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DATE: February 7, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILD & FAMILY SECURITY
ANALYSIS**

BILL #: HB 755
RELATING TO: Residential Group Care
SPONSOR(S): Representative(s) Murman

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CHILD & FAMILY SECURITY YEAS 10 NAYS 0
 - (2) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

House Bill 755 bill improves implementation of privatized community-based foster care and expands residential group care and targeted case management statewide.

- The bill moves the completion date for implementation of privatized, community-based foster care statewide to December 31, 2004, and requires the Department of Children and Families to establish model comprehensive residential services in counties not privatized by that date.
- It provides for an appropriation category residential group care.
- The bill requires community-based care providers to provide automobile liability insurance for employees transporting clients in privately owned vehicles and limits liability.
- The bill requires the department to establish procedures for fiscal, operational and performance monitoring of service delivery contracts of community-based care lead providers.
- It requires the department to propose to the Legislative Budget Commission, a long-term, shared-earnings program in place of the existing risk pool, and removes the existing excess earnings pilot.
- It removes the pilot status of residential group care and targeted case management to provide for statewide implementation.
- The bill requires the department and the Agency for Healthcare Administration to review the process for placing children in residential mental health treatment and to report by January 1, 2003.

On February 7, 2002, the Committee on Child and Family Safety adopted two amendments to the bill that spell out provisions for implementation comprehensive residential care and dual payments for out-of-home care and subsidized child care. The amendments also provide for: OPPAGA to conduct the review of residential mental health placement, instead of the department; use of excess federal earnings to continue services if a provider fails; agreements between lead agencies and Healthy Families for planning prevention/intervention services; and a task force on efficiency to address duplication of effort with audits, accreditation and monitoring.

The enacting date of the bill is July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Community-Based Care

Section 409.1671, F.S., includes the statutory provisions for the privatization of foster care and related services directing the department to accomplish privatization statewide by January 1, 2003. Current law includes no alternative course of action or consequences if privatization is not achieved statewide by that date.

Currently, four lead community-based agencies have service contracts with the department to provide community-based care in ten counties. By having a service contract, the lead agency has begun providing services after completing the start-up phase of infrastructure and capacity development and the training and education of community stakeholders. The four agencies are:

- YMCA Children and Families, Inc—Sarasota and Manatee,
- Family Continuity Program, Inc—Pinellas and Pasco,
- Lakeview Center—Escambia, Santa Rosa, Okaloosa and Walton,
- Partners for Community-Based Care—Flagler and Volusia.

In addition, three lead community-based agencies have start-up or transition contracts with the department to provide community-based care in three counties. During the start-up phase (taking 9 to 12 months), the provider develops the infrastructure and capacity for services and prepares the community agencies and stakeholders for community-based care. The three agencies are:

- Hillsborough Kids, Inc—Hillsborough,
- Child Family Connections—Palm Beach,
- Family Support Service of North Florida, Inc.—Duval.

During FY 2001-2002, the following districts are or will be in various stages of the competitive procurement process:

- First Quarter—Districts 10 and 15 have released Invitation to Negotiate.
- Third Quarter—Districts 2, 8, and 11, and Seminole and Brevard counties will release Invitation to Negotiate.

- Fourth Quarter—Districts 3, 13, 14, and Nassau, Baker, Clay and St. Johns counties will release Invitation to Negotiate.

The Justification Review of the Child Protection Program in the Department of Children and Family Services, February 2001, by the Office of Program Policy Analysis and Government Accountability, states that the department must address several potential obstacles before achieving statewide implementation of privatization of foster care and related services. Those problems include: 1) reluctance on the part of many providers to assume the increased financial risk that comes with lead agency status, 2) the limited number of providers with the capacity to provide a comprehensive array of services, and 3) the reluctance of some communities to privatize child protection services.

Transportation of Clients by Lead Community-Based Provider Staff

There are many instances when it is necessary for lead agency and sub-contractor staff to transport children and their families in their personal automobiles to appointments and meetings. The state does not allow the lead agency to purchase automobiles with state funds, and there are no current statutory provisions that protect these staff persons from the liabilities associated with accidents while transporting clients.

Section 409.1671(1) (f)-(g), F.S., requires that a lead community-based provider and its sub-contractors obtain a minimum of \$1 million per claim/\$3 million per incident of general liability insurance coverage. The law also specifies that the immunities from liability extend to employees of the provider agency who are conducting the business of the provider.

