

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Storms, Chair
Senator Rich, Vice Chair

MEETING DATE: Tuesday, September 20, 2011
TIME: 10:45 a.m.—12:45 p.m.
PLACE: James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Rich, Vice Chair; Senators Detert, Dockery, and Hill

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Update on Assisted Living Facilities Workgroup		Discussed
2	Presentation by David Wilkins, Secretary, Florida Department of Children and Families (Barahona Grand Jury Final Report, Strategic Vision)		Presented
3	Introduction of Michael Hansen, Director, Agency for Persons with Disabilities		Discussed
4	Mandatory Review 2012-301 (Open Government Sunset Review of Section 409.25661, F.S., Insurance Claim Data Exchange Information) Presentation		Presented

ASSISTED LIVING WORKGROUP

Molly McKinstry
Deputy Secretary Health Quality Assurance
Agency for Health Care Administration

Governor's Assisted Living Workgroup

- Governor Scott Veto Message for SB 1992
- Response to Concerns Raised in Recent Miami Herald Assisted Living Facilities Series

ASSISTED LIVING WORKGROUP

- Examine Regulation and Oversight of Assisted Living Facilities in Florida
- Develop Recommendations for Improvement in the State's Ability to Monitor Quality and Safety in Assisted Living Facilities and the Well-Being of their Residents

Workgroup Membership

Larry Polivka, **Chair**

Florida State University, The Pepper Center

Darlene R. Arbeit

Florida Association of Homes and Services for the Aging

Michael Bay

Eastside Care, Inc.

Luis E. Collazo

Palm Breeze Assisted Living Facility

Jim Crochet

Long Term Care Ombudsman

Representative Matt Hudson

Florida House of Representatives

Martha Lenderman

Lenderman and Associates

Workgroup Membership

Ken Plante

Academy of Florida Elder Law Attorneys

Brian Robare

The Villa at Carpenters

Bob Sharpe

Florida Council for Community Mental Health

Larry Sherberg

Florida Assisted Living Association

Roxana Solano

Villa Serena I-V

Senator Ronda Storms

Florida Senate

Marilyn Wood

Florida Health Care Association

State Agency Resources

- Agency for Health Care Administration
- Agency for Persons with Disabilities
- Attorney General's Office
- Department of Children and Families
- Department of Elder Affairs
- State Fire Marshall, Department of Financial Services

Public Meetings & Outreach

Three State-wide Public Meetings

- Public Testimony and Stake Holder Input
- Tallahassee August 8, 2011
- Tampa September 23, 2011
- Miami To Be Scheduled

Assisted Living Workgroup Website

Initial Presentations

- American Association of Retired Persons
- Disability Rights Florida
- Florida Assisted Living Association
- Florida Association of Homes & Services for the Aging
- Florida Council for Community Mental Health
- Florida Health Care Association
- Florida Long Term Care Ombudsman
- Florida Peer Network
- National Association of Mental Illness

Initial Objectives Discussed

- Enhanced Oversight of Troubled Facilities
- Streamlined Regulatory Process for Facilities with a Favorable Regulatory History
- Enforcement Action
 - Mandatory Sanctions, Revocation or Denial
 - Due Process Matters

Initial Objectives Discussed

- Qualifications and Training of Assisted Living
 - Administrators/Management
 - Staff
 - Assisted Living Core Trainers
- Special Attention on Assisted Living Facilities with Limited Mental Health Licenses and Clients

Agenda for Tampa September 23

- Public Comment
- Roles of Various State Agencies
- Major Issues and Potential Recommendations

Assisted Living Workgroup Website

- Meeting Agendas, Presentations, Minutes
- Resources: Regulations, Reports
- Interested Party List Serve

AHCA Home Page, Select Boards and Councils

ahca.myflorida.com

ahca.myflorida.com/SCHS/ALWG2011/alwg2011.shtml

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

9/20/11
Date

Bill Number

Name Molly McKinstry

Phone 412-4334

Address 2727 Mahan Drive

E-mail

Street Tallahassee FL 32308
City State Zip

Job Title Dep. Secretary

Speaking: For Against Information

Appearing at request of Chair

Subject ALE Workgroup

Representing Agency for Health Care Administration

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.



Rick Scott, Governor
David E. Wilkins, Secretary

Barahona Final Report and the Department's Strategic Vision

**Presentation to the Senate Children, Families and
Elder Affairs Committee**

September 20, 2011

**Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families,
and Advance Personal and Family Recovery and Resiliency.**

- **Barahona Tragedy**
Occurred on February 14, 2011
- **Internal Agency Review**
Commenced immediately with findings and documentation provided to the External Independent Review Panel.
- **External Independent Review Panel**
Met for the first time on February 25, 2011 and issued their report on March 10, 2011.
- **Grand Jury Final Report**
Report Issued July 25, 2011

Barahona Final Report

Short Term Recommendations		Complete
S1:	Implement New Protocol with Miami – Dade Police to ensure immediate notification for abuse and neglect	✓
S2:	Review the law enforcement protocols in each DCF circuit.	✓
S3:	Meet with Hotline Supervisors and Staff to direct and clarify expectations for identifying calls that require immediate response	✓
S4:	Establish a new procedure that results in the urgent handling of calls by school personnel	✓
S5:	Eliminate management incentives and performance measurement at the Florida Abuse Hotline related to the length of call	✓
S6:	Review personnel records at the Florida Abuse Hotline and assess all counselors currently under corrective action plans	✓
S7:	Review workload and supervisory/staff ratios at the Florida Abuse Hotline	✓
S8:	Require management meetings with all Child Protective Investigators statewide.	✓
S9:	Review personnel records and assess Child Protective Investigators currently under corrective action plans.	✓
S10:	Launch Supplemental Training for Child Protective Investigators	✓
S11:	Direct Community Based Care Lead Agencies to Review all Foster Children for Health, Vision, Dental, and Follow-up.	✓
S12:	Require Community Based Care agencies to collaborate with the Department to convene Educational Summits in each circuit.	✓
S13:	Report on Community-based Care (CBC) Post Adoption Services and Supports	✓
S14:	Require CBCs to meet with each case management agency within 30 days to ensure case ownership and responsibility.	✓
S15:	Investigate the expert witness selection process and report recommendations to Secretary.	✓
S16:	Investigate and Establish Integrated Review Team Processes in every DCF Region	✓
S17:	Implement Automated Notifications within Florida Safe Families Network when abuse or neglect reports are accepted on foster or adoptive parents.	✓
S18:	Authorize plans to allow Child Protective Investigators and case managers to scan documents in Florida Safe Families Network for the establishment of the single official record for every child.	✓
S19:	Review all performance metrics used with DCF staff and CBCs and eliminate incentives that give greater weight to compliance-oriented measures than those which emphasize quality and proper care to children and families.	✓

Immediate Actions:

- Hired over 100 new child protection investigators to reduce caseload size
- All local agreements with law enforcement agencies were collected for further analysis and updated to ensure standardized policies for immediate notification
- Placed Our Kids, Inc on a corrective action plan to address local deficiencies as identified by the Independent Panel and agency case analysis
- Reviewed records of all children in foster care to ensure that they are receiving proper medical and dental care
- Entered into MOU with AHCA to receive Medicaid claims data that will be integrated in FSFN to identify health care episodes, including primary care and dental visits

Results: Caseloads reduced by 33%; medical and dental services increased by 54% and 68% respectively.

Abuse Hotline Operations:

- Established new requirements for ongoing operations and management of Hotline staff, including interviewing and assessment functions
- Trained on priority for handling calls received from teachers and school personnel
- Eliminated incentives for quick completion of Hotline calls and shifted focus to quality of call interview process

Results: Reduced the abandoned calls to Hotline by 46% and call wait time was reduced by 64%.

Child Protection Investigations:

- All personnel records were assessed for job performance corrective action follow-up
- Launched statewide mandatory training for all investigators on:
 - Immediate response expectations, prompt notification to law enforcement and use of mandatory referrals to Child Protection Team
 - Interviewing and court testimony skills

Results: Over 1,100 CPI trained on interviewing techniques and court testimony skills.

Case Management Services:

- Required lead agencies to instruct all case managers on expectations for lead case ownership and accountability.
- Directed lead agencies to convene educational forums with local school districts and stakeholders to improve educational support for children in out of home care.
- Prepared a description of all post-adoption services available through each lead agency.

Results: Successfully reviewed records of over 8,000 children in foster care to ensure that they are receiving required health and dental examinations and follow-up care.

Additional Action:

- Researched protocols in each region regarding procurement and retention of quality mental health practitioners in dependency system.
- Gathered information and recommendations from experts in the mental health field to improve the process of selection, quality control, and retention of mental health care providers in the dependency system.
- Established integrated review team process in every region to determine plan of action for every report of abuse and neglect.
- FSFN upgrades to establish automated notification process to the local community based care agencies whenever abuse or neglect reports are accepted at the hotline on foster or adoptive parents.
- Developed scanning memo guidance to all regional directors and moving toward more robust document management system that integrates with other DCF systems and all CBC document management systems to achieve objective single record.

Barahona Final Report

Grand Jury Items		DCF
1	All Hotline Counselors (and their supervisors) receive training to improve their ability to classify cases where they deem sufficient criteria have been met for filing a report.	Training has been completed and will continue
2	All Hotline Counselors (and their supervisors) receive training sufficient for them to be able to identify allegations that amount to criminal activity.	Training has been completed and will continue
3	Strict compliance be required of all Hotline Counselors (and their supervisors) in regard to the immediate reporting to local law enforcement of all cases where the conduct reported to a Hotline Counselor amounts to criminal activity.	Immediate reporting to law enforcement occurs at the local level
4	DCF Regional and local investigative offices be given the authority to reassess, reevaluate and reclassify all DCF response times included in any report received from a Hotline Counselor.	Such authority currently exists
5	The Florida Legislature, even in light of our limited tax dollars, adjust other budgets to find sufficient resources for these critical technological improvements to the Child Abuse Hotline Center.	Concur
6	We strongly believe that the essence of the job of a CPI is one of law enforcement more than social work. We therefore recommend that the qualifications for the position of CPI be altered accordingly and require more education and/or experience in that realm.	Transformation Project
7	More training of a law enforcement nature for CPIs.	Transformation Project
8	Require case background review prior to initiating a home visit pursuant to a Hotline call be instituted and in instances of extreme emergency, that a protocol be developed for providing the case background information to the CPI en route by telephone.	Transformation Project
9	Each CPI have 24 hour access through a portable device to the entire case file.	24 hour access is available
10	CPIs or their supervisors have the authority and responsibility to escalate a classification of a reported case of abuse received from the Hotline Call Center.	Such authority currently exists
11	For CPIs that, in order to preclude this bias of trust, a requirement to conduct investigative steps like those listed above, must be made mandatory with appropriate punitive action for lack of compliance.	Transformation Project
12	DCF require all lead agencies to handle some full case management responsibilities in-house.	Current statutory requirement. To be reviewed in 9 Transformation Project

Barahona Final Report

Grand Jury Items	DCF
<p>13 For Case Managers that again, in order to preclude this bias of trust, a requirement to conduct investigative steps like those listed above, must be made mandatory with appropriate punitive action for lack of compliance.</p>	Transformation Project
<p>14 DCF develop a policy that requires strict compliance by all persons who are required to input data into one database system. This will apply to all DCF employees and all agencies involved in the Child Welfare System including all Lead Agencies and FCMAs.</p>	Concur
<p>15 DCF develop a policy that will impose discipline or punitive measures for those who fail to comply with the strict policy to input all necessary data in the one database system. This will apply to all DCF employees and all agencies involved in the Child Welfare System including all Lead Agencies and FCMAs.</p>	Concur
<p>16 Psychological evaluations be done of foster parents who seek to adopt children from Florida's Child Welfare System.</p>	Referred to statewide Florida Coalition for Children
<p>17 Persons who have been approved and authorized to serve as foster parents be required to undergo a full re-licensure every two (2) years to ensure they still meet the criteria to serve as foster parents.</p>	Referred to statewide Florida Coalition for Children
<p>18 Foster parents who are the subject of allegations of abuse or neglect of their wards be placed on some form of probationary status that requires more frequent visits and checks on the children in their care. We further recommend that any such probationary period be no less than six (6) months.</p>	Referred to statewide Florida Coalition for Children
<p>19 DCF institute a new mandatory policy for all adoptive parents who adopt Special Needs Children. Any person who adopts a Special Needs Child will be required to receive services from the CBC Lead Agency or Full Case Management Agency that was previously assigned to that child. Post-adoptive services for Special Needs Children shall be provided for at least the first twelve (12) months after the adoption has been completed.</p>	Under review
<p>20 Prospective adoptive parents who do not agree to receive the minimum twelve (12) months of post-adoptive services for Special Needs Children be denied the opportunity to adopt such children.</p>	Under review
<p>21 In instances where parents, adoptive or not, opt for homeschooling, that the statutorily required written notice of intent be forwarded to DCF to determine if any reports have been made to the DCF Hotline, whether ultimately founded or unfounded, substantiated or unsubstantiated, and, if so, be the immediate subject of investigation by DCF and a period of monitoring by DCF.</p>	Under review

Response to Miami-Dade County Grand Jury Report Issued 07-25-11:

- ***“We were impressed with the rapid response of the State of Florida to enforce remedial actions by our foster care agencies.”*** Miami-Dade County Grand Jury
- Analysis of findings between the grand jury, independent panel and agency review of the case has occurred.
- Similarities in recommendations related to training needs for Hotline, Investigative and Case Services professionals has been confirmed.
- Applaud the Grand Jury endorsement of the need for technology supports of child protection professionals.

Long Term Recommendations:

- Focus now moves to overall Child Protection Transformation Project and development of a “World Class” child welfare agency.

The Department's Strategic Vision

Four Areas of Focus

- Provide the support and tools employees need to deliver world-class service to Floridians

- Help Floridians move from entitlement to empowerment

**Empower
Frontline Staff**

**Effect
Program
Improvements**

- Apply proven best practices to maximize efficiencies and outcomes

**Enable Family
Accountability**

**Engage
Communities**

- Seek partnerships that promote local programs designed to strengthen families

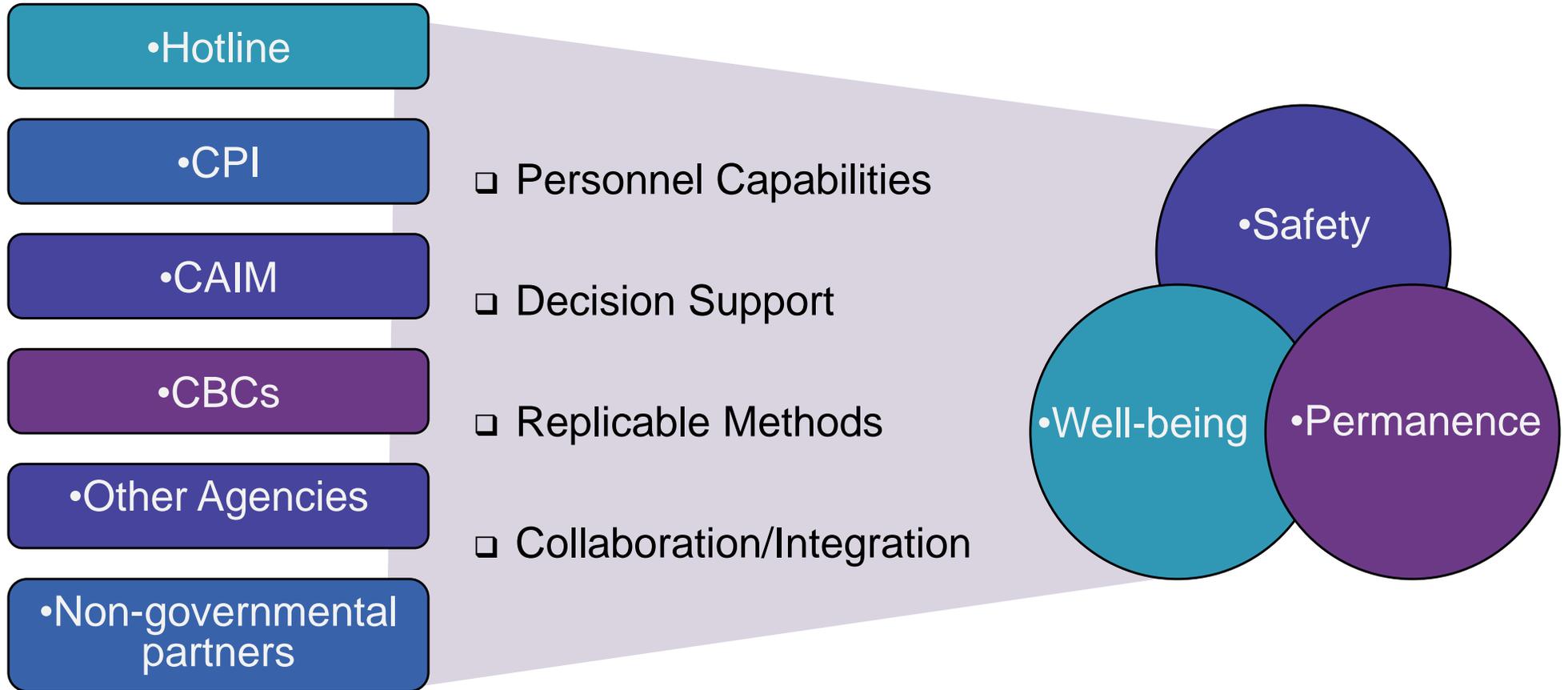
The Department's Strategic Vision



- ❖ Hotline Transformation
- ❖ CPI Redesign
- ❖ Case Management
Accountability and Information
- ❖ Welfare Eligibility Redesign

• Provide the support and tools employees need to deliver world-class service to Floridians

The Department's Strategic Vision



The Department's Strategic Vision



•Apply proven best practices to maximize efficiencies and outcomes

- ❖ HR Strategy
- ❖ Shared Services
- ❖ SAMH Performance Improvements
- ❖ Treatment Facility Improvements
- ❖ Civil / Forensic Redesign
- ❖ PA Fraud
- ❖ Refugee Services Integration

The Department's Strategic Vision



- ❖ Advocacy
- ❖ Child Well-being
- ❖ Prevention and Diversion

•Help Floridians move from entitlement to empowerment

The Department's Strategic Vision



•Seek partnerships that promote local programs designed to strengthen families

- ❖ Community Empowerment
- ❖ Prevention
- ❖ CBC Efficiency
- ❖ ESS Partnerships
- ❖ SAMH Regional System of Care

The Department's Strategic Vision



QUESTIONS?

NUBIA'S LEGACY: CONFRONTING THE BIAS OF TRUST AND COMPLACENCY IN FLORIDA'S CHILD WELFARE SYSTEM

I. INTRODUCTION

Our term as grand jurors was interrupted with the horrific news stories of the tortured existence of Nubia and Victor Barahona. We had been carrying on with our lives, and fulfilling our job as jurors while at the same time utterly unaware of what was happening in another part of our county. We had no idea that two children were imprisoned in a bathtub, bound with duct tape, fed milk and bread once a day and left to sleep, night after night, on the cold porcelain surface.

We heard the evidence and indicted Carmen and Jorge Barahona for the death of Nubia and the abusive treatment over time of both Victor and Nubia. The testimony we heard will stay with us forever, as a bad dream will sometimes stay, only this was not a dream but a reality too painful to fathom. The how and why of this is no longer ours to consider. It is now a criminal case set for trial. We leave that to others with the fervent hope that justice will be done.

One has only to spend the slightest of moments and imagine this tortured existence to know that something must be done to make sure this can never, ever happen again.

After hearing the evidence presented in support of the Indictment against the Barahonas, we decided that our investigation would, in part, take a look at our Child Welfare System to see if we could make recommendations that could stop another tragedy from happening again.¹ To be clear, we will not be presenting an examination of everything that went wrong on the Barahona case. That has already been done.² Instead, what we do in this report is make recommendations for changes that we believe will improve our Child Welfare System.

¹ Although some may view the case with Victor and Nubia as an aberration or an isolated incident, we are aware that over the years there have been other children in foster care that died or were otherwise abused. This report is designed to expose weaknesses in Florida's foster care system to keep the next tragedy from occurring.

² Shortly after the death of Nubia, David E. Wilkins, Secretary, Department of Children & Families established an Independent Investigative Panel comprised of David Lawrence, Jr., Roberto Martinez, Esq. and James D. Sewell, Ph. D. The assignment given to the panel was to review what happened and come up with recommendations that could be achieved within ninety (90) days. Additionally, the panel was to identify other issues and practices that the department and its contract providers must review in depth over the coming months. The result of the Panel's work was a document released on March 10, 2011 entitled, The Nubia Report. That report is available online at <http://www.dcf.state.fl.us/initiatives/barahona/barahona.asp?path=Barahona%20Independent%20Review%20panel/>

For those not familiar with the Barahona case, it is necessary that we first present a brief account of the facts.

The twins, Victor and Nubia, came into Florida's Child Welfare System in 2000. Eventually they were placed in the care of foster parents Carmen and Jorge Barahona. The Barahonas had previously served as foster parents to other children within the system. After five years of serving as foster parents to the twins, the Barahona's were approved to adopt them. The adoption was finalized in May 2009.

From the time of their initial placement in the foster home of the Barahonas and until the time of the arrest of the Barahonas, the Department of Children & Families ("DCF" or the Department) had received five calls to the Florida's Child Abuse Hotline regarding Victor and/or Nubia. The information given to Hotline Counselors included allegations and information as follows:

- A January 2005 call alleging that Nubia had been sexually abused by her foster father, Jorge Barahona;³
- A call in February 2006 alleging physical abuse of Nubia after she missed several days of school and was observed with bruising around her neck and chin area;
- A February 2007 call alleging that Victor and Nubia were coming to school unkempt, they were falling asleep in class and at times were afraid to go home. It was further reported that Nubia was always hungry and eating a lot of food at school;
- Following the adoption of Victor and Nubia in May 2009, the Hotline received a call in May 2010 alleging that Nubia was suffering from hair loss, weight loss and she was unfocused and jittery at school. Similar to the Hotline Call in February 2007, it was reported again that Nubia was always hungry and eating a lot of food at school. In fact, her hunger was described as "uncontrollable"; and
- A February 10, 2011 call alleging that Victor and Nubia were being tied up by their hands and feet and made to sit in a bathtub for extended periods of time.

On February 14, 2011, four (4) days after the February 10th call to the Hotline, a Road Ranger noticed a red pick-up truck on the side of I-95 in West Palm Beach. The Road Ranger was able to see a man near the truck, on the ground, eventually found to be Jorge Barahona. He also saw on the passenger side front cab of the truck a male child, later determined to be Jorge

[Final%20Report/List%20of%20Documents%20Referenced](#). Similarly, while the Investigative Panel was conducting its investigation, Secretary Wilkins had members of his staff begin DCF's own investigation. The results of that investigation were released on March 14, 2011 and can also be found at the same website.

³ The investigation of Jorge Barahona in connection with this incident was ruled unsubstantiated as investigators determined that the alleged abuser was not Jorge Barahona.

Barahona's ten-year old adopted son, Victor, who appeared to have serious medical problems including skin burns and trouble breathing. While police were investigating, the body of a young female was discovered in a bag, deceased, decomposed, and soaked with hazardous liquid in the rear flat bed of the vehicle. The body was that of Jorge Barahona's ten-year old adopted daughter, Nubia.

This Grand Jury returned a True Bill on March 23, 2011, indicting Carmen and Jorge Barahona, charging them with, among other things, First Degree Murder and multiple counts of Aggravated Child Abuse and Child Neglect. Victor and Nubia had been removed from the homes of their biological parents because the state was concerned that, had they remained in that environment, they would be in danger. Therefore, after removing them, the state placed Victor and Nubia with the Barahonas, adults who had been screened by the state and sanctioned to provide a loving and caring home for the twins. These "loving and caring" individuals allegedly abused the twins, killed Nubia and tried to kill Victor. The state figuratively pulled the children out of the frying pan and threw them into the fire. That is **not** how this system is supposed to work.

We discovered two factors that combined to exponentially raise the risk of disaster: a dangerous bias of trust and a failure to view or recognize or take into account the full picture. Simply put, a bias of trust is an untempered acceptance of what one person says without a healthy dose of skepticism. Failure to view the full picture is a failure to combine and correlate information in a manner that makes the whole greater than the sum of its parts, that clarifies the facts, and that therefore properly focuses the system.

