

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1061 Community-based Child Welfare Agencies
SPONSOR(S): Health & Human Services Committee, Health Care Appropriations Subcommittee, Children, Families & Seniors Subcommittee, McFarland
TIED BILLS: **IDEN./SIM. BILLS:** SB 536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N, As CS	DesRochers	Brazzell
2) Health Care Appropriations Subcommittee	14 Y, 1 N, As CS	Fontaine	Clark
3) Health & Human Services Committee	20 Y, 0 N, As CS	DesRochers	Calamas

SUMMARY ANALYSIS

Florida's model for providing child welfare services is unique in the nation. No other state outsources its child welfare services to private organizations to the extent that Florida does. Accordingly, the performance of those private organizations – community based-care lead agencies (CBCs) and their subcontractors – has a great impact on the health, safety, and well-being of the thousands of children and families served by Florida's child welfare system.

While most CBC's are deemed by DCF to overall meet or exceed performance standards, deficiencies remain, particularly in the well-being of children in care. Additionally, a recent forensic audit of 6 CBC's identified the following financial and managerial concerns with one or more of the 6 CBC's:

- Non-compliant contract procurement for related and non-related entities.
- Receipt of Paycheck Protection Program Loans that were not properly reimbursed to the State.
- Board approval of deficit budgets.
- Allocated officer compensation in excess of mandatory caps.
- Non-compliance with Cost Allocation Plans.

CS/CS/CS/HB 1061 reforms the contractual rights and obligations between DCF and the CBCs, establishes the regulatory framework for a CBC's subcontracts and transactions with related parties, revises the CBC subcontract procurement process, and creates contractual remedies to address failures to follow procurement law, noncompliance with contractual requirements, and inadequate performance in the provision of child protection and child welfare services.

The bill establishes a new funding methodology for the allocation of core service funds, and establishes a working group to study, evaluate, and offer recommendations relating to contractual and funding matters in the privatized child welfare system.

The bill has no fiscal impact for Fiscal Year 2024-25, but may redistribute funding among CBCs beginning in Fiscal Year 2025-26 and annually thereafter. The bill has no fiscal impact on local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. The Florida Legislature has declared four main purposes of the dependency system:¹

- to provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development;
- to ensure secure and safe custody;
- to promote the health and well-being of all children under the state's care; and
- to prevent the occurrence of child abuse, neglect, and abandonment.

Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) works with those families to address the problems endangering children, if possible. DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment. If the problems are not addressed, the child welfare system finds safe out-of-home placements for these children.

Community Alliances

DCF is required to establish community alliances to serve as a catalyst for community resource development and promote prevention and early intervention, among other obligations.² Each community alliance may encompass more than one county when such arrangement is determined to provide for more effective representation.³

Community Alliances include local stakeholders and representatives in each county to encourage and maintain community participation and oversight of community-based care lead agencies (CBCs).⁴ Community alliances are composed of representatives from:

- DCF.
- the county government.
- the school district.
- the county United Way.
- the county sheriff's office.
- the circuit court corresponding to the county.
- the county children's board, if one exists.
- a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, and promote adoption.⁵

The community alliance must adopt bylaws and may increase the membership of the alliance if such increase is necessary to adequately represent the diversity.⁶ The additional members may include state

¹ S. 39.001(1)(a), F.S.

² S. 20.19(5)(b), F.S.

³ S. 20.19(5)(a), F.S.

⁴ *Id.*

⁵ S. 20.19(5)(d), F.S.

⁶ S. 20.19(5)(e), F.S.

attorneys, public defenders, their designees, or individuals from funding organizations, community leaders or individuals who have knowledge of community-based service issues.⁷

DCF's procurement team for CBC contracts must include individuals from the community alliance in the area to be served under the contract.⁸

Community-Based Care Lead Agencies

Florida's model for providing child welfare services is unique in the nation. No other state outsources its child welfare services to private organizations to the extent that Florida does. Accordingly, the performance of those private organizations—community based-care lead agencies, or CBCs-- has great impact on the health, safety, and well-being of the thousands of children and families served by Florida's child welfare system. DCF's effective management and oversight of contractors is critical to the successful functioning of the child welfare system.

The Department of Children and Families (DCF) competitively contracts with CBCs as required by chapters 287 and 409 to provide child protection and child welfare services to children and families in Florida. These contracts generally cover case management, out-of-home services, and related services. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs in turn contract with a number of subcontractors for case management and direct care services to children and their families. DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services. Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.⁹

At present, there are 18 CBCs that each cover specific geographic areas within the 20 Judicial Circuits in Florida. The geographic size of the CBC's varies widely. While a few serve only one county, ranging from St. Johns County to Broward County, several CBCs cover multiple counties, with one CBC (Partnership for Strong Families) encompassing 13 rural counties. The following map illustrates DCF Regions, Judicial Circuits, and CBC geographic areas.¹⁰

⁷ *Id.*

⁸ S. 409.987(5), F.S.

⁹ S. 409.996, F.S.

