

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: SB 1326

INTRODUCER: Senator Simpson

SUBJECT: Department of Children and Families

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Sneed</u>	<u>Kidd</u>	<u>AHS</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1326 makes a number of changes to the child welfare and behavioral health programs administered by the Department of Children and Families (the department) to promote accountability and improve program performance. The bill establishes an Office of Quality Assurance and Improvement within the department to measure and monitor the performance of internal and contracted operations of the department. The bill revises the current child welfare and behavioral health accountability reporting requirements. The department will assign a letter grade to contracted entities based on whether they meet performance standards. Those contracted entities that receive poor grades will be offered technical assistance. If improvements are not made, the department will terminate contracts with low performing contracted entities.

The bill requires community based care lead agencies (CBCs), Sheriff's Offices that investigate child abuse, and contracted attorneys to use the Florida Child Welfare Practice Model. The bill allows the department to investigate certain child abuse reports within 72 hours as opposed to the current requirement of 24 hours, based on certain safety factors. The bill establishes a new funding formula for allocating funds to the CBCs. The bill requires increased funding for CBCs over a four year period based on historical funding inequities and CBC performance.

The bill has a significant fiscal impact on state government. See Section V.

The bill takes effect on July 1, 2020.

II. Present Situation:

Child Abuse and Child Welfare

A child protective investigation begins with a report by any person to the Florida Abuse Hotline. The state is required to maintain a 24/hour, 7/day capacity for receiving reports of maltreatments. The reports are sent out to child protective investigators (CPIs) across the state to investigate.

The CPI receiving the report is most commonly a department employee, but in seven counties the local sheriff's office performs the investigative function. There are currently 1,789 positions within the department and Sheriff's Offices to conduct child abuse investigations.¹

Court hearings are required whenever a child is removed from his or her home. The attorneys in these cases are either department employees or employees of the Attorney General's Office under contract to the department or, in one case, the state attorney's office in the 6th circuit (Pinellas and Pasco Counties).

The lead agencies and their subcontractors are the primary providers of services to children and families in the child welfare system. There are currently 17 CBCs with contracts covering all 20 judicial circuits.² The CBCs and their subcontractors employ case managers to oversee the provision of services to children in the child welfare system. Many of the services are not directly provided by the CBCs or the case management subcontractors, but are provided by health care, substance abuse, mental health, and other specialized community based providers.

Child Welfare Accountability

Section 409.996 (18), F.S., requires the department, in consultation with the CBCs, to establish a quality assurance program for contracted services to dependent children. The quality assurance program must be based on standards established by federal and state law and national accrediting organizations.

Section 409.997, F.S., established the Child Welfare Results-Oriented Accountability Program. The law states that the department, the CBCs, and the CBC's subcontractors share the responsibility for achieving the outcome goals specified in s. 409.986(2), F.S. The purpose of the results-oriented accountability program is to monitor and measure the use of resources, the quality and amount of services provided, and child and family outcomes. The program includes data analysis, research review, and evaluation. The program is to produce an assessment of individual entities' performance, as well as the performance of groups of entities working together on a local, regional, and statewide basis to provide an integrated system of care. Data analyzed and communicated through the accountability program is to inform the department's development and maintenance of an inclusive, interactive, and evidence-supported program of quality improvement which promotes individual skill building as well as organizational learning.

¹ Department of Children and Families SB 1326 Bill Analysis, dated January 14, 2020. On file with the Senate Committee on Children, Families and Elder Affairs.

² Department of Children and Families website. See https://www.myflfamilies.com/service-programs/community-based-care/docs/lead_agency_map.pdf. Last visited January 17, 2020.