In the world of child protection, this combination is a recipe for disaster. As to Nubia and Victor, it allowed murder, torture and child abuse.⁴ Much of the bias of trust related to the work of two major participants in the system: Child Protective Investigators (DCF employees who investigate referrals from the Hotline) and Case Managers (Our Kids' subcontractor employees who are tasked with handling individual cases of children who have been placed in the dependency system.)

⁴ Our findings are not in any way intended to excuse the acts of the Barahonas.

The sad reality is if the Barahonas had been the biological parents of Victor and Nubia, a more thorough investigation probably would have been conducted following the various reports called into the Hotline. If the Barahonas had **not** been foster parents, instead of getting a “pass”, Child Protective Investigators and Case Managers might have engaged in more critical thinking as it related to the “big picture” of what was happening with the kids. DCF’s mission is supposed to ensure that dependent children are placed in a nurturing environment where they are given the basic necessities of life; **food, shelter, clothing, medical care** and **security** in a loving home. However, this “bias of trust” and failure to see the whole picture resulted in the exact opposite happening.

Instead of being fed, Nubia was starving for food (officials should have known she was in trouble because her hunger at the school was uncontrollable). Her shelter was not a refuge, but a torture chamber (officials should have known she was in trouble because they saw some of the bruises she sustained from the physical abuse). She was clothed but she was not cared for in that regard (they should have known because she went to school unkempt with food in her hair for days in a row). Medical services, medical care and dental care were available for Nubia and Victor free of charge to the Barahonas, but they were not taken to appointments for basic medical services (officials should have known they were both in trouble because Nubia’s hair was falling out and she was losing weight, a search of their records would have revealed multiple missed medical appointments, and notes from a nurse practitioner clearly stating that the Barahonas were very poor caretakers for not attending to the required medical care **needed** by the children). Finally, instead of finding security at the Barahona home, Nubia found herself living a nightmarish existence (officials should have known she was in trouble because they saw that she was jittery in school and knew she was afraid to go home). Yes, this bias of trust and failure to see the whole picture helped to kill Nubia and injure Victor. The Barahonas, who had been longtime foster parents were “so wonderful” because they adopted these children (and others). Based on that history of being “saviors,” no one wanted to recognize them for what they apparently were, monsters.

II. FLORIDA’S CHILD ABUSE HOTLINE

Many of the children who come into contact with Florida’s Child Welfare System do so based on third-party reports of abuse or neglect being inflicted on those children. These reports

are usually made via calls to the System's central reporting center, Florida's Child Abuse Hotline (the "Hotline"). All of the calls are to a 1-800 number and are answered by DCF Hotline Counselors in Tallahassee. Reports can also be submitted online or by fax. Reports called in to the Hotline may occur as a result of observations of the children by neighbors, teachers, relatives or anyone else coming into contact with the children.

Many children in Florida's Child Welfare System end-up there following investigations conducted by DCF Child Protective Investigators (CPIs). Those investigations are initiated primarily based on the calls and reports made to Florida's Child Abuse Hotline. If the reported information meets statutory criteria, a report is forwarded to a Child Protective Investigator who works in the DCF Regional Office where the child resides.

In calendar year 2010, the Hotline had 295,064 "Child Calls Answered."⁵ Thus, Hotline Counselors play a significant role in Florida's Child Welfare System. In addition to receiving the calls and logging essential information from callers, the Hotline Counselors also assess the information they receive and make a determination as to the type of response (if any) that should be initiated by DCF.

The Department of Children and Families' goal is to act with a sense of urgency to all allegations of harm to children and/or vulnerable adults. The Florida Abuse Hotline's goal is to submit all reports to the appropriate investigative office within one hour after the call to the Hotline ends. Once the report arrives at the investigative office and is assigned to an investigator, the investigator has up to 24 hours to initiate contact with the subjects of the report. In situations in which it is believed the victim is at imminent risk of harm, the investigator will respond as soon as possible. Obviously, since Hotline Counselors "classify" the calls, they should be sufficiently trained to make appropriate assessments of the information they receive.⁶ This was one of the shortcomings we saw in this regard related to the Barahona case.

⁵ <http://www.dcf.state.fl.us/programs/abuse/>

⁶ The minimum education requirement for all Hotline counselors is a Bachelor's degree from an accredited university. In addition, all Hotline counselors are required to complete a nine week pre-service training prior to taking calls in the Hotline's call center. This training includes seven weeks of classroom training and practice, and concludes with a two week service practicum. During the practicum period, trainees are taking live abuse hotline calls, but have a trainer, supervisor, or veteran counselor with them to assist and review their decisions and reports. On-going, in-service training is conducted annually with all Hotline Counselors. <http://www.dcf.state.fl.us/programs/abuse/faq.shtml>

One of the last calls made to the Hotline regarding the twins occurred on February 10, 2011 and alleged that Victor and Nubia were being tied up by their hands and feet and made to sit in a bathtub for extended periods of time. Clearly, the nature of this information should have resulted in an “immediate response” classification. It did not. Further, inasmuch as the conduct reported was also a crime, there should have been an immediate referral to law enforcement. There was not. Therefore we make the following recommendations:

We recommend that all Hotline Counselors (and their supervisors) receive training to improve their ability to classify cases where they deem sufficient criteria have been met for filing a report.

We recommend that all Hotline Counselors (and their supervisors) receive training sufficient for them to be able to identify allegations that amount to criminal activity.

We recommend that strict compliance be required of all Hotline Counselors (and their supervisors) in regard to the immediate reporting to local law enforcement of all cases where the conduct reported to a Hotline Counselor amounts to criminal activity.

We recommend that DCF Regional and local investigative offices be given the authority to reassess, reevaluate and reclassify all DCF response times included in any report received from a Hotline Counselor.

Another area of concern involved the Hotline and technology or more appropriately, the lack thereof. Here we begin to see the failure to obtain the whole picture. The shortcomings we noted with the Hotline system is the inability of the counselor to upload pertinent data while the caller is providing information. If the caller gives a name, address or other identifying information for a specific child, the counselor would be able to make a better assessment if he had at his fingertips information of prior Hotline calls or investigations involving the same child, the same address, the same family or the same parents, guardians or caregivers. The available data should also reveal the timing of when the other calls, reports or investigations took place. The availability of this additional information could prove priceless, as the counselor is able to get the whole picture of what has been happening, as opposed to a present evaluation of what may appear to be a singular incident. This additional historical data could also accompany the report sent by the counselor to the CPI and Case Manager.⁷ The technology to be able to achieve these two goals is not available at DCF presently. However, in discussing this with Secretary

⁷ See *infra* at 13 for the Case Manager job description.

Wilkins, we discovered this was one of his priorities too. He has already positioned himself to ask the legislature for additional funding to bring these technological advances to this area.

We recommend that the Florida Legislature, even in light of our limited tax dollars, adjust other budgets to find sufficient resources for these critical technological improvements to the Child Abuse Hotline Center.

III. CHILD PROTECTIVE INVESTIGATORS

Child Protective Investigators are DCF employees charged with the responsibility of investigating allegations of abuse or neglect that usually come in through the Hotline. The enormity of their work cannot be overstated. They literally make life and death decisions throughout the course of their career. This is where we began to see the bias of trust and to recognize how it infects our entire system. We cannot afford anything other than a healthy dose of skepticism as applied to the work of the CPIs. Furthermore, considering the potential consequences, the job qualifications are remarkably undemanding, given the investigative nature of the work. In addition, the starting salary of \$34,689 per year is woefully inadequate in terms of attracting superior candidates for this very challenging position.

The essence of much of the work done by CPIs is the same as that of law enforcement. A CPI comes into a case, more often than not, having had no contact with the child or family. **They are supposed to come into the situation with no bias to believe or disbelieve any one person.** They are there to investigate and to find the truth. They respond to a home, are expected to interview victims, witnesses and subjects, and in many instances come to a conclusion that is frequently the same or similar to deciding whether a crime has taken place. In fact, many of the allegations investigated **are** crimes and many acts of child abuse may be criminal in nature. It therefore boggles the mind that CPIs have no adequate law enforcement training and are not required to have law enforcement experience. They are underpaid civilian employees doing the work of the police without the requisite background to do so. That shortcoming may help to explain why the quality of the work done by CPIs in the Barahona case was so abysmal.

The response to the February 10, 2011 hotline call is a perfect and horrifying example of the bias of trust and need for improvement in the CPI arena. As mentioned above, there was a call to the Hotline alleging that Victor and Nubia were being tied up and forced to sit in a bathtub. The Hotline Counselor qualified the call as “needing a response within 24 hours.” How this designation was assigned is beyond us. Not only did this call require an **immediate**

response, it should have required a call to 911 with the designation that it amounted to a kidnapping or false imprisonment, two extremely serious felony charges.

The CPI responded to the home four hours after she had received the report. Prior to going to the home to investigate these allegations, the CPI gave no consideration to perhaps accelerating the pace of the investigation given the nature of the allegations. Where was the basic common sense and initiative necessary to do this type of work? Even if the Hotline Counselor had labeled this “not so serious,” how is it acceptable that the “qualification” was not questioned and changed? Prior to going to the home, the CPI did no “homework” on the case. There was no research done into the background of this particular family to determine if there were any prior allegations of abuse. How is an investigator supposed to know what they are walking into if they don’t have any information about the family? The fact that she did not conduct any research further demonstrates her bias of trust and demonstrates the critical necessity of having a law enforcement perspective. No police officer in the world would go to investigate a crime as serious as this without running the subjects’ priors. This CPI was lacking the preliminary information necessary to decide how aggressively to pursue these allegations

When the CPI arrived at the Barahona home the gate was locked and she did not see any vehicles. What was her response? She left. Were Nubia and Victor in the house tied up in that bathtub at that very moment? We will never know. However, no one with real law enforcement training, investigating allegations such as these, would have just left that house without knowing whether those children were inside and, if so, what condition they were in. No one with real law enforcement training, investigating allegations such as these, would have so easily given up at that point on finding the children.

The CPI took no further action on the Barahona allegations that day. She did not call her supervisor to report that she had not been able to locate the children nor did she call whoever was working the next shift to get them to take over immediately. She did nothing.

On the next day, the CPI contacted school officials and learned that the children had been taken out of public school and were now homeschooled. She did nothing else on the Barahona case until approximately 9:30 that night. She returned to the home and again attempted to get past the locked gate. She could not. She called a coworker for the phone number to the home. Why did she not have this basic information? Something as simple as contact information for

these adoptive parents should have been ready to use, in her hand. This also raises the question, why didn't she try to make a call when she was there the day before? Simply because she didn't see a car? Or, was it really because she had 24 hours within which to complete her assigned task and now her "allowed" time was running out? Either way, this was clearly not the level of investigatory aggression called for with these allegations.

Eventually, the CPI did make contact with Carmen Barahona at the home. The CPI was told by Carmen that Jorge Barahona had the children and that Carmen had not seen the children for three weeks. The CPI's response? She simply told Carmen that if (why "if?") she had any contact with Jorge (**her husband**), to tell Jorge that the CPI needed to see the children. The CPI left. She still had not seen the children. The CPI accepted the excuses Carmen gave for the children not being present. She never searched the house and never looked in the bathroom or the bathtub. Instead of investigating for herself, she simply accepted what the person accused of abusing the children told her. She trusted their answers and looked no further.

Why did she do that? What caused it? Complacency? Laziness? An internal, inherent lack of skepticism? We mentioned earlier in this report that all CPIs must enter a case with a healthy dose of suspicion, not a bias of trust. They should not demonstrate a grain of trust. To preclude this, to truly investigate, to find the truth, what she should have done was to push harder, call law enforcement, ask for names of others who could verify the story. She should have gotten a telephone number (or other address) for Jorge Barahona. She should have questioned the other children (of course, to be effective at all, this must be done outside the presence of the person accused, in this case Carmen Barahona. To question the children in the presence of any subject is folly indeed.) She should have looked in the house to see if there was evidence that the children were still living there. She should have looked in the bathtub. She did none of these. It apparently was sufficient investigation in her mind to go to the home, speak to the subject of the complaint, simply accept her story and walk away, job done.

On February 12, 2011, the CPI did "input notes" and prepared a child safety risk assessment, which is a tool to assess risk for children who are the alleged victims of child abuse. The CPI concluded that the risk was low as to the children in the home. Our opinion is that a risk assessment could not have been made because the CPI had not yet made contact with the children who were the subject of the abuse report. The CPI did nothing further to find Nubia and

Victor. Two days later, the CPI learned that the children had been found; Nubia was dead and Victor was severely injured.

The entire protocol and perspective for investigations such as these must change radically. The lack of common sense and critical thinking here is astounding. The lack of basic investigative instincts is appalling. This must change through training. Every CPI should embark on a case with a healthy dose of suspicion. This will assist them in their investigation and make them more dogged in their pursuit of the truth and more careful in coming to a conclusion.

There are a number of recommendations that stem from an analysis of what the CPI did and did not do in the Barahona case. They are:

We strongly believe that the essence of the job of a CPI is one of law enforcement more than social work. We therefore recommend that the qualifications for the position of CPI be altered accordingly and require more education and/or experience in that realm.

We recommend more training of a law enforcement nature for CPIs.

We recommend that a requirement of case background review prior to initiating a home visit pursuant to a Hotline call be instituted and in instances of extreme emergency, that a protocol be developed for providing the case background information to the CPI en route by telephone.

We recommend that each CPI have 24 hour access through a portable device to the entire case file.

We recommend that CPIs or their supervisors have the authority and responsibility to escalate a classification of a reported case of abuse received from the Hotline Call Center.

We recommend for CPIs that, in order to preclude this bias of trust, a requirement to conduct investigative steps like those listed above, must be made mandatory with appropriate punitive action for lack of compliance.

We recognize that DCF has entered into a Memorandum of Agreement with the various police departments to have a police officer accompany CPIs on investigations. We would like to say at the outset that we do not feel that this is a substitute for each CPI, as an individual, gaining for themselves a greater law enforcement perspective when investigating allegations of abuse and neglect. As it is too early for us to do so, we ask that a future Grand Jury look at this issue at a point where it has sufficiently evolved for proper evaluation.

IV. PRIVATIZATION OF FLORIDA'S CHILD WELFARE SYSTEM

In 2005, child welfare services became privatized in this county. A new era had begun. Prior to that, services were the responsibility of DCF. Under the old system, once a

determination was made that a child would be removed from a home, DCF would then determine what type of services should be provided for that family or child. If the child was removed from the parent/guardian, DCF would then be charged with placing the child in an appropriate setting to ensure that the child's needs would be met and that the child would be afforded the appropriate care for her physical, mental, emotional, psychological and educational needs. DCF would also see to it that all appropriate services or counseling would be provided to that child, including foster care.

Florida now has twenty (20) Community Based Care (CBC) Lead Agencies that have contracted with DCF to tackle this huge responsibility of shepherding and processing children who end up in foster care. The CBC Lead Agencies are also involved in making sure services (more preventive in nature) are being provided to those children who are in need of services, but still living at home. Some of these CBC Lead Agencies conduct the provision of services function that used to be performed by DCF.⁸ However, many of the Lead Agencies contract with other providers (Full Case Management Agencies) that have the ability to provide such services. Our Kids is the CBC Lead Agency for Miami-Dade County, and it follows the latter model. In order to appreciate some of the recommendations contained herein, it is necessary to describe how this privatization system operates here.

Our Kids entered into a multi-year services contract with DCF to assume responsibility for intake and placement services, foster home management and child welfare case management and the administration and management of child welfare services in Miami-Dade and Monroe Counties. Our Kids contracts with Full Case Management Agencies which actually provide the intervention, prevention, shelter and group care, assessment and case management services.

Our Kids also serves as a pass through entity for federal and state dollars that are distributed to the Full Case Management Agencies who are directly providing services to the children in foster care and their families. Our Kids receives approximately \$100 million dollars annually that it uses for various purposes.

⁸ For instance, in Broward County, Child Net is the CBC Lead Agency and it actually provides services as a Full Case Management Agency.

Our Kids has entered into contracts with six (6) Full Case Management Agencies (five in Miami-Dade County⁹ and one in Monroe County¹⁰) that actually provide services to the children and parents/guardians who become involved in our Child Welfare System. When an allegation of abuse or neglect has been substantiated by a CPI and a child has been removed from a home in this county, that child (and that new case) becomes the responsibility of Our Kids, the CBC Lead Agency. Based on the child’s geographical location in the county, the child is placed in the care of one of five (5) Full Case Management Agencies (FCMAs) providing services to the foster children and their parent, foster parents or guardians. A Case Manager is then assigned to that file (and to that child) and assessments are begun on the needs of those children. Based on a number of factors including age, gender, psychological or physical disabilities, the number of siblings, etc., the children are “placed” in an environment that should be nurturing and productive. In addition to possible placement with other family members, other options for placement include having the child placed in foster homes, temporary shelters or group homes. Wherever the child is placed, the services are provided by the Full Case Management Agencies. We wondered whether having DCF contract with the Lead Agencies and then having those Lead Agencies contract with the Full Case Management Agencies was an effective and efficient model. We decided we would look next door to get a different version of how these services can be provided.

The Broward County lead agency is “Child Net.” Broward County has a population of 1,748,066¹¹, much smaller than Miami-Dade at 2,496,435¹² and consequently Child Net has a smaller budget, \$67 Million. When Child Net began in 2003, it was much the same as Our Kids. It was an umbrella/administrative organization that operated as a liaison between the State and a number of private agencies who were contracted to perform the work of caring for those Broward children in need of care. As the years progressed, a change was made. It was decided that some of the work contracted out would be better done “in-house.” That is, the work would be better done by Child Net itself. There were three reasons for this change that are relevant to

⁹ Those Full Case Management Agencies in Miami-Dade are His House Children’s Home, Children’s Home Society of South Florida, Inc., CHARLEE (Children Have All Rights: Legal, Educational and Emotional), Family Resource Center and the Center For Child Enrichment.

¹⁰ The Full Case Management Agency in Monroe County is Wesley House Family Services.

¹¹ U.S. Census Bureau 2010

¹² Ibid.

our considerations. The first was so that Child Net would have a greater hands-on understanding of the complexities of the work done in the field. Second, there was a desire to exercise greater control over consistency in performance. Finally, Child Net's administrative costs of contracting out the work could be saved by keeping the work in-house.

Therefore, we recommend that DCF require all lead agencies to handle some full case management responsibilities in-house.

V. THE CASE MANAGER

The concept of the bias of trust and the failure to grasp the whole picture is even more insidious when considered in the context of the work of the Case Manager, one of the most significant jobs in the foster care system. Case Managers are employed by the FCMAs and they "manage" the cases of the children who have been assigned to their individual caseloads. Most of the Case Managers have caseloads of approximately twenty cases. We received information that this is the average and we trust that if more kids come into the FCMAs that they will hire more Case Managers to keep the caseloads low. A manageable case load is an essential component to doing an effective job.

One of the most critical duties of the Case Manager is to ensure the well being of the children; make sure they are safe; ensure they are being fed and clothed properly, that regular doctor and dental appointments are being scheduled for them, that they are being taken to their doctor's appointment and that they are flourishing (or at least not deteriorating) in their placement.

In this case, prior to the adoption of the twins, Case Managers were assigned to manage the Nubia, Victor and other children in the Barahona home. The Barahonas had been licensed as foster parents and the Case Managers dealt regularly with them. They knew that the Barahonas wanted to adopt children. Anyone would think that the Barahonas were "wonderful people" because not only did they want to adopt children, they wanted to adopt Special Needs children. And, not just one Special Needs child, but two, having already adopted two other children.

All of this adds up to the Case Manager having an absolute bias of trust in dealing with them. Time and time again, when the red flags were waived, as pointed out in the DCF Report,

little or no follow-up or verification was done to determine the truthfulness of the surrounding circumstances of various allegations.

As with the CPI, there must be a mandatory requirement that when a problem is raised or appears, there must be a complete investigation which includes a complete review of the case file, interviews done of all third parties and face-to-face interviews done of all members of the household, again away from the subject of the investigation. Although some of this may sound very basic, it was not done here.

We have seen throughout this investigation, as well as here in the discussion of the Case Worker, that there is a “bias of trust.” In any given situation, it seems that there was blind acceptance of statements without verification. This has proved to be a very unwise bias. There is a need to adopt a more prudent and cautious approach. Verify. Corroborate. Make sure the information that is being received is accurate. Enter each case with a presumption of caution.

We recommend for Case Managers that again, in order to preclude this bias of trust, a requirement to conduct investigative steps like those listed above, must be made mandatory with appropriate punitive action for lack of compliance.

All Case Information in One Place, Accessible to All

During the course of our investigation, it became apparent that one factor that exacerbated the bias of trust issue in the Barahona case was that all the participants in the process were not aware of all the information necessary to come to a wise and sound opinion regarding the children. We learned that not all the information about the case was kept in one place and not all participants had access to all information. When a Case Manager does not have the full picture, it is even easier for the bias of trust to creep in and control critical decision-making.

There is a database and system that is used for tracking children in Florida’s foster care program. According to information obtained from DCF’s website, it is utilized by workers at Florida’s Abuse Hotline, Child Protective Investigators, Community Based Care Case Managers, Adult Protective Investigators, DCF Administration, DCF’s legal units and persons involved in licensing. All information obtained by the Case Manager should be entered into this system. If everyone who is required to do so makes entries into the system, everyone involved in the case

will have complete up-to-date information and, most importantly, the ability to see the whole picture.

With all the capabilities of the database and system and with all of the categories of persons who are supposed to input data into it, the **effective** use of this existing system would go a long way to providing thorough, up-to-date, comprehensive information on every child in Florida's foster care system. The information would also be accessible to anyone working within the system that had a need for the data. The main reason it is not effective is because all persons who have data to input are not using the system and many who are using it provide incomplete or insufficient information.

Further, we learned that despite the existence of one computer system that could have housed all the information, because of difficulties in using that system, all the FCMA's are not inputting all the necessary information into that system. Counterproductively, some FCMA's even purchased their own systems. The bottom line is there was no single place one could go and get all the information needed on what was happening with Victor and Nubia.

Picture this: a person conducting an investigation sits before a computer screen and runs a child's name or the child's family name or the name of a sibling or the foster parent's name or the parents' names or the court case number or the case management case number or the DCF case number. On the screen appears chronological information starting from the very moment that child came into the Child Welfare System and includes every single thing that has happened on that case, including scanned in medical and psychological appointments and reports, school records, records of hotline calls, dental appointments and results, motions filed in court, court orders, etc. Each is listed as an event with the current status and result. As one reads through this chronology of events, one has the full picture of all that has been going on in that child's life. One also can look at that information and look for patterns and problems, things that, standing alone, may mean nothing, but when seen together, paint a picture that requires further investigation. This is what Nubia and Victor needed. Someone who could view everything about their lives in one place and then see what is now obvious to everyone. That something was terribly, terribly wrong.

As a nation, we have for over a decade recognized that one of the great failures leading to September 11, 2001, was the lack of information (or intelligence) coordination. Our national

security was threatened, many would argue, because of our fractured and disjointed system of information gathering and storing. We have made great strides in first, recognizing that as a basic problem and, second, in doing something about it. Yet, that very same theory has not been applied to child protection. It is time that we do. To correct this problem, the first order of business then would be to have one system where all the information about a case can be maintained.

*We recommend that DCF develop a policy that requires strict compliance by all persons who are required to input data into **one** database system. This will apply to all DCF employees and all agencies involved in the Child Welfare System including all Lead Agencies and FCMA's.*

*We recommend that DCF develop a policy that will impose discipline or punitive measures for those who fail to comply with the strict policy to input all necessary data in the **one** database system. This will apply to all DCF employees and all agencies involved in the Child Welfare System including all Lead Agencies and FCMA's.*

The Case Manager Must Recognize Red Flags and Patterns

It has been suggested to us, and we wholeheartedly agree, that there must be a point person, someone who will take charge of each case. In other words, there must be one designated person who has the responsibility of knowing everything about a case and making absolutely sure that knowledge is communicated to every person who has a need to know the information. The most logical and best way to accomplish this is to assign the Case Manager the job of being the point person. This has been referred to in testimony as “owning the case.” Part of owning the case is the responsibility to recognize red flags. This responsibility goes further to include the requirement of recognizing patterns that are readily apparent when one views all the events in one case, in one place.

