

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 Committee on Fiscal Policy

BILL: CS/CS/SB 536

INTRODUCER: Appropriations Committee on Health and Human Services; Children, Families, and Elder Affairs Committee; and Senator Garcia

SUBJECT: Community-based Child Welfare Agencies

DATE: February 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodruff</u>	<u>Tuszynski</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>McKnight</u>	<u>AHS</u>	<u>Fav/CS</u>
3.	<u>Woodruff</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 536 amends laws related to the Department of Children and Families (DCF) contracts with community-based care lead agencies (CBCs) to increase transparency and accountability of the services provided by the CBCs. Specifically, the bill:

- Requires the DCF to procure contracts with CBCs every five years to incentivize performance and encourage competition within the provider network,
- Clarifies that CBCs are required to competitively procure all CBC subcontracts above \$250,000.
- Prohibits CBCs from subcontracting for the provision of management and oversight functions and requires a detail of the administrative functions and services the CBC is allowed to subcontract to be included in the CBC contract with the DCF.
- Limits executive compensation funded through CBC contracts to a capped total amount regardless of how many contracts the CBC has with the DCF.
- Requires a CBC's board of directors to ensure accountability and transparency of operations in addition to providing fiduciary oversight and complete annual training related to their responsibilities.
- Prohibits a CBC from contracting out administrative and management functions with a related party and requires the DCF's approval prior to a CBC entering a contract with a related party.
- Prohibits a CBC from directly providing more than 35 percent of child welfare services in its catchment area unless there is a lack of viable providers available to provide such services,

limits the approval to exceed the 35 percent threshold to two years, and adds CBC reporting requirements.

- Expands those who may have a conflict of interest to include a CBC director and includes a financial penalty on a CBC for failure to disclose known conflicts of interest.
- Requires the DCF to retain ownership of real property purchased through a CBC contract.
- Revises the criteria for corrective action plans to allow more timely action by the DCF for performance deficiencies and allows the DCF to petition for receivership when the DCF's secretary determines there is a danger to children under the CBC's care.
- Requires CBCs to comply with all financial audits and requests for records.
- Requires the DCF to include monetary sanctions or disincentives for performance deficiencies in CBC contracts.
- Expands the information a CBC must publish on its website to include the number of unlicensed placements, foster parent recruiting and licensing efforts, and other information.

The bill has no fiscal impact on state government expenditures. *See* Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare 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) and community-based care lead agencies (CBCs) work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for children.

The child welfare system includes the following key elements:

- A report to the central abuse hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent, if the child is determined to need such protection.
- Case planning to address the problems resulting in the child's dependency.
- Reunification with the child's parents or another option to establish permanency, such as adoption.

The DCF is responsible for program oversight and the overall performance of the child welfare system.¹

¹ Office of Program Policy Analysis & Government Accountability, *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care*, Report No. 06-50, June 2006, available at: <https://oppaga.fl.gov/Documents/Reports/06-50.pdf>.

Department of Children and Families

The DCF's mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.² The DCF must develop a strategic plan to fulfill this mission and establish measurable goals, objectives, performance standards, and quality assurance requirements.³

The DCF is required to deliver services by contract through private providers to the extent allowed by law and funding.⁴ These private providers include community-based care lead agencies (CBCs) delivering child welfare services.

Community-Based Care Lead Agencies

Community-based care combines the outsourcing of foster care and related services to local nonprofits with increased local community ownership of service delivery and design.⁵ CBCs are responsible for providing foster care and related services, including, but not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.⁶ Because CBCs are to partner with community providers to meet the needs of children and families in their service area, CBCs contract with subcontractors for case management and direct care services to children and families.⁷ The CBCs are to plan, administer, and coordinate the delivery of client services, ensure compliance with federal and state laws, rules, and regulations, and monitor subcontractors.⁸ At present, there are 18 CBCs that each cover specific geographic areas within the state's 20 judicial circuits.⁹

A CBC is statutorily limited from directly providing more than 35 percent of all child welfare services in its catchment area unless it can demonstrate a justification for need to exceed the 35 percent threshold.¹⁰ The local community alliance¹¹ in the CBC's service area must review the CBC's justification for need to exceed the threshold and recommend whether the DCF should approve or deny the justification.¹² Currently, nine CBCs utilize the waiver to exceed the 35 percent threshold.¹³

² Section 20.19(1), F.S.

³ *Id.*

⁴ *Id.*

⁵ Florida Department of Children and Families, *Community-Based Care*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care> (last visited Jan. 10, 2024).

⁶ Section 409.145(1), F.S.

⁷ *Id.*

⁸ Section 409.988, F.S.

⁹ Florida Department of Children and Families, *Lead Agency Information*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information> (last visited Jan. 13, 2024).

¹⁰ Section 409.988(1)(j), F.S.

¹¹ Section 20.19(5), F.S., requires the DCF, in consultation with local communities, to establish community alliances of the stakeholders, community leaders, client representatives and funders of human services in each county to provide a focal point for community participation and governance of community-based services.

¹² *Supra* note 10.