Behavioral Health Managing Entities

In 2008, the Legislature required the department to implement a system of behavioral health managing entities that would serve as regional agencies to manage and pay for mental health and substance abuse services.³ Prior to this time, the department, through its regional offices, contracted directly with behavioral health service providers. The Legislature found that a management structure that places the responsibility for publicly-financed behavioral health treatment and prevention services within a single private, nonprofit entity at the local level, would promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. These entities do not provide direct services; rather, they allow the department's funding to be tailored to the specific behavioral health needs in the various regions of the State. There are currently seven managing entities across the state.⁴

Community Based Care Funding Formula

Section 409.991, F.S., provides the basis for allocating funds for CBCs and defines the differences between "core services" and other specific appropriations that may be provided to CBCs. The core services funds are currently allocated through the equity allocation model. The law defines the three components of the model: proportion of children in the population, proportion of Hotline workload, and proportion of children in care. This method supports per child funding inequities by establishing that 100 percent of recurring core funding is based upon the fiscal year 2014-2015 recurring base of core funding.⁵ The equity allocation model is only applied to new funding that is appropriated to the system of care. The statute further establishes that 70 percent of any new funding for the system of care is shared by all CBCs and 30 percent of any new funds will be allocated among CBCs funded below their equitable share.

Because the core services funding for each CBC was established based upon the total expenditure by the Department when the CBCs were created, significant core funding inequities have been institutionalized into the system of care. Since 2006, the "per child in care funding" varies as much as 2:1, from the highest to lowest funded CBC. The lack of equitable funding has led to the creation of risk pool funding, contract amendments, and specific mid-year appropriations to address current year deficits in multiple CBCs. Over the last five fiscal years, the Legislature has appropriated an additional \$95 million in nonrecurring funds, or about \$19 million annually, to address these operational shortfalls. Additionally, when the Department has reprocured services in these districts, more than half of the markets are essentially non-competitive. According to the department, in eight of the last 19 solicitations, only one provider bid on services for a service area. These districts represent 52 percent of the population of Florida. The perceived underfunding of CBCs has constrained the department's efforts to hold CBCs accountable for performance and improvement, and to competitively procure for the best providers available.

³ See s. 394.9082, F.S., as created by Chapter 2008-243, Laws of Fla.

⁴ Department of Children and Families website, <https://www.myflfamilies.com/service-programs/samh/managing-entities/> (last visited January 17, 2020).

⁵ Department of Children and Families SB 1326 Bill Analysis, dated January 14, 2020. On file with the Senate Committee on Children, Families and Elder Affairs.

III. Effect of Proposed Changes:

Section 1 provides a short title for the bill of the “DCF Accountability Act.”

Section 2 amends s. 20.19, F.S., relating to the organizational structure of the Department of Children and Families, to create the Office of Quality Assurance and Improvement. The secretary of the department shall appoint a Chief Quality Officer to ensure the department and its contracted providers meet the highest level of performance. The bureau-level position is directed to:

- Analyze and monitor the implementation of federal and state laws, rules and policies;
- Develop and implement performance standards and metrics to determine the departments compliance with federal and state laws, rules and policies;
- Identify strengths and weaknesses in the department’s data and its analytic capabilities;
- Identify performance standards and metrics for the department and its service providers, including law enforcement agencies, behavioral health managing entities, CBCs and attorneys;
- Recommend initiatives to correct program and system deficiencies;
- Collaborate with the department’s partners to improve quality, efficiency and effectiveness;
- Report any persistent failures by the department to meet performance standards and recommend corrective actions provided under the bill; and
- Prepare an annual report of all contractual performance metrics for the Secretary of the department.

Section 3 creates s. 39.0012, F.S., entitled child welfare accountability. The bill provides intent language that the Legislature finds that:

- The child welfare system must be accountable for providing exemplary service in a transparent manner;
- The department must be accountable to the Governor and Legislature for carrying out its responsibilities and that the department must only contract with entities that carry out the purposes of the department;
- The department, other agencies, the state court system, law enforcement agencies, local communities and contracted child welfare providers be held to the highest standards;
- When the department delegates child welfare duties to other agencies, law enforcement agencies, local communities and contracted child welfare providers, the department retains responsibility for quality assurance;
- The department, in consultation with child welfare providers, must set performance levels and metrics for any entity providing child welfare services that contracts with the department;
- The department must offer increasing levels of support for child welfare providers with performance deficiencies. The department may not continue to contract with child welfare providers that persistently fail to meet performance standards for three or more years.