Our Kids has recognized, in it's Corrective Action Plan, the need for a Case Manager to own the case. We believe this needs to be taken one step further. We looked in detail at a list of the red flags in this case. When we looked at that list, all in one place, we were left with such an undeniably clear picture that we failed to see how anyone could have missed the point that the Barahonas never should have been re-licensed as foster parents, much less received approval for adoption. To make the point, the list follows.

- April 2004: Caregiver (foster parent) needs to be involved in Nubia and Victor's lives and school progress
- December 2004: Nurse informed Case Manager that

- Nubia had missed follow-up medical appointments for a year (needs to see doctor three times a year for Special Needs issue)
- Foster parent never goes with children to doctor, has transportation take them
- The child is not in a good placement because the foster parent does not care for the child's well-being
- Nurse recommended medical foster home
- Nurse expressed concern if child is adopted by this caregiver as she would have sole responsibility to care for the child
- The children have not had their 4-year-old shots
- Doesn't know how the children are in daycare without having had their 4-year-old shots
- January 2005: DCF abuse report (Hotline call)
- February 2006: DCF abuse report (Hotline call)
- November 2006: Nubia has 9 excused school absences
- March 2007: DCF abuse report (Hotline call)
- April 2007: Nubia has 19 excused school absences
- April 2007: Nubia having academic difficulty due to court and psychological evaluation
- April 2007: Victor has 13 excused school absences
- May 2007: Victor has school psychological case opened
- May 2007: Guardian ad Litem objects in Court to continued placement of the children with the Barahonas (Court held hearing, found placement safe and appropriate. In addition, it is important to note that at some point during the pre-adoption period, the Guardian ad Litem was barred from the Barahona home due to inquiries made with the school. According to the DCF report, Guardian ad Litem was dismissed from the case to "smooth things over with the Barahonas.")
- June 2007: Children psychologically evaluated at request of Guardian ad Litem attorney, brought to evaluation by caregiver
- June 2007: During psychological evaluation, both children scored for depression, Nubia moderate, Victor mild, recommendation for individual therapy for each child, thoughts of suicide were evident and Nubia stated that she thought something terrible was going to happen to her
- September 2007: Victor and Nubia have to repeat first grade
- November 2007: Nubia has 6 school absences, 3 unexcused
- November 2007: Victor has 3 school absences, 2 unexcused
- December 2007: Case Manager unable to see the children in the home, Case Manager attempted two unannounced visits to the home after learning that the phone had been disconnected, children seen at school and no concerns for their safety noted. (In the DCF report there is reference that the Case Manager documented that at one visit no one answered the door even though voices could be heard inside the home; during another home visit the Case Manager was told that Nubia was at day care, however Nubia was not found there when the Case Manager followed up that day.)
- November 2008: Nubia has 7 unexcused school absences due to lice; caregiver's failure to provide medical documentation
- November 2008: Recommendation for updated medical examinations

- Supervisory review notes that “foster parent seems to have become less enthusiastic about providing documents timely”
- December 2008: Recommendations again that children need updated physical examinations
- January 2009: Nubia has 10 school absences year-to-date
- February 2009: Children still need updated physical examination
- March 2009: Children still need updated physical examination
- March 2009: Nubia has 13 school absences (11 excused) year-to-date
- March 2009: Decision made that if abuse reports found “no indicators” then no need to “staff” if no other concerns and if nothing else in file that indicates licensing violations then the cases do not need to go to committee
- May 2009: Adoption finalized
- Post-adoption/June 2009: DCF abuse report (Hotline call)
- Post-adoption/Summer 2009: Withdrawal from public school for homeschooling

Again we repeat, how could anyone have missed the looming disaster if they had read all of this information in one place and at one time? Even if someone was reading it over the course of time, at different intervals, patterns were still recognizable early on, and increasingly, as time went by. Immediately prior to the finalization of the adoption, alarm bells should have been going off for all to hear. Case Managers, with their newly imposed responsibility of owning the case, must forever be charged with the obligation of regularly reviewing all events in a case and recognizing the meaning of red flags such as these.

It might be said that many of the above events, if viewed separately, would indicate nothing. After all, no one is perfect, no parent and no foster parent. But the difference here is that each of these did not occur in a vacuum. Each of these events occurred in the lives of two very specific children, two children who were the subject of hotline calls and who ended up being victims in a system that should have been more aware of the suffering they endured.

VI. THE PRE-ADOPTION PROCESS

The Barahonas sought to become adoptive parents after they were licensed for years as foster parents. After obtaining their initial license they renewed the license for several years. Interestingly enough, DCF’s website provides the following statement about persons seeking to become licensed foster parents in Florida:

When we receive your application, we will review our records. If you have been investigated by the department in the past, you may not be eligible to become a foster parent.¹³

Had the same standard been applied to the Barahonas when they sought to obtain their initial foster parent license, they might not have been cleared. Had these reports and allegations been made about abuse committed by the Barahonas on their own children, DCF's Child Protective Investigators might have done a more exhaustive inquiry.

Florida's Explore Adoption¹⁴ website provides the following information for Florida families who are seeking adoptions:

Although the process may vary slightly depending on where you live, the road to adoption normally includes an orientation session, an in-depth training program to help you determine if adoption is right for you and your family, a home study and a background check. This process can usually be completed within less than nine months. Once the process has been completed, you are ready to be matched with a child.... The Model Approach to Partnership in Parenting (MAPP) is a ten-week training and preparation course that adoptive parents are required to successfully complete. . . . All of this information is gathered into a home study packet and sent for approval to an adoption specialist.... The purpose of the home study is to make sure you can provide a child with a safe and secure home. . .¹⁵

Florida's Explore Adoption website further provides that after the child is placed in the home, a counselor must make monthly visits in order to assess the child's adjustment and to determine whether new or additional services are needed. The supervision period ends when the counselor provides "Consents to Adopt" to one's attorney. Usually a child lives with the adoptive family for six months before the adoption is finalized.¹⁶ It would appear that these practices do not apply when the adoption is being done by a foster parent and the child is already in the home.

The state's goal for its foster children is to find safe, permanent homes for them as soon as possible. Florida families adopted a record number of foster children in 2007-08, when 3,674 adoptions were successfully completed. Florida again set a record in 2008-09 with 3,777

¹³ <http://www.dcf.state.fl.us/programs/fostercare/amiready.shtml>

¹⁴ "Explore Adoption," is a statewide adoption initiative aimed at promoting the benefits of public adoption and urging families to consider creating or expanding their families by adopting a child who is older, disabled or part of a sibling group. <http://www.adoptflorida.org/about1.shtml>

¹⁵ <http://www.adoptflorida.org/about2.shtml>

¹⁶ *Id.*

adoptions of children in foster care.¹⁷ We wondered whether the goal of increasing the number of adoptions is at odds with the goal of ensuring the safety and security of the children in the foster care system. Are we in such a rush to get the children into a permanent placement that we are failing to take a long hard look at the persons seeking to adopt them? If the Barahonas had not served for so many years as foster parents would they have been subjected to more intense scrutiny as a result of the numerous calls to the Hotline? We appreciate, and applaud the efforts of all of the agencies and individuals who have been responsible for increasing the number of adoptions of foster children, however, we cannot be so driven by increasing those numbers that we end up taking children out of one hell-hole to simply place them in another one that has been sanctioned by the State of Florida.

A great deal of discussion was had about the psychological evaluations that were conducted of Nubia prior to her adoption by the Barahonas. We note that in the years prior to the adoption the Barahonas, after initially being approved to be foster parents, reapplied and were summarily approved each succeeding year. The subsequent approvals occurred even with the presence of several reports of alleged neglect and/or abuse. Notwithstanding the fact that the reports were not substantiated, we believe just the existence of so many reports within this time period required additional scrutiny of these foster parents. If the investigators had done an effective job, the cumulative impact of what they would have discovered was that the Barahonas failed to take Nubia or Victor for their regular doctor visits or dental checkups, they were neglecting the children by failing to feed them properly or see to their grooming and the Barahonas lied to the Case Manager and DCF regarding medical issues that were occurring with Nubia. When they sought to be re-licensed, a more detailed re-evaluation might have revealed that the Barahonas no longer qualified to serve as foster parents, especially for Special Needs children like Nubia and Victor.

More importantly, just as the children were given psychological evaluations before the adoption process was completed, we believe the Barahonas should also have received such evaluations. We received information that for some private adoptions, the entities processing the adoptions require that some prospective adoptive parents also submit to a psychological evaluation. Had such an examination been conducted in this case, it might have precluded the

¹⁷ <http://www.dcf.state.fl.us/initiatives/fostercare/docs/BecomingaFosterorAdoptiveParentFACTSHEET111909.pdf>

adoption of Victor and Nubia by the Barahonas. It is pretty evident to us that at that time, they were not, if ever, fit to serve as foster parents, let alone, qualified to adopt a set of Special Needs twins. The sad irony here is that these two children were taken from their natural parents because of concerns of abuse and neglect, only to be placed in the care and custody of persons who neglected them and inflicted more abuse than their parents ever did.

We recommend that psychological evaluations be done of foster parents who seek to adopt children from Florida's Child Welfare System.

*We recommend that persons who have been approved and authorized to serve as foster parents be required to undergo a **full** re-licensure every two (2) years to ensure they still meet the criteria to serve as foster parents.*

We recommend that foster parents who are the subject of allegations of abuse or neglect of their wards be placed on some form of probationary status that requires more frequent visits and checks on the children in their care. We further recommend that any such probationary period be no less than six (6) months.

VII. THE POST-ADOPTION PROCESS

After the Barahonas completed the adoption of Victor and Nubia, they contacted DCF and advised that they no longer wished to serve as foster parents, claiming that their "family was now complete." It is apparent to this Grand Jury that one of the benefits of taking that position is it guaranteed that no more Guardian ad Litem or snooping Case Managers would be in and around the Barahona house. Coupled with the decision to pull the children out of public school, it also guaranteed that there would be fewer eyes observing the condition of the children. One of the most telling facts that corroborates this view is the fact that the Barahonas failed to request any "post-adoptive services" for themselves or for Nubia and Victor. Once Nubia and Victor were adopted, the Barahonas had a total of **three** (3) Special Needs¹⁸ children in their custody. The local community-based care agency that assisted them in completing the adoption provides support such as information and referral services, support groups, adoption-related libraries, case management and training. To find out what options were available, all the Barahonas had to do

¹⁸ "Special Needs" is a term used in federal rules to describe certain children eligible for financial assistance in the adoption process. It does not mean the child necessarily has a disability. In the state of Florida, one or more of the following criteria qualifies a child for Special Needs assistance: Age 8 or older; Member of a sibling group being placed for adoption together; African American or racially mixed; Significant emotional ties with foster parents or a relative caregiver; or Mental, physical or emotional handicap.

<http://adoptflorida.org/about5.shtml>

was talk with their adoption counselor or contact the Department of Children and Families' Regional Office. A review of the case file would have revealed that the Barahonas were not even keeping up with taking Victor and Nubia for their regularly scheduled medical visits. It defies logic that they would not (or did not) need assistance in meeting all of the other challenging present and future needs of these three young children. Had such services been provided, it would have afforded others not in the Barahona household an opportunity to observe these children. Such regular visits should have resulted in the earlier discovery of the physical abuse that the children were experiencing.

The unfortunate consequence of the Barahonas' failure to request the no-cost, post-adoptive services for these children is that they had made a conscious decision that services they knew these children needed (and should have been receiving) were not going to be available for these children. The fact that they were becoming the permanent parents of children with these needs and were not also providing the services needed to ensure their safety and security is just another form of neglect.

We recommend that DCF institute a new mandatory policy for all adoptive parents who adopt Special Needs Children. Any person who adopts a Special Needs Child will be required to receive services from the CBC Lead Agency or Full Case Management Agency that was previously assigned to that child. Post-adoptive services for Special Needs Children shall be provided for at least the first twelve (12) months after the adoption has been completed.

We recommend that prospective adoptive parents who do not agree to receive the minimum twelve (12) months of post-adoptive services for Special Needs Children be denied the opportunity to adopt such children.

VIII. WITHDRAWAL OF THE CHILDREN FROM SCHOOL

Throughout the Barahona chronology of events, there were numerous red flags that, had they been recognized as such, probably would have saved Nubia from death and Victor from torturous injury. The failure to recognize these red flags for the most part has been admitted by DCF and Our Kids and remedies have been implemented. DCF did what one would think is a comprehensive review of all of the problems highlighted by the Barahona tragedy. Those findings are included in a sixteen (16) page report with attachments detailing many of the issues that arose. For the most part, it is a comprehensive review with many remedies mandated in a very tight time frame. Our Kids, at the direction and insistence of DCF, put together a 12-page

Corrective Action Plan. While we applaud DCF and Our Kids for their critical self-reviews, we must point out a glaring absence: The failure to recognize the withdrawal from school as a red flag.

The DCF report on the Barahona case mentions, in its “Summary of Case History” specifically on page 4 the fact that subsequent to the closure of the Hotline referral about Nubia’s unrelenting hunger and hair loss, that the children were voluntarily withdrawn from the public school system as the Barahonas intended to homeschool their children. There is no other mention of this anywhere in the report, no recognition of this as a red flag and of course, no implemented remedy.

The Our Kids Corrective Action Plan fails to mention this in any way. We recognize that Our Kids is not very involved in the post-adoption phase, except to offer post-adoption services. In fact, there is a section in its corrective plan about post-adoption services, but no mention of this particular issue as a potential red flag. Both agencies fail to mention this despite it having been pointed out as a glaring problem in The Nubia Report. Why was this ignored? Whatever reason it was not mentioned, we feel it is imperative that this issue be discussed in this report.

Homeschooling, or Home Education, as described by the Florida Department of Education website, is a “parent-directed educational option that satisfies the requirement for regular school attendance... Parents have the freedom to determine their child’s educational path and the plan for reaching their goals. Students have the opportunity to explore and learn at their own pace, in any location or at any time.” All of the Barahona adopted children were in our public school system, that is, until the Barahonas took out Victor and Nubia. The simple fact that the Barahonas left their other children in the public school system should have caused someone some discomfort.

The staff and personnel at the Miami-Dade County Public School System act as numerous sets of eyes to observe watch out for and ensure the well-being of our children. Sometimes teachers and school counselors are the frontline soldiers who often are the persons calling the Abuse Hotline to report bruises or swelling on little Johnny or Susie. They see these children every day and often times have more interaction with them than their parents. They are able to detect changes and problems affecting the children attending their schools. Such was the case here.

Nubia's teachers took note of her condition, and on two occasions, reported their observations to the DCF Hotline. After the June 9, 2010 call, and the only call post-adoption, (the adoption was finalized on May 29, 2009) the Barahonas removed **some** of their children (i.e., Victor and Nubia) from the public school system to homeschool them, thereby isolating Victor and Nubia from view and themselves from scrutiny. It should also be noted that the Barahonas had four adopted children. Only Nubia and Victor were the objects of the Barahonas abuse and torture. Only Nubia and Victor were the named children in the allegations of abuse. Only Nubia and Victor were withdrawn from school by the Barahonas. That factor should also have been a red-hot warning sign that something was terribly, terribly wrong.

We are not taking issue with the concept of homeschooling. We are taking issue with adoptive parents who, after having complaints lodged against them concerning the care of their adoptive children, after complaints not only post-adoption but pre-adoption as well, use homeschooling as a ruse to cover up their abuse of the children. This alone should have been enough of a red flag to have caused sufficient action to have kept these children in the public eye and maybe, just maybe, have saved the life of Nubia and protected Victor from the harm he suffered.

The procedure to establish a home education program, in other words to begin homeschooling one's child, is set out in Florida Statute 1002.41. It begins with the requirement to send a written notice of intent to the school district superintendent. The superintendent should be required to forward the Notice of Intent to DCF. We believe this would be the ideal moment at which a simple check should be made to determine whether there have been any abuse or neglect reports that would make the intent to homeschool a red flag. If there have been abuse or neglect complaints, the obligation to guarantee the safety of our community's children requires that an investigation be launched by DCF to make sure motives are pure and covert child abuse is not the true goal. Once that initial determination is made, a period of monitoring by DCF should follow to further ensure the safety of those children.

Therefore, we recommend that in instances where parents, adoptive or not, opt for homeschooling, that the statutorily required written notice of intent be forwarded to DCF to determine if any reports have been made to the DCF Hotline, whether ultimately founded or unfounded, substantiated or unsubstantiated, and, if so, be the immediate subject of investigation by DCF and a period of monitoring by DCF.

IX. CONCLUSION

For those agencies and persons involved in overseeing the children who end up in our foster care program, they cannot do an effective job if they do not have the whole picture. When you only have part of the whole picture, it is not possible to embark on the correct path to protect our children. We thought of the following.

The story of the blind men and an elephant is a story used to illustrate a range of truth and fallacies. It has provided insight into the inability to recognize truth or to come to accurate conclusions or to make the right choices based on partial information. It makes the point of explaining the behavior or action or, more importantly, inaction of some where there is a deficit or inaccessibility of information and the need for communication.

The story is a simple one. One version of the story goes as follows:

Six blind men were asked to determine what an elephant looked like by feeling different parts of the elephant's body. The blind man who feels a leg says the elephant is like a pillar; the one who feels the tail says the elephant is like a rope; the one who feels the trunk says the elephant is like a tree branch; the one who feels the ear says the elephant is like a hand fan; the one who feels the belly says the elephant is like a wall; and the one who feels the tusk says the elephant is like a solid pipe.

Although each man was partly right, they were all wrong. In our Child Welfare System, there are those who have behaved like the blind people and the elephant. Each had part of the information, but not the whole. One cannot come to the right conclusion or embark on the proper approach to guarantee or ensure the safety of our children if one does not have the proverbial “full picture.”

To make matters much, much worse, in this case there was an utter failure to have the full picture **and** there was a persistent, insidious bias of trust. Here, these two factors combined to exponentially raise the risk of disaster. Murder was the result.

Let Nubia not have died in vain. Let us take these lessons to heart and implement solutions in a way to eliminate the bias of trust, to ensure the enlightenment gained from having the full picture and thereby better protect all children in the future.

The Nubia Report

The Investigative Panel's Findings and Recommendations

Panel: David Lawrence Jr., Roberto Martinez, Esq., Dr. James Sewell



Presented to:
David E. Wilkins, Secretary
Department of Children and Families

March 10, 2011

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Preface

The image of Nubia - golden hair and smile framed by pony tails, sitting up straight and facing the future - is with us forever. Hers is the very picture of life and childhood in bloom - green eyes and good heart eager for what life might bring.

Nubia never had the life she wanted, the life she deserved. Her life was short. Not even 11 years. Full of horror, ending in horror. Her final screams and cries cannot leave us, should not leave us.

We do not want to call her "Nubia Barahona" because she didn't deserve to have that last name. So we will not. Just "Nubia."

All children begin with innocence. No child deserves to have innocence taken. Nubia's was ripped away. That makes us weep. And angry.

When terrible things happen, we are obliged as people to learn lessons - and apply those lessons. Shame on us - all of us in Florida - if we cannot learn from this so other children have a far less chance to have such horrors visited upon them.

The courts will decide the fate of those charged criminally in this case. The rest of us - you, us, all of us -- have much else to do. We three citizens of Florida went through more than 15 hours of testimony and several thousand pages of documents, and see so clearly this:

The red flag of caution and warning was raised many times: By teachers and principals, by a Guardian Ad Litem (GAL) and her attorney, by a nurse, by a psychologist, by Nubia's "family" stonewalling the search for fundamental information.

But nobody seemingly put it all together.

We do not seek to condemn all the people of the Department of Children and Families (DCF) nor all the people of Our Kids (the community-based care oversight group and its subcontractor agencies). We are sure that many of them are good and caring and skillful professionals who work to preserve to keep families together when they should be together, and work hard to do right by each and every child. We also know that some of them are substantially undercompensated for what is frequently the toughest sort of challenges. But none of us should be permitted to use those sorts of things as an "excuse," or say, or think, "mistakes happen." Though surely they do, mistakes must be seen as inexcusable when they involve human life, most especially the lives of the most vulnerable.

In Florida we talk about a "system," but we are far from a real "system." We would be much closer to a genuine system if the operating principle in the case of every child in the child welfare system was this: We will insist that every piece of relevant information to a child's life and future is available in one, constantly updated place where everyone

responsible for that child's well-being could see that information, discuss it, assess it. And we will apply critical thinking and common sense -- always. None of this happened here. For these and other reasons, Nubia died. Horribly.

We do not seek a bigger bureaucracy. Over the years process upon process, bureaucracy upon bureaucracy, have been added to the workload of case managers and child protective investigators and others who work in the field of child welfare. Indeed, steps should be taken to minimize "process" and "bureaucracy," substituting such with making sure we have employed and trained and advanced and compensated fairly the best, most skilled, most caring professionals - and then demanded from each not only those skills, but a great heart and real common sense. Speaking to common sense and effective listening, who within the system worked effectively to hear what Nubia and Victor were trying to say? That sort of listening requires healthy skepticism on everyone's part - the protective investigator, the case manager, the Guardian Ad Litem, Children's Legal Services, the court, the therapists. Remember that so much about the narrative was woven and manipulated by Mrs. Barahona. Moreover, it seems to us, case managers and child protective investigators seemed often - and it turns out - wrongly enthralled by the psychological report. The report, as Dr. Walter Lambert so clearly testified, was patently incorrect. In fact, children have considerable resilience at the age of these children to go through planned and trauma-sensitive transitions. Thus, a conclusion that a change in foster parents would destroy them is absurd.

What we heard makes clear that everyone seemed to be relying on professionals who were either unaware of all the research in trauma-sensitive transitions or not making an effective analysis of the information available because, among other things, professionals were not listening to, or taking into account seriously enough, what the children were saying. In Nubia's case this included well-documented depression and fear that something terrible was going to happen to her. (And it did.) As parents we know if we had heard this about our own children, we would have searched - immediately and relentlessly - for the roots of this fear and depression and wouldn't have accepted a simple referral to a therapist as an answer anywhere near complete.

Unlike previous blue-ribbon panels following the deaths of Rilya Wilson and Gabriel Myers - upon which two of us have served - we have sought, at the direction of the new secretary of DCF, recommendations arrived at more quickly so they can be implemented as immediately as practicable. We give you, then, recommendations along two paths:

One: Recommendations that can be addressed and applied within the next 90 days.

Two: Recommendations that will require exploration, take longer and may well involve legislative and gubernatorial action and leadership.

In the name of Nubia, and all the children of our state, we thank you for the privilege of service.

David Lawrence Jr.

Roberto Martínez

Dr. James Sewell

Introduction

On Feb. 14, 2011, 10-year-old Victor Barahona and his adoptive father, Jorge Barahona, were discovered next to their family vehicle on the side of Interstate 95 in Palm Beach County. Responding law enforcement personnel determined both Victor and his father were in dire need of emergency medical assistance; officials also detected toxic fumes emanating from the vehicle. Both father and son were suffering from what appeared to be chemical burns to their bodies. After Victor and his father were hospitalized, the body of Victor's twin sister, Nubia, was discovered in the trunk of the vehicle.

On Feb. 15, the Miami-Dade Police Department notified DCF that the father had confessed to causing Nubia's death, reporting that he and the mother allowed the child to starve to death. The father told police he also had planned to kill his adopted son and commit suicide, but had failed to follow through successfully. Both parents have been charged with first degree murder.

The Barahonas' other two adopted children were taken into protective custody and placed in a therapeutic foster home.

At the time of Nubia's death, the department had an open investigation on the family due to allegations of bizarre punishment and physical injury.

Independent Investigative Panel

As a result of the issues in this case, on Feb. 21, DCF Secretary David E. Wilkins established an independent investigative panel to examine this case and other issues involving the Barahona family. Specifically, the charge to the panel was two-fold:

- First, to determine what went "wrong" and what went "right," and make recommendations that can be achieved within the next 90 days;
- Second, to identify other issues and practices that the department and its contract providers must review in depth over the coming months and which ultimately may involve changes in law or policy, as well as in child welfare practices.

Secretary Wilkins asked three individuals to serve as members of this panel:

- David Lawrence, Jr., president of The Early Childhood Initiative Foundation and chair of The Children's Movement of Florida.
- Roberto Martínez, Esq., former U.S. Attorney for the Southern District of Florida and currently a member of the State Board of Education.
- James D. Sewell, Ph. D., retired Assistant Commissioner of the Florida Department of Law Enforcement.

