

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/CS/SB 1666

INTRODUCER: Children, Families, and Elder Affairs Committee, Health and Human Services Appropriations Committee, and Senator Peadar

SUBJECT: Human Services Contracts and Community-Based Care Lead Agencies

DATE: April 17, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hardy	Peters	HA	Fav/CS
2.	Toman	Walsh	CF	Fav/CS
3.			GO	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The CS/CS/SB 1666 requires certain state agencies that contract for health and human services to implement changes to improve efficiency in contract administration. The bill requires health and human services contracting agencies to limit administrative monitoring to once every three years, if the contracted provider is accredited by specified accrediting organizations.

In addition, the bill authorizes private-sector development and implementation of a data warehouse for maintaining corporate, fiscal and administrative records related to child welfare provider contracts, and requires state agencies that contract with child welfare providers to access records from this database, unless records are outdated or unavailable.

The bill also:

- Requires the Department of Children and Family Services (DCF or the department) to ensure that contracts with community-based care lead agencies are funded through grants, using general revenue, as well as with applicable federal funding sources;

- Requires community-based care lead agencies to document federal earnings and return undocumented funds to DCF;
- Allows DCF to increase community-based care lead agency contracts by the amount of excess federal funds; and
- Requires DCF to enter into a fixed-price contract, which has a two-month advance payment followed by equal monthly payments, with each community-based care lead agency.

The bill provides that certain expenditures, including staff cellular telephone allowances, contracts requiring deferred payments and maintenance agreements, security deposits for office leases, professional fees, and costs of promotional materials, are permissible expenditures for community-based care lead agencies.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 287.0576 and 409.1671.

II. Present Situation:

Contract Monitoring

State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

In November 2008, Children's Home Society of Florida (CHS) surveyed 162 programs, in an effort to “assess the quantity of external contract monitoring of CHS programs and identify any potential areas of duplication across monitoring by state and designated lead agencies.”¹ One-hundred four programs (64 percent) responded to the survey.

According to the responses, between October 1, 2007 and September 30, 2008, these 104 programs were monitored 154 times by state agencies, and 1,369 documents were requested in advance of site monitoring visits. Of the document requests, 488 (36 percent) were requested by other state agencies or other departments within a state agency during the past year. According to the survey, examples of duplicative document requests included:

- Finance and Accounting Procedures;
- Human Resources Policies and Procedures;
- List of Board of Directors and Board Meeting Minutes;
- Financial Audit and Management Letter;
- IRS forms;
- By-laws; and
- Articles of Incorporation.²

¹ CHS, *Case Study-Contract Monitoring Survey* (December 3, 2008).

² *Id.*

According to the survey, professional program staff spend an average of 19 hours to prepare for each site visit, for a total of 3,777 hours.

The survey also disclosed that, during site visits, reviewers evaluated the same policies and procedures reviewed by other state agencies during the year 130 times. The following are examples of documents that were reviewed multiple times during site visits:

- Cash Management Policies and Procedures;
- Finance and Accounting Procedures; and
- Administrative Policies.

According to the survey, professional program staff spend an average of 60 hours on each site visit.³

Pilot Project to Outsource Monitoring

In 2006, the Legislature created a three-year pilot project that allowed the department to transfer fiscal, administrative, and program monitoring responsibilities for two community-based care lead agencies⁴ to independent, non-governmental, third-party entities under contract with the department.⁵ The legislation required the outsourced monitoring to be conducted in a manner jointly agreed to by the lead agencies and the department, and the selection of the third-party entities was exempted from the competitive bidding process.⁶

The legislation required the department to enter into contracts with the designated community-based care lead agencies and mandated that the following provisions, *inter alia*, be included in the contracts:

- Contracts are fixed price, funded in 36 equal monthly installments and with an advance two-month payment;
- Contracts are funded by a grant of general revenue and by applicable federal funding sources;
- Lead agencies are responsible for documenting federal earnings, and undocumented earnings must be returned to the department; and
- Lead agencies' annual contract amounts may be increased by excess federal earnings.⁷

³ *Id.*

⁴ ChildNet in Broward County and Our Kids in Miami-Dade and Monroe Counties.

⁵ Chapter 2006-30, s. 2, L.O.F.

⁶ *Id.* To implement the pilot project, the department contracted with Abel and Associates, a certified public accounting firm, to conduct fiscal, administrative and federal funds monitoring. The department also contracted with Chapin Hall to conduct program monitoring through quality assurance reviews and to develop new performance measures. Chapin Hall is a child welfare research and demonstration institute of the University of Chicago. Administrators of the pilot lead agencies recommended Chapin Hall due to its national reputation in child welfare research.

⁷ Currently, pursuant to s. 409.1671(8), F.S., 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 *pro rata* to all entities that contributed to the excess earnings and shall be used only in the service district in which they were earned. Additional state funds appropriated by the Legislature for community-based agencies or made available pursuant to the budgetary amendment process 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 legislation authorized the department to implement these contract provisions with other community-based care lead agencies as well. According to the department, the current contract between the department and the lead agencies is an advance, fixed-price, fixed payment contract comprised of federal funds and a grant of state funds. Advance payments are equal to 1/12th of the current fiscal year contract value or, if the contract value is increased during the year, the advance is equal to the fiscal year contract amount not yet paid, divided by the remaining months to be paid.⁸

Permissible Expenditures

Chapter 2006-30, L.O.F., also made the following expenditures permissible, not just for the pilot sites, but for all lead agencies:

- Staff cellular phone allowances;
- Contracts requiring deferred payments and maintenance agreements;
- Security deposits for office leases;
- Related professional membership dues and license fees;
- Food and refreshment;
- Promotional materials; and
- Costs associated with fundraising personnel.

Prior to the passage of this legislation, these expenditures were prohibited in accordance with the Reference Guide for State Expenditures published by the Department of Financial Services.⁹ According to the department, these provisions have been amended into all lead agency contracts.¹⁰

The legislation required the Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Office of the Auditor General (Auditor General) to evaluate the pilot program and provide interim as well as final reports.

The legislation is scheduled for repeal on July 1, 2009.

Reports on Pilot Project

As required by ch. 2006-30, L.O.F., OPPAGA and the Auditor General each published two reports regarding the CBC pilot project.¹¹

⁸ DCF, *Staff Analysis and Economic Impact, CS SB 1666* (April 3, 2009).

⁹ Department of Financial Services, Division of Accounting and Auditing, Bureau of Auditing, *Reference Guide for State Expenditures*, available at http://www.fldfs.com/aadir/reference_guide/reference_guide.htm#d (last visited April 8, 2009). See also, <http://www.dcf.state.fl.us/cbc/> (follow link "CBC Fiscal Attachments" to "CBC Expenditure Guidelines") (last visited April 8, 2009), in which the department provided direction to CBC lead agencies regarding the allowability of these expenditures.

¹⁰ DCF, *supra* note 9.

¹¹ OPPAGA, *CBC Pilot Project Implementation Delayed But Proceeding; Other Initiatives Implemented, Report No. 07-03* (January 2007); OPPAGA, *Outsourced Oversight for Community-Based Care Produced Benefits But Substantive Challenges, Report No. 09-09* (February 2009). Auditor General, *Department Of Children And Family Services, Community-Based Care Pilot Program, Fiscal And Administrative Monitoring, Operational Audit, Report No. 2008-072* (January 2008); Auditor General, *Department Of Children And Family Services, Community-Based Care Pilot Program, Fiscal And Administrative Monitoring, Operational Audit, Report No.2009-095* (January 2009).

Auditor General Reports

In its reports, the Auditor General found that the fiscal and administrative monitoring approach authorized under the pilot program “continued to meet the requirements of the [d]epartment and the lead agencies.”¹² The Auditor General recommended that if the department elected to continue to contract for fiscal and administrative monitoring, the selection should be “accomplished using competitive means.”¹³

OPPAGA Reports

OPPAGA evaluated the outsourcing of programmatic oversight. In its interim report (January 2007), OPPAGA noted that the department had implemented the pilot project, but only after some delays. In addition, although stakeholders identified several benefits of the project, OPPAGA reported that the project still faced significant challenges.¹⁴

In its final report (February 2009), OPPAGA noted that although, overall, the pilot project has helped the department and lead agencies improve their quality assurance, quality improvement, and performance measurement systems, outsourcing oversight has also created several challenges for the department.

The report noted the following disadvantages of outsourcing programmatic oversight:

- Weakens the relationship between the department and its contracted agents;
- Reduces the department’s control over the timing, scope and quality of oversight;
- Limits the department’s flexibility to respond quickly to problems; and
- Increases state costs.¹⁵

As to the increase in cost to the state, OPPAGA noted,

The department incurred additional costs of approximately \$525,000 per year to contract with Chapin Hall.¹⁶ The department funded this contract using federal dollars that could have been used to provide services to children. [footnote omitted] **DCF administrators indicate that the department has the capacity to absorb the quality assurance activities for the two pilot sites within existing resources.** [emphasis added] . . . If the pilot project is not continued into Fiscal Year 2009-10, the recurring federal funds supporting the pilot project could be redirected back into services to offset funding reductions resulting from the state’s budget crisis.

¹² Auditor General, *Department Of Children And Family Services, Community-Based Care Pilot Program, Fiscal And Administrative Monitoring, Operational Audit, Report No.2009-095* (January 2009).

¹³ *Id.*

¹⁴ OPPAGA, *CBC Pilot Project Implementation Delayed But Proceeding; Other Initiatives Implemented, Report No. 07-03* (January 2007).

¹⁵ OPPAGA, *Outsourced Oversight for Community-Based Care Produced Benefits But Substantive Challenges, Report No. 09-09* (February 2009).

¹⁶ Chapin Hall is a child welfare research and demonstration institute of the University of Chicago, chosen by the department and the pilot sites to conduct program monitoring as authorized by ch. 2006-30, L.O.F.

The report also noted that there is a limited market of entities that can perform child welfare program monitoring, making competitive bidding difficult. **OPPAGA recommended that the Legislature not continue the pilot project beyond FY 2008-09 and not expand outsourced oversight statewide.** OPPAGA further recommended,

If the pilot project is not continued, we recommend that the department maintain the quality assurance system improvements and assist the lead agencies in managing and improving their performance through the data analyses. It should also implement its revised quality assurance system for the pilot lead agencies when the pilot project ends in July 2009.

OPPAGA also reviewed the revised funding and payment methods, which were incorporated into all lead agency contracts by October 2006. The report identified the following benefits of the new system:

- Change from cost-reimbursement to fixed-price contracts results in predictable cash-flow;
- Fixed price payment requires less detailed invoices, resulting in simplified administrative processes; and
- Allowing lead agencies to delay reconciling unspent general revenue funds until the end of the contract term allows them to create a cash reserve fund to hedge against increased caseloads, to provide incentives or to develop new services.

OPPAGA recommended close monitoring of general revenue utilization by the lead agencies, in an effort to guard against “lead agency financial problems.”

III. Effect of Proposed Changes:

Contract Monitoring

The bill requires DCF, as well as the Departments of Health and Juvenile Justice, and the Agencies for Persons with Disabilities and Health Care Administration, to implement changes to improve efficiency in health and human services contract administration. The bill includes the following provisions:

- Requires health and human services contracting agencies to limit administrative monitoring to once every three years, if the contracted provider is accredited by one of the following organizations:
 - Joint Commission on the Accreditation of Healthcare Organizations (JCAHO);
 - Commission on Accreditation of Rehabilitation Facilities (CARF); or
 - Council on Accreditation (COA).

The contracting agency does not, however, forfeit its right to monitor or investigate a provider under specified circumstances. In addition, Medicaid provider agreements are excepted from the requirement.

- Authorizes private-sector development and implementation of a data warehouse for maintaining corporate, fiscal and administrative records related to child welfare provider contracts.
- Requires state agencies that contract with child welfare providers to access records from this database, unless records are outdated or unavailable.
- Provides that the following records, at a minimum, must be included in the database:
 - Articles of incorporation;
 - Bylaws;
 - Governing board and committee minutes;
 - Financial audits;
 - Expenditure reports;
 - Compliance audits;
 - Organizational charts;
 - Staff resumes;
 - Governing board membership information; and
 - Human resource policies and procedures.

Outsourced Monitoring

The bill specifies that contracts entered into with community-based care lead agencies must be “funded by a grant of general revenue and by applicable other state and federal funding sources.” According to the department, this language allows it to roll forward general revenue funds unexpended by a community-based care lead agency at the end of each fiscal year.¹⁷

The bill also requires community-based care lead agencies to document federal funds earned and return unearned federal funds to the department, and permits the department to increase community-based care lead agency contracts by excess federal funds earned in accordance with the authority and requirements in s. 216.181(11), F.S. The bill requires the department to enter into a fixed-price contract that provides for a two-month advance payment with each community-based care lead agency.

Permissible Expenditures

The bill also authorizes community-based agencies to continue to use funding received through contracts for the following expenditures:

- Staff cellular telephone allowances;
- Contracts requiring deferred payments and maintenance agreements;
- Security deposits for office leases;
- Professional fees; and
- Costs of promotional materials not related to fundraising.

¹⁷ Section 216.301(1), F.S., requires that all general revenue funds appropriated but not disbursed by June 30 of each fiscal year are to revert to the state and be available for legislative reappropriation.

The bill has an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The ability to access documents through a database will likely result in increased efficiencies for contracted health and human services providers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Database Development and Implementation

The CS/CS/SB 1666 allows for “private-sector development and implementation” of a database for child welfare provider contract documents.¹⁸ The bill does not specify that only one database may be developed, thus creating a risk that multiple databases will be developed and implemented by the private sector, possibly compromising the efficiencies contemplated by the bill. The permissive nature of this provision also creates the risk that the database will not be developed at all.

¹⁸ The department reports that the Florida Coalition for Children, Inc., is currently developing a “document vault” that will provide electronic document storage and retrieval and secure system access with an electronic record of document requests and permissions. The department has already signed on as a test user of the program. Correspondence from Melissa Jaacks, DCF, Acting Deputy Secretary, Re: Report on Children’s Home Society Case Study on Contract Monitoring (March 18, 2009).

Roll-Forward of Unexpended General Revenue

The CS/CS/SB 1666 provides that community-based care lead agency contracts are fixed price, advance payment, and cost reimbursement contracts. Specifically, the agencies may receive, on July 1 of each fiscal year, up to two months of payments in advance of service provision, subject to repayment before the end of the contract term.

In addition, the bill provides that “[t]he department shall ensure that a contract entered into with each community-based care lead agency . . . **is funded by a grant of general revenue** and by applicable other state and federal funding sources.” [emphasis added] The department advises that it is this language, first adopted in the pilot project and approved by the Division of Financial Services and the State CFO, which allows it to roll forward any general revenue funds unexpended by the community-based care lead agency at the end of each fiscal year. This arrangement is outside the provisions of s. 216.301(1), F.S., which requires that all general revenue funds appropriated but not disbursed by June 30 of each fiscal year are to revert to the state and be available for legislative reappropriation.

The Division of Financial Services was asked to provide an analysis of this bill but has not done so.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Children, Families, and Elder Affairs on April 15, 2009:

The CS/CS/SB 1661:

- Removes the Department of Elder Affairs from the contract monitoring and database provisions of the bill;
- Deletes *fiscal* monitoring from the requirement limiting monitoring to once every three years;
- Specifies the organizations whose accreditation may substitute for monitoring;
- Exempts Medicaid provider agreements from the contract monitoring provisions of the bill;
- Deletes the process relating to adoption of new forms, procedures or mandates;
- Clarifies that the section of the bill related to outsourced monitoring is specific to community-based care *lead* agencies;
- Deletes the provision allowing DCF to outsource programmatic, fiscal, or administrative oversight of lead agencies; and
- Deletes the following from the list of permissible expenditures for lead agencies: food and refreshments and promotional materials used for fundraising purposes.

CS by Health and Human Services Appropriations on April 1, 2009:

Senate Bill 1666 was originally filed as a shell bill expressing legislative intent to revise laws relating to governmental operations. The Health and Human Services Appropriations Committee adopted the committee substitute as described in this bill analysis. The committee substitute removes language authorizing community-based

agencies to retain interest earned on cash advances and requiring DCF to document interest earnings and associated expenditures. The committee substitute also mandates health and human services agencies to streamline the administrative and programmatic monitoring of contract providers and mandates these agencies to consider cost and programmatic effect, in consultation with contract providers, before imposing a new form, procedure or policy.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
