



Children, Families & Seniors Subcommittee

**Tuesday, March 30, 2021
10:00 AM – 12:00 PM
Sumner Hall (404 HOB)**

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Children, Families & Seniors Subcommittee

Start Date and Time: Tuesday, March 30, 2021 10:00 am

End Date and Time: Tuesday, March 30, 2021 12:00 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 441 Elder-focused Dispute Resolution Process by Civil Justice & Property Rights Subcommittee, Hage
HB 575 The Gold Seal Quality Care Program by Omphroy
HB 871 Sovereign Immunity for Child Protection Teams by Snyder
HB 1071 Medicaid Coverage for Former Foster Youth by Roth
HB 1425 Task Force on the Monitoring of Children in Out-of-home Care by Williams

This meeting will be live-streamed on <https://thefloridachannel.org/>. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning one hour before the start of the meeting. Audience seating will be socially distanced and will be available on a first-come, first-served basis. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 03/26/2021 4:11PM by Osborne.Erin

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 441 Elder-focused Dispute Resolution Process
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Hage
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	18 Y, 0 N, As CS	Brascomb	Jones
2) Children, Families & Seniors Subcommittee		Morris	Brazzell
3) Judiciary Committee			

SUMMARY ANALYSIS

As the country's "baby-boom" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 49.2 million in 2016 to 77 million by 2034. In 2018, Florida had an estimated 4.3 million people age 65 and older, approximately 20 percent of the state's population. By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.

Eldercaring coordination is an alternative dispute resolution process for high-conflict cases, where a specialized coordinator assists elders, legally authorized decisionmakers, and others who participate by court order or invitation to resolve family disputes while considering the elder's needs for autonomy and safety. Eldercaring coordination can assist elders, family members, and other parties by:

- Resolving non-legal issues outside of court;
- Fostering a need for self-determination among both elders and family members;
- Monitoring high-risk situations for signs of elder abuse, neglect, or exploitation; and
- Offering an additional source of support during times of transition.

CS/HB 441 creates an alternative dispute resolution option in which court-appointed eldercaring coordinators assist elders, their legally authorized decision makers, and their family members in resolving high-conflict disputes that can impact an elder's safety and autonomy. The bill authorizes the court to refer cases to eldercaring coordination and establishes a specified framework for the referral process. The bill prohibits the referral of certain cases where a party has a history of domestic violence or exploitation of an elderly person, unless the parties consent to the referral and the court considers certain factors.

The bill also:

- Requires an eldercaring coordinator to satisfy specified qualifications, including, in part:
 - o Professional requirements, including good standing status with the applicable professional licensing or certification board;
 - o Minimum requirements related to the number of years of post-licensure or post-certification practice; and
 - o Training in certain topics.
- Provides specified procedures for an eldercaring coordinator's disqualification, suspension, or removal.
- Prohibits a court from ordering parties to eldercaring coordination without first confirming the financial ability of the parties to pay relevant fees and costs.
- Requires all communications made during eldercaring coordination to be kept confidential.

The bill may have an indeterminate fiscal impact on state government, but does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0441b.CFS

DATE: 3/29/2021

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

As the country's "baby-boom" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 49.2 million in 2016¹ to 77 million by 2034.² Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation.³ In 2018, Florida had an estimated 4.3 million people age 65 and older, approximately 20 percent of the state's population.⁴ By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.⁵

Guardianship and Guardianship Alternatives

When an individual is legally incapable of making decisions for him or herself, a guardian may be appointed to make decisions on behalf of that individual. A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person, property, or both.⁶ Once an individual has been adjudicated incapacitated and a guardian is deemed necessary, such individual no longer holds certain civil and legal rights.⁷ Accordingly, the Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.⁸

Less restrictive alternatives to guardianship include durable powers of attorney⁹, trusts, banking services, advance directives¹⁰, medical proxies¹¹, and representative payees¹².

Alternative Dispute Resolution

Alternative dispute resolution (ADR) refers to any means of settling disputes outside of the courtroom.¹³ As increasing court dockets, rising costs of litigation, and time delays continue to plague litigants, more states have begun experimenting with ADR programs.¹⁴ Some of these programs are voluntary; others

¹ Press Release, U.S. Census Bureau, *The Nation's Older Population is Still Growing*, Census Bureau Reports (June 22, 2017), Release Number: CB17-100, <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html> (last visited Mar. 25, 2021).

² Press Release, U.S. Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History* (revised Oct. 8, 2019), <https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html> (last visited Mar. 25, 2021).

³ *Where Do the Oldest Americans Live?*, Pew Research Center, July 9, 2015, <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> (last visited Mar. 25, 2021).

⁴ U.S. Census Bureau, *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States*, <https://www.census.gov/newsroom/press-kits/2018/estimates-characteristics.html> (last visited Mar. 25, 2021).

⁵ Florida Office of Economic & Demographic Research, *Population Data: 2016, 2020, 2025, 2030, 2035, 2040, & 2045, County by Age, Race, Sex, and Hispanic Origin*, pp. 89-90 and 269-70, http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf (last visited Mar. 25, 2021); Florida Office of Economic & Demographic Research, *Econographic News: Economic and Demographic News for Decision Makers*, 2019, Vol. 1., <http://edr.state.fl.us/content/population-demographics/reports/econographicnews-2019v1.pdf> (last visited Mar. 25, 2021).

⁶ S. 744.102(9), F.S.

⁷ S. 744.101(1), F.S.

⁸ S. 744.101(2), F.S.

⁹ s. 709.2102, F.S. A power of attorney (POA) is a writing that grants authority to an agent to act in the place of the principal, and a durable power of attorney is a POA which is not terminated by the principal's incapacity.

¹⁰ See s. 765.101(1), F.S.

¹¹ See ss. 765.101(19) and 765.401, F.S.

¹² 42 U.S. Code § 1007. A representative payee is person deemed qualified by the Social Security Administration who manages the social security benefits of another person who is incapable of managing his or her own benefits.

¹³ Legal Information Institute, *Alternative Dispute Resolution*, Cornell Law School, https://www.law.cornell.edu/wex/alternative_dispute_resolution (Last visited Mar. 25, 2021).

¹⁴ *Id.*

are mandatory. There are several forms of ADR, but the two most common are arbitration¹⁵ and mediation.¹⁶

Mediation is a process in which a neutral third person facilitates the resolution of a lawsuit or other dispute between two or more parties.¹⁷ Current Florida law authorizes courts to use mediation to aid in resolving cases, but the statutes also provide that many of the procedural aspects of mediation are governed by the Florida Rules of Civil Procedure.¹⁸ In a lawsuit for money damages, the court must refer the matter to mediation upon a party's request if the:

- Party is willing and able to pay the costs of the mediation; or
- Costs can be equitably divided between the parties.¹⁹

However, Florida law does not require a court to refer such a case to mediation if:

- The action is:
 - o A landlord and tenant dispute that does not include a personal injury claim;
 - o A debt collection action;
 - o A medical malpractice claim; or
 - o Governed by the Florida Small Claims Rules.
- The court determines that the action should be referred to nonbinding arbitration.
- The parties have agreed to:
 - o Binding arbitration;
 - o An expedited trial; or
 - o Voluntary trial resolution pursuant to s. 44.104, F.S.^{20,21}

Beyond cases that current law requires a court to refer to mediation, the court may, in general, refer all or part of any other filed civil action to mediation.²²

Parenting Coordination

In 2009, the Florida Legislature established a statutory framework for child-focused mediation known as parenting coordination,²³ wherein a court appoints a parenting coordinator to assist parents in developing, implementing, or resolving disputes in a parenting plan. The parenting coordinators help parents to resolve disputes by providing education, making recommendations, and making limited decisions within the scope of the court's referral order.²⁴ To be a qualified parenting coordinator, a person must complete training requirements and must be a:

- Licensed mental health professional;
- Licensed physician with certification by the American Board of Psychiatry and Neurology;
- Certified family law mediator with a master's degree related to mental health; or
- Member of the Florida Bar.²⁵

¹⁵ Arbitration is an ADR method in which one or more decision-makers, or arbitrators, hears a dispute and renders a binding decision. An agreement to arbitrate disputes can be made before or after a specific dispute arises. Since the parties can agree to the rules of arbitration, they can save costs as compared to litigation. Legal Information Institute, *Arbitration*, Cornell Law School, <https://www.law.cornell.edu/wex/arbitration> (Last visited Mar. 25, 2021).

¹⁶ *Supra* note 13.

¹⁷ S. 44.1011(2), F.S.; See also Fla. Jur. 2d, Arbitration and Award s. 113.

¹⁸ S. 44.102(1), F.S.

¹⁹ S. 44.102(2)(a), F.S.

²⁰ Voluntary trial resolution, or a private trial, is a type of alternative dispute resolution that allows two parties to come to an agreement by way of a third party acting as a judge and offering a verdict. Ned I. Price, *Binding Arbitration, Voluntary Trial Resolution, and MED-ARB Proceedings in Family Law*, 86 Fla. B. J. 48 (Nov. 2012), <https://www.floridabar.org/the-florida-bar-journal/binding-arbitration-voluntary-trial-resolution-and-med-arb-proceedings-in-family-law/> (last visited Mar. 25, 2021).

²¹ *Id.*

²² S. 44.102(2)(b)-(d), F.S. Additionally, a court is required or authorized to refer certain family law and dependency matters to litigation, as specified in s. 44.102(2)(c) and (d), F.S.

²³ Ch. 2009-180, L.O.F.

²⁴ S. 61.125(2) and (3), F.S.

²⁵ S. 61.152(5)(a)1., F.S.

Additionally, a parenting coordinator must complete:

- Three years of post-licensure or post-certification practice;
- A family mediation training program certified by the Florida Supreme Court;
- A minimum of 24 hours of parenting coordination training;²⁶ and
- A minimum of 4 hours of training in domestic violence and child abuse which is related to parenting coordination.²⁷

Eldercaring Coordination

As parenting coordination has become a common method of dispute resolution in contentious child custody and visitation matters, courts and legal professionals have used the concept as a model to develop a similar option for disputes involving elders.²⁸

Eldercaring coordination is an alternative dispute resolution process for high-conflict cases, where a specialized coordinator assists elders, legally authorized decisionmakers, and others who participate by court order or invitation to resolve family disputes while considering the elder's needs for autonomy and safety.²⁹ Eldercaring coordination complements—but doesn't replace—the services of mediators, financial advisors, lawyers, therapists, health care providers, or other professionals.³⁰ However, the process provides a supportive and holistic atmosphere for families to work through their difficulties.³¹

Eldercaring coordination can assist elders, family members, and other parties by:

- Resolving non-legal issues outside of court;
- Fostering a need for self-determination among both elders and family members;
- Monitoring high-risk situations for signs of elder abuse, neglect, or exploitation;
- Offering an additional source of support during times of transition.³²

Currently, fourteen jurisdictions in five states are utilizing eldercare coordination pilot programs.³³

Eldercaring Coordination in Florida

While parties in child-related disputes in Florida use parenting coordination, there is currently no statewide alternative dispute resolution option to address cases involving elder-related issues.³⁴ In March 2013, the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) created the Task Force on Eldercaring Coordination (FLAFCC Task Force), which developed a dispute resolution model for contentious cases involving elders, their family members, and other participants.³⁵

²⁶ The topics include parenting coordination concepts and ethics, family systems theory and application, family dynamics in separation and divorce, child and adolescent development, the parenting coordination process, parenting coordination techniques, and Florida family law and procedure. S. 61.125(5)(a)2.c., F.S.

²⁷ S. 61.125(5)(a)2., F.S.

²⁸ The Association for Conflict Resolution, *Guidelines for Eldercare Coordination* (Oct. 2014).

<https://ncpj.files.wordpress.com/2017/05/m4-fieldstone-morley-acr-guidelines-for-eldercaring-coordination.pdf> (last visited Mar. 25, 2021).

²⁹ *Id.* at 15.

³⁰ Sue Bronson & Linda Fieldstone, *From Friction to Fireworks to Focus: Eldercaring Coordination Sheds Light in High-Conflict Cases*, American Bar Association (2015), https://www.americanbar.org/groups/senior_lawyers/publications/experience/2015/fall-winter/friction-fireworks-focus-eldercaring-coordination-sheds-light-high-conflict-cases/ (last visited Mar. 25, 2021).