In preparing its findings and developing its recommendations, the panel held five public meetings at the Rohde State Office Building in Miami:

- Feb. 25
- March 1
- March 3
- March 7
- March 10

The panel heard presentations and testimony from 24 individuals who were invited or requested the opportunity to speak; a number of these appeared several times before the panel.

In addition to these presentations, members of the panel reviewed myriad materials, including studies, reports, previous investigations, statutes, operating procedures and model policies related to the Barahona case. At the written request of State Attorney Michael F. McAuliffe, and so as not to jeopardize the active criminal investigation, the panel focused its review on material and information received prior to the onset of the criminal investigation that began Feb. 14. Copies of all material provided and PowerPoint presentations made to the panel are maintained on the website created to ensure the transparency of this process (www.dcf.state.fl.us/).

Findings

- (1) The court-ordered psychological evaluation of Nubia and Victor performed on Feb. 12, 2008 by Dr. Vanessa Archer recommending adoption of Nubia and Victor by the Barahonas to be “clearly in their best interest” and “to proceed with no further delay” --- failed to consider critical information presented by the children’s principal and school professionals about potential signs of abuse and neglect by the Barahonas. That omission made Dr. Archer’s report, at best, incomplete, and should have brought into serious question the reliability of her recommendation of adoption. Several professionals, including the Our Kids’ case manager, the GAL, and the Children’s Legal Services attorney, as well as the judge, were, or should have been, aware of that significant omission, and yet apparently failed to take any steps to rectify that critical flaw in her report.
- (2) There appears to have been no centralized system to ensure that critical information (e.g., the schools’ concerns, the children’s academic troubles, and the reasons for the court-ordered evaluation) was disseminated to and examined by the psychologist, or that participants informed about the particulars of the case (e.g., the case manager, the DCF attorney, the GAL and the GAL attorney) followed through in reviewing the evaluation. In September 2007, a School Multidisciplinary Treatment Team found that Victor was demonstrating poor academic progress and would be repeating first grade; yet, in a report to the court on Feb. 22, 2008, Dr. Archer says, “while both children are in special educational classes, they are excelling academically.” Information about the children’s academic performance is readily available online from the Miami-Dade Public School System and could

have been accessible by the psychologist if she had been authorized to use the children's parent portal. It should be noted that the panel was provided an administrative law judge's opinion in another case in which Dr. Archer's "acquisition of her entire factual basis for her testimony commenced 10 minutes prior to entering the hearing room. At that time, she reviewed medical notes, consulted with [department counsel] and met with the child and the foster mother, briefly." The Administrative Law Judge on that case referred to this as a "drive-by diagnosis."

- (3) The delay of more than five months to perform the psychological evaluation ordered by Judge Valerie Manno-Schurr appears inexcusable in light of the fact that it was compelled by the very serious concerns raised by the principal and teacher at the children's schools about the safety of Nubia and Victor in their foster home. In total, about 11 months lapsed between the date the GAL attorney and the Abuse Hotline received the concerns from Nubia's school on March 20, 2007 and the date Dr. Archer's report was filed with the court on Feb. 22, 2008.
- (4) While this case was complex there were throughout a number of visible, but neither comprehensively nor effectively handled, red flags that should have resulted in further review. Throughout the life of the case, the GAL, school personnel, and a nurse practitioner raised concerns that should have required intense and coordinated follow-up. The troubling nature of these flags, were largely ignored. Behavioral concerns and difficulties in school performance also should have generated a more integrated response in which the concerns of all parties could have been considered and reconciled.
- (5) This case spanned a number of years and a large number of reports. Significantly, much of the documentation was incomplete or inadequate, and it was difficult for this panel, as well as staff concerned with quality assurance, to reconstruct what actually occurred, who was or should have been involved, and the results of any action taken. This is at best sloppy note-taking.
- (6) Process can give a false sense of complacency to those involved in the system. Simply checking off a box on a standardized form, observing children during a brief visit, or conducting a pro forma evaluation without considering all the issues that impact a child do not eliminate the need for reasoned judgment. Critical thinking, common sense and a sense of urgency were lacking at points throughout the life of this case.
- (7) As we have seen in other cases in the past, no one accepted the role of "system integrator" with responsibility to ensure that each individual involved shared and had access to all pertinent case-related information, including allegations of abuse. That point person needs to be the case manager who ensures that all of the information is blended into a useable format. As in other cases, the Our Kids case manager, GAL, GAL attorney, DCF Children's Legal Services attorney, and psychologist each had specific responsibilities. But no

single person came to the fore and said, "I am responsible." We cannot let that happen again.

- (8) The school system served as an independent barometer of issues occurring in the lives of Nubia and Victor, and both kindergarten and elementary school personnel were willing to be involved in raising the issues in an appropriate forum, including testifying in court hearings. These school personnel deserve to be commended for their diligence as caring professionals. After the end of the 2009-2010 school year, the Barahonas chose to home school the children, taking away most of their visibility to outside eyes and increasing the danger that abuse and neglect would go unrecognized. This was further compounded by the lack of formal requirements relating to the monitoring of students being home schooled.
- (9) DCF and Our Kids discussed with the panel a number of new practices that have been implemented since these children were first put into foster care and that should reduce some of the concerns we saw in this case. The model of Structured Decision Making (SDM), used in Miami-Dade County by both child protective investigators and case managers, appears to offer an organized approach to assessing safety, risks, potential future harm, and the needs of the family but only if correctly and consistently applied and takes into account all known facts and circumstances. Enhanced use of technology could reduce some of the paperwork burden of the investigators and case managers and ensure better and more real-time communication among the elements of the child welfare system. But technology should never substitute for the exercise of critical thinking, sound judgment and common sense. Technology should be used to augment and enhance those skills.
- (10) While Our Kids has discussed expanded post-adoption services now available in Miami-Dade County, the panel cannot emphasize more strongly the necessity to ensure that adoptive parents understand the resources that are available. That alone may not suffice. Appropriate follow-up by the case management agency must support the use of such services to meet the family's unique needs.
- (11) Early in this case, the biological father suggested that a family placement with his sister and brother-in-law was more appropriate than with foster parents. Delays in using the Interstate Compact on Placement of Children to accomplish this and the opinion by Dr. Archer that removal from the Barahona family would be detrimental to the children resulted in this not being considered a viable option.
- (12) Throughout the case, there is evidence that the Barahonas did not ensure the mental and medical health of these children. On several occasions in the file, Victor's dental needs are noted, and, as early as December 2004, a nurse practitioner noted concerns about both Nubia missing appointments and the failure of the foster mother to accompany her to appointments she did keep. On Aug. 8, 2008, the Foster Care Review Panel expressed concerns that

Nubia had not received therapy, noted that this panel had recommended such therapy at a previous meeting, and that an earlier evaluation had found Nubia to be depressed, thinking about killing herself, and afraid that terrible things might happen to her. The case record for Nubia provided to the panel by Our Kids contains scant documentation about health care services received.

- (13) The panel is extremely concerned about the accountability of DCF child protective investigators for their on-the-job performance. Data provided to the panel indicated that of 58 investigators evaluated during the last annual performance appraisal period, five had less than satisfactory performance evaluations (three of whom were supervised by a supervisor on a corrective action plan for poor performance). One of these was placed upon a performance improvement plan; one was transferred to another unit; one demonstrated improvement and is being re-appraised; and two had no action taken. The child protective investigator responding to one of the abuse reports of Feb. 10 was one of the employees who had received a less than satisfactory annual rating. (Currently, three CPI supervisors also are on corrective action plans for job performance.)
- (14) We appreciate the openness of discussions by the majority of those who appeared before the panel. Honesty, candor and transparency are critical to the continued improvement of our child welfare system. However, we must note that the presentation by Delores Dunn, the CEO of the Center for Family and Child Enrichment (CFCE), the case management organization contracted by Our Kids for Nubia and other foster children, was unsatisfactory. In her prepared comments, she repeatedly failed to demonstrate a grasp of the basic facts surrounding the work of her case managers. Her “stage handling” by Fran Allegra, CEO of Our Kids, Inc. and Alan Mishael, Counsel retained by CFCE created suspicions as to what, if anything, they were trying to hide, with both of them answering for her or whispering in her ear while the panel was posing questions. None of this contributed to the candid discussion we expected; instead, it resembled the “circling of the wagons” seen in some past reviews of cases occurring within Florida’s child welfare system.
- (15) On June 9, 2010, the Abuse Hotline received a call from Nubia’s school detailing comprehensive allegations of explicit neglect, including that Nubia’s hunger was “uncontrollable, that she had an unpleasant body odor, and that she was very thin, nervous, and losing hair.” The report was assessed as a “special conditions” referral, indicating that it did not constitute an allegation of abuse, abandonment, or neglect, but still required a response by DCF to assess the need for services. That report was closed on June 24 with no services recommended. The parents apparently were offered services, but said they were already receiving what they needed. Based on our review of the entire series of cases involving Nubia, the panel finds that the allegations should have been treated as a case involving abuse or neglect and that Our Kids should have been involved in identifying and providing post-adoption services. This was the last call to the Abuse Hotline from the school system. The children were removed by the Barahonas from the school system for the

2010-2011 school year and presumably “home schooled.”

- (16) The response to a Feb. 10, 2011 call and two subsequent calls to the Abuse Hotline concerning abuse of Nubia by the Barahonas was replete with errors and poor practices and stands out as a model of fatal ineptitude. Abuse Hotline personnel initially classified the call as needing a response by investigators within 24 hours, when it should have mandated an immediate response and a referral to law enforcement; another call received on Feb. 12 also was misclassified as needing a response within 24 hours response when it, too, should have required the immediate attention of an investigator. Three calls received within 48 hours about the Barahonas were considered wrongly - - and stupidly -- as three distinct events, and the investigative responses were not coordinated from the onset. The SDM instrument developed after the initial on-site review of the Barahona home was completed incorrectly and did not take into account the absence of Nubia or Victor or their potential danger; consequently, the investigator found no concerns for the safety of the other children in the home. An initial supervisory review completed late on Feb. 12 was conducted by a supervisor, did not take into account all the facts of the case, and failed to identify investigative deficiencies or add a sense of urgency to the activities of the child protective investigator. At no time prior to Feb. 14 was law enforcement advised of these abuse allegations or DCF's inability to locate the children.
- (17) The panel is concerned about efforts to recruit, train, reward and retain child protective investigators. The starting salary for a DCF child protective investigator in Miami-Dade County is \$34,689. Comparable salaries are in the \$40,000 range for Broward CPIs, located under the Broward County Sheriff's Office, and Miami- Dade case managers working for Our Kids. In short, many top performers leave this stressful job and are paid more money in the process. Thirty-nine investigators have been hired since July 2010, with 10 of these still in training and not yet with a caseload. An additional eight vacancies currently exist, and three more are anticipated in the near future.
- (18) Foster Care Review, a not-for-profit organization, supports the Juvenile Court in monitoring the safety, well-being and permanency of children living in the child welfare system in Miami-Dade County. Its volunteers serve on citizen review panels that conduct legally required judicial reviews of 13-15% of foster children in out-of-home care. Nubia's case was presented to a citizen review panel on eight separate occasions over the last three years she was in the foster care system, prior to her adoption by the Barahonas. We were impressed with the Foster Care Review potential and would hope it would be expanded and used in many more cases.
- (19) In 1993, the Legislature authorized the then Department of Health and Rehabilitative Services to enter into agreements with sheriffs' offices or police departments to assume the lead role in conducting criminal investigation of child maltreatment, as well as other aspects of child protective investigations. In 1997, the Manatee County Sheriff's Office was the first to assume

contracted responsibility for child protection investigations. Since then, seven county sheriff's offices have assumed responsibility for child abuse investigations in their jurisdiction. According to a 2010 report by the Office of Program Policy Analysis and Government Accountability (OPPAGA), the costs for a sheriff's office generally exceed DCF costs for child protective investigations. But there are significant benefits, including enhanced resources, additional equipment (including vehicles and technology), enhanced entry-level training, better training consistent with law enforcement needs, standardized uniforms, better office space, better salaries, and greater assistance and cooperation with law enforcement. (This same OPPAGA report found no meaningful differences between sheriffs' offices and DCF in short-term outcomes for children as measured by subsequent maltreatment within three to six months when an investigator did not originally substantiate maltreatment, nor were there significant differences in the rate of substantiation of allegations of maltreatment between the two bodies.)

- (20) Much of the necessary information raising red flags and identifying the service needs of the Barahonas was present in documents contained within the system. A serious deficiency, however, was the failure of individuals involved in the case to talk with each other rather than relying on inadequate information technology. Many of the communications problems that can be identified in this and other cases can be overcome by prompt and coordinated interpersonal interaction among those involved in the care of the child. We emphasize: There is no substitute for critical thinking and common sense.

Short-term Recommendations (Within 60-90 Days)

Quality of Case Managers

Case managers are central to the well-being of the children in the system. It is critically important that they be qualified, well trained, well supervised and fairly compensated. DCF immediately should undertake a comprehensive review of the quality of the work performed by the CFCE and its case managers, including the quality of the oversight of CFCE provided by Our Kids. The defensive presentation by CFCE, with its denial of mistakes, even with the benefit of a hindsight review, throws into question the level of its professional standards and its ability to monitor the quality of its professionals.

Psychologists

1. DCF should commence an immediate review of the work and qualifications of the psychologists used by the court system. This review should be performed by a panel of psychologists independent of the Miami-Dade children welfare system and should include recommendations to improve the quality of the professionals and of the system.
2. Children's Legal Services should work with the chief judge and appropriate dependency judges to enhance information on court orders for psychological

evaluation of foster children, providing greater and better direction to the psychologist.

3. What's needed are clearly articulated expectations for any psychological evaluation as well as clear criteria for reviewing the performance of any contracted psychologist or other expert called on to evaluate children on behalf of the court.
4. Children's Legal Services should work with the chief judge and appropriate dependency judges to explore the need for and use of a "wheel" system to select and assign psychologists for evaluations.

Abuse Hotline

1. DCF should modify the Abuse Hotline procedures to give a greater weight and immediacy to calls from a school district employee.
2. DCF should review the definition and use of "special conditions" referrals.
3. DCF should modify the Abuse Hotline procedures to give greater weight to calls from community-based care agencies and their contracted providers.
4. DCF should take steps through both training and quality control to ensure that intakes from the Abuse Hotline are correctly identified as an immediate response or within-24-hours response.
5. DCF should work with law enforcement to ensure an appropriate joint response when children are not located quickly.
6. Through training, enhanced technology, process improvement and quality control, every effort must be made to insist that all new information is linked to existing cases in a simple and readily accessible fashion.
7. DCF should ensure that "mandatory reporters" in each community are exposed to web-based training available through the DCF to sharpen their awareness and reporting skills for abuse and neglect calls.

Information Sharing and Services Integration

1. DCF should work with the school system and Department of Education to devise an efficient alert system, with appropriate follow-up inspections, for at risk children removed from the school system and placed in "home schooling."
2. DCF, working in partnership with its community-based care lead agencies, should emphasize and mandate the role of the case manager as the "systems integrator" on cases to which he/she is assigned, articulating the leadership role of this position in assembling and supporting the right team to deal effectively with the needs of the child. This includes ensuring the safety, permanency and well-being of each child, providing educational support, full medical and dental services, all needed mental health and therapy services, and necessary child development care and services.
3. Our Kids should work with the Miami-Dade School District to ensure that school personnel are integrated into any team meetings that focus on the needs of a child in foster care.
4. DCF should immediately update its Memorandum of Understanding with law enforcement to ensure an appropriate joint response when children are not located in a timely manner and to ensure that law enforcement is notified

immediately when the statutory requirement for immediate notification of abuse and neglect reports is met.

5. Children's Legal Services should work with Our Kids and the assigned judge to ensure that the citizens' review panel recommendations are fully heard and heeded.
6. DCF should meet with the Chief Justice of the Florida Supreme Court to review the assignment and rotation of dependency judges so that each serves for at least 2-3 years on that bench.

Training

1. DCF, working in partnership with its community-based care partners and child welfare experts, should revise the current approach to professional development of investigators, case managers and licensure staff, including pre-service and in-service training and the use of technology. This should include both much deeper specialty training for CPIs in the science and practice of child protective investigation as well as training of CPI and case management supervisors.
2. DCF should review and strengthen the training provided to child protective investigator supervisors.

Technology

1. Our Kids should work with the Miami-Dade School District to develop an interface between the district's system, integrating school-related indicators with those used within the child welfare system.
2. DCF should develop the capability to technologically link existing adoptees within the Abuse Hotline information system when notifying the community-based care agency that services are needed after an abuse or neglect report.
3. DCF should make sure it has the technology to ensure Guardian ad Litem and courts are automatically notified of abuse reports on children in foster care and to encourage them to use Florida Safe Families Network.
4. DCF and Our Kids should work with the Miami-Dade School District to make sure that the case manager has direct technological access to student records for children in foster care.
5. Our Kids should add abuse reports regardless of findings to the existing Child Facesheet within its information system.
6. Our Kids immediately should begin full use of the department's automated child welfare case record as required by federal and state law. This includes fully completing the educational, medical, mental health and other key components of the automated child welfare case record.
7. When an abuse report is received on a child in foster care, DCF immediately should convene a team of all key agencies and involved professionals.

Long-term Recommendations

Personnel Management

1. DCF should examine the recruitment, selection and retention of CPIs, including classification, pay scale, need for competitive area differential, and career development and develop recommendations by May 1.
2. DCF should examine the salary scales within the community-based care agencies and their contracted providers. There is surely a major disparity in compensation and questions of equity when one sees how much less DCF professionals make vis-à-vis those in the community-based care system.
3. DCF should ensure that performance reviews of child protective investigators, caseworkers and supervisors are completed annually and that most importantly individuals on performance improvement plans are held accountable and dealt with in a consistent, timely manner.

Training

1. DCF, working with its community-based care lead agencies, should ensure on-going training of child welfare personnel in trauma-informed care, including how to make trauma-sensitive transitions when it might be best to remove children from their birth family homes, or foster or adoptive homes.
2. Our Kids should work with the Miami-Dade School District to provide joint training of child welfare workers and foster/adoptive parents.
3. Children's Legal Services should take the lead in coordinating training in substantive and litigation skills, including cross-training with Guardian ad Litem and the Office of Regional Counsel.

Service Delivery

1. Our Kids, working with the Miami-Dade School District, should ensure that educational plans are developed for all children in care.
2. DCF should take the necessary legislative and/or administrative steps to ensure that foster children who have been adopted and are being home schooled are seen on a regular basis by case management personnel.
3. DCF, working with its community-based care lead agencies, should ensure that adequate post-adoption services are available throughout the state, and consideration should be given to requiring such services for the first two years when families adopt children with special needs.

Technology

1. DCF, working with its community-based care partners, should develop an electronic medical passport for each child in foster care and link this to the FSFN data base.

Other Thoughts

1. The incoming Secretary should undertake a review of the quality of the services performed by Our Kids and its subcontractors. Our Kids of Miami-Dade/Monroe receives about \$100 million per year from DCF to perform contracted services. This investigation has raised concerns about the quality of some services delivered by Our Kids and its subcontractors.
2. Children's Legal Services and the chief judge should review practices in the appointment of private lawyers to represent dependent children to ensure that the Rules of Professional Responsibility are fulfilled.

List of Documents Reviewed

The following documents were reviewed by the panel. The complete set of documents is available on the DCF website:

1. Detailed Timeline of Barahona Case Events
2. Transcript from Evidentiary Court Hearing on November 28, 2007
3. Transcript from Evidentiary Court Hearing on February 22, 2008
4. Department of Administrative Hearing - Recommended Order for Case 20061129, C.S. v. DCF
5. Home Schooling Facts, Laws and Questions
6. Written Statement to the Investigative Review Panel by Delores Dunn, CEO of the Center for Family and Child Enrichment
7. Transcript of Oral Statement to the Investigative Review Panel by Delores Dunn, CEO of the Center for Family and Child Enrichment
8. Recommendations for Children's Legal Services to the Investigative Review Panel by Mary Cagle, Director of Children's Legal Services
9. IRS 990 Form for Our Kids, Inc.
10. IRS 990 Form for the Center for Family and Child Enrichment
11. Our Kids, Inc. Budget
12. Psychological Reports
13. Judicial Review Reports and Court Orders
14. Protective Investigation and Case Management Records

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
1.		<p><i>Inadequate case management practices focused on superficial observations regarding the twins' play and dress as opposed to ensuring the quality of their care and safety</i></p> <p><i>Our Kids completed face to face contact with the child's caregiver every thirty days and all contacts were documented in the case file. OK used its nationally recognized technology based approach (smart phones, laptops and GPS equipment) to determine that the children were where they were supposed to be. However, it did not assure substantive discussions with the caregiver regarding the children's progress, development, health and education.</i></p> <p><i>There was no verification that the Child Health Check-up was completed despite the requirement for annual checkups. There were no ancillary contacts made with other providers such as the school. No additional face to face contacts were made when allegations of abuse came in about the children.</i></p>							
	Case Management Responsibilities	Re-Design the Home Visit Form so that it clearly focuses on the practice of observations, interviewing, discussions with caregivers and children and considers other stakeholders in making conclusions about the well-being of children	OK Lead – Evelin Meltz OK Project Manager - FCMA's – GAL CLS	<ul style="list-style-type: none"> Design Home Visit Form to: <ul style="list-style-type: none"> Ask open-end questions Document preparation and follow-up actions before and after home visit Document medical, school, CLS, GAL, and abuse reports (regardless of classification) in between and during home visits. 	<ul style="list-style-type: none"> Convene workgroup to redesign HV form Train on new form Implement paper version of new form Develop electronic version of form 	<ul style="list-style-type: none"> New HV form Quarterly QA reviews will demonstrate how the new form improves quality of the visit and how the process impacts practice 	5/1/11	6/30/11	Complete – workgroup Convened 6/13/11. follow up Meeting week of 7/5/11
			FCMA OK-Clinical	<ul style="list-style-type: none"> Required completion of Ages and Stages Questionnaire (ASQ) 	<ul style="list-style-type: none"> Every age appropriate child has a completed screening 	<ul style="list-style-type: none"> ASQ Forms 	2/2010		OK Clinical completes monthly Reviews to assure completion of the form and that it is placed in the child's electronic file.
			OK IT OK Clinical	<ul style="list-style-type: none"> Automate the ASQ 	<ul style="list-style-type: none"> Purchase Electronic version of ASQ 	<ul style="list-style-type: none"> Proof of Purchase of software 	5/1/11	7/1/11	Complete – software Purchased 6/8/11
			OK QA FCMA	<ul style="list-style-type: none"> Peer reviews with FCMA's supervisors to assess the quality of the home visit forms [during supervisory reviews 	<ul style="list-style-type: none"> Completion of Review 	<ul style="list-style-type: none"> Supervisory Reviews 	7/1/11	12/30/11	Pending
			FCMA	<ul style="list-style-type: none"> Implement quarterly home visit requirement for supervisors to assess case management 	<ul style="list-style-type: none"> Improved engagement with caregivers 	<ul style="list-style-type: none"> Home visit forms/notes Supervisory Reviews OK quarterly review for 	7/1/11		Pending

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			OK QA	competency of case ownership	Case ownership	scorecard to validate improved quality of visits			
2.		<p>Unclear case ownership and case integration among various groups and unclear role of supervisors (for both investigations) and case management.</p> <p><i>Our Kids was not in violation of 65C-13, which is the administrative code that governs licensing requirements of foster homes. Our Kids did a thorough job in this area. Our Kids case managers are the single point of contact for families they serve. They are expected to coordinate with ALL others who touch the lives of their families by organizing meetings, facilitating discussions, gathering documents, sharing those documents and assuring that information is available and considered at each decision point in the case. In this case, the case manager followed up with the child's specialist to assure the child was receiving treatment specific to her complex medical needs. However, there was a lack of follow up on basic routine medical and dental care. The case manager could have done a better job of owning the case and being the single point of contact. The CBHA was completed in 2004, which predates community based care in Miami. Today we have a clear process to assure that recommendations from the LOCA are integrated in the case plan and services are linked for families. However, in this case there was a failure by Our Kids, the courts, the case manager and the supervisor to recognize the recommendations were not incorporated and to make an effort to link the services.</i></p>							
	Case Management Responsibilities	Implement new and enhance training curriculum for case managers and PI's that includes comprehensive training for case managers on how to interview families and children	DCF – OK Lead – Evelin Meltz and Megan Walderon OK Project Manager FCMA's – Miami Police Department CLS	<ul style="list-style-type: none"> Finalize new joint training curriculum for case managers and PI's 	<ul style="list-style-type: none"> Enhanced training curriculum for PI's and case managers 	<ul style="list-style-type: none"> Training plan 	7/ 2009	7/1/2011	Complete – contracts Created. Current pre-serv curricula Being enhanced and Reorganized while state Wide changes in training Are developed and Implemented.
	System Integration	Assure case managers have a clear understanding of case ownership and how to partner and integrate	Judges Change Project Initiative – Judge Lederman and Sharon Abrams	<ul style="list-style-type: none"> Implement additional training for case manager supervisors that include level of competency in core job requirements and supervisory skills. 	<ul style="list-style-type: none"> Clear understanding of case ownership 	<ul style="list-style-type: none"> Training plan 	7/ 2010	12/30/2011	In Progress
		Develop a training curriculum that clearly outlines roles, responsibilities and expectations of a case manager and clearly lays out a practice model that is consistent with the best practices in child welfare	OK Evelin Meltz Megan Walderon	<ul style="list-style-type: none"> Research best case management practice skills on how to engage children 	<ul style="list-style-type: none"> Case ownership create equal voice for all children 	<ul style="list-style-type: none"> Training Plan 	5/2011		In Progress
				<ul style="list-style-type: none"> Explore or develop tool that measures behavioral style that will improve the selection process and plan for growth in performance 	<ul style="list-style-type: none"> Assessment of workforce talent to address retention and recruitment 	<ul style="list-style-type: none"> Training plan 	7/2009	7/1/2011	Complete – job analysis Completed for supervisor Case managers & PI's. Development reports Created.

