HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1061 Community-based Child Welfare Agencies
SPONSOR(S): 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			
3) Health & Human Services Committee			

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/HB 1061 strengthens the child welfare system in the following ways:

- <u>Procurement of CBC's:</u> The bill prohibits renewal of CBC contracts by DCF, though it allows DCF to extend a CBC contract for one year.
- <u>Contractual Obligations</u>: The bill restricts the ability of CBCs to transact with third-party entities that are directly or indirectly related to CBC board members, officers, and directors, and certain relatives. The bill expands the minimum data points that the CBCs must publish on its website every month.
- <u>Actuarially-sound funding model</u>: Gradually transitions the allocation of core service funds for CBCs to an actuarially-based tiered payment model over four state fiscal years, starting with 2024-2025.
- <u>CBC Procurements</u>: The bill requires DCF to establish by contract financial penalties or sanctions that DCF must enforce when a CBC is not compliant with applicable local, state, or federal law for the procurement of commodities or contractual services.
- <u>CBC Receivership</u>: The bill lowers the threshold levels that authorize DCF to petition the court for a receivership of a CBC.
- <u>Remedies for Noncompliance or Inadequate Performance</u>: The bill establishes contractual actions that DCF may enforce against a CBC if the CBC fails to comply with contract terms or experiences performance deficiencies.

The bill has an indeterminate, negative fiscal impact on state government and no 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]