The bill requires the department to report to the Governor and Legislature, all performance levels for contracted entities by November 1st of each year. The report must be published on the department’s website and contain:

- Performance metrics for the child welfare system, including letter grades for the community based care lead agencies;
- Performance metrics by region and type of child welfare provider;
- A list of child welfare providers not meeting performance metrics; and
- Detailed corrective action taken to bring child welfare providers into compliance with performance metrics.

Section 4 amends s. 39.01, F.S., regarding definitions. “Best practices” is defined as a method or program that the department recognizes as successful in meeting performance standards. “Child welfare service provider” is defined as public or private agencies, and private individuals that the department contracts with to meet its responsibilities. “Florida’s Child Welfare Practice Model” is defined as the methodology the department uses to ensure the permanency, safety and well-being of children. “Performance standards and metrics” is defined as the quantifiable measures the department uses to track and assess performance.

Section 5 amends s. 39.201, F.S., relating to reporting of child abuse, abandonment or neglect. The bill allows the department to begin the investigation of certain child abuse reports within 72 hours rather the current requirement that such investigations begin within 24 hours. The bill provides factors to consider when determining the timeframe for investigations. These factors include:

- Whether the abuse is alleged to have occurred more than 30 days prior to the report;
- Whether the alleged perpetrator will have access to the child in the next 72 hours following the report; and
- Whether the alleged victim still resides in the home or facility where the abuse was alleged to have happened.

The bill requires that investigations of alleged sexual abuse, human trafficking, or alleged victims under 1 year of age begin within 24 hours. The bill allows the department to contact families of alleged victims when the report does not meet the criteria for abuse, abandonment or neglect to offer services.

Section 6 amends s. 39.301, F.S., regarding the initiation of child abuse investigations. The bill requires the department to notify the regional offices of abuse reports that require a 24 hour investigation, a 72 hour investigation or an offer for services. Contacts with families of children where an abuse report did not meet criteria for an abuse investigation to offer services shall be announced in advance when possible.

Section 7 amends s. 39.3065, F.S., relating to those Sheriff’s Offices responsible for providing child protective investigations. The bill states that it is the intent of the Legislature that these sheriffs adopt the department’s Florida Child Welfare Practice Model and implement a plan to prevent child abuse. The bill requires these Sheriff’s Offices operate in accordance with federal performance standards and metrics for child welfare. The bill requires the department and these Sheriff’s Offices to collaborate on program performance evaluations and meet quarterly to work on quality assurance and quality improvement initiatives. The bill requires program performance evaluations be based on a random sample of cases selected by the department. The department’s annual report on the performance of the Sheriff’s Offices that investigate child abuse is due

November 1st. These Sheriff's Offices that are responsible for conducting child protective investigations must submit to the department, for its approval, a prevention plan by June 30th each year. The bill allows the Secretary of the department to offer resources to any Sheriff's Office that investigates child abuse and has demonstrated performance deficiencies.

Section 8 amends s. 394.67, F.S., relating to mental health, to add new definitions. "Performance standards and metrics" is defined as the quantifiable measures the department uses to track and assess performance.

Section 9 amends s. 394.9082, F.S., relating to behavioral health managing entities. The bill states that the Legislature intends that:

- The department contract only with managing entities that carry out the responsibilities assigned by law;
- The department and managing entities be held to the highest standards. The Legislature also finds that when the department delegates duties to managing entities, the department retains responsibility for quality assurance;
- The department, in consultation with managing entities, will set performance levels and metrics for services provided by the managing entities. Such performance standards must address the tasks in the department's contract with a managing entity; and
- The department offer increasing levels of support for managing entities with performance deficiencies. The department may not continue to contract with managing entities that persistently fail to meet performance standards for three or more years.