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
			OK QA Evelin Meltz	<ul style="list-style-type: none"> Finalize negotiation with Miami Police Dept. to deliver training 	<ul style="list-style-type: none"> Improved training Improved Partnership 	<ul style="list-style-type: none"> Contract 	1/2011	7/1/2011	Pending signature from C Of Miami.
		Co-locate full time with PI's in service centers	OK Intake Barbie Toledo DCF PI Glenn Brock	<ul style="list-style-type: none"> Add resources to OK Intake staff to help meet current demands of the system of care 	<ul style="list-style-type: none"> Improved integration 	<ul style="list-style-type: none"> Additional OK staff 	4/4/2011	4/30/2011	Completed
		Judicial internal consistency by creating a uniform approach or practice in the circuit	CLS Ester Jacobo OK Fran Allegra Judges	<ul style="list-style-type: none"> Meet with Judiciary to discuss uniform approach. 	<ul style="list-style-type: none"> Improved case ownership 	<ul style="list-style-type: none"> Meeting notes from Dependency work group (DWG) 	4/1/11	10/30/11	Judge Cohen is a member Of the Innovation Site Group. Recommendation On uniform approach will Be made by group. In Progress
		Investigate the expert witness selection process and report recommendations to Secretary (S15)	CLS Ester Jacobo OK Fran Allegra Judges DCF	<ul style="list-style-type: none"> Collaborate with Judiciary and CLS to create list of preferred service providers for psychological and therapeutic services. 	<ul style="list-style-type: none"> Evaluation and selection process to include an annual performance measure 	<ul style="list-style-type: none"> Evidence of discussion/possible list 	4/1/11		
			OK Evelin Meltz Sharon Abrams	<ul style="list-style-type: none"> Partner with Change Project Initiative to bring evidenced based trainings to the region 	<ul style="list-style-type: none"> Evidenced Based Trainings for workforce 	<ul style="list-style-type: none"> Training plan 	7/1/11		DCF added as participant: To calls
		Meet with each case management agency within 30 days to ensure case ownership and responsibility (S14)	OK	<ul style="list-style-type: none"> Meet with Leadership of FCMA to ensure clear understanding of case ownership 	<ul style="list-style-type: none"> Understanding of case ownership 	<ul style="list-style-type: none"> Meeting minutes/Agenda 	4/4/11	4/7/11	Complete – met with CQJ staff of the FCMA On 4/4/11 and with Leadership and Project Managers on 4/7/11

3. *Insufficient attention to health care, mental health care, educational support and dental care which were clearly needed by the twins.*

The case manager followed up with the child's specialist to assure the child was receiving treatment specific to her condition, but there was a lack of follow up on basic routine medical and dental care. The Our Kids case worker did not suspect that the caregiver was giving false and misleading information. The case worker took the information at face value and did not verify the information provided with the Child's Resource Book. This reconciliation may have led to a more in-depth examination of the home environment. The case file contained regular reports from the school on the children's progress, however, there was a lack of interaction with the teachers when allegations of abuse were being reported by the school.

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

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<p><i>CBHA which was completed in 2004 was not integrated in the case plan. There was an opportunity to ask probing questions when the children were originally placed, but OK did not make the placement as referenced in 65C-28.004(7).</i></p> <p><i>Section 65C-28.004(7) is the code section that references placement matching requirements of children, specifically in subsection (7) the placement of Children with Special Physical, Medical, Emotional, Educational or Developmental needs.</i></p> <p><i>Those considerations absolutely needed to be a part of the planning for the care of these children and it was not clear in the file if the children's special needs were considered at the time of placement by the Department.</i></p> <p><i>The children were already placed when OK inherited the case.</i></p>									
Case Management Responsibilities	Integration of Services		OK – Michelle Montero	<ul style="list-style-type: none"> Implementation of electronic medical passport. The following databases are available FSFN, school performance and nurse case management team information. 	<ul style="list-style-type: none"> Child specific medical passport that is portable after care and can exchange information with the Regional Exchange Center or other providers at the point of services to allow one depository of information for case managers to access 	<ul style="list-style-type: none"> New electronic Medical Passport 	7/2010		Vendor selected. Pilot set
			DCF						To begin 7/15/11. Vendor
			FCMA						Are AAJ and Follow Me
			GAL						
FCR									
AHCA									
		OK Clinical FCMA	<ul style="list-style-type: none"> Maintain Nurse Case management team who serve as point of contact for case managers. They collect and organize information by establishing relationships with the medical community and providing medical info to the case managers for delivery of services 	<ul style="list-style-type: none"> 100% of children receive timely medical care 	<ul style="list-style-type: none"> OK quarterly reviews and quarterly scorecard performance reviews 	6/2009		Recent medical reviews	
	Revealed medical services								
			DCF Leadership	<ul style="list-style-type: none"> Gain access to the following databases: <ul style="list-style-type: none"> Office of Vital Statistics - Birth Data Dept. of Health- Immunization 	<ul style="list-style-type: none"> 100% of children receive timely medical care 	<ul style="list-style-type: none"> Establish agreements with community partners 	2005		Are being provided, but
	Documentation is lacking								
			OK IT – Pat Smith	<ul style="list-style-type: none"> Create dashboard that aggregates data and outcomes for children at highest risk. 	<ul style="list-style-type: none"> 100% of the children receive dental/medical care once a year. 	<ul style="list-style-type: none"> Review of Mindshare and FSFN 	4/30/11	12/30/11	Complete -OK Intake and FCMA have
	Completed Need date In progress								
									Action has been Communicated to DCF as priority but not yet

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

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			OK IT – Pat Smith OK – Michelle Montero DCF	<ul style="list-style-type: none"> Collaborate with DCF-IT to include alerts in FSFN when medical and dental fields are vacant for more than 30 days 	<ul style="list-style-type: none"> 100% of children receive medical/dental care once a year 	<ul style="list-style-type: none"> Meeting notes; FSFN 	4/11/11	7/1/11	<p>scheduled</p> <p>FSFN and ASK updates</p> <p>Are in progress (are the</p>
			OK FCMA	<ul style="list-style-type: none"> Improve documentation of medical and dental information in the electronic case file ASK and FSFN 	<ul style="list-style-type: none"> Improved compliance with overall ongoing health care 	<ul style="list-style-type: none"> Quarterly QA reviews To assure health info is being integrated throughout the case Quarterly scorecard performance review 	7/2007		<p>Weekly report from Tally</p> <p>Enough support)</p> <p>Complete – 6/14/11</p>
		CBCs to review all foster children for health, vision, dental (\$11)	OK Clinical OK QA FCMA	<ul style="list-style-type: none"> QA review of all foster children to verify they are receiving required child health, vision and dental examinations as well as follow-up health care. Identify any major shortcomings and action plans to get these children back to acceptable standards of care. 	<ul style="list-style-type: none"> 100% of all children receive medical/dental care and follow up noted 	<ul style="list-style-type: none"> File review for compliance with preventive medical and dental care FSFN 	4/26/11	6/15/11	<p>AS of 7/28 512 review</p> <p>Completed with 506</p> <p>Requiring CA</p>
		CBCs to review all foster children for health, vision, dental (\$11)	OK Clinical OK QA FCMA	<ul style="list-style-type: none"> QA review of all children in relative placement to verify they are receiving required child health, vision and dental examinations as well as follow-up health care. Identify any major shortcomings and action plans to get these children back to acceptable standards of care 	<ul style="list-style-type: none"> 100% of all children receive medical/dental care and follow up noted 	<ul style="list-style-type: none"> File review for compliance with preventive medical and dental care FSFN 	7/15/11	9/1/11	<p>Completed</p>
			OK Clinical OK IT	<ul style="list-style-type: none"> Develop tool for medical/dental/vision review 	<ul style="list-style-type: none"> 100% of all children receive medical/dental care and follow up noted 	<ul style="list-style-type: none"> Submit tool used 	4/12/11	4/25/11	<p>All users trained.</p>

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Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
									Completed
			OK Clinical OK QA	<ul style="list-style-type: none"> Train on tool medical/dental/vision review 	<ul style="list-style-type: none"> 100% of all children receive medical/dental care and follow up noted 	<ul style="list-style-type: none"> Submit attendance sheet 	4/26/11	4/26/2011	Q4 –Trainings completed 7/22/11. Sign in sheets a Training material attache
			OK Clinical FCMA	<ul style="list-style-type: none"> Quarterly training on accessing behavioral health services and documentation in FSN, ASK and child resource record 	<ul style="list-style-type: none"> Improved Linkage to services 	<ul style="list-style-type: none"> Training calendar Attendance sheet that is monitored by OK Clinical Training presentation 	7/2007		Review completed in 4/21 Revealed poor performar Providers submitted plan Improve linkage by next review
			OK Clinical	<ul style="list-style-type: none"> Assure clear process in place to link service recommendations from the LOCA within required timeframe of 30days after the staffing 	<ul style="list-style-type: none"> Improved linkage to services 	<ul style="list-style-type: none"> Quarterly Clinical Case Reviews 	1/2006		
			OK Clinical	<ul style="list-style-type: none"> Increase quarterly clinical QA reviews from 25% to 50% 	<ul style="list-style-type: none"> Improved linkage to services 	<ul style="list-style-type: none"> QA Clinical monitoring reports 	7/2009		
			OK Renee Stephens FCMA	<ul style="list-style-type: none"> Expand computer-based training for children at risk of failing the FCAT 	<ul style="list-style-type: none"> Improved academic performance 	<ul style="list-style-type: none"> Training calendar Attendance sheet 	2/1/11	4/11/2011	EKids provided 2 nd -5 th Graders a 12 week Computer based program with intensive Curriculum based FCAT Preparation in reading and Math. 30 of the 50Kids successfully completed Program. Award Ceremony scheduled For 5/26/11.

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Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
			OK Renee Stephens FCMA	<ul style="list-style-type: none"> Identify children most at risk in school for the case manager to complete an education action plan. 	<ul style="list-style-type: none"> Improved case Integration 	<ul style="list-style-type: none"> OK Education Specialist distributes and monitors monthly reports Facilitates discussions with foster parents and CM to assure information about education is integrated 	11/2010		Students are identified by failing grades, absences, suspensions and poor FCAT scores. FCMA receive monthly reports. 500 students currently identified
			OK Renee Stephens FCMA	<ul style="list-style-type: none"> Develop process for case mangers to receive daily data on from MDPS data base 	<ul style="list-style-type: none"> Improved case integration and accountability by being informed of academic functions 	<ul style="list-style-type: none"> Red Flag Educational Progress 	8/2010	12/30/11	Pilot stages with 3 rd grade And working to expand to All grade levels for August
			OK IT MDPS	<ul style="list-style-type: none"> MDPS to provide task list of barriers to developing on a case manager level daily Educational alerts for missed days from school 	<ul style="list-style-type: none"> Improved Case ownership 	<ul style="list-style-type: none"> Task list/ develop a response to task list 	6/1/11	12/30/11	Meeting scheduled for 8/9/11
		CBCs to collaborate with the Department to convene Educational Summits in each circuit (S12)	OK DCF CLS Mary Cagle	<ul style="list-style-type: none"> Bring stakeholders together 	<ul style="list-style-type: none"> Improved Integration 	<ul style="list-style-type: none"> Meeting minutes/action list 		Complete	Completed in 11 th Judicial Circuit. Groundwork laid And work progressing
4		<p>Failure to act in the face of significant evidence that the twins were receiving inadequate care in their foster home.</p> <p><i>The significant evidence cited led to investigations where the investigators concluded the allegations were unsupported. This process did not protect the children. Unrelated to this case, in 2009 OK completed a needs assessment and analysis of our training which revealed a lack of tools to evaluate and assess the progress of families. In November 2009 OK implemented Structured Decision Making (SDM). Unfortunately, this was too late for the children in this case. SDM is a set of evidence based tools that assess risk and safety at critical junctures of a case. The system expectation today is that case management and all other contracted providers apply SDM tools in assessing families.</i></p>							

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

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<i>In 2010 SDM was implemented at the Department's investigation level and will be used by DCF investigators when responding to hotline calls.</i>									
	Case Management Responsibility	Assure fidelity to SDM process	OK DCF	<ul style="list-style-type: none"> Perform a quality assurance review on the FCMA's and Family Preservation providers' implementation of the Structure Decision Making tool. 	<ul style="list-style-type: none"> Complete Ad Hoc quarterly QA reviews 	<ul style="list-style-type: none"> Monitoring reports 	11/2009		Completed and provided additional training to assure fidelity and compliance and set up monthly grand round case readings
	Systems Integrations	Create multidisciplinary team to assist case managers in case ownership (S16)	OK – GAL, CLS Foster	<ul style="list-style-type: none"> Identify team members and train case managers on team approach 	<ul style="list-style-type: none"> Active multidisciplinary team for all cases/improved case coordination 	<ul style="list-style-type: none"> Staffing forms generated during MDT meetings 	7/1/11		Pending
Parent, Parents School Services providers for child and parents Foster care review			<ul style="list-style-type: none"> Create a multidisciplinary team that meets weekly discuss all cases of concern 	<ul style="list-style-type: none"> Improved partnering/continuous quality control/case coordination 	<ul style="list-style-type: none"> Staffing forms 	7/1/11	FCR submitted Proposal. Reviewing.		
OK – Renee Stephens DCF MDPS –		<ul style="list-style-type: none"> Collaborate with Foster Care Review (FCR) on a case alert system when follow up not completed 	<ul style="list-style-type: none"> Improved Integration 	<ul style="list-style-type: none"> Reports from FCR 	5/1/11	Received proposal from FCR and reviewing			
		Ongoing training	CLS to lead statewide initiative	<ul style="list-style-type: none"> Create MOU with GAL and FCR 	<ul style="list-style-type: none"> Improved Integration 	<ul style="list-style-type: none"> Evidence of MOU 			Best Practice will call for State wide agreement with GAL

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
		OKIT Pat Smith Judiciary	• Expand availability of videoconferencing to facilitate participation of children and multidisciplinary team members	• More participation of children in court.	• Project Plan for expansion	4/1/11 3/1/12			Beginning new school year expanded to all judges and courtroom
		OK IT Pat Smith	• Create a Foster Home Face Sheet	• Summary page of history of each foster home	• Face Sheet	10/1/2011			In Progress
		OK Licensing	• Quarterly training on Institutional Abuse	• Assure case managers and supervisors educated on abuse reports	• Attendance records	4/1/11 8/1/11			Training reset for 8/3/11
		OK Licensing OK QA DCF QA	• Review all foster homes with 3 or more abuse reports, regardless of findings to identify any underlying issues	• Awareness of any issues within foster homes/identify patterns	• Staffing forms from review of files	5/1/2011			Meeting with Carol Shauffer with Youth Law Center, California and leading QPI to brainstorm on best approach. Meeting set for week of 8/16
5.		<p><i>Lack of post-adoption services for a family adopting three children with special needs.</i></p> <p><i>Upon request by families, OK provides post adoption services to many families who have adopted. These services include medical, financial and therapeutic support and are available upon request. There were no post adoption services provided to this family because they did not request any. There was a lack of understanding that multiple special needs children within one family may require additional follow up. At the time of this adoption there was no clear mechanism in place to assure adoptive families are provided with information on services available.</i></p>							
	Service Array	Assure information to access adoption services are clear to the adoptive community Establish a point of contact for Adoptive families	OK FCMA	• Establish an email address to facilitate communication with adoptive families	Customer service	Establish email Adoptionpayments@ourkids.us		Completed 2009	Established in 2009. Distribution list CreatedFor emails to include Finance and adoption Support staff
			OK FCMA	• Create a monthly newsletter for adoptive families	Customer Service/access to information	Review monthly Newsletter		Completed 11/2009	Newsletter is distributed Monthly along with Subsidy payment

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
			OK MDCFFPA	<ul style="list-style-type: none"> Coordinated with Miami-Dade County Foster And Adoptive Parent Association 	Customer Service/access to information	Distribute monthly Newsletter		Completed	including electronic payments. Every newsletter will have info The MDCFAAPS News Letters are attached And Distributed with the OK Monthly newsletter each Month
			OK	<ul style="list-style-type: none"> Create a 24 hour support line for Adoptive families 	Customer Service/access to information	Establish support line 1-866-894-1220 or 305-496-5098 Review Call logs	4/1/11	Completed 11/2009	
		Establish notification Process for new abuse calls on Post adoption cases	DCF OK	<ul style="list-style-type: none"> Collaborate with DCF to create alerts for post adoption cases 	Customer Service/access to information	FSFN	3/2011	4/1/11	Function in FSFN Enabled and currently Receiving alerts Completed
		Monitoring and Training	OK	<ul style="list-style-type: none"> Develop a process with FCMA to follow up on needs for services for any post adoption family generating an abuse call 	Customer Service/access to information Case ownership	Policy and Procedure	4/1/11	4/30/2011	Completed. Process in place Made contact with 21 Families to provide service
			OK ARC FCMA	<ul style="list-style-type: none"> Establish process that requires all families seeking to adopt who have history of abuse allegation must be staffed with the Adoption Review Committee 	Integration of Services	Policy and Procedure	5/1/2011	5/30/2011	Completed. Policy and Process developed.
			OK	<ul style="list-style-type: none"> Assure FCMA and other partners are trained and familiar with new policy 	Case ownership/Integration of Services	Attendance records Training schedule	4/1/11	5/30/2011	Complete – 5/26; 5/27 5/31/11 and 6/3/11
			OK FCMA	<ul style="list-style-type: none"> Implement required contact with adoptive families during the month in which they adopted to include a follow 	Educate about post adoption services	Call logs	3/1/11		In Progress

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
				up call					
			OK FCMA	<ul style="list-style-type: none"> Implement additional call to adoptive families who have adopted complex children to include children placed out of state; trans racial adoptions; children adopted after age 16; severely medically needed and children placed 90 days and less 	Educate about post adoption services	Call logs	4/1/11		In Progress
			OK FCMA	<ul style="list-style-type: none"> Assess family's capacity to care for children with special needs and/or multiple children. And identified and create a post adoption plan that addresses needs 	Educate about post adoption services	Post adoption plans to be submitted to OK Adoption as part of Adoption packet Documentation in FSFN of discussions with Families	7/1/11		Complete – do you want. Sample of a note in FSFN
			OK DCF Kathy Waters FCMA	<ul style="list-style-type: none"> Create a FACT sheet of all services available to adoptive family to include how to contact OK that is distributed at the foster placement level and throughout placement 	Educate about post adoption services	Review Adoption packets for FACT sheets. Documentation in FSFN	6/1/11		Created and being revised. Include all services provided
			OK IT	<ul style="list-style-type: none"> Add a link to our Website to access FACT sheet, Monthly adoption newsletter and our Support line. 	Educate prospective adoptive parents on post adoption services early in the process	Web Page	4/2011		Monthly adoption news Letter and support line Info are available on our website. FACT sheet will be added once complete
			OK DCF Kathy Waters	<ul style="list-style-type: none"> Collaborate with State for statewide FACT Sheet on Adopt Us Kids and Adoption Exchange websites 	Educate about post adoption services	Web page	7/1/11		Pending
		Develop a report that lists all post-adoption support services, lists how this is communicated to parents, and service delivery	OK FCMA	<ul style="list-style-type: none"> Collect list of post adoption support services and how information is 	Integration of Services/Educate about post adoption services	Report to DCF	4/5/11	4/8/11	Completed

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
		mechanisms (S13)		communicated from FCMA's					
6.		<p>Overall substandard quality of documentation by both case managers (and protective investigators).</p> <p><i>Better documentation may have helped the courts, caseworker, supervisor and Our Kids identify that there was something wrong with this placement. Certainly, the Structured Decision Making assessment tool currently in use would have put all the areas on concern in one document and, therefore, connected the dots. In this case, we relied on excellent documentation, which was lacking. It would have helped if there was documentation that the caregiver failed to tend to the routine medical and dental needs. It would have been informative if the efforts made to schedule conferences with school personnel were well-documented. Documentation of the discussion with the Psychologist requesting a second evaluation was also lacking. A note describing the joint visits in the caregiver's home between the caseworker and the GAL, after the GAL was denied access to the home would have been important and informative.</i></p> <p><i>Critical thinking by the caseworker was essential. We must insist that Our Kids caseworkers think critically and apply common sense where possible.</i></p>							
	Case Management Responsibility	Standardize and Centralize all case management forms	FCMA OK DCF GAL CLS Judge	<ul style="list-style-type: none"> Review all required case management forms 	Quality of Documents Integrity of data captured	Analysis of existing documents	6/30/11	7/30/11	Pending
			OK FCMA	<ul style="list-style-type: none"> Standardize all case management forms 	Quality of Documents Integrity of data captured	New forms	8/1/11	12/30/11	Pending
			OK FCMA	<ul style="list-style-type: none"> Train on the use of all forms 	Quality of Documents Integrity of data captured	Attendance Records	1/1/2012	3/30/2012	Pending
		Develop a CQI staffing process	OK OA OK Regional Managers	<ul style="list-style-type: none"> Ongoing discussion and review of cases to assure case ownership and monitor integrity and quality of documents in the file. 	Assure Case coordination and quality of documents	Staffing/review forms	7/1/11		
		Improve Access to Information	OK DCF DJJ MDPS	<ul style="list-style-type: none"> Enhance Child Face sheet 	Summary sheet about the child	New Face Sheet/Mindshare	3/1/11	12/30/11	In Progress target date for Completion December
		Ongoing Monitoring	OK Regional Managers	<ul style="list-style-type: none"> Monitor case load ratio 	Improved quality of documentation	Quarterly report on case load ratio by agency	4/2011	7/1/11	Complete report attached This will continue

Our Kids of Miami-Dade and Monroe, Inc. – Action Plan for The Barahona Case

Item	Category	Action	Agency and Lead Person Responsible	Tasks	Deliverable	Evidence of Completion	Start Date	Completion Date	Status
			FCMA						

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

9/20/11

Date

Bill Number

Barcode

Name David Wilkins

Phone 850-487-2167

Address 1317 Winewood Blvd

E-mail david.wilkins@

Street

Tallahassee,

FL

32399

dcf.state.fl.us

Job Title Secretary

City

State

Zip

Speaking: For Against Information

Appearing at request of Chair

Subject Barahona Case Update & Strategic Vision

Representing Department of Children & Families

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from .m. to .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

9/20/11

Date

Bill Number

Barcode

Name Ron Silver

Phone

Address 2031 NE 209 St

E-mail

Street

No. MIAMI Bl

FL

33179

Job Title

City

State

Zip

Speaking: For Against Information

Appearing at request of Chair

Subject BARAHONA REPORT

Representing OUR KIDS OF MIAMI - DAD & MOM ROE

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from .m. to .m.