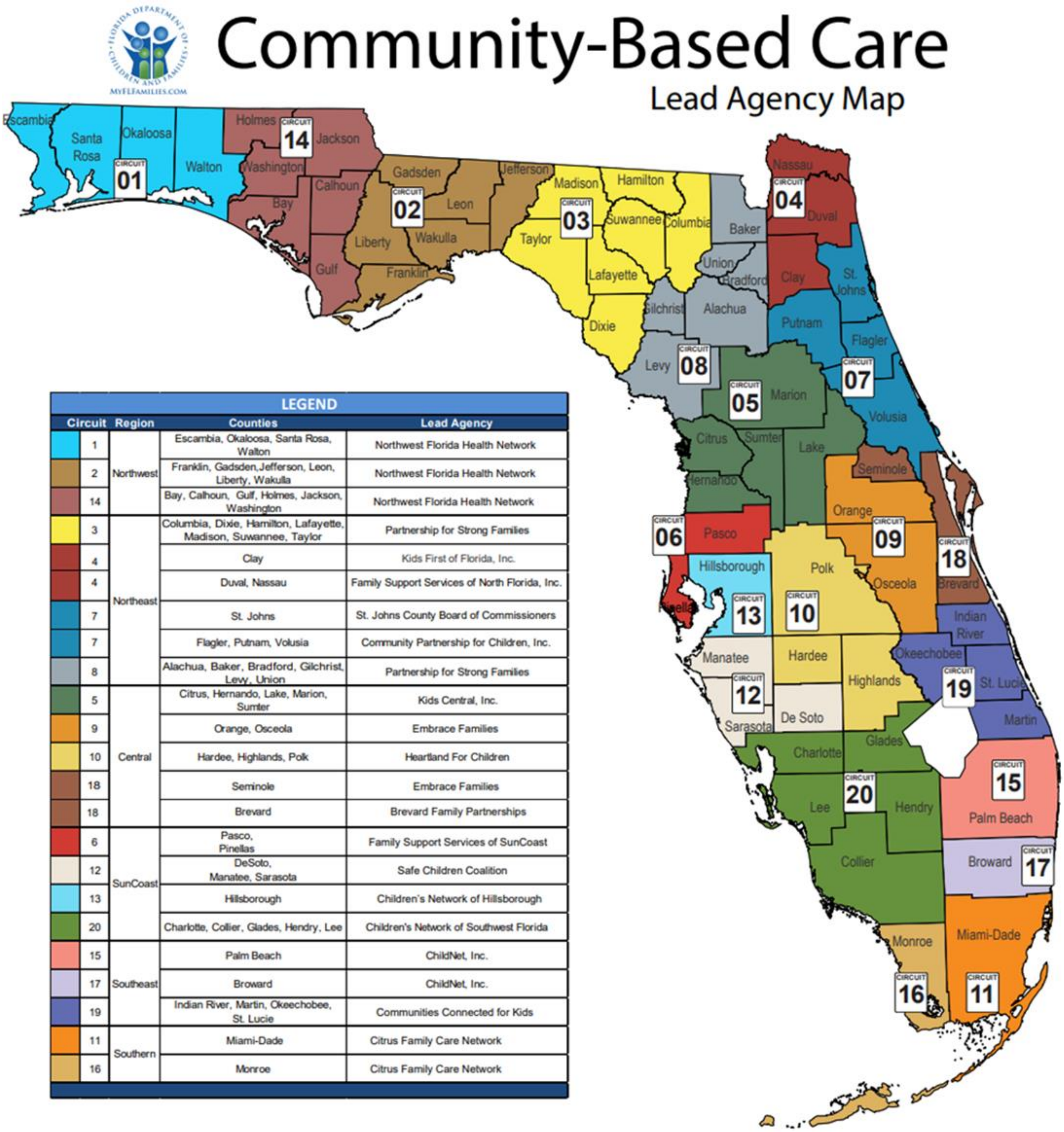
Community-Based Care Lead Agencies

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).

