

Bill No. HB 2125, 2nd Eng.

Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Diaz-Balart moved the following amendment:

**Senate Amendment**

On page 38, line 12, through page 42, line 19, delete those lines

insert:

(1) The Department of Children and Family Services may petition a court of competent jurisdiction for the appointment of a receiver for a lead community-based provider established pursuant to s. 409.1671 when any of the following conditions exist:

(a) The lead community-based provider is operating without a license as a child-placing agency.

(b) The lead community-based provider has given less than 120 days notice of its intent to cease operations, and arrangements have not been made for another lead community-based provider or for the department to continue the uninterrupted provision of services.

(c) The department determines that conditions exist in the lead community-based provider which present an imminent

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1 danger to the health, safety, or welfare of the dependent  
2 children under that provider's care or supervision. Whenever  
3 possible, the department shall make a reasonable effort to  
4 facilitate the continued operation of the program.

5 (d) The lead community-based provider cannot meet its  
6 current financial obligations to its employees, contractors,  
7 or foster parents. Issuance of bad checks or the existence of  
8 delinquent obligations for payment of salaries, utilities, or  
9 invoices for essential services or commodities shall  
10 constitute prima facie evidence that the lead community-based  
11 provider lacks the financial ability to meet its financial  
12 obligations.

13 (2)(a) The petition for receivership shall take  
14 precedence over other court business unless the court  
15 determines that some other pending proceeding, having  
16 statutory precedence, has priority.

17 (b) A hearing shall be conducted within 5 days after  
18 the filing of the petition, at which time interested parties  
19 shall have the opportunity to present evidence as to whether a  
20 receiver should be appointed. The department shall give  
21 reasonable notice of the hearing on the petition to the lead  
22 community-based provider.

23 (c) The court shall grant the petition upon finding  
24 that one or more of the conditions in subsection (1) exists  
25 and the continued existence of the condition or conditions  
26 jeopardizes the health, safety, or welfare of dependent  
27 children. A receiver may be appointed ex parte when the court  
28 determines that one or more of the conditions in subsection  
29 (1) exists. After such finding, the court may appoint any  
30 person, including an employee of the department who is  
31 qualified by education, training, or experience to carry out

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1 the duties of the receiver pursuant to this section, except  
2 that the court shall not appoint any member of the governing  
3 board or any officer of the lead community-based provider. The  
4 receiver may be selected from a list of persons qualified to  
5 act as receivers which is developed by the department and  
6 presented to the court with each petition of receivership.

7 (d) A receiver may be appointed for up to 90 days and  
8 the department may petition the court for additional 30-day  
9 extensions. Sixty days after appointment of a receiver and  
10 every 30 days thereafter until the receivership is terminated,  
11 the department shall submit to the court an assessment of the  
12 lead community-based provider's ability to ensure the health,  
13 safety, and welfare of the dependent children under its  
14 supervision.

15 (3) The receiver shall take such steps as are  
16 reasonably necessary to ensure the continued health, safety,  
17 and welfare of the dependent children under the supervision of  
18 the lead community-based provider and shall exercise those  
19 powers and perform those duties set out by the court,  
20 including, but not limited to:

21 (a) Taking such action as is reasonably necessary to  
22 protect or conserve the assets or property of the lead  
23 community-based provider. The receiver may use the assets and  
24 property and any proceeds from any transfer thereof only in  
25 the performance of the powers and duties set forth in this  
26 section and by order of the court.

27 (b) Using the assets of the lead community-based  
28 provider in the provision of care and services to dependent  
29 children.

30 (c) Entering into contracts and hiring agents and  
31 employees to carry out the powers and duties of the receiver

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1 under this section.

2 (d) Having full power to direct, manage, hire, and  
3 discharge employees of the lead community-based provider. The  
4 receiver shall hire and pay new employees at the rate of  
5 compensation, including benefits, approved by the court.

6 (e) Honoring all leases, mortgages, and contractual  
7 obligations of the lead community-based provider, but only to  
8 the extent of payments that become due during the period of  
9 the receivership.

10 (4)(a) The receiver shall deposit funds received in a  
11 separate account and shall use this account for all  
12 disbursements.

13 (b) A payment to the receiver of any sum owing to the  
14 lead community-based provider shall discharge any obligation  
15 to the provider to the extent of the payment.

16 (5) A receiver may petition the court for temporary  
17 relief from obligations entered into by the lead  
18 community-based provider if the rent, price, or rate of  
19 interest required to be paid under the agreement was  
20 substantially in excess of a reasonable rent, price, or rate  
21 of interest at the time the contract was entered into, or if  
22 any material provision of the agreement was unreasonable when  
23 compared to contracts negotiated under similar conditions. Any  
24 relief in this form provided by the court shall be limited to  
25 the life of the receivership, unless otherwise determined by  
26 the court.

27 (6) The court shall set the compensation of the  
28 receiver, which shall be considered a necessary expense of a  
29 receivership and may grant to the receiver such other  
30 authority necessary to ensure the health, safety, and welfare  
31 of the children served.

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1           (7) A receiver may be held liable in a personal  
2 capacity only for the receiver's own gross negligence,  
3 intentional acts, or breaches of fiduciary duty. This section  
4 shall not be interpreted to be a waiver of sovereign immunity  
5 should the department be appointed receiver.

6           (8) If the receiver is not the department, the court  
7 may require a receiver to post a bond to ensure the faithful  
8 performance of these duties.

9           (9) The court may terminate a receivership when:

10           (a) The court determines that the receivership is no  
11 longer necessary because the conditions that gave rise to the  
12 receivership no longer exist; or

13           (b) The department has entered into a contract with a  
14 new lead community-based provider pursuant to s. 409.1671 and  
15 that contractor is ready and able to assume the duties of the  
16 previous provider.

17           (10) Within 30 days after the termination, unless this  
18 time period is extended by the court, the receiver shall give  
19 the court a complete accounting of all property of which the  
20 receiver has taken possession, of all funds collected and  
21 disbursed, and of the expenses of the receivership.

22           (11) Nothing in this section shall be construed to  
23 relieve any employee of the lead community-based provider  
24 placed in receivership of any civil or criminal liability  
25 incurred, or any duty imposed by law, by reason of acts or  
26 omissions of the employee prior to the appointment of a  
27 receiver; nor shall anything contained in this section be  
28 construed to suspend during the receivership any obligation of  
29 the employee for payment of taxes or other operating or  
30 maintenance expenses of the lead community-based provider or  
31 for the payment of mortgages or liens. The lead

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1 community-based provider shall retain the right to sell or  
2 mortgage any facility under receivership, subject to the prior  
3 approval of the court that ordered the receivership.  
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