The bill requires the department to report to the Governor and Legislature, all performance levels for managing entities each November 1st. The report must be published on the department's website and contain:

- Performance metrics, including letter grades, for the managing entities;
- Performance metrics by region and type of managing entity;
- A list of managing entities not meeting performance metrics; and
- Detailed corrective action taken to bring managing entities into compliance with performance metrics.

The bill requires the department to develop a grading system to assess the performance of managing entities using letter grades. A managing entity will earn a grade of "A" if it has a weighted score of 4.0. The bill does not prescribe which performance metrics will be used for grading or how they will be weighted. A managing entity will earn a grade of "B" if it has a weighted score of 3.0, or "C" if it has a weighted score of 2.0, or "D" if it has a weighted score of 1.0, or "F" if it has a weighted score of less than 1.0.

The bill requires the department to renew managing entity contracts with renewal options for those that receive a grade of "A" for the two years preceding the end of the contract. The bill requires the department to develop support and improvement strategies for low performing managing entities. The department may provide assistance, including adoption of best practices and corrective action plans, to such managing entities. If a managing entity receives a "D" or "F" letter grade, the department must work with stakeholders to develop a turnaround option plan. Such a plan may include adoption of best practices and corrective action plans. Turnaround

option plans must be approved by the department before implementation by the managing entity. If a managing entity receives a “D” or “F” for three years in a row, the department must terminate the contract. The secretary of the department may offer resources to a managing entity with poor performance. The department may also terminate a contract with a managing entity that receives a “F” grade on its performance. The state may not be able to terminate an existing contract as envisioned in the bill. See section IV on Constitutional Issues of this analysis for more information.

The bill requires managing entities to pay any federal fines that result from a managing entity’s failure to meet performance standards. In addition, the managing entity shall retain responsibility for performance failures even if the service was subcontracted to another provider by the managing entity.

The bill requires the department to conduct onsite program performance evaluations of managing entities each year. The evaluation shall be based on a review of a random sample of cases selected by the department.

The bill strikes existing law directing the department to evaluate managing entities based on:

- The extent to which persons receive services, including services to parents of children in the child welfare system;
- The improvement in the overall behavioral health of the community served;
- The improvement in functioning and recovery of persons in the community;
- The success in diverting admissions to hospitals, jails, prisons, and forensic facilities by persons with behavioral health needs who have multiple admissions to such facilities;
- The integration of behavioral health services with the child welfare system;
- The extent to which managing entities address the housing needs of individuals released from facilities that are likely to become homeless;
- Consumer and family satisfaction with behavioral health care services; and
- The extent to which managing entities work with local community partners such as law enforcement agencies, CBCs, juvenile justice agencies, the state court system, school districts, local governments, and hospitals.

Section 10 amends s. 409.986, F.S., providing definitions and intent for community based child welfare agencies. The bill defines “Best practices” as a method or program that the department recognizes as successful in meeting performance standards. “Florida’s Child Welfare Practice Model” is defined as the methodology the department uses to ensure the permanency, safety and well-being of children. “Performance standards and metrics” is defined as the quantifiable measures the department uses to track and assess performance.

Section 11 amends s. 409.991, F.S., relating to the allocation of certain funds to the CBCs. Currently, the funding formula is used to distribute additional funding provided over the base budget for core services. The bill states that it is the intent of the Legislature that there is a need for accountability in the child welfare system and that equitable funding is needed to ensure quality services to all persons served.

The bill establishes a new funding formula based on the following factors in each CBC:

- Area cost differential – this is defined as the district cost differential used in the s. 1011.62, F.S., for the Florida Education Finance Program. The education funding formula uses average wage data for persons in each county as a way of estimating the cost of living.
- Caseload – this is defined using 7 different components. These include: caseload data for case managers, the amount of foster homes, the number of new foster homes needed, the number of foster homes relicensed, data on the number of child removed from their homes, the number of adoptions, and data on the number of children in foster homes, group homes and residential treatment facilities.
- Core plus funds – this is based on the funding for community based care and the funding for community based care to provide for behavioral health services.
- Florida funding for children model – this is based on prevention services, client services, licensed out-of-home care, and staffing. These terms are not further defined.
- Group home ceiling – this is based on the usage of group homes.
- Optimal funding amount – this means 100 percent of the Florida funding for children model.
- Prevention services – these are the services or costs for preventing children from entering or re-entering foster care.