¹³ Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.;

CBCs are required to perform several duties, including:

- Serve children referred to the CBC as a result of abuse, neglect, or abandonment reports to the central abuse hotline.
- Provide the DCF with accurate and timely information necessary for oversight.
- Follow financial guidelines developed by the DCF and provide for regular independent audits.
- Prepare and file all necessary court documents and attend dependency court proceedings.
- Ensure all individuals providing care to dependent children receive training and specified information and meet employment requirements.
- Maintain eligibility to receive all available federal child welfare funds.
- Adhere to child welfare best practices.
- Maintain written agreements with Healthy Families Florida entities in its service area to promote cooperative planning for the provision of prevention and intervention services.
- Comply with federal and state statutory requirements and agency rules in the provision of contractual services.
- Use authority to subcontract for the provision of services provided CBCs contribute to services and meet specified criteria.
- Identify an employee to serve as a liaison with the community alliance and community-based and faith-based organizations interested in collaborating or offering services or other assistance on a volunteer basis to the children and families served by the CBC.
- Ensure that appropriate CBC staff and subcontractors are informed of the specific services or assistance available from local community-based and faith-based organizations.
- Identify it as a DCF contractor on its website and promotional literature.
- Ensure that it is addressing the unique needs of the fathers of children who are served by the CBC by employing a father-engagement specialist.
- Post information regarding case management services on its website by a specified date, including the average caseload of case managers for filled positions, the turnover rate for case managers and their supervisors for the previous 12 months, the percentage of required home visits completed, and performance on outcome measures required under s. 409.997, F.S., for the previous 12 months.¹⁴

There are minimum requirements with which CBCs must comply to be eligible to contract with the DCF, including:

- Being organized as a Florida corporation or a governmental entity.¹⁵
- Having a board of directors or board committee with authority to approve the CBC budget and hire a CBC executive director.¹⁶
- Demonstrating financial responsibility by having a plan for regular fiscal audits and securing a performance bond.¹⁷

Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children's Network of Southwest Florida.

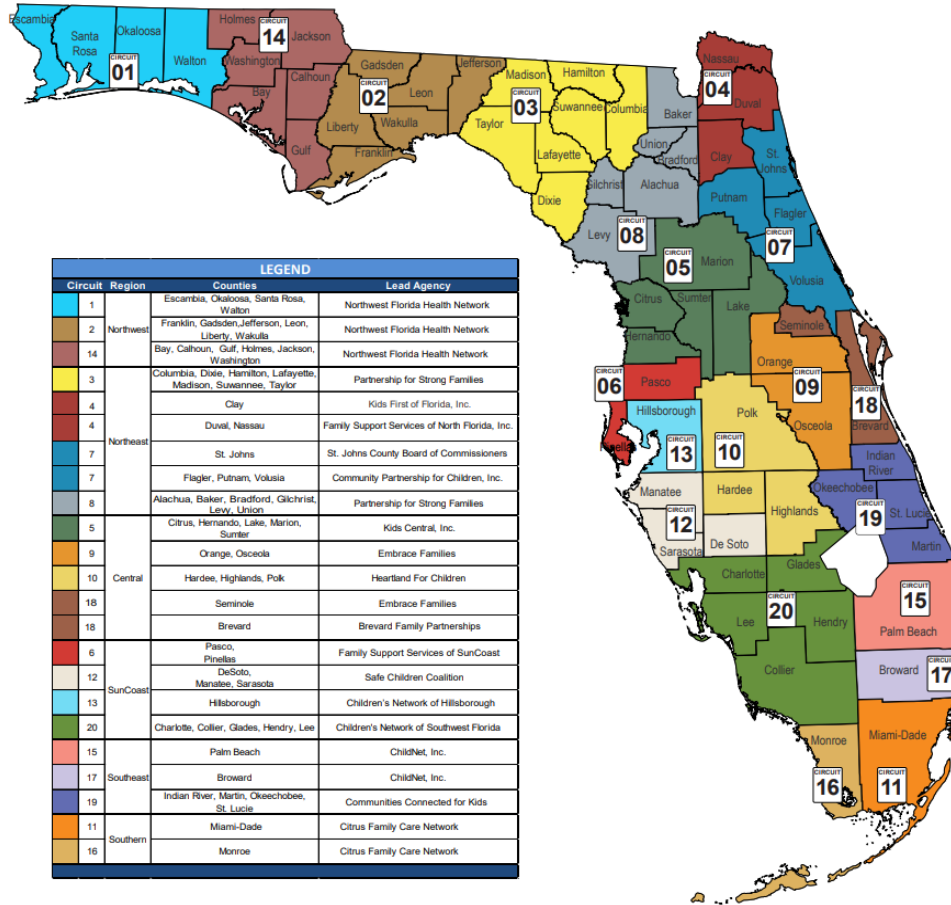
¹⁴ Section 409.988(1), F.S.

¹⁵ Section 409.987(4)(a), F.S.

¹⁶ Section 409.987(4)(b), F.S.

¹⁷ Section 409.987(4)(c), F.S.

The DCF contracts with the following CBCs as illustrated in the following map:¹⁸



The DCF must develop and maintain written policies and procedures for monitoring compliance with the services the CBCs provide under contract. The DCF is required to evaluate each CBC's programmatic, operation, and fiscal operations at least once annually.¹⁹

The DCF typically enters into 5-year contracts with CBCs, with the option for an extension or a renewal of up to five years or for the original term of the contract, whichever period is longer.²⁰ While entering into 5-year contracts has provided stability within the CBC system, it has also had the effect of reducing competition. For example, since the creation of CBCs, the DCF has conducted 19 procurements, 11 of which had only one entity submit a bid for the contract.²¹ The

¹⁸ Florida Department of Children and Families, *Lead Agency Information*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information> (last visited Jan. 13, 2024).