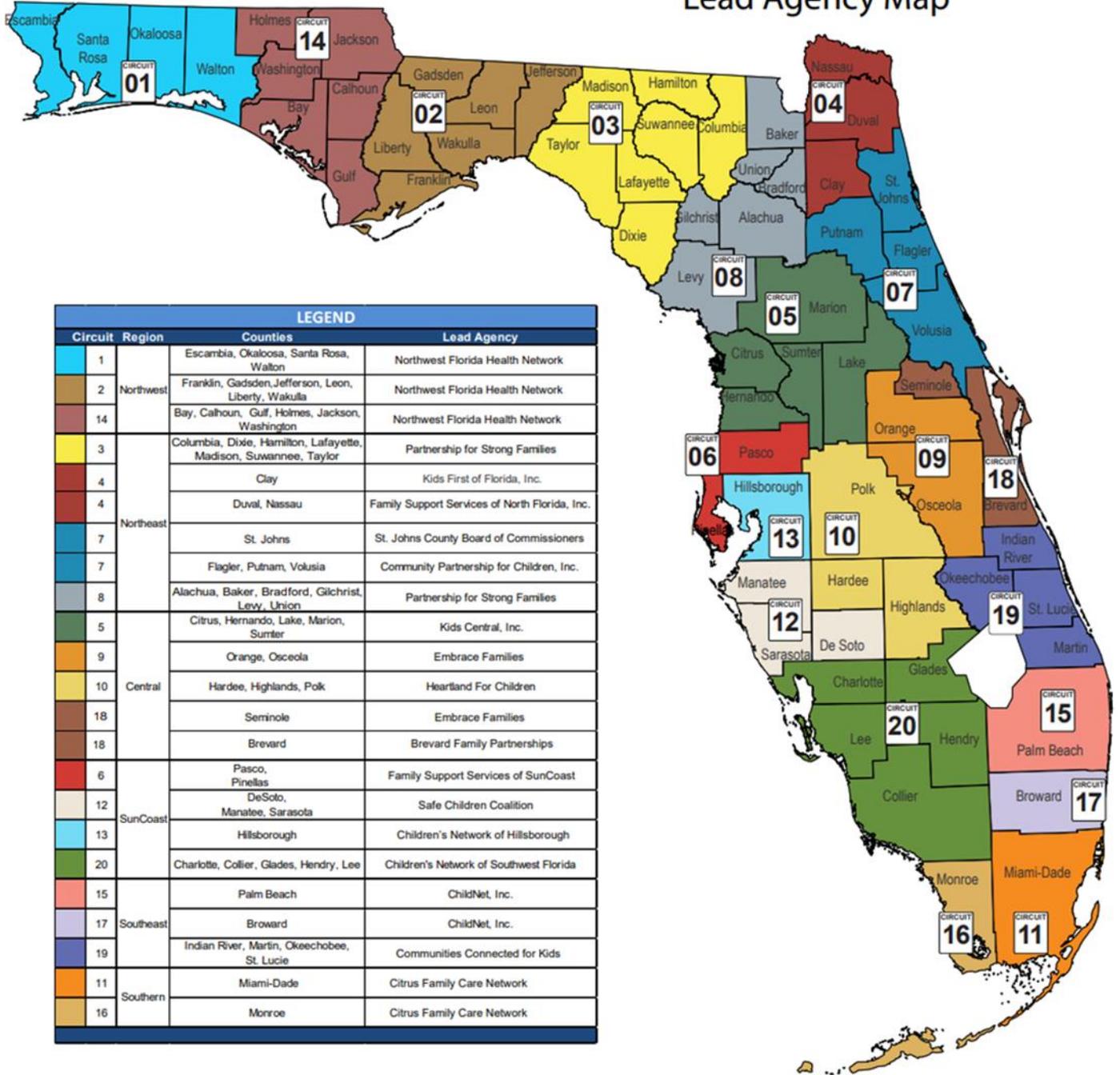
¹⁰ Florida Department of Children and Families, *A Comprehensive, Multi-Year Review of the Revenues, Expenditures, and Financial Position of All Community-Based Care Lead Agencies with System of Care Analysis*, p. 2 (Dec. 1, 2023)

<https://www.myflfamilies.com/services/child-family/lmr> (last visited Jan. 6, 2024).



Community-Based Care

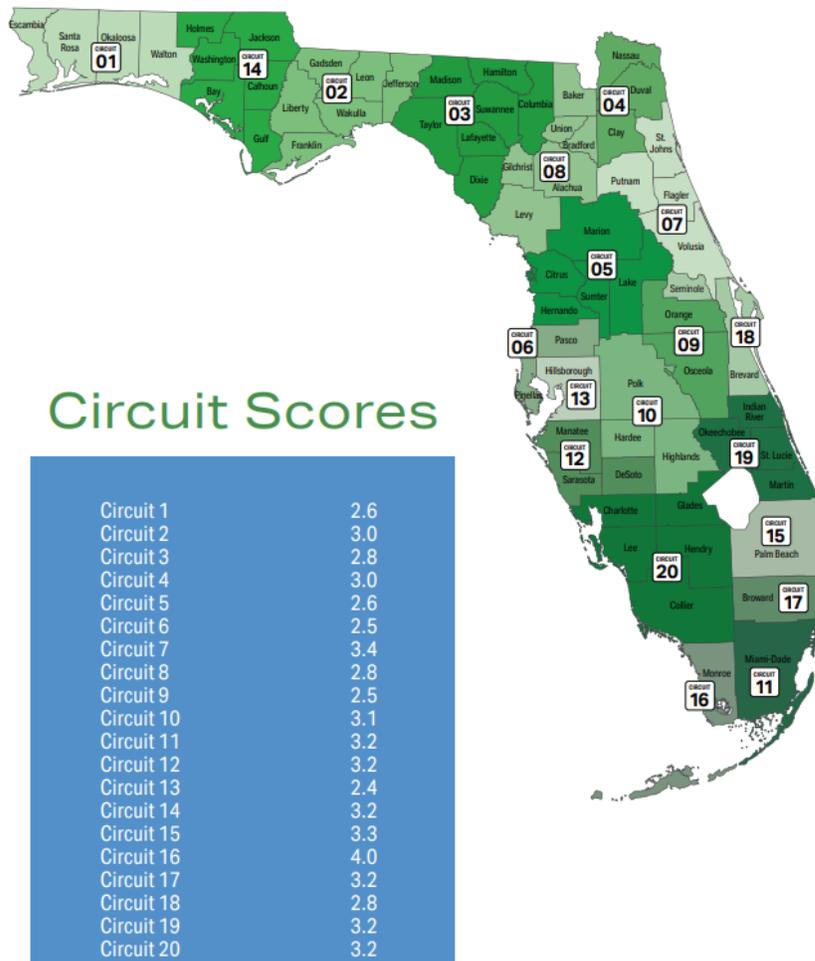
Lead Agency Map



LEGEND			
Circuit	Region	Counties	Lead Agency
1		Escambia, Okaloosa, Santa Rosa, Walton	Northwest Florida Health Network
2	Northwest	Franklin, Gadsden, Jefferson, Leon, Liberty, Wakulla	Northwest Florida Health Network
14		Bay, Calhoun, Gulf, Holmes, Jackson, Washington	Northwest Florida Health Network
3		Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, Taylor	Partnership for Strong Families
4		Clay	Kids First of Florida, Inc.
4	Northwest	Duval, Nassau	Family Support Services of North Florida, Inc.
7	Northwest	St. Johns	St. Johns County Board of Commissioners
7	Northwest	Flagler, Putnam, Volusia	Community Partnership for Children, Inc.
8		Alachua, Baker, Bradford, Gilchrist, Levy, Union	Partnership for Strong Families
5		Citrus, Hernando, Lake, Marion, Sumter	Kids Central, Inc.
9		Orange, Osceola	Embrace Families
10	Central	Hardee, Highlands, Polk	Hearland For Children
18		Seminole	Embrace Families
18		Brevard	Brevard Family Partnerships
6		Pasco, Pinellas	Family Support Services of SunCoast
12	SunCoast	DeSoto, Manatee, Sarasota	Safe Children Coalition
13	SunCoast	Hillsborough	Children's Network of Hillsborough
20	SunCoast	Charlotte, Collier, Glades, Hendry, Lee	Children's Network of Southwest Florida
15		Palm Beach	ChildNet, Inc.
17	Southeast	Broward	ChildNet, Inc.
19	Southeast	Indian River, Martin, Okeechobee, St. Lucie	Communities Connected for Kids
11	Southern	Miami-Dade	Citrus Family Care Network
16	Southern	Monroe	Citrus Family Care Network

Accordingly, the child population of the area served by each CBC varies, and the number of children and families served by each CBC varies.