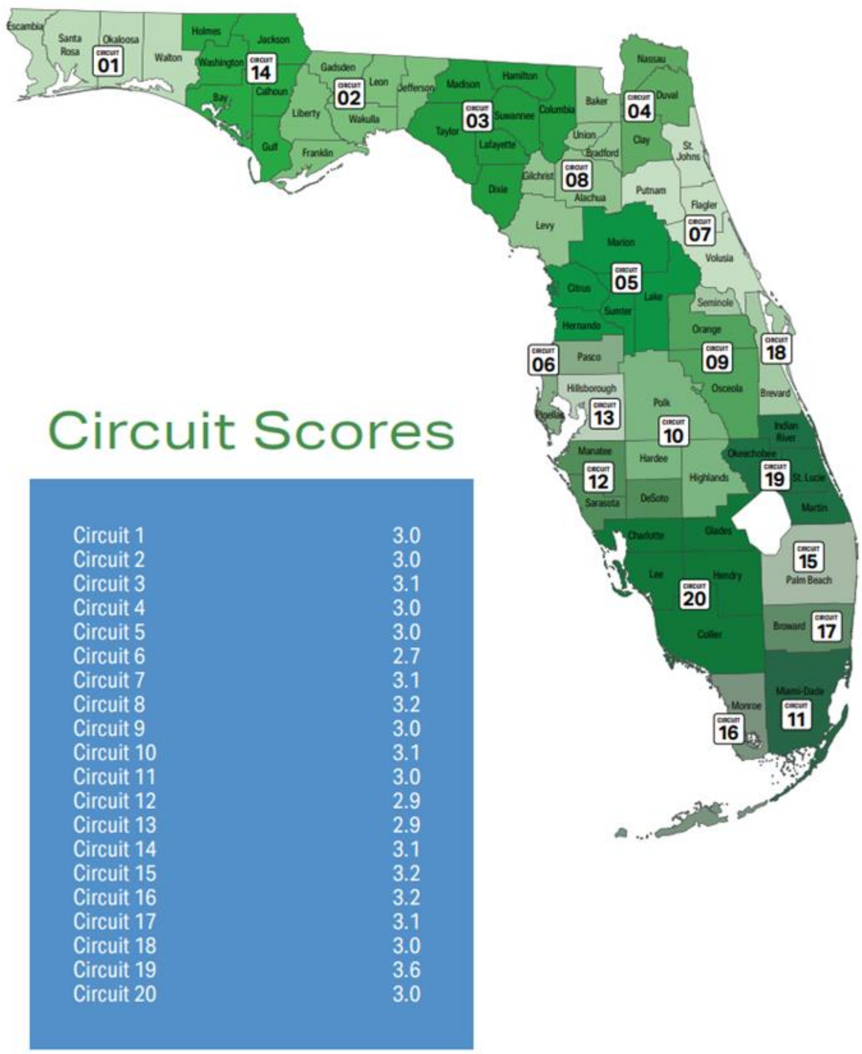


LEGEND

Circuit	Region	Counties	Lead Agency
1	Northwest	Escambia, Okaloosa, Santa Rosa, Walton	Northwest Florida Health Network
2		Franklin, Gadsden,Jefferson, Leon, Liberty, Wakulla	Northwest Florida Health Network
14		Bay, Calhoun, Gulf, Holmes, Jackson, Washington	Northwest Florida Health Network
3	Northeast	Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, Taylor	Partnership for Strong Families
4		Clay	Kids First of Florida, Inc.
4		Duval, Nassau	Family Support Services of North Florida, Inc.
7		St. Johns	St. Johns County Board of Commissioners
7		Flagler, Putnam, Volusia	Community Partnership for Children, Inc.
8		Alachua, Baker, Bradford, Gilchrist, Levy, Union	Partnership for Strong Families
5	Central	Citrus, Hernando, Lake, Marion, Sumter	Kids Central, Inc.
9		Orange, Osceola	Embrace Families
10		Hardee, Highlands, Polk	Heartland For Children
18		Seminole	Embrace Families
18		Brevard	Brevard Family Partnerships
6	SunCoast	Pasco, Pinellas	Family Support Services of SunCoast
12		DeSoto, Manatee, Sarasota	Safe Children Coalition
13		Hillsborough	Children's Network of Hillsborough
20		Charlotte, Collier, Glades, Hendry, Lee	Children's Network of Southwest Florida
15	Southeast	Palm Beach	ChildNet, Inc.
17		Broward	ChildNet, Inc.
19		Indian River, Martin, Okeechobee, St. Lucie	Communities Connected for Kids
11	Southern	Miami-Dade	Citrus Family Care Network
16		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-being[12] 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 FY21-22, the overall median score is 3.1 out of a possible 5, and 85% 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 2021-2022, DCF gave 17 of 20 circuits a score of 3 or higher, indicating that the circuit's performance exceeds established standards. However, there were still deficiencies. Every CBC except one was rated below expectations or poor for the well-being of children in care.



[17]

CBC Funding

[11] Florida Department of Children and Families, *Annual Accountability Report on the Health of Florida's Child Welfare System: Fiscal Year 2021-2022,* p. 6 (Dec. 12, 2022) https://www.myflfamilies.com/sites/default/files/2022-12/Accountability_System_Report_2022-revision12DEC22.pdf (last visited Nov. 28, 2023).
[12] *Id*. at p. 3.
[13] *Id*. at p. 2.
[14] *Id*. at p. 7.
[15] *Id*.
[16] *Id*.
[17] *Id*. at pg. 6.

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 Act[18] 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]

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[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]

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-

[26] S. 409.991(2), F.S.
[27] *Supra,* FN 10, at 5.
[28] *Supra*, FN 10 at 5.

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.

[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.

Procurement by CBCs and Civil Penalties

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.

The Subrecipient Classification[35]	The Contractor Classification[36]
Determines a person's eligibility for federal assistance	Providers 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 conditions[40] 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 entity[46], 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 alliances[52] 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 decisionmaking. 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]

<u>Forensic Audits of CBCs</u>

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 (CAPs) 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]

[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.

Effect of the Bill

Contractual Obligations

Contract Term

The bill prohibits DCF from renewing a CBC contract, instead requiring DCF to reprocure it at the end of the five-year term. The bill allows DCF to extend a CBC contract for one year.

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. CBCs must ensure that board members participate in annual training related to their responsibilities.

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.

The bill defines related party as “any entity of which a director or an executive 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, parent entity, associate firm, or joint venture, or any entity that is controlled, influenced, or managed by another entity or an individual related to such entity, including an individual who is, or was within the immediately preceding 3 years, an executive officer or a board member of the entity.”