¹⁹ Section 409.996(19)(a), F.S.

²⁰ Section 409.987(3), F.S.

²¹ Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.; Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children's Network of Southwest Florida.

DCF is currently in the process of procuring CBC services in 12 circuits for Fiscal Year 2024-25.²²

Funding

Section 409.990, F.S., requires that funding for a contract between DCF and CBC be through general revenue or other applicable state or federal funding sources. The DCF allocates core funding²³ to CBCs based on a statutory “equity model”, which considers the proportion of child population, child abuse hotline workload, and children in care.²⁴

In addition to annually evaluating CBC fiscal operations, current law requires the DCF to do several things to ensure that the CBCs are providing services within its allocated budget:

- Section 409.996, F.S., requires the DCF to annually conduct a comprehensive, multi-year review of the revenues, expenditures, and financial positions of all CBCs that cover the most recent two consecutive fiscal years. The review must include a comprehensive system-of-care analysis and the CBCs must develop and maintain a plan to achieve financial viability to accompany the DCF’s review. The DCF must submit the review to the Governor, the Senate President, and the Speaker of the House of Representatives by November 1 each year.
- The Fiscal Year 2023-24 General Appropriations Act required each CBC to submit a detailed spending plan, approved by its board of directors, to the DCF for all projected expenditures for the current fiscal year. The spending plan must demonstrate that core expenditures will not exceed the appropriated amount of core funding and reserve a certain amount of funding for unanticipated expenses. The DCF cannot release additional funds outside the two-month advance until it has reviewed and approved a CBC’s spending plan. At any point during the year, if a CBC’s actual expenditures project an end-of-year deficit, the CBC must submit a revised spending plan to the DCF that reflects actions to be taken to remain within appropriated core funding for the remainder of the fiscal year.

²² Florida Department of Children and Families, Invitation to Negotiate, Community-Based Care Lead Agencies, DCF ITN 2324 063

²³ Section 409.997(1)(a), defines “core services funds” as all funds allocated to CBCs operating under contract with the DCF, with the following exceptions: funds appropriated for independent living; funds appropriated for maintenance adoption subsidies; Funds allocated by the DCF for protective investigations training; nonrecurring funds; designated mental health wrap-around services funds; funds for special projects for a designated CBC; and funds appropriated for the Guardianship Assistance Program under s. 39.6225, F.S.

²⁴ Section 409.991, F.S. provides that core services funds are calculated based on the proportion of the (a) child population weighted as five percent of the total; (b) child abuse hotline workload weighted as 35 percent of the total; and (c) children in care weighted as 60 percent of the total. Section 409.991(3), F.S., provides that beginning in the 2015-16 FY, 100 percent of the recurring core services funding must be based on the prior year recurring base core services funds, and any new funding be allocated as: (a) 70 percent of new funding among all CBCs and (b) 35 percent of new funding to CBCs below their equitable share.

The Fiscal Year 2023-24 GAA provides the following core service funding to CBCs²⁵:

CBC Lead Agency	Circuit	FY 2023-24 Core Services Funding
Northwest Florida Health Network (Big Bend)	2, 14	\$55,032,652
	1	\$35,459,931
Partnership for Strong Families	3, 8	\$31,401,300
Family Support Services of North Florida	4 (Duval, Nassau)	\$49,018,528
Kids First of Florida	4 (Clay)	\$12,525,871
St. Johns County Board of Commissioners	7 (St. Johns)	\$7,683,739
Community Partnership for Children	7 (Flagler, Volusia, Putnam)	\$43,440,511
Safe Children Coalition	12	\$34,861,493
Family Support Services of Suncoast	6 (Pasco, Pinellas)	\$87,553,887
Kids Central	5	\$54,912,909
Embrace Families	9, 18 (Orange, Osceola, Seminole)	\$60,761,737
Heartland for Children	10	\$46,721,076
Brevard Family Partnerships	18 (Brevard)	\$29,292,110
Communities Connected for Kids	19	\$24,247,000
ChildNet	15 (Palm Beach)	\$38,086,728
	17 (Broward)	\$60,952,428
Children’s Network of Southwest Florida	20	\$53,746,134
Children’s Network of Hillsborough	13	\$75,448,412
Citrus Family Care Network	11, 16	\$76,440,546
TOTAL		\$877,586,992

Because the core services funding for each CBC was established based on the total expenditures by the DCF when the CBCs were created, significant core funding inequities have been institutionalized in the system of care. To mitigate financial risk, the Legislature created a CBC Risk Pool that allows CBCs to apply to the DCF for additional funding.²⁶ A committee that includes the DCF’s secretary and three non-applicant CBC representatives review the risk pool applications.²⁷ The DCF may authorize risk pool funding to address:

- Significant changes in the number or composition of clients eligible to receive services.²⁸
- Significant changes in the services that are eligible for reimbursement.²⁹
- Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a CBC.³⁰

²⁵ Chapter 2023-239, L.O.F, General Appropriations Act for Fiscal Year 2023-24, Specific Appropriation 328.

²⁶ Section 409.990(8), F.S.

²⁷ *Id.*

²⁸ Section 409.990(8)(c)1., F.S.

²⁹ Section 409.990(8)(c)2., F.S.

³⁰ Section 409.990(8)(c)3., F.S.