The allocation of core plus funds is based on the total of prevention services, client services, licensed out-of-home care, and staffing and a comparison of the total optimal funding and the allocated funding.

The bill provides additional definitions and calculations to be used to calculate the funding for each community based care lead agency.

The bill provides for a transition to implement the new funding formula over the beginning in fiscal year 2020-2021 and with full implementation in fiscal year 2023-2024.

Section 12 amends s. 409.996, F.S., relating to the duties of the department in the community based care system for child welfare. The bill adds language authorizing the department to terminate contracts for CBCs that fail to meet performance standards and metrics. At a minimum, the bill lists 12 performance metrics used by the state and federal government to evaluate child welfare services. Metrics include such things as the number of children who achieve permanency within a year and the number of children who are abused while in out-of-home care.

The bill requires the department to develop a grading system to assess the performance of CBCs using letter grades. A CBC will earn a grade of “A” if it has a weighted score of 4.0. The bill does not prescribe how the performance metrics will be weighted. A CBC will earn a grade of “B” if it has a weighted score of 3.0; “C” if it has a weighted score of 2.0; “D” if it has a weighted score of 1.0; or “F” if it has a weighted score of less than 1.0.

The bill requires the department to renew contracts with a renewal option for CBCs with an “A” grade for the two years preceding the end of the contract. The bill also requires the department to develop support and improvement strategies for low performing CBCs. The department may provide assistance, including adoption of best practices and corrective action plans, to such lead agencies. If a CBC receives a “D” or “F” grade, the department must work with stakeholders to

develop a turnaround option plan. Such a plan may include adoption of best practices and corrective action plans. Turnaround option plans must be approved by the department before implementation by the CBC. If a CBC receives a “D” or “F” for three years in a row, the department must terminate the contract. The secretary of the department may offer resources to a lead agency with poor performance. The bill requires the department to terminate a contract with a CBC that receives an “F” grade on its performance. In some cases, the state may not be able to terminate an existing contract. See section IV of this analysis on Constitutional Issues for more information.

The bill requires CBCs to pay any federal fines that result from an agency’s failure to meet performance standards. In addition, the lead agency shall retain responsibility for performance failures even if the service was subcontracted to another provider by the lead agency.

The bill requires the department to conduct onsite program performance evaluations of CBCs each year. The evaluation shall be based on a review of a random sample of cases selected by the department. The agency is authorized to adopt rules to implement the requirements of this section.

In the areas of the state where the department contracts for legal services for child welfare, the bill provides new accountability measures. The bill requires the contracted attorneys to use the Florida’s Child Welfare Practice Model. Program performance evaluations are to be conducted on an ongoing basis using criteria developed by the department. The evaluation must be conducted by a team of peer reviewers and use a random sample of cases. The department must report each November 1st to the Governor and Legislature on the performance of contracted attorneys providing children’s legal services on behalf of the department. The secretary may offer resources to contracted attorneys when there are performance deficiencies.

Section 13 amends s. 409.997, F.S., relating to Child Welfare Results-Oriented Accountability Program. The bill requires that department data from the accountability system be provided to the department’s Office of Quality Assurance and Improvement. The bill requires the department to conduct onsite program performance evaluations of each community based care lead agency annually using a random sample of cases.

Section 14 amends s. 39.202, F.S., relating to confidentiality of abuse reports to correct a cross reference.

Section 15 amends s. 39.502, F.S., relating to notice to parents in dependency proceedings to correct cross references.

Section 16 amends 39.521, F.S., relating to disposition hearings in dependency cases to correct a cross reference.

Section 17 amends s. 39.6011, F.S., relating to case plan development, to correct cross references.