The bill requires the board to disclose any known or actual conflicts of interest – including with related parties for the provision of management, administrative services, or oversight.

The bill expands the definition of conflict of interest to cover 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 DCF to assess a civil penalty of $5,000 per occurrence on a CBC for each known and potential conflict of interest that the CBC fails to disclose to DCF. In addition, the bill requires DCF to assess a civil penalty on a CBC when that CBC procures a contract for which a conflict of interest was not disclosed to DCF prior to the execution of the contract. For the first offense, DCF must assess a civil penalty of $50,000. For each subsequent offense, DCF must assess a civil penalty of $100,000. Finally, the bill requires the CBCs to reprocure transactions that involved a conflict of interest.

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

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 contracts a CBC executes with DCF.

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 four 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.

Four-Year Implementation of the Actuarially-Based Tiered Payment Model

The bill gradually transitions the allocation of core services funds for CBCs from an equity allocation model and back-of-the-bill funding to an actuarially-based tiered payment model over four state fiscal years, starting with 2024-2025.

The bill creates a three-tiered payment model that adjusts for workload fluctuations and incentivizes prevention, family preservation, and permanency.

The bill establishes fixed payments for Tier 1 operational base expenses and fixed costs that are not sensitive to the number of children and families served. The bill allows Tier 1 expenses to include administrative expenses, lease payments, asset depreciation, utilities, select components of case management, mandated activities such as training, quality, and contract management, and activities performed for children and families which are nonjudicial and who are not candidates for Title IV-E funding. The bill authorizes Tier 1 fixed payments to vary by geographic catchment area and cost of living differences.

The bill establishes variable payments for the Tier 2 per-child, per-month payment. The bill provides a Tier 2 payment rate that blends out-of-home rates and in-home rates specific to each lead agency. This rate incentivizes CBCs to provide services in the least restrictive safe placement.

The bill requires DCF to establish and annually update Tier 1 and Tier 2 payment rates to maintain cost expectations aligned with the population served, the services provided, and the environment.

The bill creates financial incentive payments for Tier 3 and requires DCF to reward CBCs that achieve performance measures aligned with DCF's goals of prevention, family preservation, and permanency.

Pertaining to the four-year implementation of the actuarially-based tiered payment model, the bill sets up a specific timeline framework as shown in the table below:

State Fiscal Year	Allocation of Core Service Funds	Implementation Responsibilities
Year One: 2024-25	**<u>The Hold Harmless Year</u>**: 100% of core service funding for each CBC will remain constant according to the equity allocation model, unless the GAA provides otherwise.	DCF must establish the requisite systems and processes to collect the data necessary to implement the new payment model. DCF must refine model in collaboration with the CBCs. Quarterly Reporting Requirements • Each quarterly report must contain, at a minimum, documentation of DCF's actions, determinations, proposals, and results of implementation. • <u>First Quarter Report</u>: Due October 31, 2024. Must include an implementation plan. Implementation plan must be updated in subsequent reports. • <u>Second Quarter Report</u>: Must provide details about the Tier 3 incentive payments and the corresponding measures, targets, and payment amounts; these details must be updated in subsequent reports. This report must also describe how Tier 3 will relate to DCF's results-oriented accountability program. This report must disclose the proposed funding for state fiscal year 2025-26.
Year Two: 2025-26	**<u>Hybrid Allocation SFY 2025-26</u>**: • 67% under the equity allocation model unless the GAA provides otherwise. • 33% under the actuarially-based tiered payment model.	Quarterly report requirements continue.
Year Three: 2026-27	**<u>Hybrid Allocation SFY 2026-27</u>**: • 33% under the equity allocation model unless the GAA provides otherwise. • 67% under the actuarially-based tiered payment model.	Starting in 2027, DCF must submit an annual report that evaluates the CBCs fiscal performance under the actuarially-based tier payment model and any funding adjustment and tiered payment model adjustment recommendations proposed. The first annual report is due December 1, 2027. Quarterly report requirements continue.
Year Four: 2027-28	**<u>The Full Implementation Year</u>**: 100% of core service funding for each CBC will be provided according to the actuarially-based tiered payment model.	Quarterly report requirements continue. Annual report evaluating CBC fiscal performance, funding adjustments, and model adjustments is due December 1, 2028.