The DCF infographic below scores the health of Florida’s child welfare system at the circuit level.¹¹ DCF identifies areas with the most significant systemic impact on improving permanency and well-being¹² and evaluates progress toward achieving permanency, safety, and well-being for children in the welfare system. The overall score for each of the 20 circuits aggregates individual circuit performance scores on permanency, safety, and well-being. For FY 2022-23, the overall median score was 3.0 out of a possible 5, and 60% of circuits earned a 3.0 or higher.¹³ A score over 3.50 indicates the circuit’s performance exceeds established standards.¹⁴ A score between 3.00-3.349 indicates the circuit’s performance meets established standards.¹⁵ A score of 2.00-2.99 indicated the circuit’s performance does not meet established standards.¹⁶ In FY 2022-23, DCF gave 11 of 20 circuits a score of 3.0 or higher, indicating that the circuit’s performance exceeded established standards. Every CBC except one was rated below expectations or poor for the well-being of children in care.



17

¹¹ Florida Department of Children and Families, *Annual Accountability Report on the Health of Florida’s Child Welfare System: Fiscal Year 2022-2023*, p. 6 (Dec. 1, 2023) <https://www.myflfamilies.com/sites/default/files/2023-12/Annual%20Accountability%20Report%20on%20the%20Health%20of%20Floridas%20Child%20Welfare%20System%20FY%202022-23.pdf> (last visited Feb. 22, 2024).

¹² *Id.* at p. 3.

¹³ *Id.* at p. 2.

¹⁴ *Id.* at p. 7.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at pg. 6.

CBC Funding

The source of CBC revenues are predominately federal and state funds appropriated by the Florida Legislature. Nearly all federal funding for child welfare purposes comes from the Social Security Act¹⁸ and the Child Abuse Prevention and Treatment Act (CAPTA). Each of these federal sources generally require state matching funds.¹⁹ Historically, CBCs could use Title IV-E funds in a variety of state-specific, innovative ways because the federal government approved a waiver allowing Florida to experiment. However, the federal government terminated the Title IV-E waiver authority it had allowed states on September 30, 2019.²⁰ This has led to significant change in levels and the mix of federal and state funds over the last five years.

CBC appropriations from federal and state sources grew from \$951.9 million in Fiscal Year (FY) 2018-19 to \$1.3 billion for FY 2023-24.²¹ The Legislature appropriates funds from both state and federal sources to CBC's through DCF.

State law specifies calculation of annual CBC funding. The Legislature first established a CBC funding formula in law in 2011 and has changed over time.²² Before this statutory formula, the allocation of new state or federal funds to lead agencies was based primarily on the number of children in care with direction to the department through proviso language in the General Appropriations Act, though at the time of the formula's enactment, the Legislature had begun considering additional factors such as those now in the formula.²³

Under the current formula, 100 percent of the recurring core services funding for each community-based care lead agency are based on the prior year recurring base of core services funds, and any new funds are allocated according to a statutory formula.

Generally, all funds allocated to a CBCs are considered "core service funds", except for:

1. Funds appropriated for independent living.
2. Funds appropriated for maintenance adoption subsidies.
3. Funds allocated by DCF for protective investigations training.
4. Nonrecurring funds (e.g., risk pool appropriations, back of the bill authorizations designed in the General Appropriations Act, Legislative Budget Commission actions, and prior year excess federal earnings).²⁴
5. Designated mental health wrap-around services.
6. Funds for special projects for a designated CBC.
7. Funds appropriated for the Guardianship Assistance Program under s. 39.6225, F.S.

Unless otherwise specified in the General Appropriations Act, any new core service funds are allocated according to the equity allocation model on the following weighted basis:

- 70% of new funding must be allocated among all CBCs.
- 30% of new funding must be allocated among the CBCs that are funded below their equitable share.²⁵

¹⁸ Relevant provisions of the Social Security Act include the Title IV-A Temporary Assistance for Needy Families (TANF) block grant, Title IV-B child welfare services, Title IV-B promoting safe and stable families, Title IV-E funds for foster care, Title IV-E funds for adoption assistance, independent living and education, training and voucher funds, and the Title XX Social Services Block Grant.

¹⁹ In addition, a local match is required for the Title IV-B promoting safe and stable families fund.

²⁰ Florida Department of Children and Families, *A Comprehensive, Multi-Year Review of the Revenues, Expenditures, and Financial Position of All Community-Based Care Lead Agencies with System of Care Analysis*, p. 3 (Dec. 1, 2023)

<https://www.myflfamilies.com/services/child-family/lmr> (last visited Jan. 6, 2024).

²¹ *Supra*, FN 10 at 3.

²² Ch. 2011-62, L.O.F.

²³ Florida Senate Analysis of 2011 Senate Bill 2146, p. 3 (April 1, 2011)

<https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2011s2146.bc.DOCX&DocumentType=Analysis&BillNumber=2146&Session=2011> (last visited Jan. 26, 2024).

²⁴ *Supra*, FN 3 at 4-5. At the time of DCF's annual report, the carry-forward balance for FY 2023-24 was not yet determined.

²⁵ S. 409.991(4), F.S.

The equity allocation model weights the proportions of the child population, the child abuse hotline workload, and the children in care according to the following formula:

- The proportion of the child population is weighted at 5% of the total.
- The proportion of the child abuse hotline workload is weighted at 35% of the total.
- The proportion of the children in care is weighted at 60% of the total.²⁶

The FY 2023-24 GAA provides the following core service funding amounts to CBC's:

Community-based Care Lead Agency	Core Service Funding for FY 2023-24
Big Bend CBC (Northwest Florida Health Network)-West	\$55,032,652
Big Bend CBC (Northwest Florida Health Network)-East	\$35,459,931
Partnership for Strong Families	\$31,401,300
Kids First of Florida	\$12,525,871
Family Support Services of North Florida	\$49,018,528
St Johns Board of County Commissioners (Family Integrity Program)	\$7,683,739
Community Partnership for Children	\$43,440,511
Kids Central	\$54,912,909
Embrace Families	\$60,761,737
Heartland for Children	\$46,721,076
Community-Based Care of Brevard (Brevard Family Partnerships)	\$29,292,110
Communities Connected for Kids	\$24,247,000
Family Support Services of Suncoast	\$87,553,887
Safe Children Coalition	\$34,861,493
Children's Network of Hillsborough	\$75,448,412
Children's Network of Southwest Florida	\$53,746,134
ChildNet (Palm Beach)	\$38,086,728
ChildNet (Broward)	\$60,952,428
Citrus Family Care Network	\$76,440,546

Total state-appropriated funds available for CBC's for FY 2023-24 was \$1.331 billion.²⁷

In addition, some CBCs receive revenue from local sources such as local government, private businesses, and not-for-profit foundations.²⁸

²⁶ S. 409.991(2), F.S.
²⁷ *Supra*, FN 10, at 5.
²⁸ *Supra*, FN 10 at 5.
STORAGE NAME: h1061g.HHS
DATE: 2/23/2024

Risk Pool

Total new funding available to CBC's varies by year but is generally a small percentage of the total funding for CBC services. This means that a CBC's funding does not change significantly year to year. When extenuating circumstances result in increased expenditures for CBC's, the funding through the formula does not change significantly. Thus s. 409.990, F.S., establishes a risk pool for lead agencies. The risk pool is intended to mitigate the financial risk to eligible lead agencies.

CBC's must apply for risk pool funding, and then a DCF secretary-appointed risk pool peer review committee reviews and assesses all risk pool applications. The committee includes both DCF and non-applicant CBC representatives. The peer review committee then reports its findings and recommendations to the secretary, providing, at a minimum:

- Justification for the specific funding amount required by the risk pool applicant based on the current year's service trend data, including validation that the applicant's financial need was caused by circumstances beyond the control of the lead agency management;
- Verification that the proposed use of risk pool funds meets at least one of the purposes specified in paragraph (c); and
- Evidence of technical assistance provided in an effort to avoid the need to access the risk pool and recommendations for technical assistance to the lead agency to ensure that risk pool funds are expended effectively and that the agency's need for future risk pool funding is diminished.

Upon approval by the secretary of a risk pool application, the department may request funds from the risk pool in accordance with s. 216.181(6)(a).

The four purposes for which the community-based care risk pool shall be used include:

- Significant changes in the number or composition of clients eligible to receive services.
- Significant changes in the services that are eligible for reimbursement.
- Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a lead agency.
- Significant changes in the mix of available funds.

The Legislature appropriates funding for the risk pool. The amount appropriated varies by year; for FY 23-24, the Legislature appropriated \$3.0 million for the risk pool.²⁹ In FY 2022-23, two CBC's applied for risk pool funding, and one of the two (Embrace Families) was approved and awarded \$3.1 million.³⁰

2022 and 2024 Reports on Allocation Options

Current law sets monthly reporting requirements for DCF regarding its case management services or case management services provided by CBCs or their subcontractors. At a minimum, DCF must publish the following data points on its website by the 15th day of each month:³¹

1. The average caseload of case managers, including only filled positions;
2. The total number and percentage of case managers who have 25 or more cases on their caseloads;
3. The turnover rate for case managers and case management supervisors for the previous 12 months;
4. The percentage of required home visits completed; and
5. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months.

Procurement by CBCs and Civil Penalties

²⁹ *Supra*, FN 10, at 3.

³⁰ Department of Children and Families, *Risk Pool Peer Review Committee, Executive Summary Report, Fiscal Year 2022-23*, https://www.myflfamilies.com/sites/default/files/2023-05/Risk_Pool_Executive_Summary_FY22-23.pdf, p. 2.

³¹ S. 409.988(1)(k), F.S.

Federal Requirements Governing Procurement by CBCs

The federal government awards federal program funds to DCF as the federal awarding agency or pass-through entity. Current law defines the pass-through entity as a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. A non-federal entity means a state, local government, indigenous tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient.³²

CBCs must comply with state and federal statutory requirements and agency rules in the provision of contractual services.³³ To determine which federal rules apply to CBCs, DCF must first determine whether CBCs meet the federal classification of subrecipient or contractor. DCF, as the pass-through entity, must make a case-by-case determination whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. The substance of the relationship is more important the form of the agreement.³⁴

The table below describes the criteria that DCF must use to determine whether a CBC is a subrecipient or contractor; CBC's meet the criteria for subrecipients.

Subrecipient Classification ³⁵	Contractor Classification ³⁶
Determines a person's eligibility for federal assistance	Provides goods and services within normal business operations
Has its performance measured in relation to whether objectives of a federal program were met	Provides similar goods or services to many different purchasers
Has responsibility for programmatic decision-making	Normally operates in a competitive environment
Must adhere to applicable federal program requirements specified in the federal award	Provides goods or services that are ancillary to the operation of the federal program
Uses federal funds to carry out a program for a public purpose authorized in statute (as opposed to providing goods or services for the benefit of a pass-through entity)	Is not subject to compliance requirements of the federal program as a result of the agreement with the pass-through entity.

At the time of DCF's subaward to the subrecipient CBC, the DCF must put the CBC on notice of all federal requirements to ensure the federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the federal award.³⁷ DCF must evaluate each CBC's risk of noncompliance with federal statutes, regulations, and terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring protocols.³⁸ The federal government authorizes the DCF to consider taking enforcement action against noncompliant subrecipients.³⁹

The federal government delegates certain federal subaward enforcement responsibilities to DCF. If a CBC fails to comply with federal law or the terms and conditions of a federal award, DCF may impose

³² 2 C.F.R. § 200.1.

³³ S. 409.988(1)(i), F.S.

³⁴ 2 C.F.R. § 200.331.

³⁵ 2 C.F.R. § 200.331(a).

³⁶ 2 C.F.R. § 200.331(b).

³⁷ 2 C.F.R. § 200.332(a)(2).

³⁸ 2 C.F.R. § 200.332(b).

³⁹ 2 C.F.R. § 200.332(h).

additional conditions⁴⁰ on the subrecipient or contractor. If DCF determines that noncompliance cannot be remedied by imposing additional conditions, DCF may take one of more the following actions:⁴¹

1. Temporarily withhold cash payments pending correction of the deficiency by the non-federal entity or take more serve enforcement action.
2. Deny all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the federal award.
4. Initiate suspension or debarment proceedings.
5. Withhold further federal awards for the project or program.
6. Take other remedies that are legally available.

Under federal law, a nonprofit organization that carries out a Federal award as a recipient or subrecipient (i.e., a CBC) must provide for full and open competition in procuring goods and services.⁴² When the value of the procurement for property or services under a federal award does not exceed the federal simplified acquisition threshold of \$250,000,⁴³ or a lower threshold established by a non-federal entity, formal procurement methods are not required.⁴⁴ When the value of the procurement for property or services under a federal financial assistance award exceed the federal simplified acquisition threshold of \$250,000, or a lower threshold established by a non-federal entity, formal procurement methods are required.⁴⁵

A CBC may conduct noncompetitive procurements with federal award dollars if:

1. The acquisition of services does not exceed an established micro-purchase threshold,
2. The item is available only from a single source,
3. There is public exigency or an emergency,
4. The federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity⁴⁶, or
5. Competition is deemed inadequate after solicitation of a number of sources.⁴⁷

State Law Governing Procurement by CBC's

In Florida, chapter 287 governs the procurement of commodities and contractual services. Generally, if a procurement request for commodities or contractual services exceeds \$35,000, the competitive solicitation process is mandatory.⁴⁸ However, purchases of certain contractual services and commodities are exempt from this requirement, such as:

- Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration.
- Services provided to persons with mental or physical disabilities by nonprofits recognized as 501(c)(3)s by the IRS.
- Medicaid services delivered to Medicaid eligible recipients.
- Family placement services.
- Prevention services related to mental health operated by nonprofits – including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways.⁴⁹

⁴⁰ Additional conditions include adjusting specific federal award conditions, requiring payments as reimbursements rather than a dvance payments, requiring more detailed financial reports, requiring additional project monitoring, requiring technical or management assistance, and establishing additional prior approvals. 2 C.F.R. 200.208.

⁴¹ 2 C.F.R. § 200.339.

⁴² 2 C.F.R. § 200.318-320.

⁴³ 48 C.F.R. § 2.101.

⁴⁴ 2 C.F.R. § 200.320(a).

⁴⁵ 2 C.F.R. § 200.320(b).

⁴⁶ e.g., a DCF waiver to bypass competitive procurement requirements that create inefficiencies or inhibit of the performance of the CBC's duties.

⁴⁷ 2 C.F.R. § 200.320(c)(1)-(5).

⁴⁸ Ss. 287.057(1), 287.017(2), F.S.

⁴⁹ S. 287.057(3)(e), F.S.

If an agency receives fewer than two responsive bids, proposals, or replies, the procuring agency may negotiate with the vendor on the best terms and conditions.⁵⁰ Also, an agency may award a non-competitive government contract if state or federal law prescribes with whom the agency must contract or if the rate of payment or the receipt of funds is established during the appropriations process.⁵¹

CBCs have additional limitations on their procurement under state law beyond the general requirements in ch. 287, F.S. Specifically, CBC's cannot directly provide more than 35 percent of all child welfare services unless the CBC can demonstrate a need within the CBC's geographic service area to exceed this threshold. Current law requires community alliances⁵² to review the CBC's justification for need and to recommend whether DCF should approve or deny the CBC's request for an exemption from the 35 percent threshold.⁵³ When CBCs outsource contractual services, the subcontracts must specify how the third-party vendor helps the CBC meet established performance standards under the child welfare results-oriented accountability system.⁵⁴

CBC Governance and Expenditures

Organization and Board Responsibilities

Each CBC must be organized as a Florida corporation or a governmental entity and be governed by a board of directors or a board committee composed of by board members.⁵⁵ The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency.

- For boards of directors, at least 75% of the membership must consist of Florida residents, and at least 51% of these Florida resident members must reside within the CBC service area. The board of directors must have the power to hire the CBC's executive director.
- For board committees, 100% of its membership must consist of persons residing within the CBC service area. The board committee must have the power to confirm the selection of an executive director.⁵⁶

Regardless of organization, each governing body must approve its CBC budget, set the CBC's operational policy and procedures, and demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a performance bond.⁵⁷

Conflict of Interest Requirements

Section 409.987, F.S, addresses conflict of interests in CBC board decision making. A CBC board member or officer must disclose to the board any activity that may reasonably be construed to be a conflict of interest before that activity may be initially considered and approved. This mandatory disclosure also applies to contract renewals.⁵⁸ A conflict of interest transaction manifests when a CBC board member or officer, or their relatives within the third degree of consanguinity by blood or marriage, does any of the following acts:

- Enters into a contract or other transaction with the CBC for goods or services.
- Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts or proposes business with the CBC.

⁵⁰ S. 287.057(6), F.S.

⁵¹ S. 287.057(11), F.S.

⁵² Current law requires DCF to establish community alliances in each county to provide a focal point for community participation and governance of community-based services. s. 20.19(5), F.S.

⁵³ S. 409.988(1)(j), F.S.

⁵⁴ *Id.*

⁵⁵ e.g., St. Johns County Board of Commissioners is the CBC serving St. Johns County in Circuit 7.

⁵⁶ S. 409.987(4), F.S.

⁵⁷ S. 409.987(4), F.S.

⁵⁸ S. 409.987(7)(b), F.S.

- Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such board member or officer, or their relatives, with the CBC.⁵⁹

A rebuttable presumption of a conflict of interest exists if the board acted on a proposed conflict of interest transaction without prior notice on the board's meeting agenda. The meeting agenda must clearly identify the existence of a potential conflict of interest for the proposed transaction. At the meeting, if an affirmative vote of two-thirds of all other non-interested board members present approve the proposed transaction, only then can the CBC board member or officer engage in the conflict of interest activity.⁶⁰ The interested CBC board member or officer must recuse himself or herself from the vote.⁶¹ However, if the proposed transaction is not approved, the CBC board member or officer must decide whether to provide written notice of the board member's or officer's intent to not pursue the proposed transaction or to withdraw from CBC leadership.⁶²

If a conflict-of-interest contract entered into between the CBC and a CBC board member or officer (or their relatives) was not properly disclosed, the contract is voidable. The board may terminate the contract with the formal consent of at least 20% of the voting interests of the CBC.

CBC Executive Compensation

A CBC lead agency administrative employee cannot receive a salary, whether in base pay or base pay plus bonus or incentive payments, in excess of 150% of the annual salary paid to the DCF Secretary from state-appropriated funds – including state-appropriated federal funds.⁶³ Additional federal requirements also apply. In practice, this is currently a maximum of \$350,449.71 of combined state and federal funds, of which only \$213,000 can be federal funds. According to DCF, during recent audits of CBC spending on executive compensation, some CBCs stated that because they had multiple DCF contracts, they believed they could exceed this cap.⁶⁴

Remedies

As an immediate remedy for failure to comply with contract terms or in the event of performance deficiencies, all contracts between DCF and the CBCs must provide for tiered interventions and graduated penalties. Examples of available interventions and penalties include:

- Enhanced monitoring and reporting.
- Corrective action plans.
- Requirements to accept DCF's technical assistance and consultation.
- Financial penalties requiring a CBC to reallocate funds from administrative costs to direct care for children.
- Early termination of contracts.⁶⁵

In the event that DCF determines health, safety, and welfare of the dependent children currently cared for or supervised by a CBC is in imminent danger, DCF may petition a court of competent jurisdiction for the appointment of a receiver to ensure the continued health, safety, and welfare of the dependent children.⁶⁶ According to current law, DCF can make at least two arguments in a receivership petition:

- DCF determines that conditions exist in the CBC which present an imminent danger to the health, safety, or welfare of dependent children under the CBC's care or supervision.
- The CBC cannot meet its current financial obligations to its employees, contractors, or foster parents. The issuance of bad checks or the existence of delinquent obligations for payment of

⁵⁹ S. 409.987(7)(a), F.S.

⁶⁰ S. 409.987(7)(c), F.S.

⁶¹ S. 409.987(e), F.S.

⁶² S. 409.987(7)(d), F.S.

⁶³ S. 409.992(3), F.S.

⁶⁴ Florida Department of Children and Families, Agency Analysis of 2024 House Bill 1061, p. 6.

⁶⁵ S. 409.996(d), F.S.

⁶⁶ S. 409.994, F.S.

salaries, utilities, or invoices for essential services or commodities constitute prima facie evidence that the CBC lacks the financial ability to meet its financial obligations.⁶⁷

The court may appoint a receiver for up to 90 days. DCF may petition for additional 30-day extensions. Sixty days after the appointment of the receiver, and every 30 days until the receivership is terminated, DCF must submit to the court an assessment of the CBC's ability to ensure the health, safety, and welfare of the dependent children under its supervision.⁶⁸

Forensic Audits of CBCs

In December 2021, the DCF Inspector General (IG) identified 11 CBCs that routinely transferred funds to related parties. The IG expressed concern over this practice because funds transferred to related parties compromises DCF's ability to track further expenditures of state and federal dollars. Current law mandates that CBCs abide by DCF's financial guidelines and allow for a regular independent auditing of its financial activities,⁶⁹ and thus DCF procured the services of two auditing firms with the expertise to perform a forensic audit of these CBCs. As of January 2024, these auditing firms completed forensic examination reports for 6 CBCs and submitted them to DCF in August 2023.⁷⁰

In response to the findings of the initial forensic examinations, the Department issued corrective action plans to address key findings which included:

- Non-compliant contract procurement for related and non-related entities.
- Receipt of Paycheck Protection Program Loans that were not properly reimbursed to the State.
- Board approval of deficit budgets.
- Allocated officer compensation in excess of mandatory caps.
- Non-compliance with Cost Allocation Plans.⁷¹

Effect of the Bill

CBC Contractual Obligations

Contract Term

The bill authorizes DCF to extend 5-year CBC lead agency contracts for a period of 1-5 years if the CBC lead agency meets performance expectations.

General Governance

The bill requires board members to provide fiduciary oversight to prevent conflicts of interest, to promote accountability and transparency for the system of care, and to protect state and federal funding from misuse. The bill requires at least 75 percent of the membership of the board of directors or the board committee be composed of Florida residents. The bill requires CBCs to ensure that board members participate in annual training related to their responsibilities. The bill requires DCF to identify the minimum training criteria in the department's contracts with the CBCs.

Related Parties and Conflict of Interest Transactions

The bill restricts the ability of CBCs to transact with third-party entities that are directly or indirectly related to the CBC itself by requiring CBCs to competitively procure all contracts with related parties in excess of \$35,000.

⁶⁷ S. 409.994, F.S.

⁶⁸ S. 409.994(2)(d), F.S.

⁶⁹ S. 409.988(1)(c), F.S.

⁷⁰ The six CBC's were Northwest Florida Health Network, Embrace Families, Partnership for Strong Families, Children's Network of Southwest Florida, Kids First of Florida, and Brevard Family Partnership. The audit reports for the first six CBC's are at <https://www.myflfamilies.com/community-based-care-lead-agencies-audit-findings> (last visited Jan. 26, 2024).

⁷¹ *Supra*, FN 64.

The bill defines related party as “any entity of which a director or an officer of the entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the lead agency. The term also includes any subsidiary firm and joint venture.”

The bill requires the board to disclose any known or actual conflicts of interest. The bill prohibits a CBC from contracting or being a party to a transaction with a related party when the CBC does not properly disclose the conflict to DCF. The bill prohibits a CBC from delegating management functions by contract to a related party. The bill defines management functions as the planning, directing, organizing, coordinating, and carrying out oversight duties of the CBC, or, in the alternative, the contracting for officer or director level staffing to perform such activities. If a CBC complies with these disclosure and delegation requirements, the bill authorizes a CBC to contract or be a party to a transaction with a related party as long as the fee, rate, or price paid by the lead agency for the commodities or services do not exceed the fair market value of those commodities or services.

The bill also makes conflict of interest requirements applicable to director level positions in the CBCs and the relatives of a board member, director, or officer of the CBCs. The bill prohibits directors and their relatives from knowingly obtaining a direct or indirect personal, financial, professional, or other benefit as a result of the conflict of interest relationship.

The bill requires the contract between DCF and a CBC to contain specific contractual penalty provisions as an enforcement measure against a CBC’s improper subcontracts and transactions with related parties. The table below itemizes the specific contractual penalties required by the bill.

Each Known and Potential Conflict of Interest Not Disclosed to DCF		
Matters Presented to the CBC Board (Initial Consideration or Renewal Contracts)	For Contracts Executed	
Per Occurrence Penalty	First Offense	Subsequent Offenses
\$5,000	\$10,000	\$15,000

The contractual penalties apply to all methods of procurement. In addition to the contractual penalties, the bill requires the CBCs to re-procure transactions that involved a conflict of interest that was not disclosed to DCF and requires DCF to recoup from a CBC the expenses related to the improperly executed contract.

CBC Subcontract Procurement

The bill requires CBCs to competitively procure all contracts, consistent with the simplified acquisition threshold as specified the Code of Federal Regulations; the simplified acquisition threshold is currently \$250,000. When a CBC subcontracts, the bill requires subcontracts in excess of \$250,000 to comply with the federal competitive procurement process.

The bill prevents a CBC from providing more than 35 percent of all child welfare services unless it can demonstrate a need within its geographic service area where there is a lack of qualified providers available to perform the necessary services. The bill limits the waiver period to two years, and the waiver period must be renewed by submitting a new, evidenced-based exemption request to DCF and the community alliance for the geographic service area (if a community alliance serves the area) for approval each time the CBC wishes to extend an active waiver.

The bill requires the contract between DCF and a CBC to specify the administrative functions and services for which the CBC will subcontract.

CBC Executive Pay

The bill prohibits a CBC administrative employee from receiving a salary, whether base pay or base pay combined with any bonus or incentive payments from the CBC or any related party, in excess of 150 percent of the annual salary paid to the DCF Secretary from state-appropriated funds. The bill applies this limitation regardless of the number of CBC contracts that a CBC executes with DCF.

Real Property

The bill requires newly procured contracts between DCF and CBC lead agencies to delineate the rights and obligations of both parties concerning the acquisition, transfer, or other disposition of real property during the contract term.

Financial Integrity

The bill requires the CBCs to comply with regular, independent auditing of its financial activities, including any requests for records associated with such financial audits within the timeframe established by DCF or its contracted vendors.

Reporting Requirements

The bill expands the minimum data points that the CBCs must publish on its website by the 15th day of each month. Specifically, the bill requires the CBCs to report five new data points:

1. The number of unlicensed placements for the previous month.
2. The percentages and trends for foster parent and group home recruitment and licensure for the previous month.
3. The percentage of families being served through family support, in-home, and out-home services for the previous month.
4. The percentage of cases that converted from nonjudicial to judicial for the previous month.
5. The staffing rates for children's legal services.

Remedies for Noncompliance or Inadequate Performance

The bill requires contracts between DCF and CBCs to include a provision that requires a CBC to pay financial penalties and sanctions for failure to comply with contractual terms, for noncompliance with applicable local, state, or federal procurement law, and for inadequate performance. To this end, the bill eliminates the current system of tiered interventions and graduated penalties, providing DCF more flexibility in addressing CBC performance deficiencies. To this end, as a matter of contract, DCF may immediately address CBC performance deficiencies with financial penalties. The bill requires any financial penalties assessed by DCF to revert to the state upon DCF enforcement.

The bill establishes a deadline of January 1, 2025, by which DCF must ensure that each CBC contract executed includes a list of financial penalties for failure to comply with contractual requirements.

CBC Funding Methodology

The bill repeals s. 409.991, F.S., relating to allocation of funds for community-based care lead agencies. The bill directs DCF to work in collaboration with CBCs and child welfare providers to develop a new funding methodology. At a minimum, the methodology must:

- Be actuarially sound,
- Be reimbursement based,
- Be designed to incentivize efficient and effective CBC operations, prevention, family preservation, and child permanency.
- Consider variable costs for in-home and out-of-home care, prevention services, operational costs, and fixed costs.
- Be scalable to account for regional cost-of-living differences.

The bill itemizes which variables are to be considered “operational and fixed costs” and reaffirms that “core services funding” refers to all funds allocated to a CBC with certain exceptions. Operational and fixed costs means administrative expenditures (including, but not limited to, information technology and human resources), lease payments, asset depreciation, utilities, and mandated activities such as training, quality improvement, and contract management. Core services funds do not include funding a CBC receives for independent living services, adoption subsidies, child protective investigation training, nonrecurring funds, mental health wrap-around services, special projects, and the Guardianship Assistance Program.

The bill includes three reporting requirements to present the new methodology, to provide monthly progress reports on the development of the methodology, and to provide annual, recommended updates to the methodology that account for any changes to variable costs that serve as the basis for each CBC allocation:

1. From July 2024 through October 2024, DCF is required to submit monthly updates to the Governor and Legislature on the activities and progress in developing the new funding methodology.
2. By December 1, 2024, the bill requires DCF to submit the final report on the new methodology to the Governor and Legislature for consideration during the 2025 Session. The report shall describe the proposed methodology, the data used to develop the methodology, and include proposed rates and allocations for each CBC that may not exceed the total amount of funding provided in the General Appropriations Act for Fiscal Year 2024-25. The report shall also include risk mitigation recommendations should a CBC’s proposed allocation negatively impact operations or result in a reduction of services to children.
3. Beginning October 31, 2025, the bill requires DCF to submit a report annually including recommended adjustments to the proposed methodology that incorporate fluctuations to the underlying criteria used to calculate the allocations.

The bill subjects the new funding methodology to the state government planning and budgeting requirements of Chapter 216. The bill authorizes DCF to report on the proposed rates and total allocations for each CBC that reflect any additional core service funding requested by DCF in legislative budget requests.

Beginning with FY 2025-26, the bill requires the Legislature to allocate funding to the CBCs through the General Appropriations Act with due consideration given to the funding methodology developed by DCF, in collaboration with the CBCs and child welfare providers.

The bill prohibits DCF from changing the allocation of funds to a CBC as provided in the General Appropriations Act without legislative approval. However, the bill authorizes DCF to approve additional risk pool funding for a CBC.

Future of Child Protection Contracting and Funding Working Group

The bill establishes the Future of Child Protection Contracting and Funding Working Group (working group). The DCF-led working group must study, evaluate, and offer recommendations relating to contractual and funding matters in the privatized child welfare system to the Governor and Legislature in a report due by October 15, 2025.

At a minimum, the report must:

- Examine the current contracting methods for the provision of all foster care and related services.
- Identify any barriers or deficiencies in creating local ownership and governance over the provision of all foster care and related services.
- Assess the implications of a 10% cap on administrative costs.
- Evaluate barriers to entry in the procurement of managed care networks.
- Consider the unique regional needs of children and families at-risk of abuse and neglect.

- Recommend changes to existing laws, rules, and policies necessary to implement those recommendations.

The bill requires the DCF Secretary, or his or her designee, to chair the working group and to invite the following persons to participate as a member of the working group.

- The Secretary of the Agency for Health Care Administration, or his or her designee.
- The Secretary of the Department of Management Services, or his or her designee.
- A member of the Florida Coalition for Children, or his or her designee.
- A current contractor for lead agency child protection services.
- Two representatives of a direct provider of child protection or child welfare services.
- A member of the Family Law Section of the Florida Bar or a member of the court exercising jurisdiction over family law matters.
- A representative of a for-profit managed care entity.
- A representative from a State University System school of business.
- A representative from the Florida Institute for Child Welfare.
- Any additional members as the department deems appropriate.

The bill requires the working group to terminate immediately after DCF submits the report.

CBC Receivership

The bill also lowers the threshold risk of financial insolvency at which DCF can petition the court for a receivership of a CBC. Specifically, the bill allows DCF to file a petition in court the receivership of a CBC when DCF determines a CBC is unlikely to meet its current financial obligations to its employees, contractors, or foster parents.