³¹ *Id.*

³² *Id.*

³³ Karen Campbell, *Dispute Resolution Tactics Emerge to Aid the Elderly*, American Bar Association (July 2017), https://www.americanbar.org/groups/senior_lawyers/publications/experience/2017/june-july/#:~:text=Dispute-Resolution%20Tactics%20Emerge%20to%20Aid%20the%20Elderly%20By,families%20and%20legal%20professionals%20better%20manage%20today%E2%80%99s%20challenges. (last visited Mar. 25, 2021).

³⁴ Florida Chapter of the Association of Family and Conciliation Courts Task Force on Eldercaring Coordination, *Guidelines for Eldercaring Coordinators*, p. 3 (October 2014), https://flafcc.org/wp-content/uploads/2020/08/flafcc_guidelines_for_eldercaring_coordination_website.pdf (last visited Mar. 25, 2021).

³⁵ *Id.*

The FLAFCC Task Force worked with the Association for Conflict Resolution's Task Force on Eldercaring Coordination (ACR Task Force), which provided general, non-state specific guidance and suggestions on eldercaring coordination best practices.³⁶ Based on the ACR Guidelines for Eldercaring Coordinators, the FLAFCC Board of Directors approved their own, Florida-specific guidelines in 2014 which are utilized by eldercare coordinators in Florida.³⁷

In 2015, eight of Florida's twenty judicial circuits were chosen to participate in a pilot program intended to provide eldercare coordination services: the Fifth, Seventh, Ninth, Twelfth, Thirteenth, Fifteenth, Seventeenth, and Eighteenth Circuits.³⁸ Court administrators representing the First, Sixth, Eighth, and Eleventh circuits have since expressed interest in becoming a part of the pilot.³⁹ Pilot programs were also created in four other states: Idaho, Indiana, Ohio, and Minnesota.⁴⁰ The pilot programs⁴¹ assign eldercaring coordinators to elder law cases involving family dispute.⁴² A total of approximately 75 cases have been referred to the eight Florida sites since their inception.⁴³

Judges from the Probate and Guardianship Divisions of courts from each pilot site first evaluated and selected individuals to be trained as eldercaring coordinators.⁴⁴ Judges, eldercaring coordinators, and administrators were then trained on eldercaring coordination.⁴⁵ Cases were referred and the FLAFCC has since reported the following findings from cases at the pilot sites:

- Fewer motions;
- Shorter, more efficient hearings;
- Reduced levels of family conflict, leading to minimized abuse, neglect, and exploitation of elders;
- A reduced need for guardianships and a reduced number of cases in need of final determinations of capacity; and
- An increased ability of elders and family members to respond to issues efficiently and without needing further judicial intervention.⁴⁶

Eldercaring Coordination Effectiveness

Judges from the Probate and Guardianship Divisions of courts from each pilot site first evaluated and selected individuals to be trained as eldercaring coordinators.⁴⁷ Judges, eldercaring coordinators, and administrators were then trained on eldercaring coordination.⁴⁸ Cases were referred, and the FLAFCC has since reported the following findings from cases at the pilot sites:

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³⁶ *Id.* at 4.

³⁷ *Id.*

³⁸ Jim Ash, 'Eldercaring' Program Serves the Courts and Florida's Aging Citizens, The Florida Bar News, October 15, 2018, <https://www.floridabar.org/the-florida-bar-news/eldercaring-program-serves-the-courts-and-floridas-aging-citizens/> (last visited Mar. 25, 2021).

³⁹ *Id.* See also The Office of the State Courts Administrator (OSCA), *Judicial Branch 2021 Legislative Agenda*, p. 18-19, (2021).

⁴⁰ *Id.*

⁴¹ "Pilot site" is one judge or group of judges or magistrates that refer at least six cases for eldercaring coordination, or a group of attorneys that initiate at least six cases for eldercaring coordination through agreed order, where those families choose to participate in the independent research of the process. *Id.*

⁴² *Supra* note 38.

⁴³ *Id.*

⁴⁴ The Office of the State Courts Administrator (OSCA), *Judicial Branch 2021 Legislative Agenda*, p. 19, (2021).

⁴⁵ *Id.*

⁴⁶ *Id.* at 19-20.

⁴⁷ The Office of the State Courts Administrator (OSCA), *Judicial Branch 2021 Legislative Agenda*, p. 19, (2021).

⁴⁸ *Id.*

- An increased ability of elders and family members to respond to issues efficiently and without needing further judicial intervention.⁴⁹

An evaluation of eldercaring coordination by researchers at Virginia Tech published in 2019⁵⁰ reported surveying a small group⁵¹ of eldercaring coordination participants, including eldercaring coordinators, judges, court administrators, and magistrates. Prior to taking part in eldercaring coordination, participants were asked to describe indicators of effective eldercaring coordination. Common responses included:⁵²

- Improving elder well-being;
- Reducing family conflict;
- Improving family communication and problem solving;
- Reducing litigation;
- Finalizing decisions related to the elder; and
- Reaching agreements about what is in the elder's best interest.

On intake surveys, when elders and participants were asked about their level of understanding and comfort with eldercaring coordination, their responses were mixed, with some indicating complete understanding and comfort with the process while others reported a lack of understanding, and feelings of discomfort.⁵³

After taking part in eldercaring coordination, some judges, court administrators, and eldercaring coordinators were again surveyed. Results showed that families referred were high-conflict families with deeply entrenched, multigenerational patterns of interaction. About half of the eldercaring coordinators believed that, after eldercaring coordination, family relationships between the elder and other participants were unchanged, while about 25% believed family relationships had improved and about a quarter felt that family relationships had deteriorated since beginning eldercaring coordination. All judges and the majority of court administrators and magistrates reported that eldercaring coordination was effective, though just half of eldercaring coordinators reported that the process was effective. For instance, some of the elders' issues were resolved, while others were not.⁵⁴

While the success of eldercaring coordination requires families to be open to the process and actively participating in it, eldercaring coordinators reported that it could be challenging to get participants to "buy into" the process. The process was seen as burdensome to some degree. Perceived burdens included the difficulty associated with scheduling meetings, prohibitive fees, and overall time commitment. When eldercaring coordination worked, it resulted in decisions being made in the best interest of the elder.⁵⁵

The researchers indicated that eldercaring coordination has significant potential for filling the gap in services for families making decisions regarding an older adult. However, based on these findings, they recommend that more data are needed to determine the extent to which eldercaring coordination is able to achieve the goal of improving family relationships. Researchers made a variety of recommendations to improve eldercaring coordination:⁵⁶

- Provide clear explanations of the process, ensure understanding, and address concerns;
- Develop strategies for handling resistance and conflict and enlist participation and cooperation;

⁴⁹ *Id.* at 19-20.

⁵⁰ Ashley A. King, et al, Preliminary Findings from an Evaluation of ElderCaring Coordination, https://www.acresolution-digital.org/acresolutionmag/january_2020/MobilePagedArticle.action?articleId=1554009#articleId1554009 (last visited Mar. 25, 2021).

⁵¹ Pretests included feedback from 17 elders or elder surrogates and 85 other participants representing 28 separate cases. This also included 18 eldercaring coordinators representing 40 eldercaring coordination cases; 9 judges representing 37 eldercaring coordination cases, 14 court administrators/magistrates representing 49 cases. Posttests included responses from seven eldercaring coordinators representing 18 cases, six judges representing 15 cases, and seven court administrators/magistrates representing 22 cases.

⁵² *Supra*, note 50.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

- Establish realistic, achievable goals;
- Initiate outreach efforts to attorneys and other professionals to increase cooperation; and
- Explore ways to make eldercaring coordination less time intestine and complex.

Note that researchers did not survey elders or family participants after utilization of eldercaring coordination, so the perspectives on the effectiveness of eldercaring coordination of such persons are unknown. Additionally, due to the study's design, it is unknown how these families' results and circumstances compare to families not involved in eldercaring coordination.⁵⁷

Effect of Proposed Changes

CS/HB 441 creates a statutorily-authorized alternative dispute resolution option in which court-appointed eldercaring coordinators assist elders, their legally authorized decision makers, and their family members in resolving high-conflict disputes that can impact an elder's safety and autonomy.

Duties

The bill requires an eldercaring coordinator to assist elders, decision makers, and other participants in resolving disputes related to the care and safety of an elder by:

- Facilitating more effective communication and negotiation and the development of problem solving skills;
- Providing education about eldercare resources;
- Facilitating the creation, modification, or implementation of an eldercaring plan and reassessing it as necessary;
- Making recommendations for dispute resolution related to the care and safety of the elder; and
- Making limited decisions with the prior approval of the parties or of the court.

Referral Process

The bill authorizes a court to appoint an eldercaring coordinator and refer the parties to eldercaring coordination upon:

- Agreement of the parties;
- The court's own motion; or
- Any party's motion.

The bill establishes several actions which may be referred to eldercaring coordination:

- Determining if someone is or is not incapacitated;
- Appointing or removing a guardian;
- Undertaking an investigation through adult protective services;
- Auditing an annual guardianship report;
- Appointing a guardian advocate;
- Entering an injunction to protect an elder;
- Following up on a complaint made to the Office of Public and Professional Guardians;
- Addressing advice from the clerk of the court regarding review of guardianship assets; and
- At the discretion of the judge, addressing other matters pending before the court related to the care and safety of an elder or the security of his or her property.

The bill prohibits the court from referring parties with a history of domestic violence or exploitation of an elder to eldercaring coordination absent the consent of all parties, including the elder. Further, the court must offer each party the opportunity to consult with either an attorney or a domestic violence advocate prior to accepting consent of the referral and the court is required to determine whether each party has given his or her consent freely and voluntarily.

⁵⁷ *Id.*

When a court is determining whether to refer parties that may have an above-mentioned history that would otherwise preclude the referral, the court must consider whether a party has:

- Committed an act of exploitation⁵⁸ or domestic violence⁵⁹ against another party or any member of another party's family;
- Engaged in a behavioral pattern where power and control are used against another party and that could jeopardize another party's ability to negotiate fairly; or
- Behaved in a way that leads another party to reasonably believe he or she is in imminent danger of becoming a victim of domestic violence.

If the court refers a case to eldercaring coordination that involves a party who has any history of domestic violence or exploitation of an elder, the court must order necessary precautions to protect the safety of:

- All parties;
- All other participants;
- The elder; and
- The elder's property.

These precautions may include adherence to all provisions of an injunction for protection or conditions of bail, probation, a criminal sentence, and any other relevant precaution the court deems appropriate.

Appointment and Qualifications of the Eldercaring Coordinator

The bill limits the court's appointment of an eldercaring coordinator for a term of up to two years. The court must conduct review hearings intermittently to determine whether it is appropriate to conclude or extend the term of the appointment. The bill also sets the qualifications of eldercaring coordinators and identifies factors that disqualify a person from serving as an eldercaring coordinator. Specifically, the bill requires an eldercaring coordinator to be in good standing or in clear and active status with all professional licensing authorities or certification boards and to meet at least one of the following requirements related to professional training:

- Be a licensed mental health professional under ch. 491, F.S., and hold at least a master's degree in the professional field of practice;
- Be a licensed psychologist under ch. 490, F.S.;
- Be a licensed physician under ch. 458, or ch. 459, F.S.;
- Be a licensed nurse under ch. 464, F.S., and hold at least a master's degree;
- Hold a family mediator certification from the Florida Supreme Court and at least a master's degree;
- Be a member in good standing of the Florida Bar; or
- Serve as a professional guardian as defined in s. 744.102(17), F.S., and hold at least a master's degree.

The bill also requires an eldercaring coordinator to complete all of the following:

- Three years of post-licensure or post-certification practice;
- A Florida Supreme Court-certified family mediation training program;
- An elder mediation training program which adheres to the standards of the Florida Supreme Court;⁶⁰ and
- Eldercaring coordinator training totaling 28 or more hours and including the following training:
 - o Eldercaring coordination;
 - o Elder, guardianship, and incapacity law and procedures and less restrictive alternatives to guardianship relating to eldercaring coordination;

⁵⁸ See ss. 415.102(8) and 825.103(1), F.S.

⁵⁹ S. 741.28, F.S.

⁶⁰ If the Florida Supreme Court has not yet adopted such standards, then the eldercaring coordinator must complete a program which adhered to the standards for elder mediation training adopted by the Association for Conflict Resolution.