- Significant changes in the mix of available funds.³¹

The Legislature added the “equity model” CBC funding model into statute in 2011 because the allocation of state or federal funds to CBCs was based primarily on the number of children in care with funding direction to the DCF through proviso in the General Appropriations Act (GAA).³² In 2019, the Legislature directed the DCF and the CBCs to develop an alternative funding model.³³ This produced the Florida Funding Model for Children (FMC) that calculated the cost of providing services by setting case worker caseload ratios, an incentive for prevention spending, and a target to reduce use of group care and a per child cost calculation.³⁴ The Legislature, through proviso in the GAA, used the FMC methodology to allocate increases in CBC core services funding of \$25 million in Fiscal Year 2019-2020 and \$150 million in Fiscal Year 2022-2023.³⁵

Oversight and Monitoring

The DCF is responsible for monitoring and overseeing CBCs to ensure that they are delivering services in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in its strategic plan.³⁶ The DCF must, at a minimum, evaluate each of the CBCs under contract annually.³⁷ The evaluation must cover the programmatic, operational, and fiscal operations of the CBC.³⁸

CBC contracts specify required performance measures that generally align with the state and federal measures.³⁹ The DCF contract manager must periodically identify whether any gaps exist between actual and required CBC performance. If contractor performance is insufficient, the DCF may allow a reasonable time for correction. If the deficiencies are not resolved and there are no extenuating circumstances, the DCF must terminate the contract and it may not contract again with the same provider during the next 24 months.⁴⁰

³¹ Section 409.990(8)(c)4., F.S.

³² Chapter 2011-62, L.O.F. In Fiscal Year 2010-11, the allocation was based on four weighted factors: the number of children in poverty (30 percent); the number of reports the DCF’s central abuse hotline that are either referred for investigation or whose findings have been verified (30 percent); the number of children in out-of-home care (30 percent); and contribution to a safe reduction in out-of-home care (10 percent).

³³ Chapter 2019-115, L.O.F., General Appropriations Act for Fiscal Year 2019-20, Specific Appropriation 326.

³⁴ Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.; Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children’s Network of Southwest Florida.

³⁵ In Fiscal Year 2022-23, the Florida Legislature addressed the funding inequities by appropriating \$150 million in increases to core funding to bring all CBCs up to 100 percent funding levels to ensure that each CBC has the tools to best serve the children and families in their respective service area. [*Supra* note 34] Even with this \$150 million increase in core funding, at the request of certain CBCs, the Legislature appropriated an additional \$18.5 million in Back of Bill funding to address CBC funding deficits incurred in Fiscal Year 2022-23. [*Supra* note 25, Section 88.]

³⁶ Section 409.996, F.S.

³⁷ Section 409.996(21)(a), F.S.

³⁸ *Id.*

³⁹ November 2022 CBC Services Contract, Contract AJ500, pp. 40-44, available at:

<https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=600000&ContractId=AJ500&Tab=4>.

⁴⁰ Section 402.7305(3)(f), F.S.

Section 409.996(1)(d), F.S., requires CBC contracts to include tiered interventions the DCF may use if CBCs fail to comply with contractual terms or in the event of performance deficiencies. Such interventions include, but are not limited to:

- Enhanced monitoring and reporting;
- Corrective action plans;
- Requirements for contracted providers to accept technical assistance and consultations from the DCF;
- Financial penalties that require a CBC to reallocate funds from administrative costs to direct care for children; and
- Early termination of contracts.

The DCF may provide technical assistance and consultation to CBCs as necessary for the achievement of performance standings, including, but not limited to, providing additional resources to assist a CBC in implementing best practices or instituting operational efficiencies.⁴¹

The DCF may impose financial penalties on a CBC that does not comply with a corrective action plan.⁴² The DCF must request corrective action on a provider when the delivery of services is unacceptable or the provider is not in compliance with contractual terms and conditions. The DCF can impose financial penalties for failure to comply with a corrective action plan, unless the DCF determines that extenuating circumstances exist.⁴³ The imposed financial penalties are based on the severity of the noncompliance, nonperformance, or unacceptable performance that generated the need for the corrective action plan.⁴⁴ A provider is prohibited from paying a financial penalty with funds intended to be used, or which are budgeted, to provide services to clients and cannot reduce the amount of quality of services delivered to clients as a result of the imposition of a financial penalty.⁴⁵

The DCF may also petition a court for the appointment of a receiver for a CBC if:

- The CBC is operating without a license as a child-placing agency;
- The CBC has given less than 120 days' notice of its intent to cease operations, and arrangements have not been made for another CBC or the DCF to continue the uninterrupted provision of services;

⁴¹ Section 409.996(6), F.S.

⁴² Section 402.73(1), F.S.; *See also* R. 65C-29.001, F.A.C. All contracts entered into by the DCF for services shall contain a notice that penalties shall be imposed for failure to implement or to make acceptable progress on corrective action plans develop as a result of noncompliance, non-performance, or unacceptable performance with the terms and conditions of a contract.

⁴³ Rule 65C-29.001(3)(a), F.A.C.

⁴⁴ Rule 65C-29.001(3)(b), F.A.C. The penalty, if imposed, shall not exceed ten percent of the total contract payments during the period in which the corrective action plan has not been implemented or in which acceptable progress toward implementation has not been made. Noncompliance that is determined to have a direct effect on client health and safety shall result in the imposition of a ten percent penalty of the total contract payments during the period in which the corrective action plan was not implemented or in which acceptable progress toward implementation has not been made. Noncompliance involving the provision of service not having a direct effect on client health and safety shall result in the imposition of a five percent penalty. Noncompliance as a result of unacceptable performance of administrative tasks shall result in the imposition of a two percent penalty.

⁴⁵ Rule 65C-29.001(5), F.A.C.

- The DCF determines that conditions exist in the CBC which present an imminent danger to the health, safety, or welfare of the dependent children under the CBC's care or supervision; or
- A CBC is struggling to meet its financial obligations to its employees, contractors, or foster parents as supported by issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities.⁴⁶

Audits

Over the years, the Governor's Office of Inspector General (OIG) and the DCF's Office of Inspector General (DCF OIG) have conducted several audits of the CBCs.

On February 20, 2020, Florida's Governor issued an executive order requiring the OIG to review entities which had sole-source public-private agreements with state agencies; received more than 50 percent or more of their budget from state and federal funds; and had compensation totals exceeding federal or state law and regulations.⁴⁷ The OIG issued a report finding nine CBCs⁴⁸ had compensation that potentially exceeded statutory limits.⁴⁹ The report also identified additional areas of concern related to CBC employees and related parties.⁵⁰ At the request of the OIG, the DCF OIG conducted a review of the nine CBCs and identified two CBCs⁵¹ for which executive leadership compensation appeared to exceed state limits.⁵²

On December 3, 2021, the DCF OIG issued a report focused on the creation of management companies and other related parties within the CBCs.⁵³ The report found that "the purposes and functions of these related organizations are not clear and pose risks to the DCF fulfilling its mission."⁵⁴ Based on these findings, the DCF contracted with two auditing firms to conduct financial and operation examinations on all CBCs. The DCF released the findings for six of the CBCs on August 22, 2023.⁵⁵ Key findings include:

- Noncompliance with competitive procurement requirements for non-related and related entities.
- Overbilling related to PPP Loan Forgiveness.

⁴⁶ Section 409.994(1), F.S.

⁴⁷ Executive Order 20-44 arose from the Florida Coalition Against Domestic Violence, Inc., using funds from the DCF to subsidize excessive executive leadership team compensation payouts.

⁴⁸ Big Bend Community Based Care [d/b/a North West Florida Health Network (NWFHN)]; ChildNet, Inc.; Citrus Health Network, Inc.; Community Based Care of Brevard, Inc.; Eckerd Youth Alternatives (d/b/a Eckerd Connects); Embrace Families Community Based Care, Inc.; Florida Support Services of North Florida (FSSNF); Lakeview Center, Inc.; and Safe Children Coalition, Inc. See Executive Office of the Governor, Office of the Chief Inspector General, Executive Order 20-44, *Data Compilation and Statutory Compensation Limit Review*, CIG 2021-01-25-0017, June 30, 2021, pg. vi, available at <https://www.flgov.com/wp-content/uploads/2021/06/Final-Report-with-Responses-6.30.21-2.pdf>.

⁴⁹ Executive Office of the Governor, Office of the Chief Inspector General, Executive Order 20-44, *Data Compilation and Statutory Compensation Limit Review*, CIG 2021-01-25-0017, June 30, 2021, pg. vi., available at <https://www.flgov.com/wp-content/uploads/2021/06/Final-Report-with-Responses-6.30.21-2.pdf>.

⁵⁰ *Id.*

⁵¹ Eckerd Connects and Family Support Services of North Florida.

⁵² *Supra* note 49.

⁵³ Florida Department of Children and Families, Office of Inspector General, Internal Audit, Project #A-1819DCF-043, December 3, 2021, available at <https://eds.myflfamilies.com/IGRPTS/AuditFileView.aspx>.

⁵⁴ *Id.*

⁵⁵ Florida Department of Children and Families, Community-Based Care Lead Agencies Audit Findings, available at <https://www.myflfamilies.com/community-based-care-lead-agencies-audit-findings> (last visited Jan. 12, 2024).

- Board approval of departmental deficit budgets.
- Excessive compensation.
- Establishment of sub-contracts to related parties that provide administrative support and management services.
- Related parties holding real estate that may have been purchased through the use of state/federal funds or acquired based on the existence of those funding streams.

Another key finding was a significant overlap of key individuals serving on both CBC board of directors and the board of a CBC related party. Additionally, CBC boards were not providing high level fiduciary oversight of CBC operations and budgets. Certain executive leadership positions were also integrally involved in related parties creating the potential for conflict of interest in CBC contracts for services with such related parties.⁵⁶

The DCF took corrective action against the six CBCs because of the examinations' findings.

Executive Compensation

CBC expenditures must comply with financial guidelines developed by the DCF and with federal and state law. Current law prohibits a CBC administrative employee in excess of 150 percent of the annual salary paid to the DCF's secretary from state-appropriate funds, including state-appropriated federal funds.⁵⁷ The law does not prohibit any party from providing cash that is not appropriated state funds to a CBC administrative employee.⁵⁸ The Legislature codified the statutory salary cap into law in 2015 after the Florida Auditor General found instances where salary payments, including bonuses and leave balances, did not appear to be properly supported or calculated in accordance with established CBC policy or state law.⁵⁹

CBCs must also comply with the federal salary rate limit because CBCs receive federal pass-through awards from the DCF. Federal funds from the United States Health and Human Services (HHS) may not be used to pay the salary, or any percentage of salary, to an individual in excess of the Executive Level II rate, currently \$212,100.⁶⁰ Therefore, the maximum amount a CBC executive may be compensated with combined state and federal funds is \$315,000, of which only \$212,100 can be federal funds.⁶¹

⁵⁶ Florida Department of Children and Families, Community-Based Care Lead Agencies Audit Findings, available at <https://www.myflfamilies.com/community-based-care-lead-agencies-audit-findings> (last visited Jan. 12, 2024).

⁵⁷ Section 409.992(3), F.S.

⁵⁸ *Id.*

⁵⁹ Florida Auditor General, Department of Children and Families and Selected Community-Based Care Lead Agencies, Oversight of Foster Care and Related Services, Operational Audit, Report 2015-156, March 2015, available at: https://flauditor.gov/pages/pdf_files/2015-156.pdf.

⁶⁰ Email from Sam Kerce, Legislative Affairs Director, Florida Department of Children and Families, re: Questions, on file with the Senate Children, Families, and Elder Affairs Committee. *See also* Health Resources & Services Administration, Grants Policy Bulletin, Legislative Mandates in Grants Management for FY 2023, Feb. 1, 2023, available at: <https://www.hrsa.gov/sites/default/files/hrsa/grants/manage/legislative-mandates-grants-management-2023.pdf>.

⁶¹ Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.; Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children's Network of Southwest Florida.

The DCF is required to publish the compensation information for a CBC’s chief executive, chief administrator, or other chief officer.⁶² The following table includes the *total* compensation for CBC executive officers as of the last annual reporting to the DCF.⁶³

CBC Lead Agency	Circuit	CEO	CFO	COO
Northwest Florida Health Network (Big Bend)	1, 2,14	\$563,842	\$272,261	\$217,194
Partnership for Strong Families	3, 8	\$169,043	\$116,277	\$105,445
Family Support Services of North Florida	4 (Duval, Nassau)	\$230,125	\$146,978	Vacant
Family Support Services of Suncoast	6 (Pasco, Pinellas)			
Kids First of Florida	4 (Clay)	\$113,656	\$113,040	\$101,656
St. Johns County Board of Commissioners	7 (St. Johns)	N/A	N/A	N/A
Community Partnership for Children	7 (Flagler, Volusia, Putnam)	\$205,000	\$114,500	\$122,360
Safe Children Coalition	12	\$220,000	\$110,000	\$145,000
Kids Central	5	\$218,624	\$177,786	\$162,350
Embrace Families	9, 18 (Orange, Osceola, Seminole)	\$332,023	\$206,520	\$254,635
Heartland for Children	10	\$175,000	\$130,000	\$152,499
Brevard Family Partnerships	18 (Brevard)	\$157,757	\$103,716	\$129,024
Communities Connected for Kids	19	\$169,161	\$141,474	\$145,757
ChildNet	15 (Palm Beach)	\$266,492	\$201,956	\$212,630
	17 (Broward)			
Children’s Network of Southwest Florida	20	\$209,830	\$162,931	\$163,513
Children’s Network of Hillsborough	13	\$197,600	\$166,400	\$166,400
Citrus Family Care Network	11, 16	\$263,800	\$176,342	\$203,059

Conflicts of Interest

The outsourced nature of the DCF services, including child welfare, requires the DCF to engage in contract management functions focused on accountability. One area of possible lack of accountability is conflicts of interest between a CBC member, officer, or relative and CBC subcontractor.

Section 409.987(7), F.S., requires a process for disclosing and eliminating any transaction or activity that could reasonably be construed to be a conflict of interest for a member, officer, or relative of a CBC. This requirement applies to situations in which a CBC board member or

⁶² Section 409.996(4)(a)1., F.S.

⁶³ Florida Department of Children and Families, *Lead Agency Information*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information> (last visited Jan. 13, 2024).

officer, or relative within the third degree of consanguinity by blood or marriage of a member or officer:

- Enters into a contract or other transaction for goods or services with the CBC.
- Holds a direct or indirect interest⁶⁴ in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the CBC or proposes to enter into a contract or other transaction with the CBC.
- Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship with a board member or officer, or relative of the board member or officer of the CBC.

Any activity that involves a contract for goods and services, a purchase of any real or tangible property, an agreement to engage with the CBC for a benefit, or an in-kind contribution, or if a CBC board member or officer notifies the CBC board of a potential conflict of interest under an existing CBC contract, the proposed activity or potential conflict of interest must be presented to the CBC board for approval which includes:

- Listing the proposed activity on the CBC board's agenda for the next general or special meeting;
- Providing copies of all contracts and relevant documents related to the proposed transaction; and
- Allowing the CBC board an opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.⁶⁵

If the CBC board votes against the proposed activity, the CBC board member or officer must notify the CBC board in writing of his or her intention, or the relative's intention, not to pursue the proposed activity or the CBC board member or officer must resign. If the CBC board finds a CBC member or officer has violated the requirements for approval, the CBC board member or officer will be deemed removed from the CBC board before the next scheduled board meeting.