Lead Community-Based Providers Closing Cases

Section 409.1671(3) (b), F.S., requires that the contract between the department and the community-based agency include a provision for the agency to furnish the department regular status reports of all of its cases. A provider may not discontinue services without prior written notification to the department, and after discontinuing services to a child or a child and family, the community-based agency must provide to the department a written case summary, including its assessment of the child and family.

According to community-based providers, this requirement is duplicative for most clients because over 95 percent of their cases are monitored by the court as required under ch. 39, F.S. Section 39.521(1) (c), F.S., requires that for a child who has been removed from the home, an initial judicial review hearing be held no later than 90 days after the disposition hearing, or after the date of the hearing at which the court approves the case plan, whichever occurs earlier. The review hearing must be held no later than 6 months after the date of the child's removal from the home. Section 39.701(1) (a), F.S., requires that the court continue jurisdiction of these children and review the status of the child at least every 6 months, or more frequently, if the court deems it necessary or desirable.

HomeSafenet, a data management and client tracking system, is currently being implemented by the department throughout the child protection system. This system requires extensive documentation of cases and is described as a "real-time" information system that has sufficient functionality to facilitate and control activities of the users in a way that ensures that certain critical child welfare process requirements are met. Once fully implemented, this system will monitor the activities and progress of all services provided to children and families who are in Florida's child protection system, both court-involved and voluntary cases.

Department Monitoring of Lead Community-Based Providers

The Auditor General released a report in September 2001, Monitoring of Community-Based Care Providers of Child Welfare Services by the Department of Children and Family Services Operational Audit. This report focused on the monitoring of the community-based care initiative in Sarasota and Manatee counties. The report states that the department should: 1) enhance and adapt written policies and procedures to establish an appropriate infrastructure for program monitoring of community-based care providers, 2) establish procedures to adequately evaluate the community-based providers' achievement toward performance standards, 3) ensure that significant findings noted during monitoring are appropriately followed up for corrective action, and 4) establish policies and procedures related to the oversight of community-based providers' monitoring of subcontractors.

Risk Pool

Potential lead agency providers have expressed concern regarding the requirements of s. 409.1671(1) (b) 5., F.S., that the lead agency must demonstrate the "capability and the willingness" to serve all children referred from the protective investigation and court systems, regardless of the level of funding allocated by the state.

Section 409.1671 (7), F.S., authorizes the department to establish and administer a risk pool to reduce the financial risk to eligible lead community-based providers resulting from unanticipated caseload growth. The risk pool currently provided for in statute, to meet any community-based care funding shortfalls due to caseload growth, does not have an established year-to-year funding source. It is funded by specific appropriation each year from non-recurring funds.

Shared Earnings Program for Lead Community-Based Providers

Section 409.1671 (8), F.S., requires that all documented federal funds earned for the current fiscal year by the department and community-based agencies, which exceed the amount appropriated by the Legislature, be distributed to all entities that contributed to the excess earnings. The distribution of the funds is to be based on a schedule and methodology developed by the department and approved by the Executive Office of the Governor. The distribution program applies only to entities that were under privatization contracts on July 1, 1999. The distribution must be prorated based on the actual total earnings by the participating entities, and may be made only to those entities that contributed to excess earnings, and used only in the service district in which they were earned.

Additional state funds appropriated by the Legislature for community-based agencies, or made available pursuant to the budgetary amendment process contained in s. 216.177, F.S., may be transferred to the community-based agencies. The department must amend a community-based agency's contract in order to permit expenditure of the funds. This program is authorized for a period of 3 years beginning July 1, 1999, and ending June 30, 2002. The only lead agency that qualifies for the program is YMCA Children and Families, Inc. serving Sarasota and Manatee counties.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) was required to review this program to determine results such as how the additional resources were used, the number of additional clients served, the improvements in quality of service attained, and the feasibility of continuing or expanding this program. The OPPAGA report was submitted to the Legislature in August 2001. The report states that the participating lead agency earned \$209,690 in FY 1999-2000. The report concludes that the pilot is having positive effects by providing an incentive for the lead agency to modify its internal processes to maximize federal earnings. The

participating lead agency plans to use its earnings for additional foster care services and adoption assistance payments.