- o A minimum of four hours on the implications of elder abuse, neglect, and exploitation along with other safety issues relevant to eldercaring coordination;
- o The role of the elder in eldercaring coordination;
- o Family dynamics pertaining to eldercaring coordination;
- o Eldercaring coordination skills and techniques;
- o Multicultural competence and its use in eldercaring coordination;
- o A minimum of two hours of ethical considerations related to eldercaring coordination;
- o The use of technology in eldercaring coordination; and
- o Court-specific eldercaring coordination procedures.

A prospective eldercaring coordinator must pass a Level 2 background screening pursuant to s. 435.04(2) and (3), F.S., or be exempt from disqualification under s. 435.07, F.S. The bill requires a prospective eldercaring coordinator to submit a full set of fingerprints to the court or statutorily authorized agency. The court or agency must forward the fingerprints to the Florida Department of Law Enforcement (FDLE) for state processing and FDLE must forward the fingerprints to the Federal Bureau of Investigation (FBI) for national processing. A prospective eldercaring coordinator must pay the fees for state and federal fingerprint processing.

Qualified eldercaring coordinators must also:

- Not have had a final order granting an injunction for protection against domestic, dating, sexual, or repeat violence or stalking or exploitation of an elder or a disabled person filed against them;
- Meet any additional qualifications required by the court to address party-specific issues.

If an eldercaring coordinator ceases to meet the minimum qualifications to serve as such or one of the disqualifying circumstances occurs, an eldercaring coordinator must resign and promptly notify the court. Further, the bill requires the court to remove an eldercaring coordinator upon his or her resignation or disqualification, or upon a finding of good cause.

Upon a motion of the court or any party, the court is authorized to suspend the authority of an eldercaring coordinator pending a hearing on the motion for removal. Notice of such a hearing must be timely served on the eldercaring coordinator and all other parties to the action. If a motion is made in bad faith, the court may award reasonable attorney fees and costs to a party or an eldercaring coordinator who prevails on a motion for removal, in addition to any other legal remedy.

When an eldercaring coordinator resigns, is removed, or is suspended, the court must appoint a successor qualified eldercaring coordinator agreed to by all parties, or another qualified eldercaring coordinator to serve for the remainder of the original term if the parties are unable to agree on a successor.

Fees and Costs for Eldercaring Coordination

The court may not order the parties to eldercaring coordination without the parties' consent unless the court determines that the parties have the financial ability to pay the coordination fees and costs. The bill provides that the court must determine the allocation of fees and costs of eldercaring coordination between the parties and that a party who claims he or she is unable to pay the eldercaring coordination fees and costs must complete an approved financial affidavit form. The court must consider specified factors to determine whether a non-indigent party has the ability to pay, including:

- Income;
- Assets and liabilities;
- Financial obligations; and
- Resources, including, but not limited to, whether the party can receive or is receiving trust benefits, whether the party is represented by and paying a lawyer, and whether paying the fees and costs of eldercaring coordination would create a substantial hardship.

If the court finds a party is indigent,⁶¹ the court may not order eldercaring coordination unless public funds are available to pay the indigent party's portion or a non-indigent party agrees to pay the fees and costs.

Confidentiality of Eldercaring Coordination Communications

The bill protects the confidentiality of all communications by, between, or among the parties and the eldercaring coordinator during eldercaring coordination, and precludes the eldercaring coordinator from testifying or offering evidence unless:

- The parties mutually agree that the communications can be disclosed.
- The relevant communications are needed to:
 - o Identify, authenticate, confirm, or deny a written and signed agreement which the parties entered into during the course of eldercaring coordination.
 - o Identify an issue to be resolved by the court without disclosing any other communications made by any party or the eldercaring coordinator.
 - o Determine whether the eldercaring coordinator is qualified or determine the immunity and liability of an eldercaring coordinator shown to have acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for the rights, safety, or property of the parties.
 - o Protect a person from future acts which would constitute domestic violence; child abuse, neglect, or abandonment; abuse, neglect, or exploitation of an elderly or disabled adult; or are required in an investigation conducted pursuant to s. 744.2004, F.S., or a review pursuant to s. 744.368(5), F.S.
- The relevant communications are limited to the subject of a party's compliance with the order of referral to eldercaring coordination, orders for psychological evaluation, court orders or health care provider recommendations for counseling, or court orders for substance abuse testing or treatment.
- The relevant communications are offered to report, prove, or disprove professional misconduct or malpractice occurring during eldercaring coordination.
- The relevant communications were used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence.

The bill also limits the civil liability of an eldercaring coordinator who acts in good faith and requires the Florida Supreme Court to establish minimum standards and procedures for the training, ethical conduct, and discipline of eldercaring coordinators. The bill allows the Court to employ or appoint personnel to assist in carrying out these functions.

The bill also provides legislative findings.

The bill is effective July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Creates s. 44.407, F.S., relating to elder-focused dispute resolution process.

Section 2: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶¹ Under s. 57.082, F.S., an attorney may be appointed in certain civil cases when the court finds that a party is indigent.

2. Expenditures:

The Office of the State Courts Administrator (OSCA) anticipates that the bill will lead to a decreased workload for courts because cases which utilize eldercaring coordination generally have fewer motions filed, shorter hearings; and very few require emergency hearings.⁶² The fiscal impact to the state is indeterminate because there is currently insufficient data to reliably calculate the effect of the bill on judicial workload.⁶³ However, some costs are anticipated to implement eldercaring coordination throughout the state.⁶⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2021, the Civil Justice & Property Rights Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that:
 - o A prospective eldercaring coordinator must submit a full set of fingerprints to the court or statutorily authorized agency.
 - o The court or agency must forward the fingerprints to the Florida Department of Law Enforcement (FDLE) for state processing.

⁶² The Office of the State Courts Administrator, Agency Analysis of 2021 House Bill 441, p. 2 (Mar. 10, 2021).

⁶³ *Id.* at 3.

⁶⁴ *Id.*

- o FDLE must forward the fingerprints to the Federal Bureau of Investigation (FBI) for national processing.
 - o A prospective eldercaring coordinator must pay the fees for state and federal fingerprint processing.
- Made technical changes.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Property Rights Subcommittee.

1 A bill to be entitled
2 An act relating to an elder-focused dispute resolution
3 process; creating s. 44.407, F.S.; providing
4 legislative findings; defining terms; authorizing the
5 courts to appoint an eldercaring coordinator and refer
6 certain parties and elders to eldercaring
7 coordination; prohibiting the courts from referring
8 certain parties to eldercaring coordination without
9 the consent of the elder and other parties to the
10 action; specifying the duration of eldercaring
11 coordinator appointments; requiring the courts to
12 conduct intermittent review hearings regarding the
13 conclusion or extension of such appointments;
14 providing qualifications and disqualifications for
15 eldercaring coordinators; requiring prospective
16 eldercaring coordinators to meet certain
17 qualifications for background screening, unless
18 otherwise exempt; requiring prospective eldercaring
19 coordinators to submit fingerprints for purposes of
20 criminal history background screening; requiring
21 prospective eldercaring coordinators to pay the fees
22 for state and federal fingerprint processing;
23 providing for the disqualification and removal of
24 certain eldercaring coordinators; requiring that
25 notice of hearing on removal of an eldercaring

26 coordinator be timely served; authorizing the courts
27 to award reasonable attorney fees and costs under
28 certain circumstances; requiring the court to appoint
29 successor eldercaring coordinators under certain
30 circumstances; specifying the courts' authority to
31 make certain determinations based on the parties'
32 ability to pay the eldercaring coordination fees and
33 costs; providing that certain communications between
34 the parties, participants, and eldercaring
35 coordinators are confidential; providing exceptions;
36 providing requirements for emergency reporting to
37 courts under certain circumstances; providing immunity
38 from liability for eldercaring coordinators under
39 specified circumstances; requiring the Florida Supreme
40 Court to establish certain minimum standards and
41 procedures for eldercaring coordinators; authorizing
42 the Florida Supreme Court to appoint or employ
43 personnel for specified purposes; providing an
44 effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Section 44.407, Florida Statutes, is created to
49 read:

50 44.407 Elder-focused dispute resolution process.—

51 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:

52 (a) Denying an elder a voice in decisions regarding
53 himself or herself may negatively affect the elder's health and
54 well-being, as well as deprive the elder of his or her legal
55 rights. Even if an elder is losing capacity to make major
56 decisions for himself or herself, the elder is still entitled to
57 the dignity of having his or her voice heard.

58 (b) As an alternative to proceedings in court, it is in
59 the best interest of an elder, his or her family members, and
60 legally recognized decisionmakers to have access to a
61 nonadversarial process to resolve disputes relating to the elder
62 which focuses on the elder's wants, needs, and best interests.
63 Such a process will protect and preserve the elder's exercisable
64 rights.

65 (c) By recognizing that every elder, including those whose
66 capacity is being questioned, has unique needs, interests, and
67 differing abilities, the Legislature intends for this section to
68 promote the public welfare by establishing a unique dispute
69 resolution option to complement and enhance, not replace, other
70 services, such as the provision of legal information or legal
71 representation; financial advice; individual or family therapy;
72 medical, psychological, or psychiatric evaluation; or mediation,
73 specifically for issues related to the care and needs of elders.
74 The Legislature intends that this section be liberally construed
75 to accomplish these goals.

76 (2) DEFINITIONS.—As used in this section, the term:

77 (a) "Action" means a proceeding in which a party sought or
78 seeks a judgment or an order from the court to:

79 1. Determine if someone is or is not incapacitated
80 pursuant to s. 744.331.

81 2. Appoint or remove a guardian.

82 3. Undertake an investigation pursuant to s. 415.104.

83 4. Audit an annual guardianship report.

84 5. Review a proxy's decision pursuant to s. 765.105.

85 6. Appoint a guardian advocate pursuant to s. 393.12.

86 7. Enter an injunction to protect an elder under s.
87 825.1035.

88 8. Follow up on a complaint made to the Office of Public
89 and Professional Guardians pursuant to s. 744.2004.

90 9. Address advice received by the court from the clerk of
91 the court pursuant to s. 744.368(5).

92 10. At the discretion of the presiding judge, address
93 other matters pending before the court which involve the care or
94 safety of an elder or the security of an elder's property.

95 (b) "Elder" means a person 60 years of age or older who is
96 alleged to be suffering from the infirmities of aging as
97 manifested by a physical, a mental, or an emotional dysfunction
98 to the extent that the elder's ability to provide adequately for
99 the protection or care of his or her own person or property is
100 impaired.

101 (c) "Eldercaring coordination" means an elder-focused
102 dispute resolution process during which an eldercaring
103 coordinator assists an elder, legally authorized decisionmakers,
104 and others who participate by court order or by invitation of
105 the eldercaring coordinator in resolving disputes regarding the
106 care and safety of an elder by:

107 1. Facilitating more effective communication and
108 negotiation and the development of problem-solving skills.

109 2. Providing education about eldercare resources.

110 3. Facilitating the creation, modification, or
111 implementation of an eldercaring plan and reassessing it as
112 necessary to reach a resolution of ongoing disputes concerning
113 the care and safety of the elder.

114 4. Making recommendations for the resolution of disputes
115 concerning the care and safety of the elder.

116 5. With the prior approval of the parties to an action or
117 of the court, making limited decisions within the scope of the
118 court's order of referral.

119 (d) "Eldercaring coordination communication" means an oral
120 or a written statement or nonverbal conduct intended to make an
121 assertion by or to an eldercaring coordinator or individuals
122 involved in eldercaring coordination made during an eldercaring
123 coordination activity, or before the activity if made in
124 furtherance of eldercaring coordination. The term does not
125 include statements made during eldercaring coordination which

involve the commission of a crime, the intent to commit a crime,
or ongoing abuse, exploitation, or neglect of a child or a
vulnerable adult.

(e) "Eldercaring coordinator" means an impartial third
person who is appointed by the court or designated by the
parties and who meets the requirements of subsection (5). The
role of the eldercaring coordinator is to assist parties through
eldercaring coordination in a manner that respects the elder's
need for autonomy and safety.

(f) "Eldercaring plan" means a continually reassessed plan
for the items, tasks, or responsibilities needed to provide for
the care and safety of an elder which is modified throughout
eldercaring coordination to meet the changing needs of the elder
and which takes into consideration the preferences and wishes of
the elder. The plan is not a legally enforceable document, but
is meant for use by the parties and participants.