S-001 (04/14/10)



agency for persons with disabilities
State of Florida

Agency for Persons with Disabilities Overview

**Senate Committee on Children,
Families, and Elder Affairs**



Rick Scott
Governor

Michael Hansen
Director

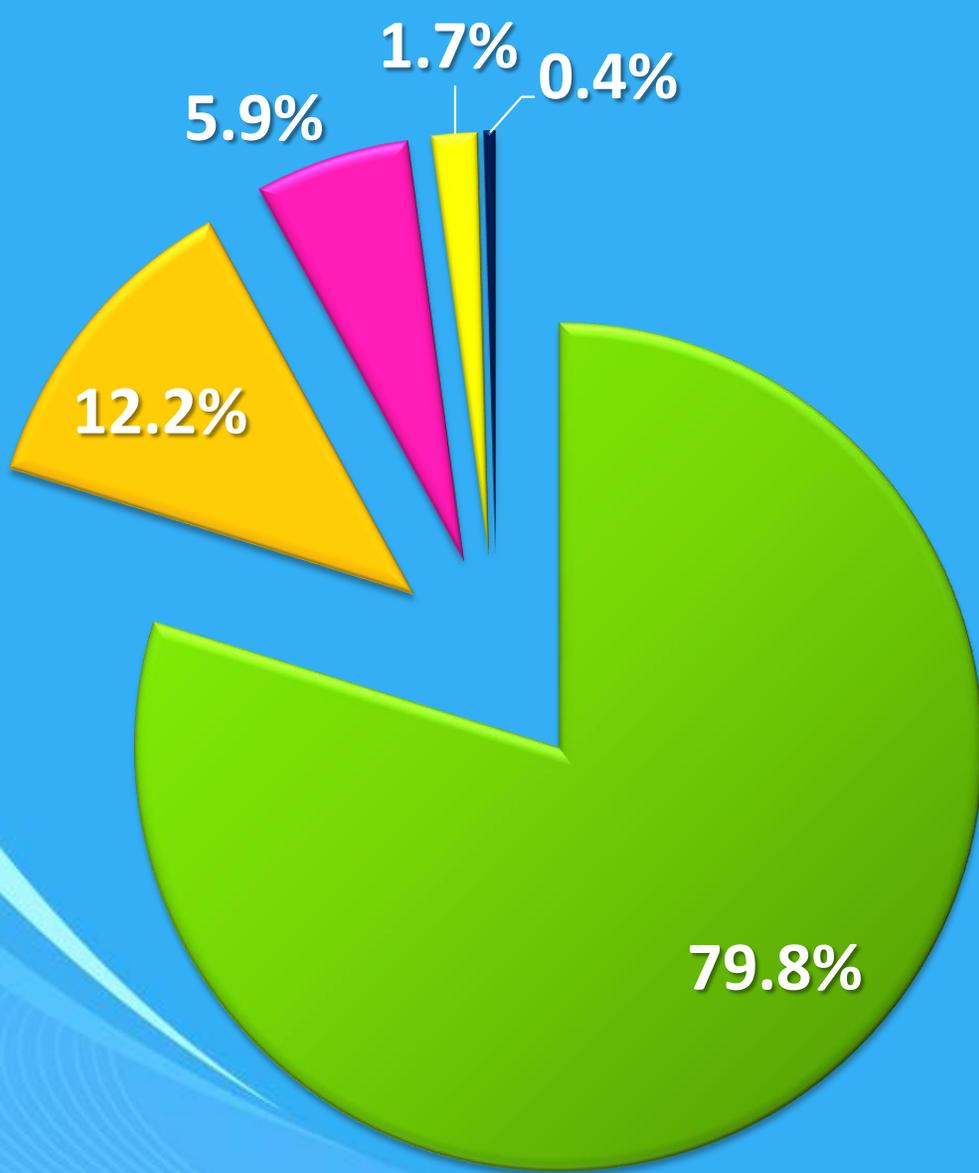
Legislative Authority

S. 393.062, F.S.: "...the greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements..."



Agency Appropriations

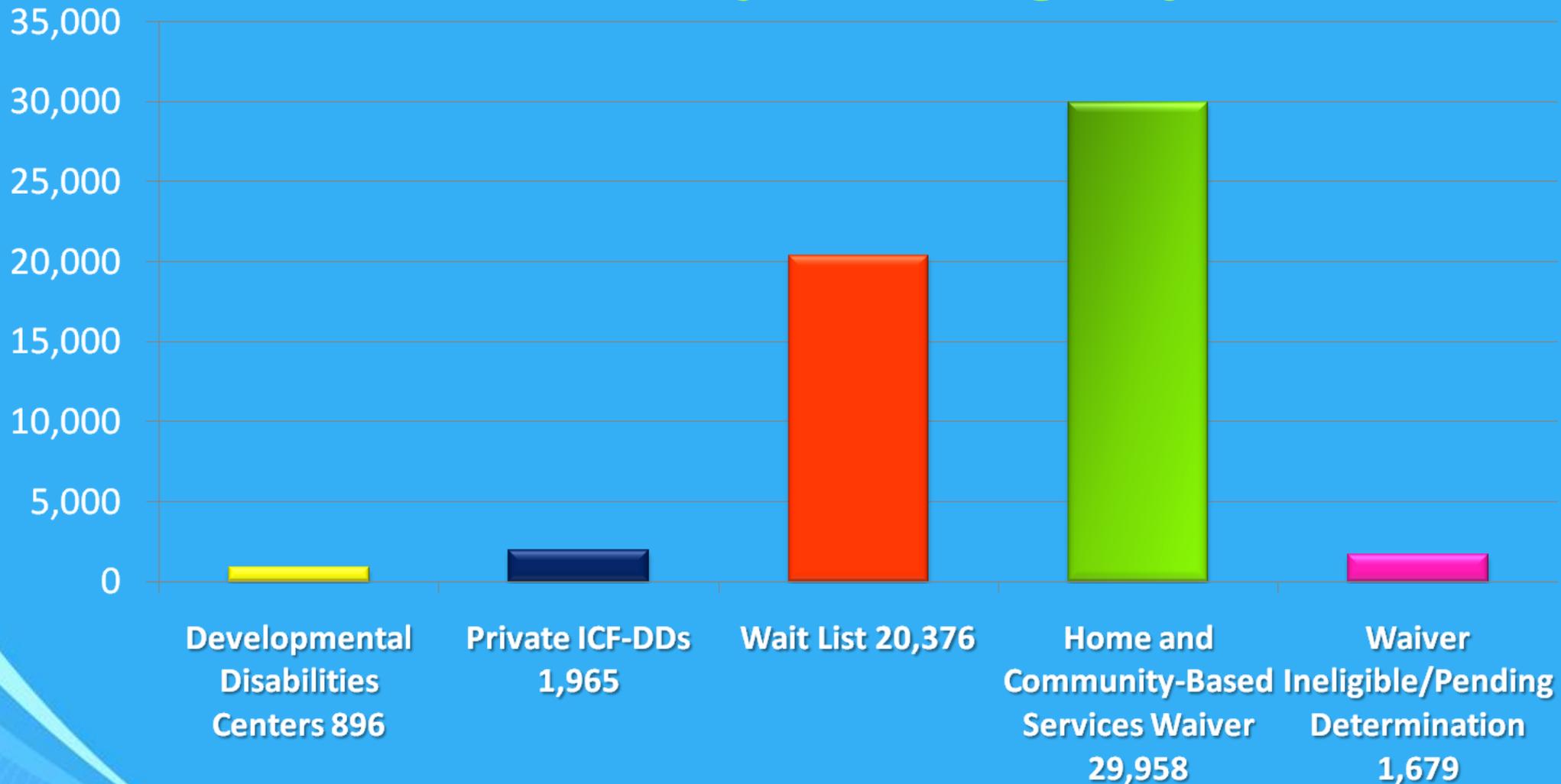
Fiscal Year 2011- 2012



- Home and Community Based Services Waiver \$810,437,372
- Developmental Disabilities Centers \$124,180,856
- Agency Operations/Administration \$59,708,479
- Individual and Family Supports (IFS) \$16,836,771
- Room and Board \$3,800,000

Total: \$1,014,963,478 4

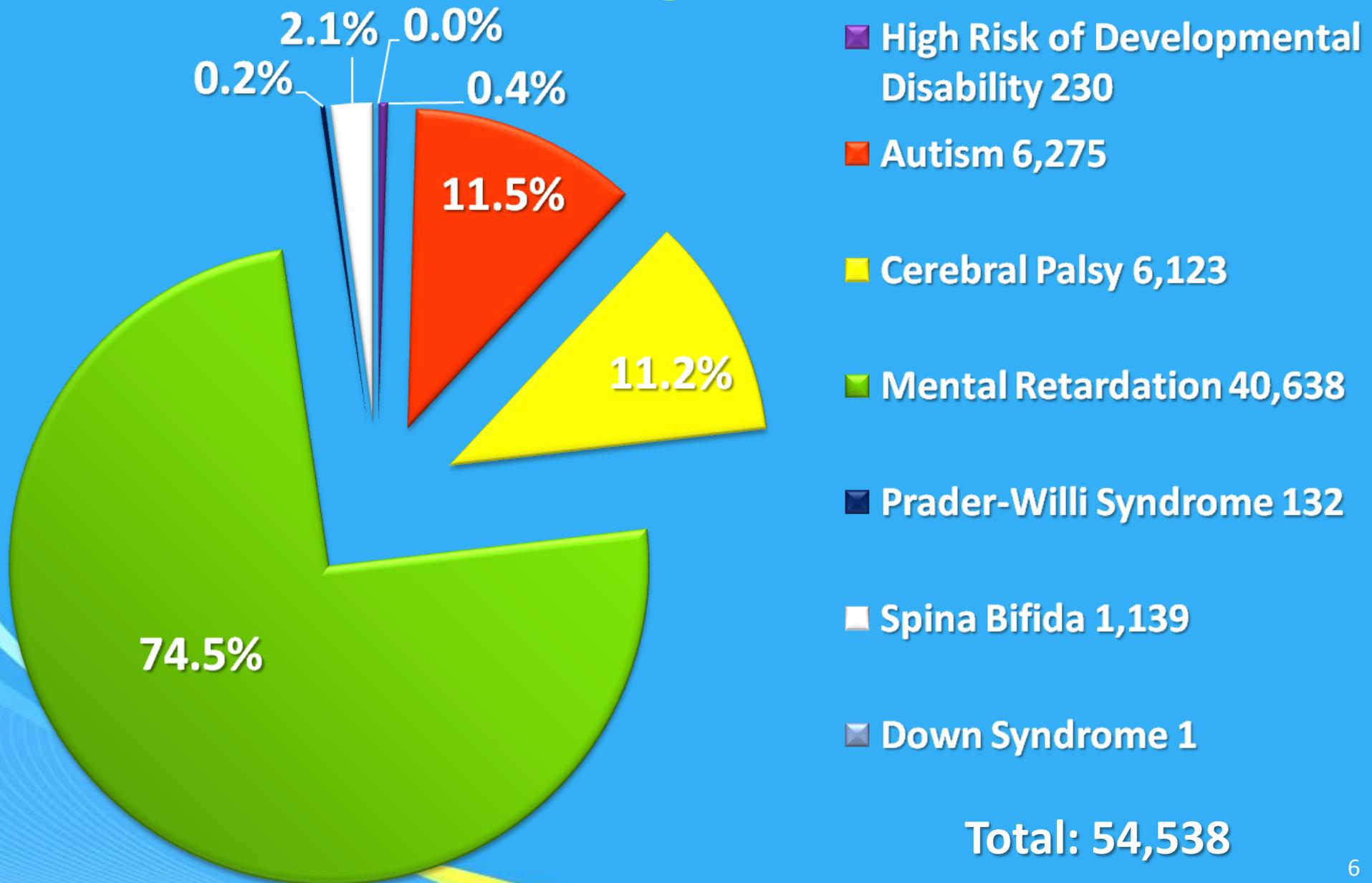
Clients By Category



***Total is unduplicated. Some clients on wait list are also in DDCs or private ICF-DDs.**

Total: 54,538*

Clients By Primary Disability Including Wait List



\$930 million

**Waiver
Services
Expenditures**

**People in Crisis
Legal
Challenges
Systemic Issues
Aging
Demographics**

**Cost-
Containment
Plan**

\$810 million

Fiscal Year 2011-2012 Cost Analysis

Description		Amount
1.	Baseline Projected Expenditures	\$930,000,000
2.	4% Provider Rate Reduction Savings	(\$36,360,000)
3.	Cost Plan Freeze Reduction Savings	(\$6,885,912)
4.	Projections after Legislatively Mandated Initiatives	\$886,754,088
<p>The HCBS waiver was appropriated \$810,437,372. Projected expenditures reflect an additional \$76.3 million in spending above this appropriation.</p>		
5.	FY 2011-2012 Appropriation	\$810,437,372
6.	Projected Expenditures in Excess of Appropriations	\$76,316,716
7.	Projected Savings from Agency Actions	(\$21,023,531)
8.	Remaining Projected Expenditures in Excess of Appropriations	\$55,293,185

August 19 Cost-Containment Initiatives

Initiative		Estimated FY 2011-2012 Savings
1.	Companion Rate Ratio/Limit Adjustment	\$17,055,318
2.	Allow In-Home Support Services as a Less Costly Option for Personal Care Assistance	\$1,618,171
3.	Transportation Review and Service Limitations	\$1,375,000
4.	Pool Respite Services for Families to Draw from and Reduce Allocation	\$975,042
5.	Total Savings	\$21,023,531

The projected savings from the cost-containment initiatives outlined in the agency plans are expected to be \$21 million. This leaves an additional \$55.3 million in expenditures that require further actions by the agency.

Next Steps

The agency continues to seek input on steps to bring spending in line with appropriations; below are among the options being considered.

	Description	Amount
1.	Cost Sharing by the parents of children who are served on the waiver	TBD
2.	Standardized Residential Habilitation—Intensive Behavior rates	\$1,549,764
3.	Residential Fee Collection for Residential Habilitation	TBD
4.	Reduce rates for therapy assessments and all nursing services to the Medicaid State Plan rate	\$1,268,174
5.	Set the agency rate premium to a maximum of 20% above solo rates	\$3,712,169
6.	Consolidate and simplify Residential Habilitation levels	\$21,113,087
7.	Reduce In-Home Support Services for those receiving additional quarter hours of service beyond the daily rate	\$1,381,433
8.	Restructure Adult Day Services	\$9,705,982
9.	Transfer Specialized Mental Health Therapy and Skilled Nursing to the Medicaid State Plan	\$3,007,975
10.	Limit cost plans to a maximum of \$150,000 with no exceptions	\$7,960,564

Administrative Cost-Savings Initiatives

Possible Initiatives

Reduce rent by eliminating the satellite offices.

Streamline field administration by reducing the number of agency area offices and consolidating their administration.

Privatization of certain components of Developmental Disabilities Centers.

iBudget Florida

Determining Individual Budgets

Level of Needs Assessment (QSI)



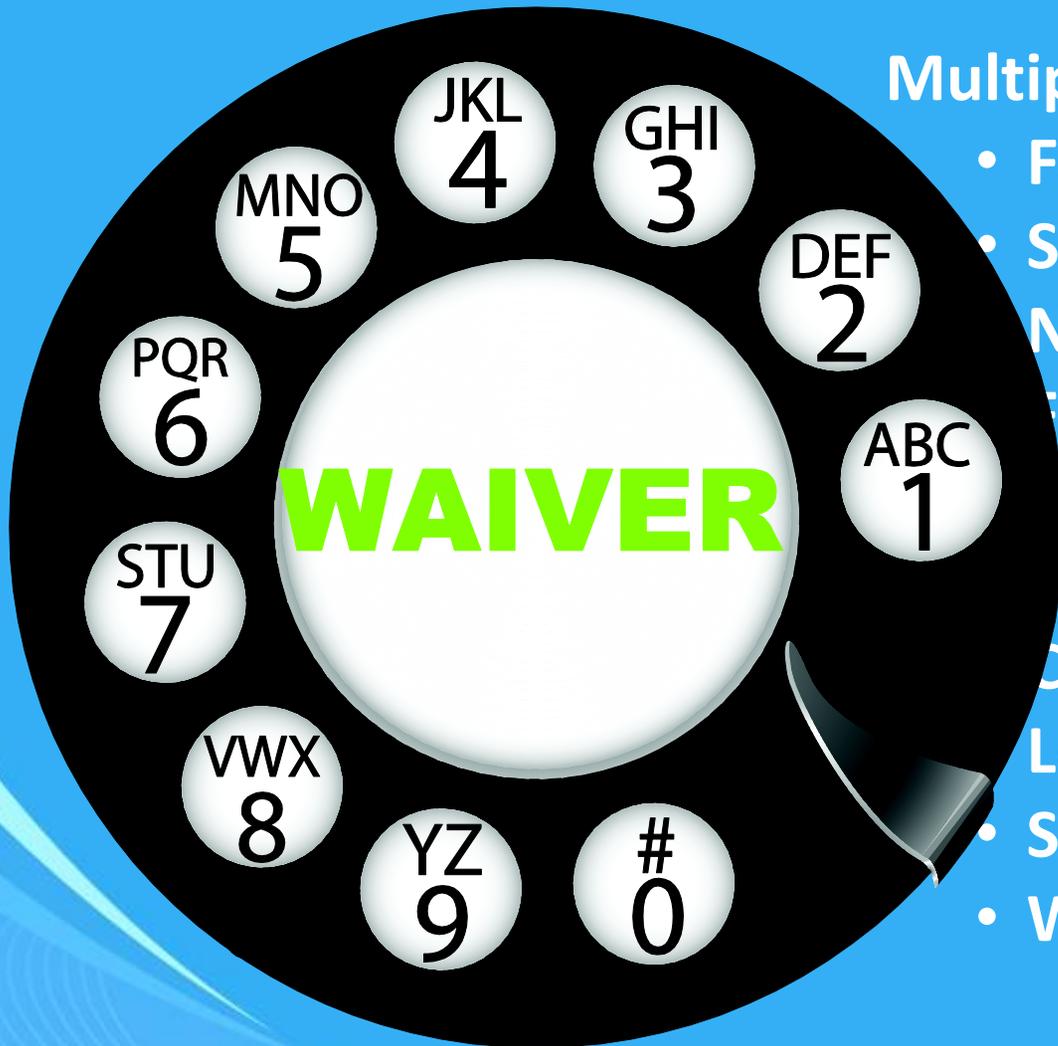
Age



Living Setting



Current and Future Service Delivery Systems



Multiple options to fit individual needs

- Families
- Schools
- Nonprofit Agencies
- Foundations
- Religious Organizations
- Community Organizations
- Corporations/Businesses
- Local Governments
- State Agencies
- Waiver





Moving Forward

- **Sound Fiscal Management**
- **Cost Containment**
- **Stakeholder and Community Involvement**
- **Incentives for Less Dependence on Waiver**
- **Client Flexibility and Choice**



agency for persons with disabilities
State of Florida

Serving Floridians with Developmental Disabilities

Thank You

michael_hansen@apd.state.fl.us


agency for persons with disabilities
State of Florida

Rick Scott,
Governor

September 1, 2011

Michael Hansen,
Director
Central Office

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To: The Honorable Rick Scott, Governor of the State of Florida
The Honorable Mike Haridopolos, President, Florida State Senate
The Honorable Dean Cannon, Speaker, Florida House of Representatives
The Honorable J.D. Alexander, Chair, Senate Budget Committee
The Honorable Joe Negron, Chair, Senate Budget Subcommittee on Health & Human Services Appropriations
The Honorable Denise Grimsley, Chair, House Appropriation Committee
The Honorable Matt Hudson, Chair, House Health Care Appropriations Subcommittee

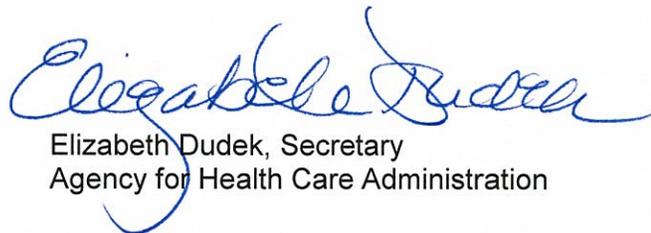
Pursuant to Fiscal Year 2011-2012 General Appropriations Act Proviso of SB 2000, the Agency for Persons with Disabilities (APD) in consultation with the Agency for Health Care Administration (AHCA) and other stakeholders hereby submit a cost containment plan that will result in sufficient fiscal and operational controls to allow APD to manage Medicaid waiver spending within the legislative appropriation.

From the funds in Specific Appropriation 231, the Agency for Persons with Disabilities shall work with the Agency for Health Care Administration and other stakeholders to develop a plan that will result in sufficient fiscal and operational controls to allow the Agency for Persons with Disabilities to manage Medicaid waiver spending within the legislative appropriation. The plan shall include, but not be limited to, increased oversight of individual cost plans; a clear definition of the roles of providers and waiver support coordinators in monitoring those cost plans; and a description of the services provided under each of the consolidated service titles or categories. The Agency for Persons with Disabilities shall submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than September 1, 2011.

Sincerely,



Michael Hansen, Director
Agency for Persons with Disabilities



Elizabeth Dudek, Secretary
Agency for Health Care Administration

ENCLOSURE:

Fiscal Year 2011-2012 Cost Containment Plan, September 1, 2011



agency for persons with disabilities
State of Florida

Serving Floridians with Developmental Disabilities



**Fiscal Year 2011-2012
Cost-Containment Plan
September 1, 2011**

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EXECUTIVE SUMMARY

The Agency for Persons with Disabilities (agency or APD) serves nearly 30,000 Floridians with developmental disabilities through the Home and Community Based Services (HCBS) and iBudget Florida Medicaid waivers. HCBS waiver appropriations for Fiscal Year 2011-2012 are \$810 million with the agency previously projecting expenditures to be \$930 million. This exceeds the amount appropriated by approximately \$120 million.

Proviso language in the Fiscal Year 2011-2012 General Appropriations Act requires APD to work with the Agency for Health Care Administration (AHCA) and other stakeholders to develop and submit a plan by September 1, 2011, allowing APD to manage Medicaid waiver spending within the legislative appropriation.

Additional proviso language mandated two important cost-containment initiatives. These initiatives went into effect July 1, 2011: a 4% provider rate reduction and a cost plan freeze. These policy measures have been effective in reducing APD’s obligations, while the cost plan freeze has kept it from rising.

Description	Amount
Baseline Projected Expenditures	\$930,000,000
4% Provider Rate Reduction Savings	(\$36,360,000)
Cost Plan Freeze Reduction Savings	(\$6,885,912)
Projected Expenditures Legislatively Mandated Initiatives	\$886,754,088

The HCBS waiver was appropriated \$810,437,372. Projected expenditures reflect an additional \$76.3 million in spending above this appropriation.

FY 2011-2012 Appropriation	\$810,437,372
Projected Expenditures in Excess of Appropriations	\$76,316,716

The projected savings from the cost-containment initiatives outlined in the initial plan, submitted August 19, 2011, are expected to be \$21.0 million. This leaves an additional \$55.3 million in expenditures that require further actions by the agency. The following chart details the cost-containment initiatives that are currently being implemented.

Initiative	Estimated FY 2011-2012 Savings	Estimated Annual Savings
Companion Rate Ratio/Limit Adjustment	\$17,055,318	\$18,605,801
Allow In-Home Support Services (IHSS) a less costly option for Personal Care Assistance (PCA)	\$1,618,171	\$1,765,277
Transportation review and service limitations	\$1,375,000	\$1,500,000
Pool Respite services for families to draw from and reduce allocation	975,042	\$1,170,050
Total Savings	\$21,023,531	\$23,041,128

The submittal of this plan constitutes APD's cost-containment initiatives, as required by the Fiscal Year 2011-2012 General Appropriations Act. This plan has been developed to result in sufficient fiscal and operational controls to allow APD to manage Medicaid waiver spending within the legislative appropriation. The plan shall include increased oversight of individual cost plans; a clear definition of the roles of providers and waiver support coordinators in monitoring those cost plans; and a description of the services provided under each of the consolidated service titles.

This plan also contains a detailed presentation of four types of options to bring spending in line with appropriations, including advantages and disadvantages for each approach as well as stakeholder responses. Each of these options may associate impact to certain areas such as legal implications, fairness and equity for both clients and providers, and quality-of-life issues that all must be thoroughly and properly evaluated.