Foster Care/Residential Group Care

The Child Protection Program in the department includes out-of-home services. Chapter 39, F.S., requires that when a report is made of suspected child abuse or neglect, the Child Protection Program must conduct a protective investigation within 60 days to assess the child's safety and determine services that may be needed. A child may be placed in out-of-home care when there is the likelihood that the child will continue to be at risk of abuse or neglect if he or she remains in the home. Out-of-home care includes relative and non-relative care services, and foster care services. According to statistics from the department, approximately 3 percent of the children who are the subject of a child abuse investigation are placed in a family foster home or residential group care.

Family foster homes are licensed under s. 409.175, F.S. Section 409.175(2) (e), F.S., defines a "family foster home" as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Under the definition, family foster care may be provided in several settings, including a family foster group home, which is not defined in statute. Section 65 C-13.001 (2), F.A.C., defines a "foster family group home" as a licensed private family home occupied by a married couple or individual who has demonstrated the interest and special qualifications to care for a total of no more than five pre-adolescent or adolescent children, including the family's own children. An informal survey of districts found only a few have licensed family group homes.

Foster care providers are reimbursed for their services according to the child's age and the level of care required. The statewide average monthly reimbursement rate per child for family foster care in January 2001 was \$672.34, and the statewide average monthly rate per child for residential group care was \$2,795.62. The provider rates are negotiated at the local community level to reflect the service needs of the children served.

Section 409.175 (2) (j), F.S., defines a "residential child-caring agency" as any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Residential group care facilities licensed as child-caring agencies, typically serve older children who have specialized needs that are better met in a group facility environment.

Many of these children have behavior management problems. The Child Welfare League of America reports that children in foster care are three to six times more likely than children not in care to have emotional, behavioral and developmental problems, including conduct disorders, depression, difficulties in school and impaired social relationships. Some experts estimate that about 30 percent of the children in care have marked or severe emotional problems.

Chapter 65 C-14, Florida Administrative Code, includes the standards for residential group care facilities that are licensed under s. 409.175, F.S., as child-caring agencies. Section 65C-14.001 (10), F.A.C., specifies that "group care" is staffed, 24-hour residential care of children in programs that do not offer maternity services, emergency shelter and runaway services or provide services in a wilderness setting. Staffing of these facilities may be provided by live-in house parents or by staff who work in rotating shifts.

Section 409.1676, F.S., created by the 2001 Legislature (ch. 2001-68, Laws of Florida), established comprehensive residential services to children who have extraordinary needs, such as serious behavior problems or having been determined to be unlikely to return home or be adopted. The

department was directed to contract for these services in, at a minimum, Districts 4, 11, 12, the Suncoast Region of the department, and with a not-for-profit entity serving children from multiple districts. These comprehensive residential services are implemented to the extent of available appropriations contained in the annual General Appropriations Act for this purpose.

Section 39.521 (5) (e), F.S., requires that the department report the following data to the Legislature by December 1 of each year:

1. The criteria used to determine placement in licensed residential group care,
2. The number of children who were assessed for placement during the reporting year,
3. The number of children placed and the number of children not placed in licensed residential group care during the reporting year based upon the assessment, and
4. The number of children who were referred to licensed residential childcare for whom placement was unavailable and the counties in which such placement was unavailable.

Residential Group Care Funding

Until the 2001 legislative session, all funds appropriated for out-of-home care were commingled into one appropriation category which incorporated all funds intended not only for all types of foster care, but also for temporary shelter. In the General Appropriations Act for Fiscal Year 2001-2002, the Legislature segregated these funds into three newly created appropriation categories, including one entitled "Special Categories: Grants and Aids – Residential Group Care," which is intended to include funds that are specifically designated for residential group care programs. Because the General Appropriations Act will only be in effect for one fiscal year, it is likely that, unless a separate appropriation category is specifically mandated in the Florida Statutes, out-of-home care funds may once again be commingled in the future.

In many areas of the state there is insufficient residential group care bed capacity to meet documented need, unless the state makes a financial investment to build the infrastructure that must be in place before the services can be provided. Most often community-based providers that are willing to provide the services lack the resources required to finance the cost of site development, construction, furniture and other one-time expenses associated with the startup of a facility.

Section 216.181 (6), F.S., specifies that prior to the transfer and release of a lump sum appropriation specified in the General Appropriations Act, the Office of the Governor may require the state agency affected by the appropriation to submit a detailed spending or implementation plan. In order for a lump sum appropriation to be transferred and released to the state agency, the notice, review and objection procedures must be followed in accordance with s. 216.177, F.S. Section 216.177, F.S., specifies that notices of action to be taken by the Executive Office of the Governor must be provided to the Legislative Budget Commission or the appropriations committees. This section also authorizes the Legislative Budget Commission and the President of the Senate and the Speaker of the House of Representatives to object to a proposed executive action if the action either exceeds legislative authority or does not comply with legislative intent.

Child Welfare Targeted Case Management for Lead Community-Based Providers

Section 3 of ch. 99-206, Laws of Florida, created s.409.906 (24), F.S., that allows the Agency for Health Care Administration, in consultation with the department, to establish a child welfare targeted case-management pilot project in those counties identified by the department and for the community-based child welfare project in Sarasota and Manatee counties, authorized under s. 409.1671, F.S. The purpose of the pilot is to determine the impact of targeted case management on the child welfare program and the earnings from the child welfare program. Results of the pilot

projects are reported to the Child Welfare Estimating Conference and the Social Services Estimating Conference. The number of projects may not be increased until requested by the department, recommended by the Child Welfare Estimating Conference and the Social Services Estimating Conference, and approved by the Legislature.

The covered group of individuals who are eligible to receive targeted case management include children who are eligible for Medicaid; who are between the ages of birth through 21; and who are under protective supervision or post-placement supervision, under foster-care supervision, or in shelter care or foster care. The number of individuals who are eligible to receive targeted case management is limited to the number for whom the department has available matching funds to cover the costs. The additional Medicaid funds generated by child-welfare targeted case management for FY 2000-2001 were \$550,162.

Placement of Dependent Children in Residential Mental Health Treatment Facilities

Chapter 2000-265, Laws of Florida, amended s. 39.407 (5) (b), F.S., specifying that when the department believes that a child in its legal custody is emotionally disturbed and may need residential treatment, an examination and suitability assessment must be conducted by a qualified evaluator who is appointed by the Agency for Health Care Administration. A qualified evaluator is defined as "a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program." The suitability assessment must be completed before a child is placed in a residential treatment center for emotionally disturbed children and adolescents or a hospital.

C. EFFECT OF PROPOSED CHANGES:

House Bill 755 provides for a residential group care appropriations category in the General Appropriations Act and specifies the purposes for which and the conditions under which funds in that category may be used. The bill revises requirements for the privatization of foster care and related services. The bill expands authority to establish child welfare targeted case management projects and provides for a review of the process for placing children for residential mental health treatment.

D. SECTION-BY-SECTION ANALYSIS:

Section 1

Repeals s. 39.521 (5), F.S., relating to the mandatory assessment of specified children for placement in licensed residential group care.

Section 2

Creates s. 39.523, F.S., relating to placement in residential group care.

Creates s. 39.523, F.S., (previously s. 39.521 (5), F.S.) and expands to all Florida counties, rather than only Districts 4, 11, 12, and the Suncoast Region, the assessment procedure for the placement of children in residential group care who are at least 11 years of age, have been in foster care for 6 months or longer, and who are moved among foster homes more than once.

Requires the department to include additional information in their annual report to the Legislature on expenditures relating to the placement of children in licensed residential group care.

Requires that funds included in the General Appropriations Act for Residential Group Care be appropriated in a separately identified special category, "Special Categories: Grants and Aids—Residential Group Care."

Requires that the department submit a spending plan that identifies a bed capacity shortage for residential group care and proposes a distribution formula by district addressing these deficiencies. Any annual increases in this special category must be expended in accordance with the spending plan.

Allows funds from "Special Categories: Grants and Aids—Residential Group Care" to be used as one-time startup funding for certain remodeling or renovation purposes in residential group care facilities.

Section 3

Amends s. 409.1671, F.S., relating to foster care and related services; privatization.

Modifies the requirement that foster care and related services be privatized statewide by January 1, 2003 to provide that the department must have initiated the competitive-procurement process statewide by that date and must have completed the privatization process by December 31, 2004.

Specifies that the department must implement a model comprehensive residential services program as described in s. 409.1677, F.S., in any county in which full privatization is not accomplished by December 31, 2004. Implementing a model program does not substitute for full conversion to community-based care.

Requires that staff of lead community-based providers and its subcontractors who transport client children and families as part of their job responsibilities obtain \$100,00 per claim and \$300,000 per incident of bodily injury liability insurance on their personal automobile and limits related liability.