(g) "Good cause" means a finding that the eldercaring
coordinator:

1. Is not fulfilling the duties and obligations of the
position;

2. Has failed to comply with any order of the court,
unless the order has been superseded on appeal;

3. Has conflicting or adverse interests that affect his or
her impartiality;

4. Has engaged in circumstances that compromise the

151 integrity of eldercaring coordination; or

152 5. Has had a disqualifying event occur.

153
154 The term does not include a party's disagreement with the
155 eldercaring coordinator's methods or procedures.

156 (h) "Legally authorized decisionmaker" means an individual
157 designated, either by the elder or by the court, pursuant to
158 chapter 709, chapter 744, chapter 747, or chapter 765 who has
159 the authority to make specific decisions on behalf of the elder
160 who is the subject of an action.

161 (i) "Participant" means an individual who joins
162 eldercaring coordination by invitation of or with the consent of
163 the eldercaring coordinator but who has not filed a pleading in
164 the action from which the case was referred to eldercaring
165 coordination.

166 (j) "Party" includes the elder who is the subject of an
167 action and any other individual over whom the court has
168 jurisdiction.

169 (3) REFERRAL.—

170 (a) Upon agreement of the parties to the action, the
171 court's own motion, or the motion of a party to the action, the
172 court may appoint an eldercaring coordinator and refer the
173 parties to eldercaring coordination to assist in the resolution
174 of disputes concerning the care and safety of the elder who is
175 the subject of an action.

176 (b) The court may not refer a party who has a history of
177 domestic violence or exploitation of an elderly person to
178 eldercaring coordination unless the elder and other parties in
179 the action consent to such referral.

180 1. The court shall offer each party an opportunity to
181 consult with an attorney or a domestic violence advocate before
182 accepting consent to such referral. The court shall determine
183 whether each party has given his or her consent freely and
184 voluntarily.

185 2. The court shall consider whether a party has committed
186 an act of exploitation as defined in s. 415.102, exploitation of
187 an elderly person or disabled adult as defined in s. 825.103(1),
188 or domestic violence as defined in s. 741.28 against another
189 party or any member of another party's family; engaged in a
190 pattern of behaviors that exert power and control over another
191 party and that may compromise another party's ability to
192 negotiate a fair result; or engaged in behavior that leads
193 another party to have reasonable cause to believe that he or she
194 is in imminent danger of becoming a victim of domestic violence.
195 The court shall consider and evaluate all relevant factors,
196 including, but not limited to, the factors specified in s.
197 741.30 (6) (b) .

198 3. If a party has a history of domestic violence or
199 exploitation of an elderly person, the court must order
200 safeguards to protect the safety of the participants and the

201 elder and the elder's property, including, but not limited to,
202 adherence to all provisions of an injunction for protection or
203 conditions of bail, probation, or a sentence arising from
204 criminal proceedings.

205 (4) COURT APPOINTMENT.—A court appointment of an
206 eldercaring coordinator is for a term of up to 2 years and the
207 court shall conduct review hearings intermittently to determine
208 whether the term should be concluded or extended. Appointments
209 conclude upon expiration of the term or upon discharge by the
210 court, whichever occurs earlier.

211 (5) QUALIFICATIONS FOR ELDERCARE COORDINATORS.—

212 (a) The court shall appoint qualified eldercaring
213 coordinators who:

214 1. Meet one of the following professional requirements:

215 a. Are licensed as a mental health professional under
216 chapter 491 and hold at least a master's degree in the
217 professional field of practice;

218 b. Are licensed as a psychologist under chapter 490;

219 c. Are licensed as a physician under chapter 458 or
220 chapter 459;

221 d. Are licensed as a nurse under chapter 464 and hold at
222 least a master's degree;

223 e. Are certified by the Florida Supreme Court as a family
224 mediator and hold at least a master's degree;

225 f. Are a member in good standing of The Florida Bar; or

226 g. Are a professional guardian as defined in s.
227 744.102(17) and hold at least a master's degree.
228 2. Have completed all of the following:
229 a. Three years of post-licensure or post-certification
230 practice;
231 b. A family mediation training program certified by the
232 Florida Supreme Court;
233 c. An elder mediation training program that meets
234 standards approved and adopted by the Florida Supreme Court. If
235 the Florida Supreme Court has not yet adopted such standards,
236 the standards for elder mediation training approved and adopted
237 by the Association for Conflict Resolution apply; and
238 d. Eldercaring coordinator training. The training must
239 total at least 28 hours and must include eldercaring
240 coordination; elder, guardianship, and incapacity law and
241 procedures and less restrictive alternatives to guardianship as
242 it pertains to eldercaring coordination; at least 4 hours on the
243 implications of elder abuse, neglect, and exploitation and other
244 safety issues in eldercaring coordination; the elder's role
245 within eldercaring coordination; family dynamics related to
246 eldercaring coordination; eldercaring coordination skills and
247 techniques; multicultural competence and its use in eldercaring
248 coordination; at least 2 hours of ethical considerations
249 pertaining to eldercaring coordination; use of technology within
250 eldercaring coordination; and court-specific eldercaring

251 coordination procedures.

252 3. Have successfully passed a Level 2 background screening
253 as provided in s. 435.04(2) and (3) or are exempt from
254 disqualification under s. 435.07. The prospective eldercaring
255 coordinator must submit a full set of fingerprints to the court
256 or to a vendor, entity, or agency authorized by s. 943.053(13).
257 The court, vendor, entity, or agency shall forward the
258 fingerprints to the Department of Law Enforcement for state
259 processing and the Department of Law Enforcement shall forward
260 the fingerprints to the Federal Bureau of Investigation for
261 national processing. The prospective eldercaring coordinator
262 shall pay the fees for state and federal fingerprint processing.
263 The state cost for fingerprint processing shall be as provided
264 in s. 943.053(3)(e) for records provided to persons or entities
265 other than those specified as exceptions therein.

266 4. Have not been a respondent in a final order granting an
267 injunction for protection against domestic, dating, sexual, or
268 repeat violence or stalking or exploitation of an elder or a
269 disabled person.

270 5. Have met any additional qualifications the court may
271 require to address issues specific to the parties.

272 (b) A qualified eldercaring coordinator must be in good
273 standing or in clear and active status with all professional
274 licensing authorities or certification boards.

275 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING

276 COORDINATORS.—

277 (a) An eldercaring coordinator must resign and immediately
278 report to the court if he or she no longer meets the minimum
279 qualifications or if any of the disqualifying circumstances
280 occurs.

281 (b) The court shall remove an eldercaring coordinator upon
282 the eldercaring coordinator's resignation or disqualification or
283 upon a finding of good cause shown based on the court's own
284 motion or a party's motion.

285 (c) Upon the court's own motion or upon a party's motion,
286 the court may suspend the authority of an eldercaring
287 coordinator pending a hearing on the motion for removal. Notice
288 of hearing on removal must be timely served on the eldercaring
289 coordinator and all parties.

290 (d) If a motion was made in bad faith, a court may, in
291 addition to any other remedy authorized by law, award reasonable
292 attorney fees and costs to a party or an eldercaring coordinator
293 who successfully challenges a motion for removal.

294 (7) SUCCESSOR ELDERCARING COORDINATORS.—If an eldercaring
295 coordinator resigns, is removed, or is suspended from an
296 appointment, the court shall appoint a successor qualified
297 eldercaring coordinator who is agreed to by all parties or, if
298 the parties do not reach agreement on a successor, another
299 qualified eldercaring coordinator to serve for the remainder of
300 the original term.

301 (8) FEES AND COSTS.—The court may not order the parties to
302 eldercaring coordination without their consent unless the court
303 determines that the parties have the financial ability to pay
304 the eldercaring coordination fees and costs. The court shall
305 determine the allocation among the parties of fees and costs for
306 eldercaring coordination and may make an unequal allocation
307 based on the financial circumstances of each party, including
308 the elder.

309 (a) A party who is asserting that he or she is unable to
310 pay the eldercaring coordination fees and costs must complete a
311 financial affidavit form approved by the presiding court. The
312 court shall consider the party's financial circumstances,
313 including income; assets; liabilities; financial obligations;
314 and resources, including, but not limited to, whether the party
315 can receive or is receiving trust benefits, whether the party is
316 represented by and paying a lawyer, and whether paying the fees
317 and costs of eldercaring coordination would create a substantial
318 hardship.

319 (b) If a court finds that a party is indigent based upon
320 the criteria prescribed in s. 57.082, the court may not order
321 the party to eldercaring coordination unless funds are available
322 to pay the indigent party's allocated portion of the eldercaring
323 coordination fees and costs, which may include funds provided
324 for that purpose by one or more nonindigent parties who consent
325 to paying such fees and costs, or unless insurance coverage or

326 reduced or pro bono services are available to pay all or a
327 portion of such fees and costs. If financial assistance, such as
328 health insurance or eldercaring coordination grants, is
329 available, such assistance must be taken into consideration by
330 the court in determining the financial abilities of the parties.

331 (9) CONFIDENTIALITY.—

332 (a) Except as otherwise provided in this section, all
333 communications made by, between, or among the parties,
334 participants, and eldercaring coordinator during eldercaring
335 coordination shall be kept confidential.

336 (b) The eldercaring coordinator, participants, and each
337 party designated in the order appointing the eldercaring
338 coordinator may not testify or otherwise offer evidence about
339 communications made by, between, or among the parties,
340 participants, and eldercaring coordinator during eldercaring
341 coordination, unless one of the following applies:

342 1. Such communications are necessary to identify,
343 authenticate, confirm, or deny a written and signed agreement
344 entered into by the parties during eldercaring coordination;

345 2. Such communications are necessary to identify an issue
346 for resolution by the court without otherwise disclosing
347 communications made by any party or the eldercaring coordinator;

348 3. Such communications are limited to the subject of a
349 party's compliance with the order of referral to eldercaring
350 coordination, orders for psychological evaluation, court orders

351 or health care provider recommendations for counseling, or court
352 orders for substance abuse testing or treatment;

353 4. The communications are necessary to determine the
354 qualifications of an eldercaring coordinator or to determine the
355 immunity and liability of an eldercaring coordinator who has
356 acted in bad faith or with malicious purpose or in a manner
357 exhibiting wanton and willful disregard for the rights, safety,
358 or property of the parties pursuant to subsection (11);

359 5. The parties agree that the communications be disclosed;

360 6. The communications are necessary to protect any person
361 from future acts that would constitute domestic violence under
362 chapter 741; child abuse, neglect, or abandonment under chapter
363 39; or abuse, neglect, or exploitation of an elderly or disabled
364 adult under chapter 415 or chapter 825, or are necessary in an
365 investigation conducted under s. 744.2004 or a review conducted
366 under s. 744.368(5);

367 7. The communications are offered to report, prove, or
368 disprove professional misconduct alleged to have occurred during
369 eldercaring coordination, solely for the internal use of the
370 body conducting the investigation of such misconduct;

371 8. The communications are offered to report, prove, or
372 disprove professional malpractice alleged to have occurred
373 during eldercaring coordination, solely for the professional
374 malpractice proceeding; or

375 9. The communications were willfully used to plan a crime,

376 commit or attempt to commit a crime, conceal ongoing criminal
377 activity, or threaten violence.

378 (c) Notwithstanding paragraphs (a) and (b),
379 confidentiality or privilege does not attach to a signed written
380 agreement reached during eldercaring coordination, unless the
381 parties agree otherwise, or to any eldercaring coordination
382 communication:

383 1. For which the confidentiality or privilege against
384 disclosure has been waived by all parties;

385 2. That is willfully used to plan a crime, commit or
386 attempt to commit a crime, conceal ongoing criminal activity, or
387 threaten violence; or

388 3. That requires a mandatory report pursuant to chapter 39
389 or chapter 415 solely for the purpose of making the mandatory
390 report to the entity requiring the report.