The bill terminates the quarterly reporting requirement on June 30, 2029.

Because the model requires additional refinement as discussed above, it is unknown what the specific impact is on each CBC once it would be fully implemented in FY 27-28.

Procurements by CBCs

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. The bill requires DCF to establish by contract financial penalties or sanctions that DCF must enforce when a CBC is not compliant with applicable local, state, or federal law for the procurement of commodities or contractual services.

The bill requires CBCs to procure contracts for real property and professionals services according to established purchasing practices. If a CBC sells, transfers, or dispossesses of real property procured during the contract term, the bill requires any resulting funds from the sell, transfer, or dispossession to be returned to DCF. When DCF or a CBC terminates a contract, the bill grants DCF immediate rights to the retention and ownership of all real property that the CBC procured.

When a CBC subcontracts for the provision of services, the bill requires subcontracts in excess of $250,000 to comply with the federal competitive procurement process. The bill prohibits a CBC from subcontracting administrative and management functions.

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 viable providers available to perform the necessary services. The bill limits the waiver period to two years. The bill requires CBCs to reprocure each subcontract before the end of the two-year waiver period. If a CBC wishes to extend an active waiver to exceed the 35 percent cap, the bill requires the CBC 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 wishes to extend an active waiver.

CBC Receivership

The bill lowers the threshold level of danger at which DCF can petition the court for a receivership of a CBC. Specifically, the bill allows DCF to file a petition in court for the receivership of a CBC when DCF determines that conditions exist at the CBC which present any danger to the health, safety, or welfare of the dependent children under that CBC's care or supervision.

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.

Remedies for Noncompliance or Inadequate Performance

The bill establishes contractual actions that DCF may enforce against a CBC if the CBC fails to comply with contract terms or experiences performance deficiencies in the opinion of DCF. Specifically, the bill authorizes DCF to reclaim funds from a CBC's administrative costs as a financial penalty when the CBC fails to provide timely, sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by DCF. The bill allows financial penalties to manifest as liquidated damages.

If DCF reclaims funds for a CBC's administrative costs as a financial penalty, the bill requires DCF to spend those funds to support service delivery of quality improvement activities for children in the CBC's care.

The bill requires contracts between DCF and CBCs to include a provision that requires a CBC pay sanctions and disincentives for failure to comply with contractual terms. The bill requires DCF to establish a schedule of daily monetary sanctions or disincentives for CBCs. The bill requires the schedule of daily monetary sanctions or disincentives to be incorporated by reference into the contracts between DCF and CBCs. The bill vests the right to determine the monetary value of liquidated damages with DCF.

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. 409.987, F.S., relating to lead agency procurement; boards; conflicts of interest.
Section 2: Amending s. 409.988, F.S., relating to community-based care lead agency duties; general provisions.
Section 3: Creating s. 409.9913, F.S., relating to actuarially-based tiered model for allocation of funds for community-based care lead agencies.
Section 4: Creating s. 409.9915, F.S., relating to implementation of actuarially-based tiered model for allocation of funds for community-based care lead agencies.
Section 5: Amending s. 409.992, F.S., relating to lead agency expenditures.
Section 6: Amending s. 409.994, F.S., relating to community-based care lead agencies; receivership.
Section 7: Amending s. 409.996, F.S., relating to duties of the department of children and families.
Section 8: Creating an unnumbered section of law relating to reporting requirements.
Section 9: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate pending refinement of the actuarial allocation model. The bill gradually transitions the allocation for funds for CBC lead agencies to an actuarially-based tiered payment model over four state fiscal years, starting with FY 2024-2025.

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, tiered payment allocation model means individual CBC funding levels may change and fluctuate. The specific impact 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.

The analysis is drafted to the amended bill as passed by the Children, Families, & Seniors Subcommittee.