of the liability incurred in case of injury or death to an individual being transported by staff of either a lead agency or a subcontractor of a lead agency to the lead agency. Since current law provides that the conditional limitations on damages pursuant to §409.1671, Florida Statutes, be increased 5 percent each year, on a prorated basis, with no similar requirement that the minimum amount of general liability coverage also be increased annually, problems could arise if other types of liability coverage are reduced.

- The changes proposed by the bill related to the annual evaluation of the community-based agency by the department to allow for an independent audit and require that the department's annual report be "based upon" the results of such independent audit could be problematic. It would appear that this would permit the community-based agency to choose the entity to evaluate the agency's performance and the department would be bound to base its required annual report solely on the audit findings. The department states that this will shift the audit cost to the lead agencies, it will produce multiple reports that may result in a less systematic overall evaluation of the statewide implementation of community-based care and it will make valid multi-site comparisons very difficult.

- The term "certified family counselor" is not defined either in current statute or the bill. Since there is no mention of the comprehensive behavioral health assessment that is currently in statute in the department's operating procedures and the requirements of "an assessment" by a certified family counselor are not provided in the new language contained in the bill, it is unclear how the two assessments compare.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES