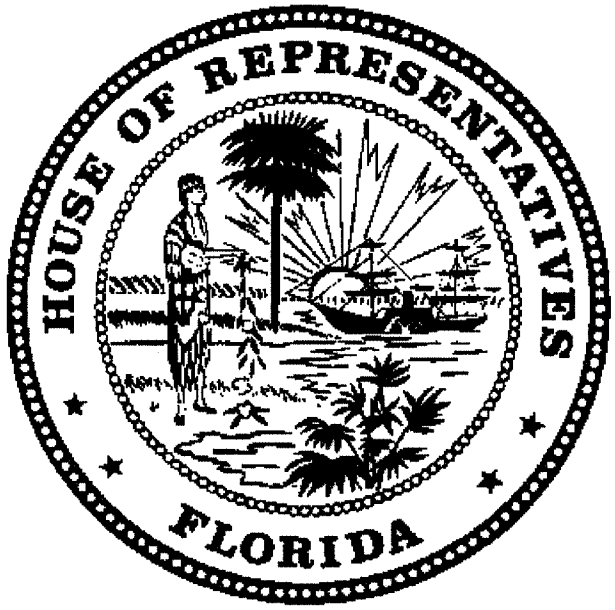

Health & Human Services Access Subcommittee

Wednesday, March 16, 2011
8:30 - 11:30 AM
12 HOB

Dean Cannon
Speaker

Gayle Harrell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Access Subcommittee

Start Date and Time: Wednesday, March 16, 2011 08:30 am

End Date and Time: Wednesday, March 16, 2011 11:30 am

Location: 12 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 81 Treatment-based Drug Court Programs by Rouson
HB 97 Health Insurance by Gaetz
HB 279 Certification of Child Welfare Personnel by Davis
HB 739 Transition-to-Adulthood Services by Porth
HB 1019 Foster Care Providers by Plakon

Workshop on the following:

PCB HSAS 11-01 Repeals Obsolete Language relating to Vulnerable Children and Adults

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, March 15, 2011.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, March 15, 2011.

NOTICE FINALIZED on 03/14/2011 16:19 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 81 Treatment-based Drug Court Programs
SPONSOR(S): Rouson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 400

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N	Krol	Cunningham
2) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Post-adjudicatory drug courts serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.

In 2009, the admission criteria for post-adjudicatory drug courts was created to include more serious prison-bound, non-violent offenders and to allow drug court judges to hear any probation or community control violations related to failed substance abuse tests. The goal was to increase state savings by diverting prison-bound offenders to drug court programming. However, the Office of Program Policy Analysis & Government Accountability recently reported that without further post-adjudicatory drug court program expansion the projected savings will not be realized.

HB 81:

- Provides courts the discretion to allow offenders with prior violent felony offenses into a post-adjudicatory treatment-based drug court program after considering the offender's criminal record.
- Allows the drug court participant to have all their probation and community control violations heard by the judge presiding over the post-adjudicatory drug court.
- Allows an offender to be placed into a post-adjudicatory drug court after violating the terms of their probation or community control.
- Increases the number of sentencing points required for admission into the post-adjudicatory treatment-based drug court program to allow more offenders to be sentenced to the program.

This bill has an indeterminate fiscal impact on state expenditures. While there is a potential savings to the state by diverting offenders bound for prison incarceration, it largely relies on the discretionary nature of judicial behavior and is thus not a quantifiable fiscal impact.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drug Court Background

The drug court concept was developed in 1989 in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding. The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were "revolving back through the criminal justice system because of underlying problems of drug addiction." The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together. There are two types of drug court programs: pre-trial diversion and post-adjudicatory.[1]

Pre-trial Diversion Drug Courts
Pre-trial diversion drug courts are designed for first-time offenders who, in lieu of the program, would likely be placed on county probation. Participants are diverted into the program prior to adjudication. Upon successful completion of the program, the offender's charges may be dropped.[2]

A person is eligible for pretrial diversion drug court if he or she is charged with a second or third degree felony for purchase or possession of a controlled substance under chapter 893, F.S., prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud and he or she:

- Has not been charged with a crime involving violence, including but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence;
- Has not previously been convicted of a felony nor been admitted to a felony pretrial program referred to in s. 948.08, F.S.; and
- Has not rejected on the record previously offered admission into the program.[3,4]

Post-adjudicatory Drug Courts
Post-adjudicatory drug courts serve non-violent, drug addicted offenders who have been adjudicated and typically have prior convictions. Post-adjudicatory drug courts generally use graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions can include mandatory community service, extended probation, or jail stays.[5] Upon successful completion, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.[6]

Post-adjudicatory Drug Court Expansion

In 2009, the Legislature appropriated $19 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant to expand post-adjudicatory drug courts into eight counties.[7] Currently, there are 30 post-adjudicatory drug courts operating in 14 judicial circuits.[8]

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[1] *The Florida Drug Court System*, Publication by the Florida Supreme Court, revised January 2004, p.1.
[2] *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, Office of Program Policy Analysis & Government Accountability, Report No. 09-13.
[3] Section 948.08(6)(a), F.S.
[4] However, if the state attorney can prove that the defendant was involved in the dealing or selling of controlled substances, the court can deny the defendant's admission into a pretrial intervention program. Section 948.08(6)(a)2., F.S.
[5] OPPAGA Report No. 09-13.
[6] OPPAGA Report No. 09-13.
[7] *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, Office of Program Policy Analysis & Government Accountability, Report No. 10-54.
[8] Treatment-Based Drug Courts in Florida, Office of the State Courts Administrator, Updated October 28, 2010. On file with the Criminal Justice Subcommittee.

Through the passage of Ch. 2009-64, L.O.F., the Legislature created criteria for admission to post-adjudicatory drug courts to include more serious prison-bound, non-violent offenders.[9] The goal was to divert these offenders from prison and reduce corrections costs by an estimated $95 million. The eligibility criteria for post-adjudicatory drug court is based on the sentencing court's assessment of the defendant's:

- Criminal history,[10]
- Substance abuse screening outcome,
- Amenability to the services of the program,
- Total sentence points (must be 52 or fewer,)
- Agreement to enter the program, and
- The recommendation of the state attorney and the victim, if any.[11]

The 2009 expansion allowed for two ways for an offender to participate in post-adjudicatory drug court:

- An offender can be sentenced to drug court as a condition of their probation or community control.[12]
- An offender can be placed into drug court after violating the terms of their probation or community control due to a failed or suspect substance abuse treatment test. [13]

In addition, the expansion provided:

- Violations of probation or community control by a post-adjudicatory drug court participant due to a failed or suspect substance abuse test to be heard by the judge presiding over the post-adjudicatory drug court program. After a hearing on or admission of the violation, the judge disposes of such violation, as he or she deems appropriate.[14]
- A mitigating sentence factor[15] that allows a defendant to participate in a post-adjudicatory program if the defendant committed a nonviolent felony,[16] has a Criminal Punishment Code scoresheet total of 52 points or fewer after including points for the violation, and is amenable to the services and is otherwise qualified.

2010 OPPAGA Report

In 2010, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) issued a report on the post-adjudicatory drug court expansion. OPPAGA reported the post-adjudicatory drug courts were generally meeting standards for their operation, but that they were not likely to generate the projected cost savings. Specifically OPPAGA found that, initial admissions targets overestimated

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[9] Prior to 2009, Florida statutes did not address eligibility criteria for post-adjudicatory drug court.

[10] Section 948.06(2)(i)c., F.S., allows for a defendant who violated their probation or community control to be placed in a post-adjudicatory drug court if the underlying offense is a nonviolent felony. Section 948.01, F.S., states that a defendant can be sentenced to drug court as a condition of their probation or community control if they are a nonviolent felony offender. In both instances, nonviolent felony is defined as a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

[11] Sections 397.334(3)(a), F.S.

[12] Section 948.01, F.S.

[13] Section 948.06(2)(i)a., F.S.

[14] Section 397.334(3)(b), F.S. Prior to 2009, violations by post-adjudicatory drug court participants had to be heard by the court that originally granted their probation or community control. Section 948.06, F.S.

[15] The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Section 921.0026, F.S., provides that a sentence may be "mitigated," which means that the length of a state prison sentence may be reduced or a non-prison sanction may be imposed even if the offender scored a prison sentence, if the court finds any permissible mitigating factor.

[16] Section 948.08(6), F.S., defines the term "nonviolent felony" as a third degree felony violation of chapter 810 (entitled Burglary and Trespass) or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

the potential population of offenders who would qualify for the programs, strict eligibility criteria limited admissions, and some programs appeared to be serving offenders who would be unlikely to be sentenced to prison in the absence of drug court.[17]

The Office of the State Court Administrator reported to OPPAGA that "as of June 30, 2010, the state had not spent approximately $18.1 million, or 96%, of the funds." The state has until September 30, 2012 to spend the remaining amount before the money is reverted back to the federal government.

To prevent reverting the funds and to increase state savings by diverting prison-bound offenders, OPPAGA made the following suggestions to the Legislature:

- Expand drug court criteria to serve more prison-bound offenders by:
    - Authorizing drug courts to serve offenders who are cited for technical violations of probation other than a failed substance abuse test, if substance abuse was the main factor at the time of their violation, and
    - Giving judges discretion to allow offenders with prior violent offenses who are appropriate for treatment and do not present a risk to public safety to participate in expansion drug court.
- Include additional counties to divert more prison-bound offenders.
- Require existing expansion courts to serve predominantly prison-bound offenders.
- Shift federal drug court funds to other prison diversion programs.

Effect of the Bill

HB 81 provides courts the discretion to allow an offender with prior violent felony offenses into a post-adjudicatory treatment-based drug court program on a case-by-case basis after considering the offender's record. The bill removes the nonviolent felony offender admission criteria from s. 948.01, F.S., and mirrors the admission criteria found in s. 948.06, F.S., to allow a defendant to be placed into a post-adjudicatory drug court when the offense he or she committed was a nonviolent felony.

Currently only probation and community control violations related to a failed or suspect substance abuse test are heard by the judge presiding over the post-adjudicatory drug court. The bill allows the drug court participant to have all of their probation and community control violations heard by the presiding post-adjudicatory drug court judge.

The bill allows an offender to be placed into a post-adjudicatory drug court after violating any of the terms of their probation or community control. This expands current law which allows offenders to be placed into a post-adjudicatory drug court for only violations related to a failed or suspect substance abuse test.

The bill also increases the maximum amount of Criminal Punishment Code scoresheet points from 52 to 60 that an offender can have and still be eligible for participation in the post-adjudicatory drug court program. Whether having violated community supervision or before the court for sentencing on a substantive law violation, the candidate for a post-adjudicatory drug court program may not score more than 60 sentencing points.

B. SECTION DIRECTORY:

Section 1. Amends s. 397.334, F.S., relating to treatment-based drug court programs.

Section 2. Amends s. 921.0026, F.S., relating to mitigating circumstances.

[17] *Id.*

Section 3. Amends s. 948.01, F.S., relating to when a court may place defendant on probation or into community control.

Section 4. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 5. Amends s. 948.20, F.S., relating to drug offender probation.

Section 6. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Substance abuse treatment providers could see a positive fiscal impact if more people become eligible for post-adjudicatory drug court.

D. FISCAL COMMENTS:

This bill has an indeterminate fiscal impact on state expenditures. While there is a potential savings to the state by diverting offenders bound for prison incarceration, it largely relies on the discretionary nature of judicial behavior and is thus not quantifiable.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to treatment-based drug court programs; amending s. 397.334, F.S.; providing that a court has the discretion to allow offenders with prior violent felony offenses into postadjudicatory treatment-based drug court programs on a case-by-case basis; requiring all offenders sentenced to a postadjudicatory drug court program who are drug court participants who are the subject of a violation of probation or community control hearing under specified provisions to have the violation of probation or community control heard by the judge presiding over the drug court program; providing that treatment-based drug court programs may include postadjudicatory programs provided under specified provisions; amending s. 921.0026, F.S.; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for a postadjudicatory treatment-based drug court program; amending s. 948.01, F.S.; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for a postadjudicatory treatment-based drug court program; amending s. 948.06, F.S.; making defendants other than those who have violated probation or community control by a failed or suspect substance abuse test eligible for postadjudicatory treatment-based drug court programs; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for a postadjudicatory treatment-based

drug court program; amending s. 948.20, F.S.; increasing the number of Criminal Punishment Code scoresheet total sentence points that a defendant may have and be eligible for a postadjudicatory treatment-based drug court program; providing an effective date.

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

Section 1. Subsections (3) and (5) of section 397.334, Florida Statutes, are amended to read:

397.334 Treatment-based drug court programs.—

(3)(a) Entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based upon the sentencing court's assessment of the defendant's criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program. The court has the discretion to allow offenders with prior violent felony offenses into any postadjudicatory treatment-based drug court program on a case-by-case basis after consideration of the offender's record.

(b) An offender who is sentenced to a postadjudicatory drug court program and who, while a drug court participant, is the subject of a violation of probation or community control under s. 948.06~~, based solely upon a failed or suspect substance abuse test administered pursuant to s. 948.01 or s. 948.03,~~

shall have the violation of probation or community control heard by the judge presiding over the postadjudicatory drug court program. The judge shall dispose of any such violation, after a hearing on or admission of the violation, as he or she deems appropriate if the resulting sentence or conditions are lawful.

(5) Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs as provided in ss. 948.01, 948.06, and 948.20, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under subsection (4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

Section 2. Paragraph (m) of subsection (2) of section 921.0026, Florida Statutes, is amended to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(m) The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 ~~52~~ points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6).

Section 3. Paragraph (a) of subsection (7) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(7)(a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 ~~52~~ points or fewer, ~~and~~ the offense ~~defendant~~ is a nonviolent felony ~~offender~~, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3). The satisfactory completion of the program shall be a condition of the defendant's probation or community control.

As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

Section 4. Paragraph (i) of subsection (2) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(i)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the court may order the defendant to successfully complete a postadjudicatory treatment-based drug court program if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation ~~and the violation was due only to a failed or suspect substance abuse test~~;

b. The offender's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 ~~52~~ points or fewer after including points for the violation;

c. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08;

d. The court determines that the offender is amenable to the services of a postadjudicatory treatment-based drug court program;

e. The court has explained the purpose of the program to the offender and the offender has agreed to participate; and

f. The offender is otherwise qualified to participate in the program under the provisions of s. 397.334(3).

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory treatment-based drug court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 5. Section 948.20, Florida Statutes, is amended to read:

948.20 Drug offender probation.—

(1) If it appears to the court upon a hearing that the defendant is a chronic substance abuser whose criminal conduct is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent felony if such nonviolent felony is committed on or after July 1, 2009, and notwithstanding s. 921.0024 the defendant's Criminal Punishment Code scoresheet total sentence points are 60 ~~52~~ points or fewer, the court may either adjudge the defendant guilty or stay and withhold the adjudication of guilt. In either case, the court may also stay and withhold the imposition of sentence and place the defendant on drug offender probation or into a postadjudicatory treatment-based drug court program if the defendant otherwise qualifies. As used in this section, the term "nonviolent felony" means a third degree felony violation

under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

(2) ~~(1)~~ The Department of Corrections shall develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which includes provision for supervision of offenders in accordance with a specific treatment plan. The program may include the use of graduated sanctions consistent with the conditions imposed by the court. Drug offender probation status shall include surveillance and random drug testing, and may include those measures normally associated with community control, except that specific treatment conditions and other treatment approaches necessary to monitor this population may be ordered.

(3) ~~(2)~~ Offenders placed on drug offender probation are subject to revocation of probation as provided in s. 948.06.

Section 6. This act shall take effect July 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health & Human Services Access Subcommittee

Representative(s) Rouson offered the following:

Amendment (with title amendment)

Remove lines 47-51 and insert:

the defendant's agreement to enter the program.

T I T L E A M E N D M E N T

Remove lines 3-6 and insert:

amending s.397.334, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Health Insurance
SPONSOR(S): Gaetz and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Prater	Schoolfield
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

This bill makes substantial changes to the insurance code and creates sections 627.64995 and 641.31099, Florida Statutes.

This bill prohibits the use of state or federal funds to provide coverage for abortions in health insurance policies purchased through health insurance exchanges created under the Federal Patient Protection and Affordable Care Act (PPACA).

The bill provides exceptions for abortions in situations of rape or incest, or in cases to save the life or physical health of the mother.

The bill clarifies that it does not prohibit insurance plans from providing separate coverage for abortion, as long as that coverage is not purchased in whole or in part with any federal or state funds.

The bill appears to have no fiscal impact on state or local governments.

The effective date for the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Federal Patient Protection and Affordable Care Act (PPACA) was signed into law by President Obama on March 23, 2010.[1]

Under PPACA, the state is required to create an insurance exchange by 2014. If the state does not take the necessary steps to create the exchange, as determined by the Secretary of the United States Health and Human Services (HHS) the exchange will be created by the Secretary and the Federal HHS Agency.[2] The exchange will provide an insurance market place whereby individuals and small business can purchase health insurance. Under PPACA, most citizens will be required to purchase health insurance, or will be required to pay a tax penalty of the greater of $695 per year up to a maximum of three times that amount ($2,085) per family or 2.5% of household income. Certain individuals who meet certain income thresholds will be given premium tax credits and cost sharing subsidies to help them purchase their health insurance.[3] Any household earning between 133% and 400% of the federal poverty level ($29,326 to $88,200 annual income for a family of 4) will be eligible for the premium tax credits and cost sharing subsidies[4].

Federal Funding of Abortions

The Hyde Amendment, first passed by Congress in 1976, prevents federal funds from being used to pay for abortion under the joint federal-state Medicaid programs. Exceptions are provided for rape, incest and to save the life of the mother. [5].The Hyde Amendment is a rider to the annual Labor/Health and Human Services/Education appropriations bill which has to be approved by Congress each year. The specific language of Hyde can vary each year.

According to PPACA, states are permitted to prohibit plans participating in the insurance exchange from providing coverage for abortions. Without such prohibition, plans are permitted to offer insurance providing abortion coverage but must provide for a separate accounting mechanism. The plan must collect from each enrollee, two separate payments; one specifically for the abortion coverage and the other for all the other services provided. All individuals enrolled in the plan providing abortion coverage would be required to pay the separate abortion fee (without regard to the enrollee's age, sex, or family status).[6]

Under PPACA, states are given the express right to prohibit abortion coverage for any health plans offered through an exchange if the state enacts a law to provide for such prohibition.[7] Additionally, PPACA specifies that the Act shall not preempt or have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions.

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[1] See Constitutional Notes.
[2] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, Section 1321 (c)
[3] A premium tax credit is an amount taken out of the taxes you paid the previous year and given back to the payer. For tax credits given by the Patient Protection and Affordable Care Act, the credits will be sent directly to the issuer of the health insurance plan from the federal government. A cost sharing reduction is a reduction in out of pocket expenses paid by the health plan member such as co-pays.
[4] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, Section 1401 & 1402
[5] Departments of Labor, Health and Human Services and Education and Related Agencies Appropriations Act of 2010, HR 3293, 111th Cong., 1st session
[6] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, section 1303(b) (2) (B) (i)
[7] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, section 1303 (a) (1)

Abortion Statistics

- In 2008, there were 1.21 million abortions nationwide.[8]
- 22% of all pregnancies (excluding miscarriages) resulted in abortion nationwide.[9]
- In Florida, there were 94,360 abortions in 2008[10] and 231,657 live births[11], which is approximately 2 abortions for every 5 births.

Proposed Changes

This bill creates two new sections of law that prohibit the sale of insurance policies covering abortions, offered through a health insurance exchange created by PPACA. This applies to policies purchased in whole or in part with federal or state subsidies.[12] The bill provides an exception that health insurance coverage may be provided in cases of rape, incest, or to save the life or physical health of the mother.

The bill does not prevent any person from purchasing separate coverage for abortion through an insurance exchange as long as that coverage is not purchased in whole or in part with state or federal funds. The bill provides that state and federal funds would include any tax credit or cost sharing reductions applied. The bill defines "state funds" to include both state and local funds.

The proposed changes in the bill create new sections of statute in Chapter 627, Part VI, relating to Health Insurance Policies and Chapter 641, Part I, relating to Health Maintenance Organizations.

B. SECTION DIRECTORY:

Section 1 Creates s. 627.64995, F.S., relating to restrictions on use of funds for state exchanges.

Section 2 Creates s. 641.31099, F.S., relating to restrictions on use of funds for state exchanges.

Section 3 Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[8] The Guttmacher Institute, Abortion Incidence and Access to Services in the United States, 2008
[9] *Id.*
[10] *Id.*
[11] Florida Department of Health, Department of Vital Statistics, 2008
[12] s. 390.011(1), F.S., defines "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

1. Revenues:

   None.

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:

   This bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   Florida and 25 other states brought an action in the United States District Court for the Northern District of Florida challenging the constitutionality of the Act. On January 31, 2011, Judge Roger Vinson found the Act unconstitutional.[13] On March 3, 2011 Judge Vinson granted a stay of his order on the condition that the federal government seek an immediate appeal and seek an expedited review. The federal government filed the appeal and motion for expedited review to the United State Court of Appeal for the Eleventh Circuit on March 8, 2011.[14] Florida and the other plaintiffs have filed a motion requesting a more condensed briefing and oral argument schedule than requested by the federal government. The Eleventh Circuit responded on March 11, 2011 setting the briefing schedule beginning on April 4, 2011 and ending May 25, 2011.[15]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It appears from the wording in the bill at section 627.94995(1), that this law is intended to apply to group health insurance policies. However, In order to apply this provision to group policies, the same language in s.627.94995, would need to be added to Part VII of Chapter 627 relating to Group, Blanket, and Franchise Insurance Policies.

In addition, to apply this provision to out of state group policies, a cross reference citing the new section in part VII of Chapter 627, needs to be added to s. 627.6515 (2) (c).

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[13] State of Florida, et al. v. United States Department of Health and Human Services, et al., --- F.Supp.2d ----, 2011 WL 285683 (N.D.Fla.)

[14] Case No. 11-11021-HH

[15] State of Fla., et al. v. U.S. Dept. of Health & Human Serv., Nos. 11-11021-HH & 11-11067-HH, Order on Appellants' Mtn. to Expedite Appeal (11th Cir. March 11, 2011).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to health insurance; creating s. 627.64995, F.S.; prohibiting the use of state or federal funds to provide coverage for abortions in an exchange created pursuant to federal law; specifying conditions under which a health insurance policy or group health insurance policy is deemed to be purchased with state or federal funds; providing exceptions; providing a definition; creating s. 641.31099, F.S.; prohibiting the use of state or federal funds to provide coverage for abortions in an exchange created pursuant to federal law; specifying conditions under which a health maintenance contract is deemed to provide coverage purchased with state or federal funds; providing exceptions; providing a definition; providing an effective date.

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

Section 1. Section 627.64995, Florida Statutes, is created to read:

627.64995 Restrictions on use of funds for state exchanges.—

(1) A health insurance policy or group health insurance policy purchased in whole or in part with state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act may not provide coverage for an abortion as defined in s. 390.011(1). A policy shall be deemed to be purchased with state or federal funds if it is a

policy toward which any tax credit or cost-sharing credit is applied.

(2) This section does not prohibit coverage for an abortion that is performed to save the life or physical health of the mother or when the pregnancy resulted from an act of rape or incest.

(3) This section may not be construed to prevent a health insurance plan or group health insurance plan from providing any private person or entity with separate coverage for abortions, provided such coverage is not purchased, in whole or in part, with state or federal funds.

(4) For purposes of this section, the term "state" means the State of Florida or any of its political subdivisions.

Section 2. Section 641.31099, Florida Statutes, is created to read:

641.31099 Restrictions on use of funds for state exchanges.—

(1) A health maintenance contract under which coverage is purchased in whole or in part with state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act may not provide coverage for an abortion as defined in s. 390.011(1). Coverage under a health maintenance contract shall be deemed to be purchased with state or federal funds if the coverage is provided under a contract toward which any tax credit or cost-sharing credit is applied.

(2) This section does not prohibit coverage for an abortion that is performed to save the life or physical health of the mother or when the pregnancy resulted from an act of rape

or incest.

(3) This section may not be construed to prevent a health maintenance contract from providing any private person or entity with separate coverage for abortions, provided such coverage is not purchased, in whole or in part, with state or federal funds.

(4) For purposes of this section, the term "state" means the State of Florida or any of its political subdivisions.

Section 3. This act shall take effect July 1, 2011.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER _____

Council/Committee hearing bill: Health & Human Services Access Subcommittee

Representative(s) Gaetz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 627.64995, Florida Statutes, is created to read:

627.64995 Restrictions on use of state and federal funds for state exchanges.—

(1) A health insurance policy or group health insurance policy under which coverage is purchased in whole or in part with any state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, may not provide coverage for an abortion as defined in s. 390.011(1), except if the physician certifies in writing that an abortion is necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest. Coverage is deemed to be purchased with state

or federal funds if any tax credit or cost-sharing credit is applied toward the health insurance policy or group health insurance policy.

(2) This section does not prevent a health insurance policy or group health insurance policy from providing any person or entity with separate coverage for an abortion, if such coverage is not purchased in whole or in part with any state or federal funds.

(3) As used in this section, the term "state" means this state and includes any political subdivision of the state.

Section 2. Section 627.66995, Florida Statutes, is created to read:

627.66995 Restrictions on use of state and federal funds for state exchanges.—

(1) A group, franchise, or blanket health insurance policy under which coverage is purchased in whole or in part with any state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, may not provide coverage for an abortion as defined in s. 390.011(1), except if the physician certifies in writing that an abortion is necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest. Coverage is deemed to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied toward the group, franchise, or blanket health insurance policy.

(2) This section does not prevent a group, franchise, or blanket health insurance policy from providing any person or entity with separate coverage for an abortion, if such coverage

is not purchased in whole or in part with any state or federal funds.

(3) As used in this section, the term "state" means this state and includes any political subdivision of the state.

Section 3. Section 641.31099, Florida Statutes, is created to read:

641.31099 Restrictions on use of state and federal funds for state exchanges.—

(1) A health maintenance contract under which coverage is purchased in whole or in part with any state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, may not provide coverage for an abortion as defined in s. 390.011(1), except if the physician certifies in writing that an abortion is necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest. Coverage is deemed to be purchased with state of federal funds if any tax credit or cost-sharing credit is applied toward the health maintenance contract.

(2) This section does not prevent a health maintenance contract from providing any person or entity with separate coverage for an abortion, if such coverage is not purchased in whole or in part with any state or federal funds.

(3) As used in this section, the term "state" means this state and includes any political subdivision of the state.

Section 4. Paragraph (c) of subsection (2) of 627.6515, Florida Statutes, is amended to read:

627.6515 Out-of-state groups.—

Amendment No.

(2) Except as otherwise provided in this part, this part does not apply to a group health insurance policy issued or delivered outside this state under which a resident of this state is provided coverage if:

(c) The policy provides the benefits specified in ss. 627.419, 627.6574, 627.6575, 627.6579, 627.6612, 627.66121, 627.66122, 627.6613, 627.667, 627.6675, 627.6691, ~~and~~ 627.66911, and 627.66995.

Section 5. This act shall take effect July 1, 2011.

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to health insurance; creating ss. 627.64995, 627.66995, and 641.31099, F.S.; prohibiting certain health insurance policies and health maintenance contracts from providing coverage for abortions; providing exceptions; defining the term "state"; amending s. 627.6515, F.S.; providing that certain restrictions on coverage for abortions apply to certain group health insurance policies issued or delivered outside the state which provide coverage to residents of the state; providing an effective date.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

Committee/Subcommittee hearing bill: Health & Human Services Access Subcommittee

Representatives Berman, Fullwood, Perman, and Porth offered the following:

Amendment (with title amendment)

Remove lines 35-63 and insert:

(3) For purposes of this section, the term "state" means the State of Florida or any of its political subdivisions.

Section 2. Section 641.31099, Florida Statutes, is created to read:

641.31099 Restrictions on use of funds for state exchanges.—

(1) A health maintenance contract under which coverage is purchased in whole or in part with state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act may not provide coverage for an abortion as defined in s. 390.011(1). Coverage under a health maintenance contract shall be deemed to be purchased with state

or federal funds if the coverage is provided under a contract toward which any tax credit or cost-sharing credit is applied.

(2) This section does not prohibit coverage for an abortion that is performed to save the life or physical health of the mother or when the pregnancy resulted from an act of rape or incest.

(3) For purposes of this section, the term "state" means the State of Florida or any of its political subdivisions.

Section 3. (1) Any qualified health plan offered through an exchange established in this state pursuant to and as a result of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, may not use any state funds to pay for any abortion services except for those abortions for which public funding is allowed under 42 U.S.C. s. 18023.

(2) Any qualified health plan offered through an exchange established in this state pursuant to and as a result of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, which covers abortion services beyond those permitted in 42 U.S.C. s. 18023 must ensure compliance with the segregation-of-funds requirements under 42 U.S.C. s. 18023.

T I T L E A M E N D M E N T

Remove lines 8-15 and insert:

federal funds; providing an exception; providing a definition; creating s. 641.31099, F.S.; prohibiting the use of state or federal funds to provide coverage for abortions in an exchange created pursuant to federal law; specifying conditions under

which a health maintenance contract is deemed to provide coverage purchased with state or federal funds; providing an exception; providing a definition; prohibiting any qualified health plan offered through an exchange established under the federal Patient Protection and Affordable Care Act from using any state funds to pay for abortion services; providing an exception; requiring such qualified health plan to ensure compliance with the segregation-of-funds requirements under the Patient Protection and Affordable Care Act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 279 Certification of Child Welfare Personnel
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends legislative intent by eliminating the training of child welfare personnel by the Department of Children and Family Services (DCF) and replacing it with a child welfare certification issued by a professional credentialing entity.

The bill creates definitions for the terms "child welfare certification" and "professional credentialing entity," and requires persons who provide child welfare services to be certified by a professional credentialing entity that is approved by the department.

The bill also provides requirements for a credentialing entity to secure DCF approval and removes requirements relating to the establishment of the current training program, including training academies. The use of the Child Welfare Training Trust Fund is amended and rulemaking authority of the department is removed. The bill substantially amends s. 402.40 of the Florida Statutes.

The bill is estimated to create a net savings of approximately $950,968 in the first year and $1,123,393 in recurring years.

Provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Statewide Training

Currently, DCF is required to provide a systematic approach to staff development and training for persons providing child welfare services.[1] The department is authorized to create certification programs to ensure that only qualified employees and service providers provide client services.[2] The department works with various stakeholders to ensure that minimum curriculum standards and core competencies are uniform and that service providers (e.g. Sheriff's Offices and Community Based Care Organizations (CBC's)) can adjust those standards to meet local needs.

The department has the authority to develop rules that include qualifications for certification, including training and testing requirements, continuing education requirements for ongoing certification, and decertification procedures to be used to determine when an individual no longer meets the qualifications for certification and to implement the decertification of an employee or agent.[3]

The department is also required to establish child welfare training academies to perform one or more of the following: to offer developed training curricula; to administer the certification process; to develop, validate, and periodically evaluate additional training curricula determined to be necessary, including advanced training that is specific to a region or contractor, or that meets a particular training need; or to offer any additional training curricula. The department currently contracts with Florida Atlantic University and the University of South Florida to provide the child welfare training academy.

Child Welfare Certification Process

The certification process requires that each individual demonstrate the knowledge, skills and ability to competently carry out their duties as a Florida Child Protection Professional. Each individual in a position requiring certification must be certified within one year of the date of hire, or within one year of having successfully completed a post-test or a waiver test, whichever is earlier.[4] Currently, there are 11 types of certification designations for child protection professionals:

- Child Protective Investigator;
- Child Protective Investigations Supervisor;
- Child Protective Investigations Specialist;
- Child Protection Case Manager;
- Child Protection Case Management Supervisor;
- Child Protection Case Management Specialist;
- Child Protection Licensing Counselor;
- Child Protection Licensing Supervisor;
- Child Protection Licensing Specialist;
- Child Protection Specialized Services Professional; and
- Child Welfare Trainer. [5]

[1] s. 402.40(1), F.S.
[2] s.402.731, F.S.
[3] *Id*
[4] Chapter 65C-33.001,F.A.C.
[5] Chapter 65C-33.001,F.A.C.

Each position classification has a different training, testing and certification requirement depending on the duties they perform. DCF estimates that during calendar year 2010, they initially certified 1,098 and recertified 1,239 child welfare professionals in the investigative, case management, and licensing specialties. There are currently 1,475 child protective investigators (employed either through DCF or sheriff's offices) and 2,200 case managers (employed by CBCs or subcontractors) statewide. More than half of the state's child welfare professionals (2,377 or 64%) who are required to be certified are currently certified. The remaining individuals are in the process of achieving certification, as newly hired staff or they have not yet met minimum certification requirements.[6]

In addition, there are currently 344 child welfare professionals who have met certification requirements to be a Child Welfare Trainer. These staff are employed by community-based care agencies, sheriff's offices, or the department. Certified child welfare trainers teach the department-approved standard pre-service curriculum, and the content must be delivered in its entirety to all newly-hired child protective investigative and case management staff statewide.[7] The intent of this model is it ensure that all necessary statutory, policy, procedural and best practice information is conveyed to child welfare personnel by qualified child welfare trainers and that minimum competency requirements are consistent statewide.[8]

Federal Requirements for Child Welfare Training, Child and Family Services Plan

Federal regulations require states to prepare a five-year plan, the Child Family Services Plan (CFSP), which lays out the framework for a system of coordinated, integrated, culturally relevant family focused services in the state child welfare agencies.[9] All training activities and funding for Title IV-E must be included in the agencies training plan.[10] This plan must be submitted and approved by the federal Administration of Families (ACF). According to DCF, failure to obtain approval prior to changing training requirements could jeopardize federal funding.[11]

Child Welfare Training Trust Fund

The Child Welfare Training Trust Fund was created to be used by DCF for the purpose of funding child welfare training and for securing consultants to develop the training system. [12] The trust funds receives $1 dollar from certain non-criminal traffic infractions,[13] receives monies from an additional fee on birth certificates and dissolution of marriage filings[14] and may receive funds from any other public or private source.[15]

The Florida Certification Board

According to DCF, The Florida Certification Board (FCB) is currently the only certification board in the state that provides a child welfare certification. The FCB provides a number of certifications, including those for substance abuse counselors, prevention specialists, criminal justice professionals, mental health professionals, and behavioral health technicians in Florida. FCB does not offer or provide child welfare training.[16] However, the FCB does offer a Child Welfare Case Manager (CWCM) certification as one of its professional certification programs. The FCB reports that 193 individuals have an active CWCM certification, and almost all of those individuals are employed by CBCs.

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[6] HB 279 (2011) Department of Children and Families Bill Analysis, on file with committee staff.
[7] F.S
[8] s.402.40, F.S.
[9] 45 CFR 1357.15
[10] 45 CFR 1356.60(b)(2)
[11] HB 279 (2011) Department of Children and Families Bill Analysis, on file with committee staff.
[12] s.402.40(5)(a), F.S.
[13] ss.318.14(19)(b) and 318.18, F.S.
[14] ss.382.0255 and 28.101, F.S.
[15] s. 402.40, F.S.
[16] The Florida Certification Board, http://www.flcertificationboard.org

Effect of Proposed Changes

The bill eliminates DCF's child welfare training program established in s. 402.40 and replaces it with a child welfare personnel certification from a professional credentialing organization. The bill replaces current training standards with a certification from a professional credentialing entity that is to be approved by DCF.

The bill provides definitions for:

- child welfare certification
- professional credentialing entity
- child welfare certification

The bill establishes that DCF shall approve one or more professional credentialing entities for awarding child welfare certification. The professional credentialing agency will:

- establish requirements and standards for obtaining a child welfare certification,
- develop core competencies,
- maintain a code of ethics and disciplinary process for persons holding certification,
- maintain a database accessible to the public of all persons holding certifications and
- require annual continuing education requirements.

The bill amends the purpose of the Child Welfare Training Trust Fund, to be used for funding the professional development of persons providing child welfare services.

The bill removes DCF's rulemaking authority related to child welfare training.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.40, F.S., as it relates to Certification of Child Welfare Personnel.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DCF estimates that by eliminating contracts for the development and maintenance of curriculum and training as well as the services provided by the training academies there could be a $1.3 million dollar savings, including reductions in training academy staff at the University of South Florida and Florida Atlantic University.

   However, DCF also estimates that first year costs to certify the DCF employed Child Protective Investigators (CPI) would be about $349,031.25. The recurring annual cost to account for turnover will be about $176,606.25.

   It is estimated that DCF will have a net savings of $950,968.75 in the first year and $1,123,393.75 in recurring years.

   DCF Child Protective Investigator (CPI)/CPI Supervisor Cost Calculation

   First-Year Costs:

1,241 x 225 =	$279,225.00
1,241 x .25 x $225 =	$ 69,806.25
Total First Year Costs:	$349,031.25

   Since the bill imposes both initial and ongoing certification costs, given the approximate 25% annual turnover rate of child welfare staff statewide, subsequent estimated recurring annual costs would be approximately:

   Recurring Annual Costs:

1,241 x .75 x $100 =	$106,800.00
1,241 x .25 x $225 =	$ 69,806.25
Total Recurring Costs:	$176,606.25

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, the child welfare case managers employed by CBC's sand subcontractors receive the training required by s.402.40, F.S. from DCF at no additional cost. . With the changes proposed in the bill, certification costs would be the responsibility of the CBC's and or subcontractors to certify the 2200 child welfare case managers in the state. In addition, there are 234 child protective investigators at various contracted Sherriff's offices who will also need to be certified. The cost for certifying these staff will be the responsibility of the Sheriffs offices.

First Year Costs:

2200 CBC case managers x $225 =	$495,000
234 CPI's in Sheriffs offices x $225 =	$ 52,650
2200 CBC case managers x .25 x $225 =	$123,750
234 CPI's in Sheriffs offices x .25 x$225 =	$ 13,162
Total First Year Costs:	$ 684,562.

Since the bill imposes both initial and ongoing certification costs, given the approximate 25% annual turnover rate of child welfare staff statewide, subsequent estimated recurring annual costs would be approximately:

Recurring Annual Costs:

2200 CBC case managers x .75 x 100 =	$ 165,000
234 CPI's in Sheriffs offices x .75 x 100 =	$ 17,550
2200 CBC case managers x .25 x 225 =	$ 123,750
234 CPI's in Sheriffs offices x .25 x225 =	$ 13,162
Total Recurring Costs:	$ 319,462

D. FISCAL COMMENTS:

The cost to provide child welfare certification by private sector CBCs and their contractors will be a potentially new cost to be covered by these organizations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Deletes rule making authority as it relates to Child Welfare Training.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- According to DCF, failure to obtain approval from the Administration on Children and Families prior to changing and implementing new training requirements could jeopardize federal funding.
- It will be difficult for a professional credentialing agency to be prepared by July 1, 2011 to provide, all child welfare certifications for the various professional categories currently covered by DCF.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the certification of child welfare personnel; amending s. 402.40, F.S.; revising legislative intent; defining the terms "child welfare certification" and "professional credentialing entity"; requiring persons who provide child welfare services to be certified by a professional credentialing entity approved by the Department of Children and Family Services; providing requirements for department approval; deleting requirements relating to the establishment of a department training program, including training academies; revising the use of a department trust fund; deleting certain rulemaking authority of the department; providing an effective date.

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

Section 1. Section 402.40, Florida Statutes, is amended to read:

402.40 Certification of child welfare personnel ~~training~~.—

(1) LEGISLATIVE INTENT.—~~In order to enable the state to provide a systematic approach to staff development and training for persons providing child welfare services that will meet the needs of such staff in their discharge of duties,~~ It is the intent of the Legislature that each person providing child welfare services in this state earns and maintains a professional certification from a professional credentialing entity that is approved by the Department of Children and Family

Services ~~establish, maintain, and oversee the operation of child welfare training academies in the state~~. ~~The Legislature further intends that the staff development and training programs that are established will aid in the reduction of poor staff morale and of staff turnover, will positively impact on the quality of decisions made regarding children and families who require assistance from programs providing child welfare services, and will afford better quality care of children who must be removed from their families.~~

(2) DEFINITIONS.—As used in this section, the term:

(a) "Child welfare certification" means a professional credential awarded to persons who have demonstrated competency and proficiency in a child welfare services practice area through the achievement of education, professional experience, and examination requirements that have been developed according to nationally recognized certification and psychometric standards.

(b) ~~(a)~~ "Child welfare services" means any intake, protective investigations, preprotective services, protective services, foster care, shelter and group care, and adoption and related services program, including supportive services, supervision, and legal services, provided to children who are alleged to have been abused, abandoned, or neglected, or who are at risk of becoming, are alleged to be, or have been found dependent pursuant to chapter 39.

(c) ~~(b)~~ "Person providing child welfare services" means a person who has a responsibility for supervisory, ~~legal,~~ direct care, or support-related ~~support related~~ work in the provision

of child welfare services pursuant to chapters 39 and 409 ~~chapter 39~~.

(d) "Professional credentialing entity" means a department-approved nonprofit organization that is governed by a board of directors composed of members who represent the population for which it awards credentials.

(3) CHILD WELFARE CERTIFICATION.—Any person providing child welfare services in this state must earn and maintain a child welfare certification issued by a professional credentialing entity.

(4) PROFESSIONAL CREDENTIALING ENTITIES.—The department shall approve one or more professional credentialing entities for the purpose of awarding child welfare certification to persons who provide child welfare services. A professional credentialing entity shall request such approval in writing from the department. In order to obtain approval, the professional credentialing entity must:

(a) Establish professional requirements and standards that applicants must achieve in order to obtain a child welfare certification and to maintain such certification;

(b) Develop and apply core competencies and examination instruments according to nationally recognized certification and psychometric standards;

(c) Maintain a professional code of ethics and a disciplinary process that apply to all persons holding child welfare certification;

(d) Maintain a database, accessible to the public, of all persons holding child welfare certification, including any

history of ethical violations; and

(e) Require annual continuing education requirements for persons holding child welfare certification.

~~(3) CHILD WELFARE TRAINING PROGRAM.—The department shall establish a program for training pursuant to the provisions of this section, and all persons providing child welfare services shall be required to participate in and successfully complete the program of training pertinent to their areas of responsibility.~~

(5)~~(4)~~ CHILD WELFARE TRAINING TRUST FUND.—

(a) There is created within the State Treasury a Child Welfare Training Trust Fund to be used by the Department of Children and Family Services for the purpose of funding the professional development ~~a comprehensive system of child welfare training, including the securing of consultants to develop the system and the developing of child welfare training academies that include the participation~~ of persons providing child welfare services.

(b) One dollar from every noncriminal traffic infraction collected pursuant to s. 318.14(10)(b) or s. 318.18 shall be deposited into the Child Welfare Training Trust Fund.

(c) ~~In addition to the funds generated by paragraph (b),~~ The trust fund shall also receive funds generated from an additional fee on birth certificates and dissolution of marriage filings, as specified in ss. 382.0255 and 28.101, respectively, and may receive funds from any other public or private source.

(d) Funds that are not expended by the end of the budget cycle or through a supplemental budget approved by the

department shall revert to the trust fund.

~~(5) CORE COMPETENCIES.~~

~~(a) The Department of Children and Family Services shall establish the core competencies for a single integrated curriculum that ensures that each person delivering child welfare services obtains the knowledge, skills, and abilities to competently carry out his or her work responsibilities. This curriculum may be a compilation of different development efforts based on specific subsets of core competencies that are integrated for a comprehensive curriculum required in the provision of child welfare services in this state.~~

~~(b) The identification of these core competencies shall be a collaborative effort to include professionals with expertise in child welfare services and providers that will be affected by the curriculum, to include, but not be limited to, representatives from the community-based care lead agencies, sheriffs' offices conducting child protection investigations, and child welfare legal services providers.~~

~~(c) Notwithstanding s. 287.057(3) and (21), the department shall competitively solicit and contract for the development, validation, and periodic evaluation of the training curricula for the established single integrated curriculum. No more than one training curriculum may be developed for each specific subset of the core competencies.~~

~~(6) ADVANCED TRAINING. The Department of Children and Family Services shall annually examine the advanced training that is needed by persons who deliver child welfare services in the state. This examination shall address whether the current~~

~~advanced training provided should be continued and shall include the development of plans for incorporating any revisions to the advanced training determined necessary. This examination shall be conducted in collaboration with professionals with expertise in child welfare services and providers that will be affected by the curriculum, to include, but not be limited to, representatives from the community-based care lead agencies, sheriffs' offices conducting child protection investigations, and child welfare legal services providers.~~

~~(7) CERTIFICATION AND TRAINER QUALIFICATIONS.—The department shall, in collaboration with the professionals and providers described in subsection (5), develop minimum standards for a certification process that ensures that participants have successfully attained the knowledge, skills, and abilities necessary to competently carry out their work responsibilities and shall develop minimum standards for trainer qualifications which must be required of training academies in the offering of the training curricula. Any person providing child welfare services shall be required to master the components of the curriculum that are particular to that person's work responsibilities.~~

~~(8) ESTABLISHMENT OF TRAINING ACADEMIES.—The department shall establish child welfare training academies as part of a comprehensive system of child welfare training. In establishing a program of training, the department may contract for the operation of one or more training academies to perform one or more of the following: to offer one or more of the training curricula developed under subsection (5); to administer the~~

~~certification process; to develop, validate, and periodically evaluate additional training curricula determined to be necessary, including advanced training that is specific to a region or contractor, or that meets a particular training need; or to offer the additional training curricula. The number, location, and timeframe for establishment of training academies shall be approved by the Secretary of Children and Family Services who shall ensure that the goals for the core competencies and the single integrated curriculum, the certification process, the trainer qualifications, and the additional training needs are addressed. Notwithstanding s. 287.057(3) and (21), the department shall competitively solicit all training academy contracts.~~

~~(9) ADOPTION OF RULES.—The Department of Children and Family Services shall adopt rules necessary to carry out the provisions of this section.~~

Section 2. This act shall take effect July 1, 2011.

Amendment No.1

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Health & Human Services Access Subcommittee

Representative(s) Davis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 402.40, Florida Statutes, is amended to read:

402.40 Child welfare training and certification.—

(1) LEGISLATIVE INTENT.—In order to enable the state to provide a systematic approach to staff development and training for persons providing child welfare services that will meet the needs of such staff in their discharge of duties, it is the intent of the Legislature that the Department of Children and Family Services work in collaboration with the child welfare stakeholder community, including department-approved third-party credentialing entities, to ensure that staff have the knowledge, skills, and abilities necessary to competently provide child welfare services ~~establish, maintain, and oversee the operation of child welfare training academies in the state~~. It is the

Amendment No.1

intent of the Legislature that each person providing child welfare services in this state earns and maintains a professional certification from a professional credentialing entity that is approved by the Department of Children and Family Services. The Legislature further intends that certification and ~~the staff development and~~ training programs ~~that are established~~ will aid in the reduction of poor staff morale and of staff turnover, will positively impact on the quality of decisions made regarding children and families who require assistance from programs providing child welfare services, and will afford better quality care of children who must be removed from their families.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Child welfare certification" means a professional credential awarded by a department-approved third-party credentialing entity to individuals demonstrating core competency in any child welfare practice area.

(b) ~~(a)~~ "Child welfare services" means any intake, protective investigations, preprotective services, protective services, foster care, shelter and group care, and adoption and related services program, including supportive services and~~,~~ supervision, ~~and legal services,~~ provided to children who are alleged to have been abused, abandoned, or neglected, or who are at risk of becoming, are alleged to be, or have been found dependent pursuant to chapter 39.

(c) "Core competency" means the minimum knowledge, skills, and abilities necessary to carry out work responsibilities.

(d) ~~(b)~~ "Person providing child welfare services" means a person who has a responsibility for supervisory, ~~legal,~~ direct care, or support-related ~~support related~~ work in the provision of child welfare services pursuant to chapter 39.

(e) "Preservice curriculum" means the minimum statewide training content based upon the core competencies that is to be made available to all persons providing child welfare services.

(f) "Third-party credentialing entity" means a department-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.

(3) THIRD-PARTY CREDENTIALING ENTITIES.—The department shall approve one or more third-party credentialing entities for the purpose of developing and administering child welfare certification programs for persons who provide child welfare services. A third-party credentialing entity shall request such approval in writing from the department. In order to obtain approval, the third-party credentialing entity must:

(a) Establish professional requirements and standards that applicants must achieve in order to obtain a child welfare certification and to maintain such certification;

(b) Develop and apply core competencies and examination instruments according to nationally recognized certification and psychometric standards;

(c) Maintain a professional code of ethics and a disciplinary process that apply to all persons holding child welfare certification;

(d) Maintain a database, accessible to the public, of all persons holding child welfare certification, including any history of ethical violations;

(e) Require annual continuing education for persons holding child welfare certification; and

(f) Administer a continuing education provider program to ensure that only qualified providers offer continuing education opportunities for certificateholders.

~~(3) CHILD WELFARE TRAINING PROGRAM.—The department shall establish a program for training pursuant to the provisions of this section, and all persons providing child welfare services shall be required to participate in and successfully complete the program of training pertinent to their areas of responsibility.~~

(4) CHILD WELFARE TRAINING TRUST FUND.—

(a) There is created within the State Treasury a Child Welfare Training Trust Fund to be used by the Department of Children and Family Services for the purpose of funding the professional development ~~a comprehensive system of child welfare training, including the securing of consultants to develop the system and the developing of child welfare training academies that include the participation~~ of persons providing child welfare services.

(b) One dollar from every noncriminal traffic infraction collected pursuant to s. 318.14(10)(b) or s. 318.18 shall be deposited into the Child Welfare Training Trust Fund.

(c) In addition to the funds generated by paragraph (b), the trust fund shall receive funds generated from an additional

fee on birth certificates and dissolution of marriage filings, as specified in ss. 382.0255 and 28.101, respectively, and may receive funds from any other public or private source.

(d) Funds that are not expended by the end of the budget cycle or through a supplemental budget approved by the department shall revert to the trust fund.

(5) CORE COMPETENCIES.—

(a) The Department of Children and Family Services shall approve ~~establish~~ the core competencies and related preservice curricula ~~for a single integrated curriculum~~ that ensures that each person delivering child welfare services obtains the knowledge, skills, and abilities to competently carry out his or her work responsibilities. ~~This curriculum may be a compilation of different development efforts based on specific subsets of core competencies that are integrated for a comprehensive curriculum required in the provision of child welfare services in this state.~~

(b) The identification of these core competencies and development of preservice curricula shall be a collaborative effort that includes ~~to include~~ professionals who have ~~with~~ expertise in child welfare services, department-approved third-party credentialing entities, and providers that will be affected by the curriculum, including ~~to include~~, but not ~~be~~ limited to, representatives from the community-based care lead agencies, sheriffs' offices conducting child protection investigations, and child welfare legal services providers.

(c) Community-based care agencies, sheriffs' offices, and the department may contract for the delivery of preservice and

any additional training for persons delivering child welfare services as long as the curriculum satisfies the department-approved core competencies. ~~Notwithstanding s. 287.057(3) and (21), the department shall competitively solicit and contract for the development, validation, and periodic evaluation of the training curricula for the established single integrated curriculum. No more than one training curriculum may be developed for each specific subset of the core competencies.~~

(d) Department-approved credentialing entities shall, for a period of at least 12 months following implementation of the third-party child welfare certification programs, grant reciprocity and award a child welfare certification to individuals who hold current department-issued child welfare certification in good standing, at no cost to the department or the certificateholder.

~~(6) ADVANCED TRAINING.—The Department of Children and Family Services shall annually examine the advanced training that is needed by persons who deliver child welfare services in the state. This examination shall address whether the current advanced training provided should be continued and shall include the development of plans for incorporating any revisions to the advanced training determined necessary. This examination shall be conducted in collaboration with professionals with expertise in child welfare services and providers that will be affected by the curriculum, to include, but not be limited to, representatives from the community-based care lead agencies, sheriffs' offices conducting child protection investigations, and child welfare legal services providers.~~

Amendment No.1

~~(7) CERTIFICATION AND TRAINER QUALIFICATIONS.—The department shall, in collaboration with the professionals and providers described in subsection (5), develop minimum standards for a certification process that ensures that participants have successfully attained the knowledge, skills, and abilities necessary to competently carry out their work responsibilities and shall develop minimum standards for trainer qualifications which must be required of training academies in the offering of the training curricula. Any person providing child welfare services shall be required to master the components of the curriculum that are particular to that person's work responsibilities.~~

~~(8) ESTABLISHMENT OF TRAINING ACADEMIES.—The department shall establish child welfare training academies as part of a comprehensive system of child welfare training. In establishing a program of training, the department may contract for the operation of one or more training academies to perform one or more of the following: to offer one or more of the training curricula developed under subsection (5); to administer the certification process; to develop, validate, and periodically evaluate additional training curricula determined to be necessary, including advanced training that is specific to a region or contractor, or that meets a particular training need; or to offer the additional training curricula. The number, location, and timeframe for establishment of training academies shall be approved by the Secretary of Children and Family Services who shall ensure that the goals for the core competencies and the single integrated curriculum, the~~

~~certification process, the trainer qualifications, and the additional training needs are addressed. Notwithstanding s. 287.057(3) and (21), the department shall competitively solicit all training academy contracts.~~

(6) ~~(9)~~ ADOPTION OF RULES.—The Department of Children and Family Services shall adopt rules necessary to carry out the provisions of this section.

Section 2. Subsection (1) of section 402.731, Florida Statutes, is amended to read:

402.731 Department of Children and Family Services certification programs for employees and service providers; employment provisions for transition to community-based care.—

(1) The Department of Children and Family Services is authorized to approve third-party credentialing entities, as defined in s. 402.40, ~~create certification programs~~ for its employees and service providers to ensure that only qualified employees and service providers provide client services. ~~The department is authorized to develop rules that include qualifications for certification, including training and testing requirements, continuing education requirements for ongoing certification, and decertification procedures to be used to determine when an individual no longer meets the qualifications for certification and to implement the decertification of an employee or agent.~~

Section 3. This act shall take effect October 1, 2011.

Amendment No.1

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to the training and certification of child welfare personnel; amending s. 402.40, F.S.; revising legislative intent; defining the terms "child welfare certification," "core competency," "preservice curriculum," and "third-party credentialing entity"; providing required criteria for the approval of credentialing entities that develop and administer certification programs for persons who provide child welfare services; revising the use of the Child Welfare Training Trust Fund within the Department of Children and Family Services; revising provisions relating to preservice curricula; requiring persons who provide child welfare services to be certified by a third-party credentialing entity; allowing entities to add to or augment preservice curriculum; allowing entities to contract for training; requiring persons to master core competencies; providing for recognition for currently certified persons; deleting requirements relating to certification and trainer qualifications; deleting provisions relating to training academies; amending s. 402.731, F.S.; authorizing approval of third-party credentialing entities; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 739 Transition-to-Adulthood Services
SPONSOR(S): Porth and others
TIED BILLS: **IDEN./SIM. BILLS:** HB 151, SB 404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Criminal Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 739 allows the Department of Juvenile Justice (DJJ) to provide older youth in its custody or under its supervision opportunities to participate in activities and services that assist in transition to adulthood. DJJ would develop a plan for participating youth which will lead to total independence. The bill also ensures that youth, who are in the custody of the Department of Children and Family Services (DCF) and enter a DJJ residential program, remain eligible for DCF services including independent living transition services.

The bill also permits the court to retain jurisdiction for a year beyond the child's 19th birthday if they are participating in the transition to adulthood program.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Independent Living Transition Services

The Department of Children and Family Services (DCF) administers a system of independent living transition services to assist older children in foster care and 18 year olds exiting foster care to transition into self-sufficient adults.[1] This program was created in 2002, utilizing both state and federal funds to provide a continuum of services and financial assistance to prepare current and former foster youth to live independently.[2] Under the program, DCF serves children who have reached 13 years of age but are not 18 years of age and are in foster care.[3] DCF also serves young adults who have turned 18 years old but are not 23 years old and were in foster care when they turned 18 years old. They also serve youth, who after turning 16 years old were adopted from foster care or placed with a court approved dependency guardian and spent at least 6 months in foster care within the 12 months preceding placement or adoption.[4]

The DCF program provides services to assist young adults in obtaining life skills and education for independent living and employment.[5] Private and county government-based child welfare organizations deliver these services through the community-based care system.[6] DCF includes youth that have been adjudicated dependent and/or delinquent in independent living services programs. Foster youth who have been adjudicated delinquent and enter a juvenile justice placement are the shared responsibility of DCF and DJJ.[7] Current law provides no specific statutory requirement that requires DCF to provide independent living transition services to youth who are in foster care and also are being served by the Department of Juvenile Justice (DJJ). DCF presumes that these youth remain eligible for independent living transition services.[8]

Department of Juvenile Justice

DJJ is tasked with providing conditional release services to youth exiting juvenile justice residential programs. Conditional release is the care, treatment, help, and supervision provided to juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.[9] The program is intended to help prepare youth for a successful transition from DJJ commitment back to the community. Each youth in a DJJ residential program is to be assessed to determine need for conditional release.

If upon leaving a DJJ residential program the youth's family abandons him or her or refuses to resume their parental duties, the youth has two options. First, he or she may use review teams, which are created through the interagency agreement with DCF and other agencies to remove obstacles that caused a parent to abandon the child, thus allowing the youth to return to their family. The youth may also call the DCF Central Abuse Hotline and file a report, which could result in an investigation by a child protective investigator if the report meets the statutory definition of abuse, neglect, or abandonment.[10] If following the investigation it is determined that the youth is in need of protection and

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[1] s. 409.1451, F.S.
[2] *Id*
[3] s. 409.1451(2)(a)
[4] s. 409.1451(2)(b), F.S.
[5] s. 409.1451(1)(b), F.S.
[6] s. 409.1671, F.S.
[7] Staff Analysis, HB 739 (2011), Department of Children and Family Services. (On file with committee staff).
[8] *Id*
[9] s. 985.46(1)(a)
[10] s. 39.301,(9)(b), F.S.

supervision of the court, DCF is required to file a petition for dependence. [11] Once adjucated dependent, DCF will take responsibility for serving the individual through the foster care system which may include independent living transition services.

Court Jurisdiction

A child who has committed a delinquent act will usually remain under the jurisdiction of the court, unless otherwise relinquished, until the child's 19th birthday. The court may also retain jurisdiction for a child beyond 19 years for special circumstances such as commitments to juvenile prison or high risk residential programs.[12]

Effect of Proposed Changes

The bill creates a definition for "transition to adulthood" to mean services for youth, which are in the custody or supervision of DJJ, to provide them with knowledge, skills and aptitudes to assist them in their adult lives. The bill also defines the services which may be included under this definition including assessment, plan development and services toward achieving transition to adulthood.

The bill provides Legislative intent that DJJ may provide older youth in custody or under supervision the opportunity to participate in transition to adulthood services. This appears to be a similar and augmented authority to what currently exists in the conditional release program operated by DJJ for youth transitioning back to the community.[13]

The bill also provides that youth who enter a DJJ placement from a foster care placement, and who are in legal custody of DCF are eligible to receive independent living transition services pursuant to s. 409.1451, F.S. The bill also provides that court ordered commitment or probation are not barriers to eligibility for youth to receive the array of services available if they were in foster care alone. This is consistent with current DCF policy.

The bill provides that adjudication of delinquency may not be considered by itself as disqualifying criteria for eligibility in DCF's Independent Living Program.

The bill permits DJJ to assess youth prior to placement in a transition to adulthood program. The assessment will include determining the youth's ability to live independently and become self-sufficient. DJJ is also given authority to develop a list of age-appropriate activities and responsibilities. Some of the activities include, but are not limited to life skills training, banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, time management or organizational skills, educational support, employment training, and counseling.

The bill permits DJJ to request parental or guardian consent for the youth to participate in the transition to adulthood program. The activities the youth will participate in and other transition services are to be incorporated into an overall plan which must be reviewed and updated quarterly. The plan must not interfere with parents or guardians rights to train the child.

DJJ is also given authority to contract for transition to adulthood services including residential services. The bill provides for program eligibility to include youth at least 17 but not yet 19 years of age and who are not a danger to the public and have a demonstrated aptitude for the program. The effect of this change will permit DJJ to provide services to youth in their custody or supervision to increase their ability to live independently and become self-sufficient adults.

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[11] *Id*
[12] s. 985.0301,F.S.
[13] s. 985.46, F.S.

The bill also allows the court to retain jurisdiction for an additional 365 days beyond a youth's 19th birthday if he or she is participating in a DJJ transition to adulthood program. This is similar to the provision for continued court jurisdiction of up to one year for children from the foster care system who are participating in the Independent Living program administered by DCF.[14]

B. SECTION DIRECTORY:

Section 1: Amends s. 985.03, F.S., relating to definitions.

Section 2: Creates s. 985.461, F.S., relating to transition to adulthood.

Section 3: Amends s. 985.0301, F.S., relating to jurisdiction.

Section 4: Creates an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

[14] s. 39.013, F.S.

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to transition-to-adulthood services; amending s. 985.03, F.S.; defining the term "transition-to-adulthood services"; creating s. 985.461, F.S.; providing legislative intent concerning transition-to-adulthood services for youth in the custody of the Department of Juvenile Justice; providing for eligibility for services for youth served by the department who are legally in the custody of the Department of Children and Family Services; providing that an adjudication of delinquency does not disqualify a youth in foster care from certain services from the Department of Children and Family Services; providing powers and duties of the Department of Juvenile Justice for transition services; providing for assessments; requiring that services be part of a plan leading to independence; amending s. 985.0301, F.S.; providing for retention of court jurisdiction over a child for a specified period following the child's 19th birthday if the child is participating in transition-to-adulthood services; providing that certain services require voluntary participation by affected youth and do not create an involuntary court-sanctioned residential commitment; providing an effective date.

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

Section 1. Present subsections (57) and (58) of section 985.03, Florida Statutes, are renumbered as subsections (58) and

(59), respectively, and a new subsection (57) is added to that section to read:

985.03 Definitions.—As used in this chapter, the term:

(57) "Transition-to-adulthood services" means services that are provided for youth in the custody of the department or under the supervision of the department and that have the objective of instilling the knowledge, skills, and aptitudes essential to a socially integrated, self-supporting adult life. The services may include, but are not limited to:

(a) Assessment of the youth's ability and readiness for adult life.

(b) A plan for the youth to acquire the knowledge, information, and counseling necessary to make a successful transition to adulthood.

(c) Services that have proven effective toward achieving the transition to adulthood.

Section 2. Section 985.461, Florida Statutes, is created to read:

985.461 Transition to adulthood.—

(1) The Legislature finds that older youth are faced with the need to learn how to support themselves within legal means and overcome the stigma of being delinquent. In most cases, parents expedite this transition. It is the intent of the Legislature that the department provide older youth in its custody or under its supervision with opportunities for participating in transition-to-adulthood services while in the department's commitment programs or in probation or conditional release programs in the community. These services should be

reasonable and appropriate for the youths' respective ages or special needs and provide activities that build life skills and increase the ability to live independently and become self-sufficient.

(2) Youth served by the department who are in the custody of the Department of Children and Family Services and who entered juvenile justice placement from a foster care placement, if otherwise eligible, may receive independent living transition services pursuant to s. 409.1451. Court-ordered commitment or probation with the department is not a barrier to eligibility for the array of services available to a youth who is in the dependency foster care system only.

(3) For a dependent child in the foster care system, adjudication for delinquency does not, by itself, disqualify such child for eligibility in the Department of Children and Family Services' independent living program.

(4) To support participation in transition-to-adulthood services and subject to appropriation, the department may:

(a) Assess the child's skills and abilities to live independently and become self-sufficient. The specific services to be provided shall be determined using an assessment of his or her readiness for adult life.

(b) Develop a list of age-appropriate activities and responsibilities to be incorporated in the child's written case plan for any youth 17 years of age or older who is under the custody or supervision of the department. Activities may include, but are not limited to, life skills training, including training to develop banking and budgeting skills, interviewing

and career planning skills, parenting skills, personal health management, and time management or organizational skills; educational support; employment training; and counseling.

(c) Provide information related to social security insurance benefits and public assistance.

(d) Request parental or guardian permission for the youth to participate in transition-to-adulthood services. Upon such consent, age-appropriate activities shall be incorporated into the youth's written case plan. This plan may include specific goals and objectives and shall be reviewed and updated at least quarterly. If the parent or guardian is cooperative, the plan may not interfere with the parent's or guardian's rights to nurture and train his or her child in ways that are otherwise in compliance with the law and court order.

(e) Contract for transition-to-adulthood services that include residential services and assistance and allow the child to live independently of the daily care and supervision of an adult in a setting that is not licensed under s. 409.175. A child under the care or supervision of the department who has reached 17 years of age but is not yet 19 years of age is eligible for such services if he or she does not pose a danger to the public and is able to demonstrate minimally sufficient skills and aptitude for living under decreased adult supervision, as determined by the department, using established procedures and assessments.

(5) For a child who is 17 years of age or older, under the department's care or supervision, and without benefit of parents or legal guardians capable of assisting the child in the

transition to adult life, the department may provide an assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the assessment and within existing resources, services and training may be provided in order to develop the necessary skills and abilities before the child's 18th birthday.

(6) The provision of transition-to-adulthood services must be part of an overall plan leading to the total independence of the child from department supervision. The plan must include, but need not be limited to:

(a) A description of the child's skills and a plan for learning additional identified skills;

(b) The behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities, as appropriate;

(c) A plan for the provision of future educational, vocational, and training skills;

(d) Present financial and budgeting capabilities and a plan for improving resources and abilities;

(e) A description of the proposed residence;

(f) Documentation that the child understands the specific consequences of his or her conduct in such a program;

(g) Documentation of proposed services to be provided by the department and other agencies, including the type of services and the nature and frequency of contact; and

(h) A plan for maintaining or developing relationships with family, other adults, friends, and the community, as appropriate.

Section 3. Paragraph (a) of subsection (5) of section 985.0301, Florida Statutes, is amended to read:

985.0301 Jurisdiction.—

(5)(a) Notwithstanding ss. 743.07, 985.43, 985.433, 985.435, 985.439, and 985.441, and except as provided in ss. 985.461, 985.465, and 985.47 and paragraph (f), when the jurisdiction of any child who is alleged to have committed a delinquent act or violation of law is obtained, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child which ~~that~~ the court had before ~~prior to~~ the child became ~~becoming~~ an adult. For the purposes of s. 985.461, the court may retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services. The additional services do not extend involuntary court-sanctioned residential commitment and therefore require voluntary participation by the affected youth.

Section 4. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1019 Foster Care Providers
SPONSOR(S): Plakon and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1500

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Poche	Schoolfield
2) Civil Justice Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1019 reduces the general liability insurance requirement for an eligible lead community-based provider ("lead agency") and a subcontractor of a lead agency involved in the community-based care (CBC) program to provide foster care services to abused and neglected children in Florida. The bill also caps, in a tort action, the economic and non-economic damages recoverable by a claimant or claimant(s) against a lead agency or subcontractor, or against multiple entities involved in the same incident.

The bill provides that the Department of Children and Families (DCF) is not liable in tort for acts or omissions of a lead agency, or a subcontractor of the lead agency, or the officers, agents, or employees of the lead agency or subcontractor. The bill prohibits DCF from requiring a lead agency or a subcontractor to indemnify DCF against the department's own acts or omissions. Further, the bill provides that DCF may not require a lead agency or subcontractor to include the department as an additional insured on any insurance policy.

The bill does not appear to have fiscal impact.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

DCF is one of the state agencies responsible for providing assistance and services to abused and neglected children. Prior to 1996, DCF accomplished its mission by directly delivering child protection services to recipients. In 1996, DCF began to privatize child protection services through a CBC pilot program.[1] Through the CBC program, private companies, known as "lead agencies", enter into a contract with DCF to provide foster care services, child abuse services, and mental health services, and other types of assistance.

Upon evaluating the program, DCF found that the lead agencies were able to have more frequent in-person contact with children in the program, to achieve lower ratios of children per home, to maintain smaller caseloads per case worker, and to have a lower average number of per child placement changes.[2] Due to the success of the pilot program, the Legislature significantly amended s. 409.1671, F.S., to create the CBC program privatizing foster care services, which remains largely unchanged today.[3] There are currently 20 lead agencies providing these and other services across the state.[4] Lead agencies use subcontractors to deliver services directly to recipients.

Among many other facets of the CBC program, current law requires mandatory liability insurance limits to be maintained by lead agencies and their subcontractors.[5] In addition to the mandatory insurance limits, current law allows for a yearly increase of 5 percent in the conditional limitation on damages available to claimants to account for the annual increase in the cost of goods and services.[6] Lead agencies and subcontractors must maintain a minimum level of general liability insurance of $1 million per claimant and $3 million per liability incident.[7] Economic damages[8] per claimant are capped at $1,550,000.[9] Non-economic damages[10] per claimant are capped at $310,000.[11] In addition, lead agencies and subcontractors must maintain minimum bodily injury liability insurance coverage of $100,000 per claim and $300,000 per incident.[12] Also, providers must maintain $1,000,000 in non-owned automobile insurance coverage.[13] This coverage is secondary to the primary insurance coverage of $100,000 per claim and $300,000 per incident that must be maintained by employees of lead agencies or subcontractors who use their personal vehicles to transport children and families in the course of providing services.[14]

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[1] State of Florida, Department of Children and Families, *Community-Based Care Implementation Plan*, July 1999, pg. 2
[2] *Id.*
[3] *See* s. 2, Ch. 2009-206, Laws of Fla. (2009)
[4] Lead Agency Map, State of Florida, Department of Children and Families, at http://www.dcf.f.us/programs/cbc/docs/lead_agency_map.pdf
[5] S. 409.1671(1)(h), (j), F.S. (2010)
[6] S. 409.1671(1)(l), F.S. (2010)
[7] S. 409.1671(1)(h) and (j), F.S. (2010)
[8] *See, e.g.*, s. 766.202(3), F.S., defining "economic damages" as financial losses that would not have occurred but for the injury giving rise to the cause of action in tort, including, but not limited to, past and future medical expenses, wage loss, loss of future earnings capacity, funeral expenses, and loss of prospective net accumulations of an estate
[9] The original limit on economic damages was set at $1,000,000.00 in Chapter 2009-206, Laws of Florida. The current limit on economic damages includes the annual 5 percent increase allowed by law.
[10] *See, e.g.*, s. 766.202(8), F.S., defining "non-economic damages" as non-financial losses that would not have occurred but for the injury giving rise to the cause of action in tort, including, but not limited to, pain and suffering, loss of support and services, loss of companionship or consortium, inconvenience, physical impairment, mental anguish, disfigurement, and loss of capacity for enjoyment of life.
[11] The original limit on non-economic damages was set at $200,000.00 in Chapter 2009-206, Laws of Florida. The current limit on non-economic damages includes the annual 5 percent increase allowed by law.
[12] S. 409.1671(h) and (j), F.S. (2010)
[13] S. 409.1671(h), F.S. (2010)
[14] S. 409.1671(j), F.S. (2010)

According to industry advocates, lead agencies collectively paid approximately $2,750,000 in insurance premiums in 2010.[15] Given the fact that each lead agency contracts with many subcontractors to directly provide services and the fact that each subcontractor must maintain the same insurance coverage levels as the lead agency, it can reasonably be concluded that subcontractors are paying much more in insurance premiums that the combined amount paid by all twenty lead agencies. It can also be reasonably concluded than the total amount of insurance premiums paid by both lead agencies and subcontractors to maintain the statutorily mandated coverage is significant.

There is some indication, through anecdotal evidence, that tort claims against lead community-based providers, and subcontractors of the providers, are increasing.[16] One possible reason for the increase in claims is the high liability insurance requirement, which guarantees a significant source of recovery for a plaintiff in a tort case, assuming the plaintiff can obtain a favorable verdict. Also, the statute of limitations for intentional torts based on abuse can be lengthy, leaving a lead community-based provider, or subcontractor of the provider, liable for potentially significant damages over an extended period of time.[17]

Effect of Proposed Changes

The bill reduces the mandatory general liability insurance coverage requirement for lead agencies and subcontractors by half, to $500,000 per claimant and a policy limit aggregate of $1,500,000. The limit on economic damages available to a claimant is reduced to $500,000, and capped at $1,500,000 for all claimants per incidence. The total amount of economic damages recoverable by all claimants is limited to $2,000,000 against a lead agency and all subcontractors involved in the same incident.

The bill also limits non-economic damages available to a claimant to $200,000 per claimant and $500,000 per incident. The total amount of non-economic damages recoverable by all claimants is limited to $1,000,000 against a lead agency and all subcontractors involved in the same incident.

The bill repeals s. 409.1671(1)(l), F.S., eliminating the 5 percent annual increase in the conditional limitations on damages.

The bill adds language to s. 409.1671(2)(a), F.S., to state that DCF is not liable in tort for the acts or omissions of a lead agency, or a subcontractor of a lead agency, or the officers, agents, or employees of a lead agency, or subcontractor of a lead agency. The department may not require a lead agency or subcontractor of a lead agency to indemnify the department for its' own acts or omissions. Lastly, the department may not require a lead agency or subcontractor to include the department as an additional insured on any insurance policy.

By cutting the general liability insurance coverage requirement in half and limiting the amount of economic and non-economic damages available in tort cases against lead agencies and subcontractors, insurance premiums could decrease, and allow more funds for services to children.

Also, insurers will be encouraged to enter the market and write policies for lead community-based providers and subcontractors, allowing those entities to maximize their premium dollars by driving competition among insurers.

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[15] *See* A Premium on Care: The Importance of Providing Affordable Insurance Coverage to Florida's Community-Based Care Agencies, Cynthia S. Tunnicliff, et al., at pg. 6, citing data provided by the Florida Coalition for Children

[16] *Id.*

[17] S. 95.11, F.S. (2010), which, in part, provides for limitations on actions in tort, ranging from four years for actions founded on negligence or statutory liability [s. 95.11(3)(a) and (f)] to at least seven years, with a possibility of many years beyond, for intentional torts based on abuse [s. 95.11(7)]

B. SECTION DIRECTORY:

Section 1: Amends s. 409.1671, F.S., relating to foster care and related services; outsourcing; and limitations on liability
Section 2: Provides an effective date of July 1, 2011

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Lower liability limits could encourage insurers to enter, or re-enter, the market in Florida, creating competition for business and allowing lead agencies and subcontractors to maximize their premium dollars. Lead agencies and subcontractors should realize savings on insurance premiums

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to foster care providers; amending s. 409.1671, F.S.; decreasing the limits of liability and requisite insurance coverage for lead community-based providers and subcontractors; providing immunity from liability for the Department of Children and Family Services for acts or omissions of a community-based provider or subcontractor, or the officers, agents, or employees thereof; providing an effective date.

WHEREAS, lead community-based providers were established to provide foster care and related services, and

WHEREAS, the goal of establishing these providers was to strengthen the support and commitment of communities to the reunification of families and the care of children and families and to increase the efficiency and accountability of providers, and

WHEREAS, lead community-based providers provide services identical to those previously provided by the Department of Children and Family Services, which was protected when delivering those services by the state's sovereign immunity limits, and

WHEREAS, the costs of litigation and attorney's fees diminishes the resources available to the children and families served by lead community-based providers, and

WHEREAS, the Legislature finds that the limits of liability for lead community-based providers should be reviewed, NOW, THEREFORE,

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

Section 1. Paragraphs (f), (h), (j), and (l) of subsection (1) and paragraph (a) of subsection (2) of section 409.1671, Florida Statutes, are amended to read:

409.1671 Foster care and related services; outsourcing.—

(1)

(f)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 outsourced pursuant to this section and that the provision of such services is of paramount importance to the state. The purpose for such outsourcing 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. To ensure that these resources are not significantly reduced, specified limits of liability are necessary for eligible lead community-based providers and subcontractors engaged in the provision of

services previously performed by the Department of Children and Family Services.

2. The Legislature further finds that, by requiring the following minimum levels of insurance, children in outsourced 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~~.

(h) Other than an entity to which s. 768.28 applies, any eligible lead community-based provider, as defined in paragraph (e), or its employees or officers, except as otherwise provided in paragraph (i), must, as a part of its contract, obtain general liability coverage for a minimum of $500,000 ~~$1 million~~ per claim with a policy limit aggregate of~~/~~ $1.5 ~~$3~~ million ~~per incident~~ in general liability insurance coverage. The 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 lieu of personal motor vehicle insurance, the lead community-based provider's casualty, liability, or motor vehicle insurance carrier may provide nonowned automobile liability coverage. This insurance provides liability insurance for automobiles that the provider uses in connection with the provider's business but does not own, lease, rent, or borrow. This coverage includes automobiles owned by the employees of the provider or a member of the employee's household but only while the automobiles are used in connection with the provider's

business. The nonowned automobile coverage for the provider applies as excess coverage over any other collectible insurance. The personal automobile policy for the employee of the provider shall be primary insurance, and the nonowned automobile coverage of the provider acts as excess insurance to the primary insurance. The provider shall provide a minimum limit of $1 million in nonowned automobile coverage. In any tort action brought against such an eligible lead community-based provider or employee, net economic damages shall be limited to $500,000 ~~$1 million~~ per liability claim, $1.5 million per liability incident, and $100,000 per automobile 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 an eligible lead community-based provider, the total economic damages recoverable by all claimants shall be limited to no more than $2 million against all lead agencies and subcontractors involved in the same incident or occurrence, when totaled together. In any tort action brought against such an eligible lead community-based provider, noneconomic damages shall be limited to $200,000 per claim and $500,000 per incident. In any tort action brought against an eligible lead community-based provider, the total noneconomic damages recoverable by all claimants shall be limited to no more than $1 million against all subcontractors and lead agencies involved in the same incident or occurrence, when totaled together. 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 is ~~shall~~ not ~~be~~ liable in tort for the acts or omissions of its subcontractors or the officers, agents, or employees of its subcontractors.

(j) Any subcontractor of an eligible lead community-based provider, as defined in paragraph (e), 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 (i), must, as a part of its contract, obtain general liability insurance coverage for a minimum of $500,000 ~~$1 million~~ per claim with a policy limit aggregate of~~/~~ $1.5 ~~$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 lieu of personal motor vehicle insurance, the subcontractor's casualty, liability, or motor vehicle insurance carrier may provide nonowned automobile liability coverage. This insurance provides liability insurance for automobiles that the subcontractor uses in connection with the subcontractor's business but does not own, lease, rent, or borrow. This coverage includes automobiles owned by the employees of the subcontractor or a member of the employee's household but only while the automobiles are used in connection with the subcontractor's business. The nonowned

automobile coverage for the subcontractor applies as excess coverage over any other collectible insurance. The personal automobile policy for the employee of the subcontractor shall be primary insurance, and the nonowned automobile coverage of the subcontractor acts as excess insurance to the primary insurance. The subcontractor shall provide a minimum limit of $1 million in nonowned automobile coverage. In any tort action brought against such subcontractor or employee, net economic damages shall be limited to $500,000 ~~$1 million~~ per liability claim, $1.5 million per liability incident, and $100,000 per automobile 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 or employee, the total economic damages recoverable by all claimants shall be limited to no more than $2 million against all subcontractors and lead agencies involved in the same incident or occurrence, when totaled together. In any tort action brought against such subcontractor, noneconomic damages shall be limited to $200,000 per claim and $500,000 per incident. In any tort action brought against such subcontractor or employee, the total noneconomic damages recoverable by all claimants shall be limited to no more than $1 million against all subcontractors and lead agencies involved in the same incident or occurrence, when totaled together. 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.

~~(1) 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 use diligent efforts to ensure that ~~retain responsibility for the quality of~~ contracted services and programs ~~and shall ensure that services~~ are of high quality and delivered in accordance with applicable federal and state statutes and regulations. However, the department is not liable in tort for the acts or omissions of an eligible lead community-based provider or the officers, agents, or employees of the provider, nor is the department liable in tort for the acts or omissions of the subcontractors of eligible lead community-based providers or the officers, agents, or employees of its subcontractors. The department may not require an eligible lead community-based provider or its subcontractors to indemnify the department for the department's own acts or omissions, nor may the department require an eligible lead community-based provider or its subcontractors to include the department as an additional

insured on any insurance policy. The department must adopt written policies and procedures for monitoring the contract for delivery of services by lead community-based providers. These policies and procedures must, at a minimum, address the evaluation of fiscal accountability and program operations, including provider achievement of performance standards, provider monitoring of subcontractors, and timely followup of corrective actions for significant monitoring findings related to providers and subcontractors. These policies and procedures must also include provisions for reducing the duplication of the department's program monitoring activities both internally and with other agencies, to the extent possible. The department's written procedures must ensure that the written findings, conclusions, and recommendations from monitoring the contract for services of lead community-based providers are communicated to the director of the provider agency as expeditiously as possible.

Section 2. This act shall take effect July 1, 2011.

PCB HSAS 11-01 Repeals Obsolete Language relating to Vulnerable Children and Adults

The proposed committee bill repeals the following sections of statute which are either outdated, no longer effective or no longer being implemented:

Child Abuse Prevention Training in the District School System
Repeals s. 39.0015, F.S., which created the "Child Abuse Prevention Training Act of 1985". This Act encouraged the Department of Education to implement abuse prevention training for all school teachers, guidance counselors, parents, and children in the district school system. No rules were created relating to this section and the program was never implemented by the Department of Education (DOE).

Intervention and Treatment in Sexual Abuse Cases; Model Plan
Repeals s. 39.305, F.S., which requires the Department of Children and Family Services (DCF) to develop a model plan for community intervention and treatment of intra-family sexual abuse in conjunction with the Department of Law Enforcement, the Department of Health, Department of Education, the Attorney General, the state Guardian Ad Litem Program, the Department of Corrections, representatives of the judiciary, and professionals and advocates from the mental health and child welfare community. The model plan was never developed. However, other sections of law already provide collaborative efforts including but not limited to child protection teams,[1] agreements with local law enforcement regarding investigations[2] and mandatory notification requirements regarding abuse[3].

Family Builders Program
Repeals s. 39.311, F.S., which establishes the "Family Builders Program" (program). Repeals s. 39.312, F.S., which outlines goals for the program. Repeals s. 39.313, F.S., as it relates to contracting of services for the program. Repeals s. 39.314, F.S., establishing eligibility for the program. Repeals s. 39.315, F.S., regarding delivery of services for the program. Repeals s. 39.316, F.S., regarding qualifications of program workers. Repeals s. 39.317, F.S., relating to outcome evaluation of the program. Repeals s. 39.318, F.S., relating to funding of the program. The program was established in the department to provide family preservation services. The department no longer operates the program and recommended repeal of the program and relating sections of statute during the 2009 legislative session.

Authorization for Pilot and Demonstration Projects
Repeals s. 39.816, F.S., which was enacted in 1998 and requires DCF, contingent on a grant from the federal Adoption Safe Families Act (ASFA), to establish one or more pilots for the purpose of furthering the goals of the Act. It also authorizes DCF to establish demonstration projects to identify barriers to adoption, to address parental substance abuse problems that endanger children, and to address kinship care. It is unknown whether the pilots were ever established. As such, the statutory language for pilots is outdated.

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[1] s. 39.303, F.S.
[2] s. 36.306, F.S.
[3] s. 39.301, F.S.

Foster Care Privatization Demonstration Pilot Project

Repeals s. 39.817, F.S., which requires the establishment of a pilot project through The Ounce of Prevention Fund of Florida to contract with a private entity for a foster care privatization demonstration project. The statute is outdated and foster care and related services are currently privatized statewide through community based care organizations.

The Commission on Marriage and Family Support Initiatives

Repeals s. 383.0115, F.S., which creates the Commission on Marriage and Family Support Initiatives (Commission), which essentially replaced the Commission of Responsible Fatherhood created in 1996. The Commission is authorized to hire an executive director, a researcher, and an administrative assistant and to also create documents related to marriage and family initiatives. The Commission is also required to develop a community awareness campaign related to marriage promotion. The Commission was funded following its inception in 2003, but has not been funded since 2008. As a result, the Commission is no longer operating.

Financial Commitment to Community Services Program

Repeals s. 393.22, F.S., which provides specific guidelines for transferring funds from the institution budget to the community budget when a developmental disabilities center discharges enough persons to close a residential unit. The section also provides that the funds to support at least 80 percent of the direct cost to serve people in the unit that closes must be shifted to community services. The language is not needed as the use of funds which become available from the closing or downsizing of an institution are handled through the Legislative budgeting process. Legislative findings and intent already cover preference of community services instead of services in a developmental disabilities center.[4] This section of law is no longer needed.

Respite and Family Care Subsidy Expenditures

Repeals s. 393.503, F.S., which requires the Agency for Persons with Disabilities (APD) to report to the Family Care Councils and others the annual expenditures for respite care and family care subsidies for individuals living at home. The law also requires the Family Care Council to review the information and make recommendations to APD when new funds become available. This section of law is no longer effective since the Family Care Council no longer needs to submit recommendations to plan for funding of respite care and family care subsidies and APD no longer needs to report the information to the Council each year. Under current law, clients of APD are served based on their assessed need within the funds available.[5] The services are not provided to individuals based on the funding of specific programs such as respite or family care subsidies. Therefore, this section of law is no longer effective and inconsistent with the current Legislative policy.

Constitutional Requirements for Involuntary Civil Commitment

Repeals s. 394.922, which requires the long-term control, care and treatment of a sexually violent predator who is involuntarily civilly committed to conform to constitutional protections. The personal protections afforded to all citizens under the Florida Constitution and the U.S. Constitution are not impeded by involuntary civil commitment. The redundancy of this section is not necessary as the personal protections provided by both Constitutions remain in effect without restating such in statute.

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[4] s. 393.062, F.S.

[5] s. 393.0661, F.S.

Requirement for distinguishable definitions of child care.
Repeals s. 402.3045, F.S., which requires DCF to adopt by rule a definition for child care. This is redundant language and not needed in statute since the exact same language is contained in s. 402.305(1)(c).

Administrative Infrastructure; legislative intent; establishment of standards
Repeals s. 402.50, which was enacted in 1991 that requires DCF to develop standards for administrative infrastructure funding and staffing to support the department and contract providers. DCF has undergone several reorganizations since this statute was enacted including a restructuring of administration. This section of statute is outdated and no longer necessary.

Management Fellows Program
Repeals s. 402.55, F.S., which established the Management Fellows Program at DCF and the Department of Health (DOH). The program was enacted in 1991 to identify, train designate and promote employees with high levels of administrative and management potential to fill the needs of the departments. One Career Service employee is to be identified each year and placed in the training program for these purposes. A special pay increase is allowed upon completion of the program. The program is no longer being used by either department.

Incentives for Department Employees
Repeals s. 409.1672, F.S., was enacted in 1994 to authorize DCF to, within existing resources, develop monetary performance incentives such as bonuses, salary increases, and educational enhancements for department employees engaged in positions or activities related to the child welfare system under Chapter 39, relating to dependent children, or Chapter 409, relating to social and economic assistance. It appears this section has never been used due to lack of funds.

Alternative Care Plans; Legislative Findings
Repeals s. 409.1673, F.S., which provides legislative findings related to out-of-home placements for children in the legal custody of the department. It also requires DCF, in collaboration with community service providers, to develop and administer plans for services for dependent children. This section of law was enacted at the early stages of the change to community-based care and it is now outdated as a result of subsequent changes to chapter 39, F.S., and s. 409.1671, F.S.

Annual Report to Legislature relating to Children in Foster Care
Repeals s. 409.1685, F.S., which requires DCF to submit a report each year to the Legislature concerning the status of children in foster care. The report with the specific content referenced in statute is not needed. This section of law is outdated as the information in this report is available from other sources.

Family Policy Act
Repeals s. 409.801, F.S., which creates the "Family Policy Act." Repeals s. 409.802, F.S., which requires the Legislature to seek to provide families certain benefits. Repeals s. 409.803, F.S., which requires DCF to establish a two year pilot program in a rural and an urban county to provide funding and resources for shelters, foster homes, and the children in their care. Provisions regarding these services exist in chapters 39 and 402 and other sections of chapter 409, which more accurately reflect the current philosophy and practice relating to foster children and their parents. This section of statute is outdated.

A bill to be entitled

An act relating to vulnerable children and adults; repealing s. 39.0015, relating to child abuse prevention training in the district school system; repealing s. 39.305, F.S., relating to the development by the Department of Children and Family Services of a model plan for community intervention and treatment in intrafamily sexual abuse cases; repealing ss. 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, and 39.318, F.S., relating to the Family Builders Program; repealing 39.816, F.S., related to authorization for pilot and demonstration projects; repealing s. 39.817, F.S., relating to foster care privatization demonstration project; repealing s. 383.0115, F.S., relating to the Commission on Marriage and Family Support Initiatives; repealing s. 393.22, F.S., relating to financial commitment to community services programs; repealing s. 393.503, F.S., relating to respite and family care subsidy expenditures and funding recommendations; repealing s. 394.922, F.S., relating to constitutional requirements; repealing s. 402.3045, F.S., relating to a requirement that the Department of Children and Family Services adopt distinguishable definitions of child care programs by rule; repealing s. 402.50, F.S., relating to the development of administrative infrastructure standards by the Department of Children and Family Services; repealing s. 402.55, F.S., relating to management fellows program; repealing s. 409.1672, F.S., relating to incentives for department employees; repealing

s. 409.1673, F.S., relating to legislative findings regarding the foster care system and the development of alternate care plans; repealing s. 409.1685, F.S., relating to an annual report to the Legislature by the Department of Children and Family Services with respect to children in foster care; repealing ss. 409.801 and 409.802, F.S., relating to the Family Policy Act; repealing s. 409.803, F.S., relating to pilot programs to provide shelter and foster care services to dependent children; amending ss. 39.3031, 390.01114, and 753.03, F.S.; conforming references to changes made by the act; providing an effective date.

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

Section 1. Sections 39.0015, 39.305, 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, 39.318, 39.816, 39.817, 383.0115, 393.22, 393.503, 394.922, 402.3045, 402.50, 402.55, 409.1672, 409.1673, 409.1685, 409.801, 409.802, and 409.803, Florida Statutes, are repealed.

Section 2. Section 39.3031, Florida Statutes, is amended to read:

39.3031 Rules for implementation of s. ~~ss.~~ 39.303 ~~and 39.305~~.—The Department of Health, in consultation with the Department of Children and Family Services, shall adopt rules governing the child protection teams ~~and the sexual abuse treatment program~~ pursuant to s. ~~ss.~~ 39.303 ~~and 39.305~~, including definitions, organization, roles and responsibilities,

eligibility, services and their availability, qualifications of staff, and a waiver-request process.

Section 3. Paragraph (b) of subsection (2) of section 390.01114, Florida Statutes, is amended to read:

390.01114 Parental Notice of Abortion Act.—

(2) DEFINITIONS.—As used in this section, the term:

(b) "Child abuse" means abandonment, abuse, harm, mental injury, neglect, physical injury, or sexual abuse of a child as those terms are defined in ss. 39.01, 827.04, and 984.03 ~~has the same meaning as s. 39.0015(3)~~.

Section 4. Paragraph (j) of subsection (2) of section 753.03, Florida Statutes, is redesignated as paragraph (i), and present paragraph (i) of that subsection is amended to read:

753.03 Standards for supervised visitation and supervised exchange programs.—

(2) The clearinghouse shall use an advisory board to assist in developing the standards. The advisory board must include:

~~(i) A representative of the Commission on Marriage and Family Support Initiatives.~~

Section 5. This act shall take effect July 1, 2011.