The bill obligates DCF to submit two special implementation reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the rules and polices adopted and other actions taken to implement the bill's requirements. The first special implementation report is due September 30, 2024. The second special implementation report is due February 1, 2025.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amending s. 409.016, F.S., relating to definitions.

Section 2: Amending s. 409.987, F.S., relating to lead agency procurement; boards; conflicts of interest.

Section 3: Amending s. 409.988, F.S., relating to community-based care lead agency duties; general provisions.

Section 4: Repealing s. 409.991, F.S., relating to allocation of funds for community-based care lead agencies.

Section 5: Creating s. 409.9913, F.S., relating to funding methodology to allocate funding to community-based care lead agencies.

Section 6: Amending s. 409.992, F.S., relating to lead agency expenditures.

Section 7: Amending s. 409.994, F.S., relating to community-based care lead agencies; receivership.

Section 8: Amending s. 409.996, F.S., relating to duties of the department of children and families.

Section 9: Creating an unnumbered section of law relating to reporting requirements.

Section 10: Creating an unnumbered section of law relating to the Future of Child Protection Contracting and Funding Working Group.

Section 11: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has no fiscal impact for FY 2024-25 as the only requirements during this fiscal year are for reports providing monthly updates on the progress of developing the methodology and for the submission of the proposed funding methodology. For FY 2025-26, the bill specifies that the sum of the proposed allocations for each CBC may not exceed the total amount appropriated to CBCs for Fiscal Year 2024-25; however, to the extent that the proposed methodology suggests an amount to each CBC that is different than its FY 2024-25 allocation, there may be either a positive or negative fiscal impact to individual lead agencies.

The bill does not require the Legislature to adopt the proposed methodology for FY 2025-26, but requires due consideration of such when developing the General Appropriations Act for FY 2025-26. Furthermore, while the bill specifies that each annual update may not exceed the total provided to CBCs in the prior fiscal year, it does not preclude DCF from making a request for additional CBC funding through the Legislative Budget Request process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The elimination of the equity allocation model and the substitution of an actuarially sound, reimbursement-based funding methodology may redistribute funding among the CBCs beginning Fiscal Year 2025-26. The specific impact to each lead agency is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DCF has sufficient rulemaking authority to carry out the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 29, 2024, the Children, Families, & Seniors Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Gradually transitions the allocation for funds for CBC lead agencies to an actuarially-based tiered payment model over four state fiscal years, starting with 2024-2025.
 - Year One is a hold harmless year, and DCF must collaborate with the CBC lead agencies to refine the actuarially-based tiered payment model.
 - Years Two and Three blend the current and actuarial payment models.
 - Year Four and beyond sets 100 percent of payments according to the actuarially-based tiered payment model.
- Establishes reporting requirements for DCF on the details of, and CBC lead agency performance under, the actuarially-based tiered payment model:
 - Starting October 31, 2024, DCF must submit quarterly reports to the Governor, President of the Senate, and Speaker of the House of Representatives about the actuarially-based tiered payment model implementation and the Tier 3 incentive payment program.
 - Starting in 2027, DCF must submit an annual report that evaluates the CBC lead agencies' fiscal performance under the actuarially-based tier payment model and any funding adjustment and tiered payment model adjustment recommendations proposed.
- Requires a CBC lead agency with an active waiver to exceed the 35 percent statutory cap on providing child welfare services to submit a new, evidenced-based exemption request to DCF and the community alliance for the geographic service area (if a community alliance serves the area) for approval each time the CBC lead agency wishes to extend an active waiver.
- Requires DCF to submit two reports on the rules adopted, the policies promulgated, and actions implemented to carry out the provisions of the bill; the first report is due September 30, 2024, and the second report is due February 1, 2025.

On February 13, 2024, the Health Care Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the 3-tiered funding model for CBC's, the multi-year on-ramp to full appropriations using the model, and the quarterly reports by DCF to the Legislature on the funding model;
- Requires DCF, in collaboration with lead agencies and child welfare providers, to develop a methodology for allocating core services funding;
- Specifies requirements for the funding methodology, such as being actuarially sound and reimbursement based, and incentivizing efficient and effective lead agency operation, prevention, family preservation, and permanency;
- Requires lead agencies and providers to submit detailed cost and expenditure data requested by DCF for the development of the funding methodology;
- Requires a report by December 1, 2024 that presents the proposed funding methodology, and that the Legislature must give due consideration to the allocations in the report for CBC appropriations beginning in the 2025-26 fiscal year;
- Requires DCF to provide a report to the Governor and Legislature each year including recommendations for adjustments to the funding methodology:
 - Specifies that DCF must follow standard appropriations procedures, and that the report can recommend total funding above what CBC's most recently received as long as DCF also submits a budget request,

- The methodology must include risk mitigation strategies that ensure that no lead agency experiences a reduction in funding that would be detrimental to operations or result in a reduction in services to children,
 - Updated recommendations to the proposed methodology must be based on, at a minimum, updated expenditure data, cost-of-living adjustments, market dynamics, or other catchment area variations;
- Requires DCF to provide monthly reports during the first part of the next fiscal year (July through October) to update the Legislature on the development of the proposed funding methodology.

On February 22, 2024, the Health & Human Services Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorizes DCF to extend 5-year community-based care (CBC) lead agency contracts for a period of 1-5 years if the CBC lead agency meets performance expectations.
- Requires DCF to establish minimum training criteria in CBC lead agency contracts.
- Prohibits CBC lead agencies from contracting or being a party to a transaction with a related party that was not properly disclosed to DCF.
- Prohibits CBC lead agencies from delegating management functions.
- Authorizes CBC lead agencies to subcontract with related parties so long as the fee, rate, or price being paid does not exceed the fair market value of the commodity or service.
- Requires the CBC lead agencies to report monthly on children’s legal service staffing rates.
- Repeals s. 409.991, F.S., relating to the allocation of funds for CBC lead agencies.
- Requires newly procured contracts between DCF and CBC lead agencies to address the acquisition, transfer, or other disposition or real property during the contract term.
- Preserves the “imminent danger” threshold in current law relating to DCF’s authorization to petition a court for a receivership of a CBC lead agency.
- Requires DCF and the CBC lead agencies to agree to contractual terms and conditions about financial penalties.
- Requires financial penalties assessed by DCF on a CBC lead agency to revert to the state.
- Establishes a DCF-led working group that must study, evaluate, and offer recommendations relating to contractual and funding matters in the privatized child welfare system to the Governor and Legislature in a report due by October 15, 2025.
- Creates a definition for the term “management functions” and revises the definition for the term “related party”.

The analysis is drafted to bill as amended by the Health & Human Services Committee.