391 (10) EMERGENCY REPORTING TO THE COURT.—

392 (a) An eldercaring coordinator must immediately inform the
393 court by affidavit or verified report, without notice to the
394 parties, if:

395 1. The eldercaring coordinator has made or will be making
396 a report pursuant to chapter 39 or chapter 415; or

397 2. A party, including someone acting on a party's behalf,
398 is threatening or is believed to be planning to commit the
399 offense of kidnapping, as defined in s. 787.01(1), upon an
400 elder, or wrongfully removes or is removing the elder from the

jurisdiction of the court without prior court approval or compliance with the requirements of s. 744.1098. If the eldercaring coordinator suspects that a party or family member has relocated an elder within this state to protect the elder from a domestic violence situation, the eldercaring coordinator may not disclose the location of the elder unless required by court order.

(b) An eldercaring coordinator shall immediately inform the court by affidavit or verified report and serve a copy of such affidavit or report on each party upon learning that a party is the subject of a final order or injunction of protection against domestic violence or exploitation of an elderly person or has been arrested for an act of domestic violence or exploitation of an elderly person.

(11) IMMUNITY FROM AND LIMITATION ON LIABILITY.—

(a) A person who is appointed or employed to assist the body designated to perform duties relating to disciplinary proceedings involving eldercaring coordinators has absolute immunity from liability arising from the performance of his or her duties while acting within the scope of his or her appointed functions or duties of employment.

(b) An eldercaring coordinator who is appointed by the court is not liable for civil damages for any act or omission within the scope of his or her duties under an order of referral unless such person acted in bad faith or with malicious purpose

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426 or in a manner exhibiting wanton and willful disregard for the
427 rights, safety, or property of the parties.

428 (12) MINIMUM STANDARDS AND PROCEDURES.—The Florida Supreme
429 Court shall establish minimum standards and procedures for the
430 qualification, ethical conduct, discipline, and training and
431 education of eldercaring coordinators who serve under this
432 section. The Florida Supreme Court may appoint or employ such
433 personnel as are necessary to assist the court in exercising its
434 powers and performing its duties under this section.

435 Section 2. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 575 The Gold Seal Quality Care Program

SPONSOR(S): Omphroy and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Early Learning & Elementary Education Subcommittee	18 Y, 0 N	Guy	Brink
2) Children, Families & Seniors Subcommittee		Rahming	Brazzell
3) PreK-12 Appropriations Subcommittee			
4) Education & Employment Committee			

SUMMARY ANALYSIS

The Gold Seal Quality Care Program provides financial incentives, in the form of certain tax exemptions and increased reimbursements, to qualifying child care providers. A qualifying provider must be accredited by an association approved by the Florida Department of Children and Families (DCF) as meeting certain national accrediting standards and other criteria. The DCF is responsible for administering the Gold Seal program, including through rulemaking.

The bill provides a type two transfer of administrative responsibility for the Gold Seal program from the DCF to the Florida Department of Education (DOE), placing rulemaking authority with the State Board of Education (SBE).

The bill revises Gold Seal program accrediting standards and the requirements for approving an accreditor under the program. The bill specifies that an accreditor is not required to be an association and rather may be an accrediting entity.

The bill requires the DOE to establish a process for verifying Gold Seal accreditor compliance with the revised requirements, including an auditing program, and requires the DOE to recommend to the SBE termination of the accreditor's eligibility for 2 to 5 years if it is unable to correct deficiencies within 30 days. If an accreditor loses its approved status, the providers it accredited have 1 year to obtain accreditation from another approved accreditor. An accreditor is liable for repayment of provider payment differentials if it fraudulently grants accreditation or fails to conduct on-site verification.

The bill allows the DOE to revoke an accrediting entity's approval if the entity has accredited 10 or fewer child care providers in the previous 5 years. The bill also allows the DOE to recommend to the SBE that a Gold Seal provider maintain its status after it is cited for certain violations in specified circumstances.

The bill specifies that a School Readiness provider with the Gold Seal designation must receive a minimum differential payment of 20 percent, rather than up to 20 percent.

The bill has an indeterminate fiscal impact. See Fiscal Comments, *infra*.

The bill takes effect on July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Gold Seal Quality Care Program Accreditors

The Department of Children and Families (DCF) administers the state's child care provider licensing program, including inspections of child care providers for specified health and safety standards,¹ and oversees state-mandated child care personnel training.² It also administers the Gold Seal Quality Care Program, which the Legislature established in 1996 to recognize facility and home-based child care providers that go beyond minimum licensing requirements and are accredited based on specified standards by qualifying accrediting associations.³ Child care providers that earn the Gold Seal designation may be eligible for benefits such as certain property tax and sales tax exemptions and increased reimbursement rates through the School Readiness program.⁴ However, committing a class I violation⁵ is grounds for termination of the Gold Seal designation for 2 years.⁶

Accrediting standards must be based on applicable accrediting standards of the National Association for the Education of Young Children (NAEYC), the National Association of Family Child Care (NAFCC), and the National Early Childhood Program Accreditation Commission (NECPAC).⁷ To be approved as an accrediting association, the association must be recognized as an accrediting association and have accrediting standards that meet or exceed the Gold Seal accrediting standards adopted by the DCF.⁸ In addition, the accrediting association must:⁹

- Have been active and accrediting child care facilities for at least 5 years before submitting an application to the DCF;
- Be currently incorporated and registered to conduct business in Florida;
- Submit and meet the requirements of the accrediting association application form;¹⁰ and
- Submit a cross walk of its accrediting standards with the DCF's Gold Seal accrediting standards.

In approving accrediting associations, the DCF must consult with:¹¹

- The Florida Department of Education;
- The Florida Head Start Director's Association;
- The Florida Association of Child Care Management;
- The Florida Family Child Care Home Association;
- The Florida Children's Forum;

¹ See ss. 402.301-402.319, and 1002.88, F.S.

² Ss. 402.301-402.319, F.S.; see also Florida Department of Children and Families, *Provider Search*, <https://cares.myflfamilies.com/PublicSearch> (last visited Feb. 26, 2021).

³ See s. 402.281(1)-(2), F.S.; rule 65C-20.014, F.A.C.; Florida Department of Children and Families, *Child Care: About the Gold Seal Quality Care Program*, <https://www.myflfamilies.com/service-programs/child-care/goldseal.shtml> (last visited Feb. 26, 2021).

⁴ See ss. 212.08(5)(m) and 402.26(6), F.S., and rule 12D-7.015, F.A.C.

⁵ The DCF classifies licensing violations as class I, II, and III violations. Class I violations are the most serious in nature, pose an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child. Class II violations are less serious in nature than Class I violations, and could be anticipated to pose a threat to the health, safety or well-being of a child, although the threat is not imminent. Class III violations are less serious in nature than either Class I or Class II violations. Rule 65C-22.010(1)(e), F.A.C.

⁶ See 402.281(4)(a), F.S.

⁷ S. 402.281(2), F.S.

⁸ S. 402.281(3)(a), F.S.

⁹ See s. 402.281(3), F.S.; rule 65C-22.009(4)(a), F.A.C.

¹⁰ See Form CF-FSP 5315, *incorporated by reference in rule 65C-22.009(4)(a)3.*, F.A.C. (2019), *available at* <https://www.flrules.org/gateway/reference.asp?No=Ref-10508>.

¹¹ S. 402.281(3)(b), F.S.

- The Florida Association for the Education of the Young;
- The Child Development Education Alliance;
- The Florida Association of Academic Nonpublic Schools;
- The Association of Early Learning Coalitions;
- Exempt child care providers;¹² and
- Parents.

The DCF establishes review teams composed of at least 5 members from the above stakeholder groups to evaluate an accrediting association's application for approval.¹³ To receive approval, the association must obtain an overall compliance score of 85 percent or higher based on the accrediting association criteria contained in the Gold Seal Quality Care Accrediting Association Evaluation Manual for Child Care Facilities.¹⁴ The approval period lasts for up to 5 years, unless the DCF terminates approval or the association voluntarily surrenders approval.¹⁵ Applications may only be submitted in January or July.¹⁶

There are 14 DCF-adopted accreditor standards with respect to child care facilities, such as Staff Training and Professional Development, Teacher-Child Interactions, Literacy Support, and Health and Safety. There are seven such standards for home-based providers.¹⁷ Each standard includes detailed indicators of provider expectations. For example, within the Curriculum/Teacher standard, one indicator is whether the program has rich and varied materials to sustain curriculum plans and occupy children in activities that meet their interests.¹⁸ The DCF recommends compliance with this standard be demonstrated through documentation of the materials and equipment used by the provider. As part of the accrediting association approval process, the team of reviewers would evaluate whether the association's standards substantially meet, exceed, or do not meet this indicator and, based on other indicators, the standard.¹⁹

If the accrediting association receives a compliance score between 70 and 85 percent, it may resubmit its application with revisions and work to reach compliance by the next application submission period, a span of 6 months.²⁰ If the application is below 70 percent compliance, it must be denied and the association must wait at least 6 months until the next submission period to reapply.²¹

Section 402.315(5), F.S., requires the DCF to hold in a trust fund all child care licensing moneys the DCF collects to be reallocated at specified times to fund child care licensing activities, including the Gold Seal Quality Care program.

¹² Certain child care providers are exempt from child care licensing standards, except for background screening and local health and safety standards, if they submit documentation to the DCF showing they are an integral part of a church or parochial school conducting regularly scheduled classes, courses of study, or educational programs and are accredited by an organization based on health, safety, and sanitation standards. See s. 402.316, F.S.

¹³ Florida Department of Children and Families, *Gold Seal Quality Care Program Review Process and Procedures* (2015) at 1, incorporated by reference in rule 65C-22.009(4)(c), F.A.C., available at [https://www.myflfamilies.com/service-programs/child-care/docs/whats-new/Gold-Seal/Gold%20Seal%20Quality%20Care%20Program%20Review%20Process%20and%20Procedures%20\[NOPR2\].pdf](https://www.myflfamilies.com/service-programs/child-care/docs/whats-new/Gold-Seal/Gold%20Seal%20Quality%20Care%20Program%20Review%20Process%20and%20Procedures%20[NOPR2].pdf) [hereinafter referred to as Gold Seal Program Review Process and Procedures].

¹⁴ See Form CF-FSP 5389, incorporated by reference in rule 65C-22.009(4)(c), F.A.C. (2015), available at <https://www.flrules.org/gateway/reference.asp?No=Ref-05514>.

¹⁵ Rules 65C-22.009(4)(e), F.A.C.

¹⁶ Rule 65C-22.009(4)(b), F.A.C.

¹⁷ Gold Seal Program Review Process and Procedures, note 13, *supra*, at 6.

¹⁸ See Form CF-FSP 5389, incorporated by reference in rule 65C-22.009(4)(c), F.A.C. (2015) at 10, available at <https://www.flrules.org/gateway/reference.asp?No=Ref-05514>.

¹⁹ See *id.* See also Gold Seal Program Review Process and Procedures, note 13, *supra*, at 6-8.

²⁰ See Gold Seal Program Review Process and Procedures, note 13, *supra*, at 8-9.

²¹ R. 65C-22.009(4)(b), F.A.C.

As of December 2020, there are 18 approved accrediting associations, including the NAEYC, the NAFCC, and the NECPAC,²² and 1,892 Gold Seal-designated child care providers.²³

School Readiness Provider Funding

Established in 1999,²⁴ the School Readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, abandonment, or homelessness; foster children; and children with disabilities.²⁵ The School Readiness program offers financial assistance for child care to these families while supporting children in the development of skills for success in school. Additionally, the program provides developmental screening and referrals to health and education specialists where needed.²⁶

School Readiness funding for participating providers comes primarily from reimbursements from early learning coalitions (ELC) and tuition payments by participating families.²⁷ Each ELC reimburses participating providers with appropriated funds for each eligible child, either through child care certificates provided by parents or through contracted slots.²⁸ The reimbursement and co-payment amounts are determined locally by ELCs, subject to approval by the Office of Early Learning (OEL). Any additional amount a parent must pay is based on the difference between the provider's tuition rate and the sum of the reimbursement rate and required parent co-payment. Reimbursement amounts vary based on provider type and level of care, and co-payments are determined using a sliding fee scale.²⁹

Federal regulation requires states to ensure equal access to child care through the Child Care and Development Fund by determining a fair market rate every 2 years using a statistically valid and reliable survey.³⁰ The survey must be completed at least 2 years before the market rates are calculated and take effect. Based in part on recommendation by the Office of Child Care within the federal Department of Health and Human Services, the OEL calculates the average market rate and the 75th percentile market rate for each county to help ELCs determine provider reimbursement schedules.³¹ The OEL establishes market rates for the following provider types and levels of care for each county:³²

- Provider Type:
 - o Private Center
 - o Large Family Child Care Home
 - o Family Child Care Home
 - o Public School
 - o Non-Public School
 - o Faith-Based Exempt
- Level of Care:

²² Florida Department of Children and Families, *Gold Seal Quality Care Accrediting Associations* (Dec. 2020), available at

<https://www.myflfamilies.com/service-programs/child-care/docs/Approved%20Gold%20Seal%20Quality%20Care%20Program%20Accrediting%20Associations.pdf?d=2021-3-10>.