The following are four types of options to bring spending in line with appropriations:

- Legislatively mandated cost-containment initiatives, which have been implemented.
- Near-term initiatives, which have been implemented this fiscal year and for which savings are also primarily realized this fiscal year.
- Initiatives requiring law changes and/or federal approval, which will impact next fiscal year spending if approved.
- Strategic initiatives, which take more time for the agency to implement but which will ensure the agency will operate within legislative appropriations in the following fiscal year. Some of these initiatives require further study and development before implementation. Savings could generally be realized next fiscal year.

APD has taken various approaches before the start of Fiscal Year 2011-2012 to limit spending. APD will have a better sense of the needed cost-containment measures as the agency monitors monthly expenditure reports.

Ultimately, the future of services to individuals with developmental disabilities is at stake. The Legislature has already authorized iBudget Florida as a key element of that future—a system that is simpler, prioritizes individual choice, and seeks greater equity while living within its means. However, implementation of iBudget Florida alone is insufficient to address the projected deficit. Therefore, the agency is proposing other initiatives that will create efficiencies and reduce the costs of individual services.

APD has been moving forward with three steps to contain costs. The first step involved the implementation of the legislatively mandated 4% provider rate reduction and cost plan freeze. The second step involved the implementation of the four initiatives outlined in the initial plan submitted August 19, 2011. The third step involves the ongoing implementation of the following measures: utilization management reviews, service rate reductions, changing roles of waiver support coordinators, iBudget Florida enrollment, and the development of a cost-sharing program as outlined in statute. APD will evaluate the effectiveness of these measures and monthly expenditures to determine whether there are needs to adopt additional measures.

We look forward to working together to help serve one of Florida's most vulnerable populations.

Introduction

The Agency for Persons with Disabilities (agency or APD) serves nearly 30,000 Floridians with developmental disabilities through the Home and Community Based Services (HCBS) and iBudget Florida Medicaid waivers. Waiver services help individuals with developmental disabilities live everyday lives in the community rather than in institutions. Most individuals live with their families or in their own homes; many others live in community homes licensed by the agency. APD also provides very limited services through general revenue funding to nearly 20,000 other individuals who are waiting for or not eligible for waiver services.

The Fiscal Year 2011-2012 General Appropriations Act provides \$810 million for waiver services. However, if the agency or Legislature took no action to contain costs, waiver service expenditures are projected to be \$930 million—about \$120 million more than the agency’s funding. Given this gap, state law requires APD to provide a plan to reduce spending. APD submits this plan in compliance with that law. The agency seeks input from the governor, Legislature, stakeholders, and the individuals and families it serves on the proposals in this plan.

Applicable State Laws

Section 393.0661(8), Florida Statutes, grants the Agency for Health Care Administration (AHCA), in consultation with APD, the authority to: adjust fees, reimbursement rates, lengths of stay, number of visits, and number of services; limit enrollment; and make any other adjustment necessary to comply with the availability of funds and any limitations or directions provided for in the General Appropriations Act.

Further, subsection (9) states that, if at any time an analysis by the agency, in consultation with AHCA, indicates that the cost of waiver services is expected to exceed the amount appropriated, the agency shall submit a plan to the Executive Office of the Governor, the chair of the Senate Ways and Means Committee or its successor, and the chair of the House Fiscal Council or its successor for remaining within the amount appropriated. APD is directed to work with AHCA to implement the plan so as to remain within the appropriation for waiver services. APD submitted an initial plan under sections 393.0661(8) and (9), F.S., on August 19, 2011, so that APD could begin implementing measures to manage spending.

In addition to this statutory authority, proviso language in the Fiscal Year 2011-2012 General Appropriations Act requires APD to work with AHCA and other stakeholders to develop and submit a plan by September 1, 2011, for sufficient fiscal and operational controls to allow APD to manage Medicaid waiver spending within the legislative appropriation. This is the second of two submissions that APD will make in compliance with this provision.

Approach

To create options for sufficient fiscal and operational controls, the Executive Office of the Governor held a series of stakeholder meetings. Attendees included persons representing the Family Care Council Florida, waiver support coordinators, providers, advocates, and APD. APD also held a public meeting on June 9, 2011. In addition, APD created a “One Team, One Goal” program to tell waiver-enrolled individuals, their families, providers, and other stakeholders about cost-containment initiatives and encourage their cooperation. APD also consulted with AHCA staff on a regular basis.

There are four types of options to bring spending in line with appropriations:

- Legislatively mandated cost-containment initiatives, which have been implemented.
- Near-term initiatives, which have been implemented this fiscal year and for which savings are also primarily realized this fiscal year.
- Initiatives requiring law changes and/or federal approval, which will impact next fiscal year spending if approved.
- Strategic initiatives, which take more time for the agency to implement but which will ensure the agency will operate within legislative appropriations in the following fiscal year. Some of these initiatives require further study and development before implementation. Savings could generally be realized next fiscal year.

APD has implemented the legislatively mandated cost-containment initiatives effective July 1, 2011, as required by law. In addition, the agency has pursued other types of options to reduce waiver costs. This is because the projected expenditures exceed current appropriations. However, it is also because the waiver system is very complex. The agency must use a multifaceted approach to reduce expenditures. Experience shows that cost-containment efforts focused on only one factor do not realize sufficient savings.

The waiver system requires several cost-containment initiatives in order to result in sustainable savings. The first such initiative was implemented on April 1, 2011, and adopted by the Legislature to require the continuation of the cost plan freeze through June 30, 2012. This required that no increases to services to individuals could be granted unless the services were needed because of a crisis. The crisis criteria are homelessness, danger to self or others, and caregiver unable to continue providing care. Additional cost-containment initiatives are needed in order to bring waiver expenditures in line with appropriations.

There are five different approaches to cost-containment. Each has general advantages and disadvantages. For example, some approaches have nearly immediate savings, while others take more time. Some affect all of a given group of people in the state, such as all individuals using a particular service or providers offering a given service, while other approaches are more targeted. Some will take significant agency resources to implement, while others require fewer agency resources.

The options in this plan also vary in regard to APD's ability to implement them without meeting additional requirements or gaining additional approvals. As described above, under s. 393.0661(8), F.S., APD and AHCA have wide authority under state law to put cost-containment initiatives in place without delay; for example, changes which would otherwise require formal rulemaking may be made without it. Once the final set of initiatives is chosen, APD and AHCA intend to use that authority to begin implementing those initiatives immediately. APD and AHCA would then pursue rulemaking. However, APD could not immediately put in place initiatives requiring federal approval. AHCA would still need to obtain federal approval first.

The five approaches are:

- **Rate adjustments:** This affects all providers of the services for which rates are adjusted. While this is one of the easier options for the agency to implement and one that does not reduce the quantity of services authorized for individuals, it affects all providers. Providers already experienced one rate adjustment this fiscal year.
- **Service eliminations or service limitations:** This involves the agency ceasing to offer a specific level of waiver service to individuals, the elimination of a specific service under the waiver, or lowering the maximum amount of a specific service that individuals may receive. It reduces or ends some of the services that individuals receive; it also affects the providers offering it. Additionally, individuals will have hearing rights. The elimination of services requires federal approval through an amendment to the Home and Community Based Services waiver.
- **Utilization management:** This features routine specific review and agency approval of an individual's use of services based on expected results from the delivery of specific services. It considers an individual's unique circumstances and requires more significant agency resources as well as time to implement, due to the thorough nature of the reviews conducted.
- **Service restructuring:** This requires a review and update of the description, requirements, ratios, limitations, and rates for a service to find ways to meet individuals' needs at lower costs. This takes agency and provider time and resources to implement but is intended to lead to longer-term efficiencies with less impact on individuals.
- **Capping an individual's cost plan and/or expenditures:** Examples are freezing cost plans so that individual's services are not increased unless the individual is in crisis. Additionally, the agency could limit expenditures using an individualized budgeting approach that gives funding to individuals based on the total appropriation.

PRESENTATION OF OPTIONS

Legislatively Mandated Cost-Containment Initiatives

The 2011 Florida Legislature approved two important cost-containment initiatives: a 4% provider rate reduction and a cost plan freeze. APD implemented these initiatives on July 1, 2011, and they will continue through June 30, 2012. This plan requires a total of approximately \$76.3 million in additional expenditure reductions after implementation of a 4% provider rate reduction and a cost plan freeze as enacted by the Legislature.

Table 1: Projected Impact of Legislatively Mandated Cost-Containment Initiatives and Remaining Projected Expenditures in Excess of Appropriations

Line	Description	Amount
1	Baseline Projected Expenditures	\$930,000,000
2	4% Provider Rate Reduction Savings	(\$36,360,000)
3	Cost Plan Freeze Reduction Savings	(\$6,885,912)
4	Revised Projected Expenditures after Implementing Initiatives	\$886,754,088
5	FY 2011-2012 Appropriation	\$810,437,372
6	Projected Expenditures in Excess of Appropriations After Implementing Legislatively Mandated Initiatives	\$76,316,716
7	Projected Savings from Initiatives	(\$21,023,531)
8	Remaining Projected Expenditures in Excess of Appropriations	\$55,293,185

Near-Term Cost-Containment Initiatives

APD has already put into place four near-term cost-containment initiatives, as outlined in the table below. The agency identified these initiatives through discussions with stakeholders.

Table 2: Current Cost-Containment Initiatives

Initiative	FY 2011-2012 Savings	Estimated Annual Savings	Description	Status
Companion Rate Ratio/Limit Adjustment	\$17,055,318	\$18,605,801	Reduces rate for the 1:1 ratio to the rate for the 1:2 ratio. The rates for the 1:2 and 1:3 ratios are unchanged.	Implemented 8/1/11
Allow In-Home Supports in all tiers as a less costly option for Personal Care Assistance	\$1,618,171	\$1,765,277	Replaces Personal Care Services at a rate of \$15 per hour with In-Home Support Services at approximately \$12 per hour	Implemented 7/1/11
Transportation review to limit services to no more than one round trip per day	\$1,375,000	\$1,500,000	Ensures that transit is funded by the waiver only as a last resort and that appropriate limits are applied.	Implemented 9/1/11
Pool Respite services for families to draw from as needed	\$975,042	\$1,170,050	Reduces unused services in current cost plans. Respite services are a critical service to families and will continue to be provided as appropriate.	Implemented 9/1/11
Total Savings	\$21,023,531	\$23,041,128	Lapse amount is 8% per month	

The agency projects savings from these current cost-containment initiatives to be \$21.0 million. This leaves an additional \$55.3 million in expenditures that must be reduced to bring spending in line with appropriations. The cost-containment initiatives under consideration are presented below by category. Detailed descriptions and analysis follow in the appendix.

Table 3: Near-Term Cost-Containment Initiatives

Type	Initiative	Estimated Annual Savings	Status
Rate adjustment	Reduce rates for therapy assessments and all nursing services to the Medicaid State Plan rate	\$1,268,174	APD and AHCA will amend reimbursement rates
Rate adjustment	Set the agency rate premium to a maximum of 20% above solo rates.	\$3,712,169	Under consideration, needs further study
Rate adjustment	Pay behavior analysts with higher qualifications at the same rate	\$2,580,874	Under consideration, needs further study
Rate adjustment	Standardized Residential Habilitation—Intensive Behavior rates	\$1,549,764	Under development
Service limit reductions	Reductions in service limits	To Be Determined	Under consideration, needs further study
Utilization management	Re-evaluate needs for in-home support services for those receiving additional quarter hours of service beyond the daily rate	\$1,381,433	Implementation to begin 9/1/11
Utilization management	Voluntary reductions by individuals and families	To Be Determined	Implemented 7/1/11
Utilization management	Comprehensive utilization reviews	To Be Determined	Implemented 7/1/11

Table 4: Cost-Containment Initiatives Requiring State and Federal Approval

Type	Initiative	Estimated Annual Savings	Status
Service eliminations	Limiting the waiver to core services to ensure health and safety	To Be Determined	Under consideration, needs further study
Cap individual cost plans	Limit individual cost plans to a maximum of \$150,000 with no exceptions	\$7,960,564	Under consideration, needs further study
Service eliminations	Transfer Specialized Mental Health Therapy and Skilled Nursing from the waiver to the Medicaid State Plan	\$3,007,975	Under consideration, needs further study

Table 5: Strategic Cost Containment Initiatives

Type	Initiative	Estimated Annual Savings	Status
Service restructuring	Consolidate and simplify Residential Habilitation levels	\$21,113,087	Under consideration, needs further study
Service restructuring	Restructure Adult Day Services	\$9,705,982	Under consideration, needs further study
iBudget Florida implementation	iBudget Florida implementation for Fiscal Year 2011-2012	To Be Determined	Beginning 10/1/11 through 6/30/12
Cost-sharing premium payments	Develop a cost-sharing payments program and request federal approval	To Be Determined	APD and AHCA will seek federal approval
Changing role of waiver support coordinator	Changing the role of waiver support coordinators and track the progress of cost efficiencies	To Be Determined	Implemented 7/1/11 and ongoing
Implement managed care	Implement managed care for services to persons served on the Home and Community Based Services waiver	To Be Determined	Under consideration, needs further study
Implement a community-based care strategy	Implement a community-based care strategy for persons served by the Home and Community Based Services waiver	To Be Determined	Under consideration, needs further study

Conclusion

APD submits this report in compliance with proviso language from the Fiscal Year 2011-2012 General Appropriations Act that required APD to work with AHCA and other stakeholders to develop and submit a plan by September 1, 2011, allowing APD to manage Medicaid waiver spending within the legislative appropriation.

APD has been moving forward with three steps to contain costs. The first step involved the implementation of the legislatively-mandated 4% provider rate reduction and cost plan freeze. The second step involved the implementation of the four initiatives outlined in the initial plan submitted August 19, 2011. The third step involves the ongoing implementation of the following measures: utilization management reviews, service rate reductions, changing roles of waiver support coordinators, iBudget Florida enrollment, and the development of a cost-sharing program as outlined in statute. APD will evaluate the effectiveness of these measures and monthly expenditures to determine whether there are needs to adopt additional measures.

APPENDIX A

DETAILED DESCRIPTIONS OF COST-CONTAINMENT OPTIONS

Near-Term Cost-Containment Initiatives

Initiative: Reduce rates for therapy assessments and all nursing services to the Medicaid State Plan (MSP) rate

Estimated Annual Savings: \$1,268,174

Description: The rates paid by the Medicaid State Plan (MSP) are lower than for similar waiver services in several cases. These are depicted in the table below. Although APD could begin implementing this initiative under its current authority, long-term implementation would require the Agency for Health Care Administration to work with APD to revise the rate rule.

Advantages: This would reduce costs while not reducing services to individuals.

Disadvantages: Some individuals may have difficulty securing providers at the lower rates.

Stakeholder feedback: Most stakeholders are supportive.

Status: APD and AHCA will amend waiver rates to align with State Plan reimbursements.

Waiver Service	MSP Rate	MSP Unit of Service	Waiver Rate	Waiver Unit of Service	Difference
Occupational Therapy Assessment	\$97.00	annual 2 x 48.50	\$133.55	annual	\$36.55
Physical Therapy Assessment	\$97.00	annual 2 x 48.50	\$133.55	annual	\$36.55
Respiratory Therapy Assessment	\$97.00	annual 2 x 48.50	\$190.79	annual	\$93.79
Speech Therapy Assessment	\$97.00	annual 2 x 48.50	\$133.55	annual	\$36.55
Skilled Nursing LPN	\$26.19	per visit	\$6.10	quarter hour	variable
Skilled Nursing RN	\$31.04	per visit	\$9.33	quarter hour	variable
Private Duty Nursing LPN	\$5.82	quarter hour	\$6.10	quarter hour	\$0.28
Private Duty Nursing RN	\$7.28	quarter hour	\$8.78	quarter hour	\$1.50
Residential Nursing LPN	\$5.82	quarter hour	\$6.10	quarter hour	\$0.28
Residential Nursing RN	\$7.28	quarter hour	\$8.78	quarter hour	\$1.50

Initiative: Agency rate premium set to a maximum of 20% above solo rates

Estimated Annual Savings: \$3,712,169

Description: Out of the 27 services offered through the waiver, some pay a higher rate to providers who are agencies. A provider qualifies as an agency if they employ one or more employees who provide direct service. For these provider types, the difference between individual or solo provider rates and agency rates ranges from 5% to 43.5%. This initiative would consolidate agency rate premiums to not more than 20% above the solo rate. APD's waiver is the only waiver in Florida that offers solo and agency rates. Additionally, Medicaid State Plan does not offer agency versus solo rates. The rates and their premiums are listed below.

Service	Agency Premium Above Solo Rate
1. Respite Care – Day	5.41%
2. Respite Care - Quarter Hour	5.48%
3. In - Home Supports (Awake Staff) Qtr. Hour	19.72%
4. Supported Employment Group	20.44%
5. Residential Habilitation - Live In Staff - Day	22.96%
6. Residential Habilitation - Quarter Hour	23.67%
7. Skilled Nursing – RN	23.73%
8. In - Home Supports (Live-In Staff) Day	24.47%
9. Companion	29.39%
10. Specialized Mental Health – Therapy	29.86%
11. Behavior Assistant Services	30.51%
12. Supported Living Coaching	30.53%
13. Private Duty Nursing – RN	32.63%
14. Private Duty Nursing – LPN	33.29%
15. Residential Nursing – RN	32.63%
16. Residential Nursing – LPN	33.97%
17. Skilled Nursing – LPN	34.30%
18. Dietician Services	34.99%
19. Behavior Analysis Level 1	42.31%
20. Behavior Analysis Level 3	42.95%
21. Behavior Analysis Level 2	43.52%

Advantages: This would reduce costs while not reducing services to individuals.

Disadvantages: If providers' capacity is reduced or they go out of business, individual choice will be limited.

Stakeholder feedback: Agency providers oppose a reduction in the agency premium due to loss of revenue.

Status: This initiative is under consideration and needs further study.

Initiative: Eliminate quarter-hour units for specified individuals with In-Home Support Services (IHSS) and pay only the day rate

Estimated Annual Savings: \$1,381,433

Description: The provider handbook allows in-home support services providers to be paid an additional increment known as quarter hours above the day rate for supporting individuals with significant disabilities. The agency has determined that there are individuals who may not need additional quarter hours of this service at this time. The day rate for agency providers in most parts of the state is \$80.74. Under this initiative, APD would review individuals on a case-by-case basis and adjust in-home support services to appropriate levels.

Advantages: This would reduce costs while ensuring services are appropriate for an individual's level of need.

Disadvantages: By law, APD must give an individual a chance to request a hearing if services are reduced. In these cases, services continue at current levels until the hearing is resolved.

Stakeholder feedback: There appeared to be no opposition from stakeholders.

Status: APD is conducting this as a part of the overall utilization management program. The agency has developed cost models for comparison to actual consumer expenditures as baseline data.

Initiative: Pay behavior analysts with higher qualifications at the same rate

Estimated Annual Savings: \$2,580,874

Description: Currently, behavior analysts with higher qualifications such as doctorate or master's degrees are paid a higher rate after they gain three years' experience. For agency providers in most areas of the state, a higher-qualified behavior analyst with three years of experience would be paid \$19.05 per quarter hour, while a higher-qualified behavior analyst with fewer than three years of experience would be paid \$16.64 per quarter hour. This initiative would eliminate the higher rate; thus higher-qualified behavior analysts with experience less than three years or greater than three years would be paid the same rate. Long-term implementation would require the Agency for Health Care Administration to work with APD to revise the coverage and limitations handbook and the rate rule.

Advantages: This would reduce costs while not reducing authorized amounts of service to individuals.

Disadvantages: Behavior analysts with greater than three years of experience may choose not to provide services to individuals on the waiver.

Stakeholder feedback: Some stakeholders oppose this initiative.

Status: This initiative is under consideration and needs further study.

Initiative: Standardize Residential Habilitation—Intensive Behavior rates

Estimated Annual Savings: \$1,549,764

Description: Currently intensive behavior rates are individually negotiated between the area office and each facility. These negotiated rates are highly variable. The Legislature has placed requirements in statute that these rates be standardized.

Advantages: Predictability of cost for each individual.

Disadvantages: Some providers may choose not to provide services to individuals on the waiver.

Stakeholder feedback: Some providers have indicated their willingness to work with APD on this initiative.

Status: This initiative is under consideration and needs further study

Initiative: Voluntary waiver service reductions by individuals and families

Estimated Annual Savings: To Be Determined

Description: Waiver support coordinators work with individuals and their families to see if they could take greater advantage of natural and community supports, replacing some of their paid waiver services. The area offices track the voluntary reductions as reported by the waiver support coordinators. For example, eight area offices have reported \$2.0 million in voluntary reductions in the approved cost plans. Additionally, the agency has received an offer to reduce rates from a provider that has a negotiated rate for individuals that receive intensive residential habilitation services. This particular provider has volunteered a \$500,000 reduction in the negotiated rates for 126 clients.

Advantages: This initiative puts individuals and families in control of reductions; they tailor them to their own unique situations. Additionally, since the reductions are voluntary, there are no hearings. This option also encourages use of natural and community supports, which are supposed to be the first resources to which individuals look for help before seeking to meet needs through waiver services. Use of these alternative supports also generally leads to greater integration in the community and a higher quality of life.

Disadvantages: None.

Stakeholder feedback: They support working together as a team to better use resources. This initiative was suggested by stakeholders.

Status: This initiative was implemented July 1, 2011. Approximately \$2.0 million in services have been voluntarily reduced in reviews of service needs by waiver support coordinators and families.

Initiative: Comprehensive utilization reviews

Estimated Annual Savings: To Be Determined

Description: The agency has initiated a utilization management system to ensure services appropriately match individuals' needs. This utilization review will contain analysis of the outliers and service patterns where costs significantly exceed the average cost of care. For example, APD is evaluating lengths of stay in intensive services; reviewing cost plan utilization; identifying duplicative services; and highlighting opportunities to shift to natural and community services or services funded by other payers. The reviews consider if the individual's need has changed since a service first began and if the coverage and limitations handbook requirements have been met.

Advantages: This is a very individually-tailored review and adjustment, considering the specifics of an individual's situation. Individuals will continue to receive the services appropriate for their needs. It also will lead to greater equity, since consistent standards would be applied across the state.

Disadvantages: By law, APD must give an individual a right to a hearing if services are reduced. In these instances, services continue at current levels until the hearing is resolved. The agency will stagger notices of reductions, which allows APD to process hearing requests more quickly and thus allows the individual to reach resolution.

Stakeholder feedback: Stakeholders have been generally supportive of this initiative.

Status: This initiative began July 1, 2011 and is continuing through this fiscal year.

Initiative: Reductions in service limits

Estimated Annual Savings: To Be Determined

Description: The current waiver provides for limits on the number of units that can be approved for an individual. This initiative would reduce those caps for many of the services offered through the waiver. The reduction to the maximum would vary by the service. While APD could begin this initiative based on its current statutory authority, this initiative would involve rulemaking to revise the Agency for Health Care Administration's rate rule and coverage and limitations handbook governing the waiver.

Advantages: This would preserve the wider service array now available while reducing expenditures to a sustainable level.

Disadvantages: This will limit the amount of services that individuals will be able to receive. Since this would involve service reductions for many individuals, the individual will have the right to request hearings.

Stakeholder feedback: There is no consensus on this issue.

Status: This initiative is under consideration and needs further study.

APPENDIX B

Initiatives Requiring Federal Approval

Initiative: Limiting the waiver to core services to ensure health and safety

Estimated Annual Savings: To Be Determined

Description: This initiative refocuses the waiver on providing only those services which are critical to health and safety and that are necessary in order to avoid the individual being placed in an institutional setting. These core services are unlikely to be provided through natural and community supports. The list of services that would be considered core is still under development.

Advantages: It would be administratively easier for the agency to implement than some other options. It would redirect individuals to services which are available from other sources.

Disadvantages: This would have a major impact on both individuals who had used the eliminated services and the providers who had offered them. This would require a waiver amendment and thus federal approval; the process of submitting and receiving approval for a waiver amendment can be lengthy, which would delay the agency's realizing savings from this option. Individuals would have the opportunity to file for administrative hearings, but given that the services are no longer available, they do not have to be continued at agency cost and the hearings can be processed quickly. Some consumers may have difficulty replacing eliminated services due to lack of availability in their community from other sources.

Stakeholder feedback: Stakeholders strongly oppose this initiative.