If the CBC board does not approve a conflict of interest, the parties to the activity where the conflict of interest exist may opt to cancel the activity or resign from the CBC board or office before the next scheduled board meeting.⁶⁶

A contract entered into between a CBC board member or officer, or relative of a CBC board member or officer, and a CBC which has not been properly disclosed as a conflict of interest or potential conflict of interest is voidable and terminates upon the filing of a written notice to the CBC board of directors.⁶⁷

Findings from the most recent CBC financial and operational examinations included concerns of significant overlap of key individuals serving on both a CBC board of directors and a related party board and executive leadership positions being integrally involved in multiple related parties creating the potential for conflict of interest in CBC contracts for services with related

⁶⁴ "Indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the person required to file under Ch. 112, Part III, F.S.

⁶⁵ Section 409.987(7)(c), F.S.

⁶⁶ Section 409.987(7)(d)2., F.S.

⁶⁷ Section 409.987(7)(f), F.S.

parties.⁶⁸ Findings also noted a perception that CBC board of directors were not providing proper fiduciary oversight of CBC operations and budgets.⁶⁹

Competitive Solicitation for Commodities or Contractual Services

Section 287.057, F.S., requires state agencies that wish to procure commodities or contractual services in excess of \$35,000 to use a competitive solicitation process. A competitive solicitation is a process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of procurement method.⁷⁰ Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods: invitation to bid,⁷¹ request for proposals,⁷² or invitation to negotiate.⁷³

III. Effect of Proposed Changes:

Section 1 amends s. 409.987, F.S., to require the Department of Children and Families (DCF) to procure community-based care lead agency (CBC) contracts every five years and allows for the DCF to extend a CBC contract for up to one year based on need.

The bill requires a CBC board of directors to ensure accountability and transparency of the system of care, which includes fiduciary oversight to prevent conflicts of interest, promote accountability and transparency, and protect state and federal funding from misuse. The bill requires the CBC to ensure that board members participate in annual training, as approved by the DCF, related to their responsibilities.

The bill expands those who may have a conflict of interest to include a CBC director or a relative of a director and creates a definition for “related party” to conform to changes made in this section.

The bill requires a CBC board of directors to disclose to the DCF any known, actual, or potential conflicts of interest.

The bill requires a CBC to competitively procure all contracts with related parties in excess of \$35,000, and prohibits CBCs from entering into a contract or be a party to any transaction that creates a conflict of interest, including for the provision of management or administrative services or oversight with related parties, which includes any:

- Entity where any director or executive of such entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the CBC.
- Subsidiary, parent entity, associate firm, joint venture, or any entity that is controlled, influenced, or managed by another entity or any individual related to such entity.

⁶⁸ Florida Department of Children and Families, Office of Inspector General, Internal Audit, Project #A-1819DCF-043, December 3, 2021, available at <https://eds.myflfamilies.com/IGRPTS/AuditFileView.aspx>.

⁶⁹ *Id.*

⁷⁰ Section 287.012(6), F.S.

⁷¹ Section 287.057(1)(a), F.S.

⁷² Section 287.057(1)(b), F.S.

⁷³ Section 287.057(1)(c), F.S.

- Individual who is, or was within the immediately preceding 36 months, an executive officer or a board member of the entity.

The bill removes obsolete language related disclosure of conflicts of interest that occur by a specific date.

The bill creates civil penalties of \$5,000 per occurrence when a CBC does not disclose a known and potential conflict of interest to the DCF in the process described in s. 409.987(b), F.S.

The bill creates civil penalties when a CBC procures a contract that was a conflict of interest and not disclosed to the DCF of \$50,000 for a first offense and \$100,000 for a second or subsequent offense. The bill requires the penalties to apply to any contract entered into, regardless of the method of procurement, including, but not limited to, formal procurement, sing-source contracts, and contracts that do not meet the minimum threshold for formal procurement. The bill requires re-procurement of any contract procured in violation of the disclosure requirements.

The bill allows the DCF to prohibit the execution of a contract for which a conflict of interest exists or will exist after execution.

These provisions all focus on the corporate function and business operations of CBCs, clarifying and detailing requirements around reporting, conflicts of interest, board of director functions, and financial penalties.

Section 2 amends s. 409.988, F.S., to require CBCs to comply with regular, independent auditing of their financial activities, including any requests for records associated with such financial audits within the timeframe established by the DCF or its contracted vendors. It also requires the results of financial audits to be provided to the community alliance in the CBC's service area rather than the CBC's financial information being provided to the community alliance.

The bill requires the CBC to competitively procure any subcontract over \$250,000 and prohibits CBCs from subcontracting for the provision of management and oversight functions. The bill also requires the CBC's contract with the DCF to detail the administrative functions and services the CBC is allowed to subcontract for.

The bill prohibits a CBC from providing more than 35 percent of direct child welfare services unless there is a lack of viable providers available to perform the necessary services. The bill requires the DCF to review and approve or deny a CBC's request to exceed the threshold if there is no community alliance in the CBC's service area. If justification for exceeding the 35 percent threshold is approved, the bill limits the approval to two years and requires the CBC to report quarterly during that period showing its efforts to recruit providers to the geographic service area. The bill also requires the CBC to procure the services before the end of the two years.

The bill expands the data that a CBC must publish on its website to include:

- The number of unlicensed placements for the previous month;
- The percentages and trends for foster parent and group home recruitment and licensure for the previous month;

- The percentage of families being served through family support, in-home, and out-of-home services for the previous month; and
- The percentage of cases that converted from nonjudicial to judicial for the previous month.

These provisions focus on the business operations of CBCs and tighten requirements around procurement, the provision of services, and transparency.

Section 3 amends s. 409.992, F.S. to require CBCs to competitively procure all contracts consistent with the simplified acquisition threshold in federal rule (2 C.F.R. part 200). It also creates financial penalties or sanctions for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services. The bill requires the DCF to establish and incorporate the financial penalties or sanctions into the CBC contracts.

The bill requires CBCs to comply with purchasing practices for professional services, including engineering or construction design, in s. 287.055, F.S. It also requires the DCF to retain all rights to and ownership of any real property procured by the CBC upon termination of the CBC's contract. Further, it requires a CBC to return any funds from the sale, transfer, or other dispossession of real property during a CBC contract term to the DCF.

The bill limits the compensation a CBC administrative employee may receive to a capped total amount not to exceed 150 percent of the annual salary paid to the secretary of the DCF, regardless of the number of contracts a CBC executes with the DCF. This is currently \$315,000 of combined state and federal funds.

Section 4 amends s. 409.994, F.S., to expand the situations in which the DCF can petition the court to initiate receivership of a CBC. The bill allows the DCF to petition the court for receivership when the DCF's secretary determines that conditions exist within the CBC that present a danger (rather than an *imminent* danger as in current law) to the health, safety, or welfare of the dependent children in the CBC's care or supervision. Further, it expands when the DCF may petition for receivership from when a CBC *cannot* meet financial obligations to also include when a CBC is *unlikely* to meet financial obligations.

Section 5 amends s. 409.996, F.S. to create flexibility for the DCF to take action against a CBC by removing a tiered intervention and graduated penalties process and instead requires contractual actions and financial penalties for performance deficiencies. The bill requires the DCF to include the following in CBC contracts:

- Contractual actions for failure to comply with contract terms or in the event of performance deficiencies, as determined by the DCF. Such interventions and penalties include, but are not limited to:
 - Corrective action plans.
 - Requirements to accept technical assistance and consultation from the DCF.
 - Financial penalties, including liquidated damages, which the DCF will be solely responsible for determining the monetary value of, that require the CBC to direct, rather than reallocate, funds from administrative costs to the DCF. The bill requires the DCF to use the collected funds to support service delivery of quality improvement activities for children in the CBC's care. The bill allows the penalties to be imposed for failure to

- provide timely, sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by the DCF.
- Provisions that require a CBC to pay the DCF for failure to comply with contractual obligations.

Section 6 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is an indeterminate fiscal impact on the community-based care lead agencies (CBCs) due to the financial penalties included in the bill. A CBC that fails to disclose known or actual conflicts of interest or does not comply with other requirements mandated by the bill will experience a negative fiscal impact in the event of the Department of Children and Families imposing the financial penalties authorized by the bill.

C. Government Sector Impact:

The bill has no fiscal impact on state government expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.987, 409.988, 409.990, 409.992, 409.994, and 409.996.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Health and Human Services on February 13, 2024:

The committee substitute:

- Requires the Department of Children and Families (DCF) to use an actuarial-based, three-tiered payment model for the allocation of core services funds to community-based care lead agencies (CBCs).
- Prohibits a CBC, under contract with the DCF, from subcontracting for management and oversight functions. Requires that the contract between the CBC and the DCF detail the administrative functions and services the CBC may subcontract for.
- Requires a CBC that received a DCF temporary exemption to exceed the 35% threshold for directly providing child welfare services, to submit quarterly reports during the exemption period to the DCF and the community alliance, showing its efforts to recruit providers to the geographic service area.

CS by Children, Families, and Elder Affairs on January 17, 2024:

The committee substitute adds the following provisions:

- Requiring CBC board members to complete annual training, as approved by the DCF, on their responsibilities.
- Include a CBC director, or a relative of a CBC director, to persons who can have a conflict of interest.
- Retaining current statutory language on the process of a CBC disclosing a conflict of interest to the DCF and allowing the DCF to impose civil penalties if a CBC does not properly disclose known or potential conflicts of interest as required by that process.
- Requiring CBC board members to disclose any known, actual, or potential conflicts of interest.
- Requiring CBCs to competitively procure all contracts with related parties over \$35,000.
- Requiring the DCF to impose civil penalties against a CBC that procures a contract without proper disclosure of a conflict of interest on any contract entered into by the CBC, regardless of the method of procurement, including, but not limited to, formal

procurement, single-source contract, and contracts that do not meet the minimum threshold for formal procurement.

- Requiring subcontracts over \$250,000 to comply with the competitive procurement process.
- Allowing a CBC to exceed the threshold of providing more than 35 percent of child welfare services in its service area if there is a lack of viable providers and limits the approval to exceed the 35 percent threshold to two years.
- Delaying implementation of the CBC funding model changes until July 1, 2025.
- Including a list of Tier 1 operational base costs in the actuarially sound funding model.
- Requiring a CBC to return any funds from the sale, transfer, or other dispossession of real property to the DCF.
- Updating a cross-reference for early termination of a CBC contract.
- Retaining the requirements that the DCF must submit an annual report on the child welfare results-oriented accountability program.

The committee substitute removes the following provisions:

- Requiring CBCs to submit certain judicial documents to the DCF attorneys within specific timeframes.
- Requiring CBCs to submit spending plans to the DCF for approval prior to receiving allocated funds.
- Allowing a written certification by the DCF's secretary to serve as prima facie to file a petition for receivership of a CBC.
- Requiring CBC contracts to include sanctions or disincentives for failure to comply with specific items.

B. Amendments:

None.