Section 18 amends s. 39.6012, F.S., relating to case plan tasks, to correct a cross reference.

Section 19 amends s. 39.701, F.S., relating to judicial reviews for dependency cases, to correct a cross reference.

Section 20 amends s. 39.823, F.S., relating to guardian advocates for drug dependent newborns, to correct a cross reference.

Section 21 amends s. 322.09, F.S., relating to driver's licenses for dependent children, to correct a cross reference.

Section 22 amends s. 393.065, F.S., relating to the children in the child welfare system that qualify for the Agency for Persons with Disabilities' Home and Community Based Services Medicaid Waiver to correct a cross reference.

Section 23 amends s. 394.495, F.S., relating to child mental health, to correct a cross reference.

Section 24 amends s. 394.674, F.S., relating to eligibility for substance abuse and mental health services, to correct a cross reference.

Section 25 amends s. 409.987, F.S., relating to the procurement of CBCs, to correct a cross reference.

Section 26 amends s. 409.988, F.S., relating to duties of CBCs, to correct a cross reference.

Section 27 amends s. 627.746, F.S., relating to insurance coverage for minor drivers, to correct a cross reference.

Section 28 amends s. 934.255, F.S., relating to subpoenas in investigations of sexual offenses, to correct a cross reference.

Section 29 amends s. 960.065, F.S., relating to eligibility of crime victim awards, to correct a cross reference.

Section 30 reenacts and amends s. 39.302 (1), F.S., relating to child abuse investigations in institutions, to correct a cross reference and reenact the subsection.

Section 31 reenacts s. 409.988 (1) (b) to incorporate amendments made to s. 409.997, F.S.

Section 32 reenacts s. 409.996 (1) (a) to incorporate amendments made to s. 409.997, F.S.

Section 33 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 10 of the Florida Constitution states that “No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.” Sections 9 and 12 of the bill would allow the department to cancel contracts with behavioral health managing entities and CBCs. Department contracts with both CBCs and managing entities are in effect for five years and staggered so that they do not expire at the same time. The department would need to incorporate the accountability system in the bill in future contracts in order to provide for termination based on performance. Otherwise, the bill could be considered to impair the obligation of an existing contract.

A new law which affects either past legal relationships or decisions made by private parties in reliance on prior law may result in a legal challenge. If the new law is to apply retroactively, it may affect previously-established rights or legal relationships, such as those contained in a contractual agreement. Retroactive application of a new law may attach legal consequences to decisions made by private parties who did not anticipate these consequences at the time the decision was made.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Community based care lead agencies (CBCs) and behavioral health managing entities (MEs) could see their contracts with the department terminated based on poor performance.

C. Government Sector Impact:

The department estimates the annual cost of the bill as follows.⁶ The department has included the cost of the bill in their Legislative Budget Request.

⁶ Department of Children and Families SB 1326 Bill Analysis, dated January 14, 2020. On file with the Senate Committee on Children, Families and Elder Affairs.

Initiatives	Recurring Cost
Quality Assurance and Performance Monitoring	\$11.7 million
24-Hour and 72-Hour Child Abuse Investigations	\$2.0 million
CBC Funding Formula	\$25.6 million
Total	\$39.3 million

VI. Technical Deficiencies:

Section 3 of the bill states that the department may not continue to contract with child welfare providers that persistently fail to meet performance standards for three or more years. This substantive language is in the intent section of the bill and would not have the force of law.

Section 9 of the bill states that the department may not continue to contract with behavioral health managing entities that persistently fail to meet performance standards for three or more years. This substantive language is in the intent section of the bill and would not have the force of law.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.19, 39.01, 39.201, 39.301, 39.3065, 394.67, 394.9082, 409.986, 409.991, 409.996, 409.997, 39.202, 39.502, 39.521, 39.6011, 39.6012, 39.701, 39.823, 322.09, 393.065, 394.495, 394.674, 409.987, 409.988, 627.746, 934.255, 960.065, and 39.302.

This bill creates section 39.0012 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.