Status: This initiative is under consideration and needs further study

Initiative: Limit individual's yearly cost plans to a maximum of \$150,000 with no exceptions

Estimated Annual Savings: \$7,960,564

Description: The waiver would be amended to cap an individual's cost plan at \$150,000. This initiative would also eliminate the exceptions outlined in statute and would require legislative action. If an individual could not be served in the community through the waiver for no more than \$150,000 per year, he or she would instead be served through alternative means, such as a private ICF/DD or a nursing home, in which case the responsibility for funding would shift to AHCA. If placement in a public institution is the most effective or available option, then a shift in funding would be necessary to ensure sufficient capacity at a lower cost. Currently, 277 individuals have cost plans in excess of \$150,000.

Advantages: Caps the upper bound of an individual's waiver service costs.

Disadvantages: Requires federal approval of a waiver amendment. The federal government may have concerns about individuals currently in the waiver moving to more restrictive settings. This may conflict with s. 393.062, F.S., which provides “the greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placement.” This initiative may limit choice; many families oppose such restrictive settings. There may not be sufficient private ICF/DD beds available for the individuals who would need a placement. Further, private ICF/DDs are able to refuse to admit these individuals.

Stakeholder feedback: There is no stakeholder consensus on this issue.

Status: This initiative requires a state law change and federal approval of a waiver amendment.

Initiative: Transfer Specialized Mental Health Therapy and Skilled Nursing Services from the waiver to the Medicaid State Plan

Estimated Annual Savings: \$3,007,975

Description: The waiver offers specialized Mental Health Therapy and Skilled Nursing Services to adults meeting the criteria to receive them. Approximately 757 individuals received specialized Mental Health Therapy and 130 individuals received Skilled Nursing Services. However, the Medicaid State Plan offers similar services for adults. This initiative would remove these services from the waiver. Adults would need to access these services through the State Plan.

Advantages: Reduces waiver expenditures while still allowing many individuals to receive these services through another source.

Disadvantages: Requires federal approval of a waiver amendment, which can be a lengthy process. If nearly all individuals whose services were reduced were able to receive these services under the State Plan, AHCA would still bear much of the cost for these services.

Stakeholder feedback: No opposition.

Status: This initiative requires a state law change and federal approval of a waiver amendment.

APPENDIX C

Strategic Cost-Containment Initiatives

Initiative: Consolidate and simplify Residential Habilitation levels

Estimated Annual Savings: \$21,113,087

Description: The waiver coverage and limitations handbook and rate rule prescribe nine levels of Residential Habilitation; there are specific criteria defining each level as well as specific requirements, staffing ratios, and rates. Residential habilitation expenditures comprise the largest percentage of total waiver spending at \$374,671,293 in the 2010-2011 fiscal year—an average of \$45,103 for each of the 8,307 individuals receiving this service. While APD could begin this initiative based on its current statutory authority, this initiative would involve rulemaking to revise AHCA’s rate rule and coverage and limitations handbook governing the waiver.

Advantages: This would reduce costs for the service comprising the largest percentage of waiver spending. It would simplify the service structure for Residential Habilitation. It would also provide an opportunity to review individuals’ Residential Habilitation levels; initial reviews prompt concerns that some individuals may be receiving higher (and thus more expensive) levels of Residential Habilitation services than are appropriate for their current needs.

Disadvantages: Consumer choice of providers may be more limited if some residential providers no longer offer these services.

Stakeholder feedback: Residential Habilitation providers oppose this initiative. Due to the agency’s significant expenditures for this service, APD staff requested that providers propose cost-containment initiatives specifically for this service, but have not received alternative proposals.

Status: This initiative is under consideration and needs further study.

Initiative: Restructure adult day services

Estimated Annual Savings: \$9,705,982

Description: APD spent \$71,260,277 for Adult Day Training (ADT) services in FY 2010-2011. Approximately 11,955 individuals used this service, for an average of \$5,961 per individual. This initiative would make several changes to adult day services. For instance, APD would start a new adult day service which places less emphasis on training for those individuals who are older and no longer require training but whose family needs a day-care option while the family is working. The agency would also review to see if rates, ratios, and service requirements for the existing Adult Day Training service could be adjusted to create efficiencies without reducing services to individuals or impacting health and safety. While APD could begin this initiative based on its current statutory authority, this initiative would involve rulemaking to revise the Agency for Health Care Administration’s rate rule and coverage and limitations handbook governing the waiver. The estimated annual savings is based on a restructured rate of \$1.20.

Advantages: This would reduce costs and ease some regulations while maintaining individuals' health and safety. Additionally, this initiative would maintain ADT services at their current level, which would avoid service reductions. This would expand service options to better serve individuals who do not need the current high level of training offered through this service, such as older individuals, at a higher ratio and lower rate.

Disadvantages: Adult Day Training is one of the original community-based services for individuals, and some stakeholders are concerned about deviating from its traditional emphasis on training, fearing that is a step backwards in serving individuals with disabilities.

Stakeholder feedback: Stakeholders are not supportive of this initiative, citing concerns that the reduction in regulatory burden would not outweigh the reduction in rates. They report that reimbursement is already too low. They also fear that rates may become inadequate especially for providers serving individuals with more challenging disabilities, thus making it more difficult for such individuals to find providers willing to serve them.

Status: This initiative is under consideration and needs further study

Initiative: iBudget Florida

Estimated Annual Savings: The savings are dependent on the gap between projected expenditures and the appropriation after the implementation of other cost-containment initiatives

Description: iBudget Florida is designed to enhance the waiver system's simplicity and equity while keeping spending within the agency's waiver services appropriation. Additionally, iBudget Florida provides individuals with greater control over the day-to-day authorization and delivery of needed services. The agency is in the process of deploying iBudget Florida statewide this fiscal year.

Advantages: This initiative provides for equitable determination of budget allocations and enhances individuals' flexibility to make choices about their services. It encourages the use of natural and community supports.

Disadvantages: Implementing iBudget Florida is a major effort requiring significant policy and process changes for agency staff and its providers and waiver support coordinators. Some individuals may have service decreases; APD must afford them hearing rights.

Stakeholder feedback: Stakeholders have generally been supportive. APD developed iBudget Florida cooperatively with stakeholders.

Status: The iBudget implementation will begin in the Pensacola and Tallahassee areas of the state on October 1, 2011. The rest of the state will be implemented during this fiscal year with December, February and April begin dates. The December implementation will include the Tampa Bay area and Southwest Florida. The February implementation will include Southeast Florida with the rest of the state following in April.

Initiative: Cost-Sharing Premium Payments

Estimated Annual Savings: To Be Determined

Description: In the 2011 legislative session, House Bill 7109 directed APD to develop a system to require premium payments or other cost sharing by the parents of children who are served by a waiver who have an adjusted household income greater than 100% of the federal poverty level. Once the system is developed, APD is directed to work with AHCA to submit a request for federal approval of this program. This initiative is designed to be a cost-sharing measure for the Home and Community Based Services waiver.

Advantages: This cost sharing would offset the costs of the waiver services.

Disadvantages: Requires federal approval and requires administrative processes to be developed in order to collect the income data and payments from families.

Stakeholder feedback: There is no consensus on this issue.

Status: AHCA and APD will seek federal approval to implement this initiative.

Initiative: Changing the role of the waiver support coordinator (WSC)

Estimated Annual Savings: To be determined

Description: A waiver support coordinator (WSC) is currently hired by the individual and paid through the waiver to assist individuals and families in identifying their capacities, needs, and resources. The WSC is responsible for coordinating the delivery of supports and services, advocating on behalf of the individual and family, maintaining relevant records, and monitoring the delivery of supports and services to determine if they meet identified needs.

The General Appropriations Act (GAA) included proviso language that requires the waiver support coordinators to work cooperatively with the agency in monitoring services and costs under the waiver. Currently, the WSC utilizes the waiver as the first resource for services. The role of the waiver support coordinator will be to work with APD to provide essential services at the least cost to the waiver. This will require that natural and community supports are the first resource for services, reserving waiver services as a last resort. The agency is developing mechanisms to hold WSCs accountable through monitoring significant variation in costs of waiver services.

Advantages: Increases accountability for costs of services to the individual and support coordinators.

Disadvantages: Requires administrative tracking to be initiated to measure progress.

Stakeholder feedback: There is mixed support of this initiative among stakeholders

Status: Currently being implemented and ongoing.

Initiative: Implement managed care for services to persons served by the Agency for Persons with Disabilities on the Home and Community Based Services waiver

Estimated Annual Savings: To Be Determined

Description: In recent years, Florida, like other states, has turned to managed care for improving access to care, containing costs and enhancing quality for persons receiving Medicaid. In the 2011 legislative session, House Bills 7107 and 7109 were enacted to provide for statewide implementation of managed care, including managed medical care for primary and acute care and managed long-term care services. In making these comprehensive changes, Medicaid recipients enrolled in the Home and Community Based Services waiver pursuant to Chapter 393, and Medicaid recipients waiting for waiver services were specifically exempted from managed care. This initiative would reconsider that decision and utilize managed care for persons in the Home and Community Based Services waiver under Chapter 393 and persons waiting for waiver services.

Advantages: If other initiatives and strategies are not successful in improving access to care, containing costs and enhancing service quality, then it may be appropriate to reconsider use of managed care as a strategy. The advantages that have been observed in the use of managed care in other Medicaid-funded activities could be utilized to improved utilization management, cost-containment and related strategies. Efficiencies in provision of waiver services could potentially make additional services available to some persons who are not currently served on the waiver.

Disadvantages: Implementation of managed care would potentially make significant change to provider service networks and resources and substantially change the way that waiver services are managed and coordinated. This could result in changes in the number of providers available to provide waiver services and could affect the choices available to consumers regarding care.

Stakeholder feedback: In general, many consumers and advocates expressed strong opposition to including services to persons with developmental disabilities in managed care.

Status: Proposed for discussion.

Initiative: Implement a community-based care strategy for persons served by the Agency for Persons with Disabilities on the Home and Community Based Services waiver

Estimated Annual Savings: To Be Determined

Description: In child welfare, community-based care (CBC) lead agencies have been used as a strategy to increase the extent to which local communities are empowered to manage the delivery of services. CBC agencies are accountable to local boards of directors and operate under contract with the state agency. This mechanism can provide accountability for meeting service goals and managing resources. CBC agencies serve as a focal point in the community for assuring that state resources complement the supports available in the community.

Advantages: Community-based care organizations would be able to complement state resources with natural and community supports to enhance services and supports available to consumers and their families. Use of community resources could be maximized and the ability of finite state resources to be used more efficiently would be enhanced.

Disadvantages: Implementation of community-based care would require significant change to the service delivery structure which could bring a period of potential disruption during implementation. Established service provider networks could change and existing cost control and resource management mechanisms would need to be successfully migrated to the new structure. Coverage for rural areas without increasing administrative costs would be a challenge.

Stakeholder feedback: There is no stakeholder feedback on this issue.

Status: Proposed for discussion.

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

Sept. 20th,
Date

Bill Number

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Appearing at request of Chair

Subject APD Introduction

Representing Agency for Persons with Disabilities

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from .m. to .m.



The Florida Senate

Interim Report 2012-301

September 2011

Committee on Children, Families, and Elder Affairs

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 409.25661, F.S., RELATING TO INSURANCE CLAIM DATA EXCHANGE INFORMATION

Issue Description

Section 409.25659, F.S., requires the Department of Revenue (DOR or department) to develop and operate a data match system in which an insurer may voluntarily provide DOR with the name, address, and, if known, date of birth and Social Security number or other taxpayer identification number for each noncustodial parent who has a claim with the insurer and who owes past-due child support. Section 409.25661, F.S., provides that specified information regarding a noncustodial parent who owes past-due child support, collected by DOR pursuant to s. 409.25659, F.S., is confidential and exempt from public records.

This public-records exemption was created in 2004 and during the 2009 and 2010 Regular Sessions, the Legislature extended the repeal date of the exemption in order to provide DOR ample time to determine the success of the federal Deficit Reduction Act of 2005.¹ This exemption stands repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Background

Florida Public-Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public-records law in 1892.² In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level.³ Article I, section 24 of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Public-Records Act⁴ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency⁵ records are available for public inspection. Section 119.011(12), F.S., defines the term “public records” very broadly to include “all documents, ... tapes, photographs, films, sounds recordings ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection at the moment they become records.⁶

Only the Legislature is authorized to create exemptions to open-government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an

¹ See chs. 2009-119 and 2010-73, Laws of Fla.

² Sections 1390, 1391, F.S. (Rev. 1892).

³ FLA. CONST. art. I, s. 24.

⁴ Chapter 119, F.S.

⁵ An agency includes any state, county, or municipal officer, department, or other separate unit of government that is created or established by law, as well as any other public or private agency or person acting on behalf of any public agency. Section 119.011(2), F.S.

⁶ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Records may be identified as either exempt from public inspection or exempt and confidential. If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from public inspection, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁰ provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption's enactment. By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹¹ An identifiable public purpose is served if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or combination of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.¹²

The act also requires the Legislature, as part of the review process, to consider the following six questions that go to the scope, public purpose, and necessity of the exemption:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹³

Insurance Claim Data Exchange

Section 409.25659, F.S., was established during the 2004 Regular Session to provide for the identification of claims¹⁴ on liability insurance which could potentially be applied to child support arrearages in Title IV-D cases.¹⁵

⁷ FLA. CONST. art. I, s. 24(c).

⁸ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁹ *Id.* at 54.

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(6)(b), F.S.

¹² *Id.*

¹³ Section 119.15(6)(a), F.S.

The department was directed by statute to develop and operate a data match system to identify noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide DOR with the name, address, and, if known, date of birth and Social Security number or other taxpayer identification number for each noncustodial parent identified as having a claim.¹⁶ This data can only be used for purposes of child support enforcement.¹⁷

Within the data match system, an insurer may provide DOR with the needed information in one of three ways:

- An insurer may provide the required data for each claim directly to DOR electronically so that the department can conduct a data match;
- An insurer may receive or access data from DOR and conduct a data match of all noncustodial parents who have a claim with the insurer and who owe past-due child support, and submit the match data regarding each noncustodial parent to DOR; or
- An insurer may authorize an insurance claim data collection organization to complete one of the two options mentioned above.¹⁸

Due to the variety of data submission methods provided within the system, it would be possible for DOR to receive information on individuals having a claim with an insurer, who do not owe child support.¹⁹

In 2004, DOR contacted most of the top 25 insurers in the state to begin implementation of the statute. However, during this time insurers were responding to claims resulting from damage caused by the 2004 hurricane season so DOR decided to postpone working on the insurance claim data exchange initiative.²⁰

In February 2006 Congress passed the Deficit Reduction Act of 2005 (the Act), which authorized the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. The Act further allows HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.²¹ A federal workgroup was established to implement this provision. The department monitored the activities of the federal workgroup charged with implementing the nationwide insurance data match program and began implementing the changes necessary to receive data from the federal program.²²

In November 2008, DOR began data matching activities with the federal program and began issuing income deduction notices on matches.²³ Between November 2008 and October 2009, the department received 2,996 data

¹⁴ A “claim” is considered an open, unresolved bodily injury claim on liability coverage in excess of \$3,000 in an insurance contract payable to an individual, or to a third party for the benefit of the individual, who is a Florida resident or who had an accident or loss that occurred in Florida, or who has an outstanding child support obligation in Florida. Section 409.24659(1), F.S.

¹⁵ Chapter 2004-334, Laws of Fla. The term “Title IV-D” refers to state-run child support enforcement programs which are funded through grants provided for by the Social Security Act of 1975. Title IV of the Social Security Act covers grants to states for the purpose of providing aid and services to needy families with children and for child-welfare services. Part “D” of that law covers child support and the establishment of paternity.

¹⁶ Section 409.25659(2), F.S.

¹⁷ Section 409.25659(5), F.S.

¹⁸ Section 409.25659(2)(a)-(c), F.S.

¹⁹ Conversation with representatives from the Fla. Dep’t of Revenue (July 12, 2011).

²⁰ Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Open Government Sunset Review Regarding Noncustodial Parents Owing Past-Due Child Support*, 4 (Interim Report 2009-202) (Sept. 2008), available at http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-202cf.pdf (last visited June 15, 2011).

²¹ *Id.*

²² *Id.*

²³ E-mail from Debbie Thomas, Dep’t of Revenue, to staff of the Senate Committee on Children, Families, and Elder Affairs (June 14, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

matches from the federal program.²⁴ Of those matches, 422 were previously made by the department through other means.²⁵ According to department representatives, approximately \$2 million has been collected since the department implemented the federal matching program.²⁶

During the 2009 Regular Session, there was discussion over whether the federal voluntary insurance data match program would replace the state's voluntary program. The department sent 84 letters to Florida-based insurance companies from November 2009 through February 2010 inviting them to participate in the voluntary state program. The department received responses from two companies, both of which stated they do not handle personal liability insurance. In February 2011, DOR sent an additional 135 letters to Florida-based insurance companies and as of June 1, 2011, they had received only three responses, including one from Citizens Property Insurance Corporation (Citizens).²⁷ The department has been working with Citizens to design a data match system and by 2012, DOR should begin receiving data from Citizens.²⁸ The department continues to encourage voluntary participation in the state insurance claim data match through annual contact letters to Florida-based insurers.²⁹

The department reports that as of May 2011, the number of noncustodial parents eligible to be matched using the insurance claim data exchange is 448,965.³⁰

Public-Records Exemption for Insurance Claim Data Exchange

Section 409.25661, F.S., provides that information obtained by DOR during an insurance claim data exchange pursuant to s. 409.25659, F.S., is confidential and exempt from public disclosure until the department determines whether a match exists. If a match does exist, the matched data is no longer considered confidential and exempt and becomes available for public disclosure unless otherwise exempt. If a match does not exist, the information must be destroyed.

This public-records exemption was created in 2004 and during the 2009 and 2010 Regular Sessions, the Legislature extended the repeal date of the exemption to provide DOR with ample time to determine the success of the provisions contained in the federal Deficit Reduction Act of 2005. This exemption stands repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Findings and/or Conclusions

Section 409.25659, F.S., requires the Department of Revenue (DOR or department) to develop and operate a data match system with insurers for purposes of collecting past-due child support. An insurer may provide information to DOR by accessing a data file from DOR and conducting a data match of all non-custodial parents who have a claim with the insurer and who owe past due child support; by providing the required data for each claim maintained by the insurer to DOR; or by authorizing an independent organization to perform one of the previously mentioned functions. To date, the department has not begun using the state data match system, but it is working with Citizens Property Insurance Corporation (Citizens) to begin data matching within the next year. The department currently uses the federal data match program and the Child Support Lien Network (CSLN)³¹ to

²⁴ Governmental Affairs Policy Committee, The Florida House of Representatives, *House of Representatives Staff Analysis HB 7091* (Mar. 5, 2010), available at <http://archive.flsenate.gov/data/session/2010/House/bills/analysis/pdf/h7091.GAP.pdf> (last visited July 13, 2011).

²⁵ *Id.*

²⁶ Conversation with representatives from the Fla. Dep't of Revenue (July 12, 2011).

²⁷ Dep't of Revenue, *CSE Insurance Data Match Public Records Exemption* (June 14, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁸ Conversation with representatives from the Fla. Dep't of Revenue (July 12, 2011).

²⁹ Dep't of Revenue, *supra* note 27.

³⁰ E-mail from Debbie Thomas, Dep't of Revenue, to staff of the Committee on Children, Families, and Elder Affairs (June 24, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

³¹ The Child Support Lien Network (CSLN) houses a database of 3.7 million delinquent child support obligors owing over \$80 billion in past-due support which is updated on a monthly basis by participating states. The database is used to intercept insurance settlements to pay delinquent child support obligations. Currently, the network has 30 participating states. Child Support Lien Network, <http://www.childsupportliens.com/> (last visited July 20, 2011).

identify individuals with open liability claims who also have an outstanding child support obligation in the state. Upon full implementation, the state program will work similarly to the federal program and CSLN. For example, under the current CSLN program DOR creates a file each month of obligor parents and places that data on a file transfer protocol (FTP) where CSLN retrieves the file and inputs the data into a master table. Then CSLN extracts data of open claims from the insurance services organization (ISO); performs a search to determine if any matches exist; conducts a quality assurance test on the match; and then sends the match back to Florida. The department then imports the file into its database and performs another quality assurance test on it to verify that the match is to the appropriate person. The department then sends the insurer an income deduction notice detailing how much money needs to be paid to DOR.³² According to the department, another option would be for the insurance company to send files of every open claim to DOR and then the department would go through the files to see if there were any matching claims to persons who owed child support.³³ In this situation, the department could acquire information of a sensitive nature on persons who do not have any ties to child support. If such information was made public it could cause unwarranted damage to the reputation of the individual.

In reviewing the public-records exemption under the Open Government Sunset Review Act, Senate professional staff of the Children, Families, and Elder Affairs Committee found there is a public necessity in continuing to keep confidential and exempt the information obtained by the department during an insurance claim data exchange pursuant to s. 409.25659, F.S. This public-records exemption appears to serve a public purpose by maintaining the confidentiality of certain information. Specifically, the following information is protected under the public-records exemption from public disclosure:

- Name;
- Address;
- Date of birth;
- Social security number or other taxpayer identification number; and
- Claim number.³⁴

In 2004, the Legislature found it was a public necessity that the information obtained by DOR during the insurance claim data exchange process be confidential and exempt until such time as DOR determines whether a match is made regarding a person who owes past-due child support. Specifically, the Legislature stated:

Such information regarding those persons who do not receive a match is personal and of a private nature. Gathering and maintaining personal information on persons for purposes of child support enforcement, when such persons do not owe child support, could be considered an intrusion into the right of one's privacy, especially since those persons are unaware that government has collected such information. If such information is not made confidential and exempt until the time specified, the effective and efficient administration of the insurance claim data exchange program could be jeopardized. Insurers might be less likely to provide the department with information regarding insurance claims if the insurer believes such information will be made available for public disclosure.³⁵

The department continues to encourage voluntary participation in the state insurance claim data match through annual contact letters to Florida based insurers, and, according to DOR, "[i]nsurance providers would be less inclined to participate in any matching without the exemption."³⁶

Options and/or Recommendations

Senate professional staff recommends that the Legislature reenact the public-records exemption established in s. 409.25661, F.S., which makes certain personal information obtained by the Department of Revenue (DOR or

³² Conversation with representatives from the Fla. Dep't of Revenue (July 12, 2011).

³³ *Id.*

³⁴ Section 409.25659(2), F.S.

³⁵ Chapter 2004-339, Laws of Fla.

³⁶ Dep't of Revenue, *supra* note 27.

department) during an insurance claim data exchange exempt from disclosure. This recommendation is made in light of the information gathered during the Open Government Sunset Review which indicates that there is a public necessity in maintaining the confidential nature of personal information gathered by the department relating to persons having open liability claims with participating insurers. Additionally, the department reports that insurance providers may be less likely to participate in the insurance claim data exchange program without the exemption, making the exemption vital to the effective administration of the program.

THE FLORIDA SENATE



COMMITTEE ON CHILDREN, FAMILIES, AND
ELDER AFFAIRS

Review of Information Relating to Insurance Claim Data Exchange

Interim Project Report 2012-301

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THE FLORIDA SENATE

Committee on Children, Families, and Elder Affairs

Open Government Sunset Review Act

- Provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption's enactment.
- Exemption under review will expire October 2, 2012, unless saved by the Legislature.



THE FLORIDA SENATE

Committee on Children, Families, and Elder Affairs

Insurance Claim Data Exchange

- **Provides for the identification of liability insurance claims which could be applied to child support arrearages.**
- **Allows insurers to provide DOR with the name, address, date of birth, social security number, and claim number for each noncustodial parent identified as having a claim.**



THE FLORIDA SENATE

Committee on Children, Families, and Elder Affairs

Exemption Under Review

- **Information obtained by DOR is confidential and exempt from public disclosure until DOR determines whether a match exists.**
- **If a match exists, the information becomes available for public disclosure.**
- **If a match does not exist, the information must be destroyed.**



THE FLORIDA SENATE

Committee on Children, Families, and Elder Affairs

Staff Recommendations

- **Reenact the public-records exemption because there is a public necessity in maintaining the confidential nature of personal information gathered by DOR relating to persons having open liability claims with participating insurers.**
- **Also, the exemption appears necessary for the effective administration of the insurance claim data exchange program.**



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