Requires that the department adopt written policies and procedures for monitoring the contract for delivery of services by lead community-based providers specifying minimal provisions such as: the evaluation of fiscal accountability and program operations including provider achievement of performance standards, provider monitoring of subcontractors, and timely follow-up of corrective actions for significant monitoring findings.

Reduces the necessity for community-based providers to provide status reports and otherwise notify the department regarding client cases, including planned case closures. Case closure notification is limited to voluntary cases.

Requires that the department, in consultation with existing lead community-based providers, develop a statewide proposal regarding the long-term use and structure of a shared-earnings program addressing the financial risk to eligible lead community-based providers. The shared-earnings program expands upon and replaces the current risk pool provision. Further, the ability to participate in the excess federal earnings distribution program is expanded to include community-based agencies in place on July 1, 2002.

Section 4

Amends s. 409.1676, F.S., relating to comprehensive residential services to children who have extraordinary needs.

Makes a technical change to s. 409.1676, F.S., in the name of the services, to residential group care services, and removes a reference to specific districts and regions of the department to allow for expansion of comprehensive residential group care services to areas of the state for which the Legislature appropriates funds.

Section 5

Amends ss. 409.906 (24), F.S., relating to Optional Medicaid Services.

Eliminates reference to a pilot project to expand the authority of the Agency for Health Care Administration, in consultation with the Department of Children and Families, to establish child-welfare-targeted case management projects. This expands the ability to earn Medicaid funds under the child-welfare-targeted case management option, to all counties in which the department has a contract with a lead-community based agency, if approved by the department.

Removes the inappropriate requirement specifying that results of the targeted case management earnings be reported to the Child Welfare Estimating Conference, limiting the reporting requirement to the Social Services Estimating Conference.

Section 6

Directs the department, in consultation with the Agency for Health Care Administration, to conduct a review of the process and make recommendations for placing children for residential mental health treatment. Provides for a report to the Governor and Legislature by January 1, 2003.

Section 7

Provides that the effective date of the act is July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The department has not provided the requested fiscal impact statement of recurring and non-recurring funds. The bill will have a fiscal impact, but an estimate is not available at this time. See comment below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill provides protection for persons employed by a lead community-based provider or sub-contractor (who transport clients and families) by requiring that they obtain a minimum of \$100,000 per claim/\$300,000 per incident of personal automobile insurance. With these proposed statutory provisions, several automobile insurance companies report that employees would experience only a minimal premium increase over what their cost would be if they did not drive their automobiles to transport clients.

By expanding the distribution of excess earnings to community-based providers under contract with the department on July 1, 2002, more private sector providers will have the opportunity to utilize these excess federal funds.

The bill provides the opportunity for all community-based providers approved by the department, to earn child welfare targeted case management funds under the Medicaid program.

The bill also provides the opportunity for private community-based providers to expand comprehensive residential group care services as funds are appropriated by the Legislature for this purpose.

D. FISCAL COMMENTS:

Staff requested a fiscal impact statement from the department, but none was provided.

According to the department last year, regarding the bill that established the residential group care pilot, the average daily cost for a child in foster care was \$22.24 and the average daily cost for a child in residential care was \$91.89. According to the department an estimated 3,675 children age 12 to 18 were in foster care. An estimated 43 percent of children in care have three or more placements in foster care and might be placed in residential care based on the provisions of this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2002, the Committee on Child and Family Safety adopted two amendments to the bill:

Amendment 1:

- Moves model comprehensive residential care to a new subsection and spells out provisions for implementation.
- Provides that dually licensed foster homes are eligible for both out-of-home care and subsidized child care payments for the same child, pursuant to federal law.

Amendment 2

- Requires OPPAGA to conduct the review of residential mental health placement instead of the department.
- Requires the department and Governor to recommend use of excess federal earnings to continue community foster care, if a community-based provider fails to provide services or engages in financial misconduct.
- Provides for agreements between lead agencies and local Healthy Family Florida entities for planning prevention/intervention services.
- Requires a Task Force on community-based care efficiency to address duplication of effort with audits, accreditation and monitoring.

The bill was then adopted favorably, as amended.

VII. SIGNATURES:

COMMITTEE ON CHILD & FAMILY SECURITY:

Prepared by:

Staff Director:

Glenn Mitchell

Robert Brown-Barrios