²³ Email from John Paul Fiore, Legislative Specialist, Florida Department of Children and Families, HB 575 – Request from H. Early Learning & Elementary Education Subcommittee, Mar. 10, 2021.

²⁴ Section 1, ch. 99-357, L.O.F.

²⁵ Ss. 1002.81 and 1002.87, F.S.

²⁶ Florida Office of Early Learning, *School Readiness Program*, <http://www.floridaeearlylearning.com/family-resources/financial-assistance> (last visited Mar. 10, 2021).

²⁷ See ss. 1002.84(8) and 1002.89, F.S.; Specific Appropriation 86, s. 2, ch. 2019-115, L.O.F.

²⁸ See rule 6M-4.500(1), F.A.C.; see also 45 C.F.R. s. 98.20(a). Florida does not provide School Readiness funding for children 13-18 years of age who are physically or mentally incapable of self-care or under court supervision. See Florida's Office of Early Learning, *Florida Child Care Development Fund (CCDF) Plan with Conditional Approval Letter for FY 2019-2021*, at 53 (October 1, 2018), available at http://www.floridaeearlylearning.com/Content/Uploads/floridaeearlylearning.com/files/CCDBG_FY2019-2021CCDFPlanFINAL_FINAL_4.9.19.pdf [hereinafter referred to as CCDF Plan].

²⁹ See s. 1002.895, F.S.; rules 6M-4.400(2) and 6M-4.500(1), F.A.C.

³⁰ See 45 C.F.R. § 98.45(a) and (c). Alternatively, states may set payment rates using an alternative methodology approved by the federal Administration for Children and Families.

³¹ See s. 1002.895(4), F.S.; Child Care and Development Fund (CCDF) Program, 81 FR 67438 (Nov. 29, 2016) (codified at 45 C.F.R. pt. 98); Florida Office of Early Learning, *2019 Market Rate Survey and Process* (May 2019), on file with House Education Committee staff.

³² S. 1002.895(2)(a) and (b), F.S.

- o Infant – Birth to 12 months
- o Toddler – 12 to 24 months
- o 2 year-old – 24 to 36 months
- o Preschool 3 year-old – 36 to 48 months
- o Preschool 4 year-old; 48 to 60 months
- o School Age; School entry to 14 years
- o Special Needs; Birth to 14 years

The market rate calculation must also differentiate rates between full-time and part-time child care services, differentiate between Gold Seal status and non-Gold Seal provider status, and consider discounted rates for child care services for multiple children in a single family.³³

To calculate market rates, the OEL sorts provider private pay rates for a given level of care within the county from highest to lowest, calculates the average market rate, and identifies the 75th percentile pay rate. Although there is no minimum threshold for provider reimbursement rates in law, each ELC must consider the market rate schedule in determining its own minimum reimbursement rates, which must be approved by the OEL.³⁴ In addition, a provider may receive additional funding above the minimum reimbursement rate if it qualifies for any of the following quality-based differentials:³⁵

- Up to an additional 20 percent for Gold Seal status.
- Up to an additional 10 percent for a quality performance incentive.
- An additional 5 percent for participating in an OEL-approved child assessment tool.

Generally, an ELC may not reimburse a provider at a higher rate than the provider's private pay rate.³⁶ However, the total additional reimbursement for these differentials may exceed a provider's private pay rate by up to 20 percent.³⁷ Providers may also receive differentials for participating in the Contracted Slots Program (10 percent above the 75th percentile market rate) and for serving children with special needs (up to 20 percent above the maximum approved base reimbursement rate established for infant care by the ELC).³⁸

About 62 percent of Florida's approximately 1.1 million children younger than age 6 are in the School Readiness program.³⁹

Effect of Proposed Changes

Gold Seal Quality Care Program Accreditation

The bill provides a type two transfer of administrative responsibility for the Gold Seal Quality Care Program from the DCF to the Department of Education (DOE), including rulemaking authority to the State Board of Education (SBE). For purposes of accreditation under the Gold Seal program, the bill requires that accreditation standards be based on nationally recognized standards and not limited to those established by the NAEYC, the NAFCC, and the NECPAC.

The bill changes the term "accrediting association" to "accrediting entity" and revises the requirements to be an approved accreditor by:

³³ S. 1002.895(1) and (2)(a), (c), and (d), F.S.

³⁴ See s. 1002.895(4), F.S.; see also Florida CCDF Plan at 6, *supra*, note 28.

³⁵ See s. 1002.82(2)(o), F.S.; rule 6M-4.500(9), (10), and (11), F.A.C.

³⁶ See rule 6M-4.500(8)(a), F.A.C., (requiring that payments exceeding market rate be counted as quality expenditures).

³⁷ *Id.*

³⁸ R. 6M-4.500(5) and (6), F.A.C.

³⁹ Office of Early Learning, School Readiness, <http://www.floridaearlylearning.com/school-readiness#:~:text=There%20are%20approximately%201.1%20million,readiness%20services%20from%207%2C676%20providers>. (last visited Mar. 19, 2021).

- Deleting the requirement that the accreditor be a “recognized accrediting association” and instead specifying that it must have qualified personnel experienced in the accreditation of child care facilities, large family child care homes, or family day care homes;
- Requiring that it have proven expertise with accrediting standards that are substantially similar to the standards adopted by the DCF;
- Codifying the requirement that it be incorporated in Florida; and
- Requiring that it provide evidence that its accreditation process has the following:
 - o Clearly defined prerequisites that a child care provider must meet before beginning the accreditation process;
 - o Procedures for completion of a self-study and comprehensive onsite verification process for each classroom;
 - o A training process for accreditation verifiers to ensure inter-rater reliability;
 - o Ongoing compliance procedures that include completion of an audit and filing of an annual report;
 - o Procedures for renewal every 5 years, including onsite verification;
 - o A process for verifying continued compliance if ownership changes;
 - o Procedures for revocation for failure to meet accreditation standards; and
 - o A process to communicate accreditation issues with governmental stakeholders.

The DOE must establish a process for verifying Gold Seal accreditor compliance with these requirements, including an auditing program, and requires the DOE to recommend to the SBE termination of the accreditor’s eligibility for 2 to 5 years if it is unable to correct deficiencies within 30 days. If an accreditor loses its approved status, the providers it accredited have 1 year to obtain accreditation from another approved accreditor. An accreditor is liable for repayment of provider payment differentials if it fraudulently grants accreditation or fails to conduct on-site verification.

The bill allows the DOE to revoke an accrediting entity’s approval if the entity has accredited 10 or fewer child care providers in the previous 5 years. The bill also allows the DOE to recommend to the SBE that a Gold Seal provider maintain its status after it is cited for a Class I or Class II violation if it has been in business for 5 or more years and has no other Class I violations.

The bill retains reference to the Gold Seal Quality Care program in s. 402.315(5), which could result in the DCF being required to use child care licensing moneys held in the DCF’s trust fund for the purposes of the Gold Seal Quality Care program that will now be administered by DOE.

The bill specifies that a School Readiness provider with the Gold Seal designation must receive a minimum differential payment of 20 percent, rather than up to 20 percent.

The bill takes effect on July 1, 2021.

B. SECTION DIRECTORY:

Sections 1 - 3. Amend ss. 39.604, 212.08, and 402.26, F.S.; conforming provisions and cross-references to changes made by the act.

Section 4. Transfers, renumbers, and amends s. 402.281, F.S.; revising the requirements of the Gold Seal Quality Care program; requiring the State Board of Education to adopt specified rules; specifying requirements for an accrediting entity, rather than an accrediting association, to be approved for participation in such program; requiring the Department of Education to establish a specified process and providing requirements therefor; deleting a provision requiring consultation with certain entities for specified purposes; authorizing the Department of Education to recommend the maintenance of Gold Seal Quality Care designation for certain child care facilities; and provides an exemption from ad valorem taxation and rate differentials for certain child care facilities.

- Section 5.** Provides for a type two transfer of the Gold Seal Quality Care program within the Department of Children and Families to the Department of Education within a specified time period; providing for the continuation of certain contracts and agreements.
- Sections 6 - 9.** Amends ss. 402.315, 1002.55, 1002.69, and 1002.895, F.S.; conforming cross-references to changes made by the act.
- Section 10.** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments, *infra*.

D. FISCAL COMMENTS:

The bill requires that School Readiness program providers with a Gold Seal designation receive a minimum differential payment of 20 percent, rather than up to 20 percent. This may cause an indeterminate impact to available funding for School Readiness provider reimbursements.

There may be indeterminate costs associated with the transfer of administrative responsibilities for the Gold Seal Quality Care Program from the DCF to the DOE.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
None.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

The bill transfers rulemaking authority for the Gold Seal Quality Care Program from the DCF to the SBE.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to the Gold Seal Quality Care Program;
3 amending ss. 39.604, 212.08, and 402.26, F.S.;
4 conforming provisions and cross-references to changes
5 made by the act; transferring, renumbering, and
6 amending s. 402.281, F.S.; revising the requirements
7 of the Gold Seal Quality Care program; requiring the
8 State Board of Education to adopt specified rules;
9 specifying requirements for an accrediting entity,
10 rather than an accrediting association, to be approved
11 for participation in such program; requiring the
12 Department of Education to establish a specified
13 process and providing requirements therefor; deleting
14 a provision requiring consultation with certain
15 entities for specified purposes; authorizing the
16 Department of Education to recommend the maintenance
17 of Gold Seal Quality Care designation for certain
18 child care facilities; providing an exemption from ad
19 valorem taxation and rate differentials for certain
20 child care facilities; providing for a type two
21 transfer of the Gold Seal Quality Care program within
22 the Department of Children and Families to the
23 Department of Education within a specified time
24 period; providing for the continuation of certain
25 contracts and agreements; amending ss. 402.315,

1002.55, 1002.69, and 1002.895, F.S.; conforming cross-references to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (5) of section 39.604, Florida Statutes, is amended to read:

39.604 Rilya Wilson Act; short title; legislative intent; child care; early education; preschool.—

(5) EDUCATIONAL STABILITY.—Just as educational stability is important for school-age children, it is also important to minimize disruptions to secure attachments and stable relationships with supportive caregivers of children from birth to school age and to ensure that these attachments are not disrupted due to placement in out-of-home care or subsequent changes in out-of-home placement.

(b) If it is not in the best interest of the child for him or her to remain in his or her child care or early education setting upon entry into out-of-home care, the caregiver must work with the case manager, guardian ad litem, child care and educational staff, and educational surrogate, if one has been appointed, to determine the best setting for the child. Such setting may be a child care provider that receives a Gold Seal Quality Care designation pursuant to s. 1002.945 ~~s. 402.281~~, a

51 provider participating in a quality rating system, a licensed
52 child care provider, a public school provider, or a license-
53 exempt child care provider, including religious-exempt and
54 registered providers, and nonpublic schools.

55 Section 2. Paragraph (m) of subsection (5) of section
56 212.08, Florida Statutes, is amended to read:

57 212.08 Sales, rental, use, consumption, distribution, and
58 storage tax; specified exemptions.—The sale at retail, the
59 rental, the use, the consumption, the distribution, and the
60 storage to be used or consumed in this state of the following
61 are hereby specifically exempt from the tax imposed by this
62 chapter.

63 (5) EXEMPTIONS; ACCOUNT OF USE.—

64 (m) Educational materials purchased by certain child care
65 facilities.—Educational materials, such as glue, paper, paints,
66 crayons, unique craft items, scissors, books, and educational
67 toys, purchased by a child care facility that meets the
68 standards delineated in s. 402.305, is licensed under s.
69 402.308, holds a current Gold Seal Quality Care designation
70 pursuant to s. 1002.945 ~~s. 402.281~~, and provides basic health
71 insurance to all employees are exempt from the taxes imposed by
72 this chapter. For purposes of this paragraph, the term "basic
73 health insurance" shall be defined and promulgated in rules
74 developed jointly by the Department of Children and Families,
75 the Agency for Health Care Administration, and the Financial

76 Services Commission.

77 Section 3. Subsection (6) of section 402.26, Florida
78 Statutes, is amended to read:

79 402.26 Child care; legislative intent.—

80 ~~(6) It is the intent of the Legislature that a child care~~
81 ~~facility licensed pursuant to s. 402.305 or a child care~~
82 ~~facility exempt from licensing pursuant to s. 402.316, that~~
83 ~~achieves Gold Seal Quality status pursuant to s. 402.281, be~~
84 ~~considered an educational institution for the purpose of~~
85 ~~qualifying for exemption from ad valorem tax pursuant to s.~~
86 ~~196.198.~~

87 Section 4. Section 402.281, Florida Statutes, is
88 transferred, renumbered as section 1002.945, Florida Statutes,
89 and amended to read:

90 1002.945 ~~402.281~~ Gold Seal Quality Care program.—

91 (1) (a) There is established within the department the Gold
92 Seal Quality Care Program.

93 (b) A child care facility, large family child care home,
94 or family day care home that is accredited by an accrediting
95 entity ~~association~~ approved by the department under subsection
96 (3) and meets all other requirements shall, upon application to
97 the department, receive a separate "Gold Seal Quality Care"
98 designation.

99 (2) The State Board of Education ~~department~~ shall adopt
100 rules establishing Gold Seal Quality Care accreditation

standards using nationally recognized accrediting standards and
input from accrediting entities ~~based on the applicable~~
~~accrediting standards of the National Association for the~~
~~Education of Young Children (NAEYC), the National Association of~~
~~Family Child Care, and the National Early Childhood Program~~
~~Accreditation Commission.~~

(3)(a) In order to be approved by the department for participation in the Gold Seal Quality Care program, an accrediting entity ~~association~~ must apply to the department and demonstrate that it:

1. Has qualified personnel experienced in the
accreditation of child care facilities, large family child care
homes, or family day care homes ~~is a recognized accrediting~~
~~association.~~

2. Has accrediting standards that substantially meet, or exceed, the Gold Seal Quality Care standards adopted by the state board ~~department~~ under subsection (2).

3. Has proven expertise with accrediting standards that
are substantially similar to the Gold Seal Quality Care
standards adopted by the state board under subsection (2).

4. Is a registered corporation with the Department of
State.

5. Can provide evidence that the accreditation process
has, at a minimum, all of the following components:

a. Clearly defined prerequisites that a child care

126 provider must meet before beginning the accreditation process.
127 However, accreditation may not be granted to a child care
128 facility, large family child care home, or family day care home
129 before the site is operational and is attended by children.

130 b. Procedures for completion of a self-study and
131 comprehensive onsite verification process for each classroom
132 that documents compliance with accrediting standards.

133 c. A training process for accreditation verifiers to
134 ensure inter-rater reliability.

135 d. Ongoing compliance procedures that include requiring
136 each accredited child care facility, large family child care
137 home, and family day care home to file an annual report with the
138 accrediting entity and risk-based, onsite auditing protocols for
139 accredited child care facilities, large family child care homes,
140 and family day care homes.

141 e. Procedures for the revocation of accreditation due to
142 failure to maintain accrediting standards as evidenced by sub-
143 subparagraph d. or any other relevant information received by
144 the accrediting entity.

145 f. Accreditation renewal procedures that include an onsite
146 verification occurring at least every 5 years.

147 g. A process for verifying continued accreditation
148 compliance in the event of a transfer of ownership of
149 facilities.

150 h. A process to communicate issues that arise during the

151 accreditation period with governmental entities that have a
152 vested interest in the Gold Seal Quality Care Program, including
153 the department, the Department of Children and Families, the
154 Department of Health, local licensing entities if applicable,
155 and the early learning coalition.

156 (b) The department shall establish a process that verifies
157 that the accrediting entity meets the provisions of paragraph
158 (a), which must include an auditing program and any other
159 procedures that may reasonably determine an accrediting entity's
160 compliance with this section. If an accrediting entity is not in
161 compliance and fails to cure its deficiencies within 30 days,
162 the department shall recommend to the state board termination of
163 the accrediting entity's participation in the program for a
164 period of at least 2 years but not more than 5 years. If an
165 accrediting entity's participation in the program is terminated,
166 each child care provider accredited by that entity shall have up
167 to 1 year to obtain a new accreditation from a department-
168 approved accreditation entity.

169 (c) If an accrediting entity has granted accreditation to
170 a child care facility, large family child care home, or family
171 day care under fraudulent terms or failed to conduct onsite
172 verifications, the accrediting entity shall be liable for the
173 repayment of any rate differentials paid under subsection (6).

174 (d) The department may remove an accrediting entity from
175 being an approved accrediting entity if the accrediting entity

176 has accredited 10 or fewer child care providers in the previous
177 5 years.

178 ~~(b) In approving accrediting associations, the department~~
179 ~~shall consult with the Department of Education, the Florida Head~~
180 ~~Start Directors Association, the Florida Association of Child~~
181 ~~Care Management, the Florida Family Child Care Home Association,~~
182 ~~the Florida Children's Forum, the Florida Association for the~~
183 ~~Education of the Young, the Child Development Education~~
184 ~~Alliance, the Florida Association of Academic Nonpublic Schools,~~
185 ~~the Association of Early Learning Coalitions, providers~~
186 ~~receiving exemptions under s. 402.316, and parents.~~

187 (4) In order to obtain and maintain a designation as a
188 Gold Seal Quality Care provider, a child care facility, large
189 family child care home, or family day care home must meet the
190 following additional criteria:

191 (a) The child care provider must not have had any class I
192 violations, as defined by rule of the Department of Children and
193 Families, within the 2 years preceding its application for
194 designation as a Gold Seal Quality Care provider. Commission of
195 a class I violation shall be grounds for termination of the
196 designation as a Gold Seal Quality Care provider until the
197 provider has no class I violations for a period of 2 years.

198 (b) The child care provider must not have had three or
199 more class II violations, as defined by rule of the Department
200 of Children and Families, within the 2 years preceding its

201 application for designation as a Gold Seal Quality Care
202 provider. Commission of three or more class II violations within
203 a 2-year period shall be grounds for termination of the
204 designation as a Gold Seal Quality Care provider until the
205 provider has no class II violations for a period of 1 year.

206 (c) The child care provider must not have been cited for
207 the same class III violation, as defined by rule of the
208 Department of Children and Families, three or more times and
209 failed to correct the violation within 1 year after the date of
210 each citation, within the 2 years preceding its application for
211 designation as a Gold Seal Quality Care provider. Commission of
212 the same class III violation three or more times and failure to
213 correct within the required time during a 2-year period may be
214 grounds for termination of the designation as a Gold Seal
215 Quality Care provider until the provider has no class III
216 violations for a period of 1 year.

217 (d) Notwithstanding paragraph (a), if the department
218 determines through a formal process that a child care provider
219 has been in business for at least 5 years and has no other class
220 I violations recorded, the department may recommend to the state
221 board that the provider maintain its Gold Seal Quality Care
222 designation. The state board's determination regarding such
223 provider's designation is final.

224 (5) A child care facility licensed pursuant to s. 402.305
225 or a child care facility exempt from licensing pursuant to s.

226 402.316 which achieves Gold Seal Quality Care designation under
227 this section shall be considered an educational institution for
228 the purpose of qualifying for an exemption from ad valorem
229 taxation under s. 196.198.

230 (6) A child care facility licensed pursuant to s. 402.305
231 or a child care facility exempt from licensing pursuant to s.
232 402.316 which achieves Gold Seal Quality Care status under this
233 section and which participates in the school readiness program
234 shall receive a minimum of a 20 percent rate differential for
235 each enrolled school readiness child by care level and unit of
236 child care.

237 (7)~~(5)~~ The state board ~~Department of Children and Families~~
238 shall adopt rules under ss. 120.536(1) and 120.54 which provide
239 criteria and procedures for reviewing and approving accrediting
240 entities ~~associations~~ for participation in the Gold Seal Quality
241 Care program and~~7~~ conferring and revoking designations of Gold
242 Seal Quality Care providers~~7~~ ~~and classifying violations.~~

243 Section 5. (1) Before July 1, 2026, all powers, duties,
244 functions, records, offices, personnel, associated
245 administrative support positions, property, pending issues,
246 existing contracts, administrative authority, administrative
247 rules, and unexpended balances of appropriations, allocations,
248 and other funds relating to the Gold Seal Quality Care program
249 within the Department of Children and Families are transferred
250 by a type two transfer, as defined in s. 20.06(2), Florida

251 Statutes, to the Department of Education.

252 (2) Any binding contract or interagency agreement existing
253 before July 1, 2021, between the Department of Children and
254 Families, or an entity or agent of the department, and any other
255 agency, entity, or person relating to the Gold Seal Quality Care
256 program shall continue as a binding contract or interagency
257 agreement for the remainder of the term of the contract or
258 agreement on the successor entity responsible for the program,
259 activity, or function relative to the contract or agreement.

260 Section 6. Subsection (5) of section 402.315, Florida
261 Statutes, is amended to read:

262 402.315 Funding; license fees.—

263 (5) All moneys collected by the department for child care
264 licensing shall be held in a trust fund of the department to be
265 reallocated to the department during the following fiscal year
266 to fund child care licensing activities, including the Gold Seal
267 Quality Care program created pursuant to s. 1002.945 ~~s. 402.281~~.

268 Section 7. Paragraph (b) of subsection (3) of section
269 1002.55, Florida Statutes, is amended to read:

270 1002.55 School-year prekindergarten program delivered by
271 private prekindergarten providers.—

272 (3) To be eligible to deliver the prekindergarten program,
273 a private prekindergarten provider must meet each of the
274 following requirements:

275 (b) The private prekindergarten provider must:

276 1. Be accredited by an accrediting association that is a
277 member of the National Council for Private School Accreditation,
278 or the Florida Association of Academic Nonpublic Schools, or be
279 accredited by the Southern Association of Colleges and Schools,
280 or Western Association of Colleges and Schools, or North Central
281 Association of Colleges and Schools, or Middle States
282 Association of Colleges and Schools, or New England Association
283 of Colleges and Schools; and have written accreditation
284 standards that meet or exceed the state's licensing requirements
285 under s. 402.305, s. 402.313, or s. 402.3131 and require at
286 least one onsite visit to the provider or school before
287 accreditation is granted;

288 2. Hold a current Gold Seal Quality Care designation under
289 s. 1002.945 ~~s. 402.281~~; or

290 3. Be licensed under s. 402.305, s. 402.313, or s.
291 402.3131 and demonstrate, before delivering the Voluntary
292 Prekindergarten Education Program, as verified by the early
293 learning coalition, that the provider meets each of the
294 requirements of the program under this part, including, but not
295 limited to, the requirements for credentials and background
296 screenings of prekindergarten instructors under paragraphs (c)
297 and (d), minimum and maximum class sizes under paragraph (f),
298 prekindergarten director credentials under paragraph (g), and a
299 developmentally appropriate curriculum under s. 1002.67(2)(b).

300 Section 8. Paragraph (d) of subsection (7) of section

1002.69, Florida Statutes, is amended to read:

1002.69 Statewide kindergarten screening; kindergarten readiness rates; state-approved prekindergarten enrollment screening; good cause exemption.—

(7)

(d) A good cause exemption may not be granted to any private prekindergarten provider that has any class I violations or two or more class II violations within the 2 years preceding the provider's or school's request for the exemption. For purposes of this paragraph, class I and class II violations have the same meaning as provided in s. 1002.945(4) ~~s. 402.281(4)~~.

Section 9. Paragraph (a) of subsection (1) and paragraph (a) of subsection (2) of section 1002.895, Florida Statutes, are amended to read:

1002.895 Market rate schedule.—The school readiness program market rate schedule shall be implemented as follows:

(1) The office shall establish procedures for the adoption of a market rate schedule. The schedule must include, at a minimum, county-by-county rates:

(a) The market rate, including the minimum and the maximum rates for child care providers that hold a Gold Seal Quality Care designation under s. 1002.945 ~~s. 402.281~~.

(2) The market rate schedule, at a minimum, must:

(a) Differentiate rates by type, including, but not limited to, a child care provider that holds a Gold Seal Quality

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Care designation under s. 1002.945 ~~s. 402.281~~, a child care facility licensed under s. 402.305, a public or nonpublic school exempt from licensure under s. 402.3025, a faith-based child care facility exempt from licensure under s. 402.316 that does not hold a Gold Seal Quality Care designation, a large family child care home licensed under s. 402.3131, or a family day care home licensed or registered under s. 402.313.

Section 10. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 871 Sovereign Immunity for Child Protection Teams

SPONSOR(S): Snyder

TIED BILLS: **IDEN./SIM. BILLS:** SB 826

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	18 Y, 0 N	Mathews	Jones
2) Children, Families & Seniors Subcommittee		Rahming	Brazzell
3) Judiciary Committee			

SUMMARY ANALYSIS

Under s. 39.201(2)(a), F.S., reports of suspected child abuse, neglect, or abandonment by a parent, caregiver, custodian, or guardian of a child are reported to the Department of Children and Families (DCF). The DCF has a central abuse hotline that is available twenty-four hours a day for reporting such abuse, neglect, or abandonment. A Child Protection Team (CPT) is responsible for receiving referrals from the DCF to provide specialized support and services in processing child abuse, neglect, and abandonment cases. CPT services are funded by state general revenue and social services block grant funds through the DCF.

The Florida Department of Health's (DOH), Division of Children's Medical Services (CMS), Bureau of Child Protection and Special Technologies staff provides oversight of the statewide CPT system. A CPT generally consists of a group of physician-directed professionals who evaluate allegations of abuse, neglect, or abandonment, assess risks, and provide recommendations for child safety and support services.

Currently, individual government employees, officers, or agents are immune from civil liability for damages caused by an action arising within the scope of employment. Such immunity from civil liability does not extend to actions made in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property. The government entity is not liable for tortious actions arising outside the scope of the employee's employment. Case law indicates that contracted CPT physician consultants have immunity from civil liability under certain circumstances because in those situations the physician consultants are acting as agents of the state.

There are approximately 238 CPT members who are independent contractors. The DOH acknowledges that any CPT members acting within the scope and direction of their contractual duties may assert a claim of sovereign immunity as a defense to an action against that CPT member. However, if the trier of fact rejects the sovereign immunity claim, the DOH's indemnification and hold harmless contract provisions would apply and the contractor would be required to indemnify and defend the DOH if the agency were sued.

HB 871 expands the immunity from civil liability to include any member of a CPT, which includes the independent contractors. Therefore, any member of a CPT is immune from civil liability for actions arising out of the scope of his or her employment under the control, direction, and supervision of the state or any of its agencies or subdivisions.

The bill has an indeterminate fiscal impact on state government. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Waiver of Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.¹ Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. A limited statutory waiver of sovereign immunity permits tort lawsuits against Florida and its agencies and subdivisions for damages resulting from the negligence of a government officer, employee, or agent acting in the scope of employment.² This liability exists only where a private person would be liable for the same conduct.³ The waiver of sovereign immunity applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment”⁴

An individual government employee, officer, or agent is immune from suit or liability for damages caused by any action taken in the scope of his or her employment unless the damages result from an action made in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.⁵ A government entity is not liable for any damages resulting from actions by an employee outside the scope of his or her employment or for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.⁶

For purposes of this immunity from liability, an “officer, employee, or agent” includes, but is not limited to any:

- Health care provider when providing services pursuant to s. 766.1115, F.S.;
- Nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); and
- Public defender or her or his employee or agent, including, an assistant public defender and an investigator.⁷

Damages

Current law caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per accident.⁸ The limits apply to all elements of the monetary award to a plaintiff against a sovereignly immune entity.⁹ The limited waiver of immunity does not apply to punitive damages or interest for the period before judgment.¹⁰ Additionally, an attorney may not charge more than 25 percent of any judgment or settlement.¹¹

Claim Bills

Although an “excess” judgment award may be entered by a court, the statutory limitations make it impossible, absent a claim bill passed by the Legislature, for a claimant to collect more than the limits

¹ Sovereign immunity, Legal Information Institute, https://www.law.cornell.edu/wex/sovereign_immunity (last visited March 18, 2021).

² S. 768.28(1), F.S.

³ *Id.*

⁴ *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019).

⁵ S. 768.28(9)(a), F.S.

⁶ *Id.*

⁷ S. 768.28(9)(b)2., F.S.

⁸ S. 768.28(5), F.S.

⁹ *Gallagher v. Manatee County*, 927 So. 2d 914, 918 (Fla. 2d DCA 2006).

¹⁰ S. 768.28(5), F.S.

¹¹ S. 768.28(8), F.S.

identified above.¹² A claim bill, also known as a relief act, is a bill that compensates a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.¹³ It is not an action at law, but rather is a legislative measure that directs a relevant government entity or officer to pay a specific sum of money to a claimant to satisfy an obligation.¹⁴ A claim bill may be obtained exclusively from the Legislature or after obtaining a judgment from a Florida court.¹⁵

A government entity may, without a claim bill, settle a claim against it for an amount above the limits in s. 768.28, F.S., if that amount is within the limits of insurance coverage.¹⁶

Child Protection Teams

The Florida Department of Health (DOH) currently contracts with 22 independent, community-based organizations that serve as child protection teams.¹⁷ A “Child Protection Team” (CPT) is a team of professionals established by the DOH to receive referrals from the protective investigators and protective supervision staff of the Department of Children and Families (DCF) and to provide specialized and supportive services to the program in processing child abuse,¹⁸ abandonment,¹⁹ or neglect cases.^{20, 21} The teams perform medical evaluations, assess risks, and provide recommendations for child safety and support services.²²

Composition and Responsibilities

The CPT is one of six programs that make up the Division of Children’s Medical Services (CMS) of the DOH. The CPTs, within the CMS, have 22 district offices.²³ Each office must be available 24 hours per day, every day, to provide immediate medical diagnosis and evaluation, for consultations by phone, or for other assessment services.²⁴

Services

When a CPT accepts a referral from the DCF or law enforcement, the team must be able to provide, in part, the following services:

- Medical diagnosis and evaluation services;
- Nursing assessments;

¹² S. 768.28(5), F.S.; *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

¹³ The Florida Senate, The Florida House of Representatives Civil Justice Subcommittee, *Legislative Claim Bill Manual, Policies, Procedures, and Information Concerning Introduction and Passage*, p. , August 2019, <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf> (last visited Mar. 18, 2021).

¹⁴ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

¹⁵ *City of Miami v. Valdez*, 847 So. 2d 1005, 1006-1007 (Fla. 3d DCA 2003).

¹⁶ S. 768.28(5), F.S.

¹⁷ Florida Department of Health (DOH), *Agency Analysis for HB 871*, March 2, 2021.

¹⁸ S. 39.01(2), F.S., defines “abuse” as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.

¹⁹ S. 39.01(1), F.S., defines “abandoned” or “abandonment” as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. “Establish or maintain a substantial and positive relationship” means, in part, frequent and regular contact with the child, and the exercise of parental rights and responsibilities.

²⁰ S. 39.01(50), F.S., states “neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

²¹ S. 39.01(13), F.S.

²² Florida Department of Children and Families, *CFOP 170-5*, Chapter 9, p. 1 (Feb. 1, 2021), <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-05%20%20Child%20Protective%20Investigations/CFOP%20170-05%20%20Chapter%2009,%20Coordination%20with%20Child%20Protection%20Team.pdf> (last visited Mar. 26, 2021).

²³ The Florida Department of Health, *Children’s Medical Services Child Protection Teams*, 2020, <http://www.cms-kids.com/home/contact/cpt.pdf> (last visited Mar. 26, 2021).

²⁴ The Florida Department of Health, Children’s Medical Services, *Child Protection Team Program Handbook*, p. 4 (June 28, 2019), http://www.cms-kids.com/providers/prevention/documents/handbook_cpt.pdf (last visited Mar. 26, 2021).

- Child and family social assessments;
- Multidisciplinary case staffings;
- Psychological and psychiatric diagnosis and evaluations;
- Specialized and forensic interviews; and
- Expert medical, psychological, and related professional testimony in court cases.²⁵

Cases Referred to a Child Protection Team

The following cases involving child abuse, abandonment, or neglect that are reported to the Central Abuse Hotline must be referred to a CPT:

- Head injuries, bruises to the head or neck, burns, or fractures in a child, regardless of age.
- Bruises that appear anywhere on a child who is five years old or younger.
- Alleged child sexual abuse.
- A sexually transmitted disease that occurs in a prepubescent child.
- Reported malnutrition or failure to thrive.
- Medical neglect.
- Instances of a child or sibling remaining in a home where a child has been pronounced dead on arrival at a hospital or a child has been injured and then died due to suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional issues occurring in a child.²⁶

Employees and Sovereign Immunity

The CPTs operate under the oversight of a medical director who is a board-certified pediatrician with special training in child abuse and neglect.²⁷ According to the DOH, Florida's CPTs have approximately 364 team members, excluding medical directors, who are employed by private, non-profit entities.²⁸ Each team includes a medical director, other physicians, advanced practice registered nurses, physician assistants, registered nurses, team coordinators, case coordinators, and support staff.²⁹ State universities and county governmental entities employ approximately 126 of the team members.³⁰ The remaining 238 or so members are independent contractors.

Sovereign Immunity and Child Protection Team Physicians

It is not definitively settled whether all CPT physicians are covered under sovereign immunity. Whether sovereign immunity applies depends on the degree of control that the state maintains over the agent on a case-by-case basis. In *Stoll v. Noel*,³¹ the Florida Supreme Court explained that, under the appropriate circumstances, independent contractor physicians may be agents of the state for purposes of sovereign immunity, and therefore protected.

The *Stoll* Court examined the employment contract between CMS physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did. The manuals and guides given to physician consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons. Furthermore, the Court's conclusion was supported by the state's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and the state acknowledged full financial responsibility for the physicians' actions. The

²⁵ S. 39.303(3), F.S. Further, a CPT that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child is required to consult with a physician who has experience in treating children with the same condition.

²⁶ S. 39.303(4), F.S.

²⁷ S. 39.303(2)(a), F.S.

²⁸ *Supra* note 17, at 2.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

Court noted that the state's interpretation of its manual is entitled to judicial deference and great weight.³²

Currently, the DOH acknowledges that a CPT member acting within the scope and direction of the contractual duties they provide on behalf of the DOH may assert a claim of sovereign immunity as a defense to an action against that CPT member.³³ However, it is the trier of fact that ultimately decides whether sovereign immunity succeeds as a defense to an action. Therefore, if the trier of fact rejects a sovereign immunity claim, the DOH's indemnification and hold harmless contract provisions³⁴ would apply and the contractor would be required to indemnify and defend the DOH if the agency were sued.³⁵ Additionally, the contractor may be required to join the lawsuit as part of that clause prior to the final determination by the trier of fact.³⁶

Litigation Cases

Since FY 2006-2007, there have been a total of 33 claims involving some level of involvement with CPTs.³⁷

Division of Risk Management Claims Involving Child Protection Team Members

<i>Fiscal Year</i>	<i>Lawsuits</i>	<i>Notice of Claim Only³⁸</i>	<i>Total Claims</i>	<i>Current Status</i>
2006-2007	9	2	11	All Closed
2007-2008	4	1	5	All Closed
2008-2009	4	1	5	All Closed
2009-2010	0	1	1	All Closed
2010-2011	0	1	1	All Closed
2011-2012	0	1	1	All Closed
2012-2013	3	0	3	All Closed
2013-2014	1	2	3	All Closed
2014-2015	0	1	1	All Closed
2015-2016	1	1	2	All Closed
2016-2017	0	0	0	
2017-2018	0	0	0	
2018-2019	0	0	0	
2019-2020	0	0	0	
2020-2021	0	0	0	
TOTAL	22	11	33	

Effect of Proposed Changes

The bill amends s. 768.28(9)(b), F.S., to expand the definition of "officer, employee, or agent" to include "any member of a child protection team, as defined in s. 39.01, F.S., when carrying out her or his duties as a team member under the control, direction, and supervision of the state or any of its agencies or subdivisions." Under the bill, a member of a CPT will receive sovereign immunity protection in a tort action only when a team member is determined to have acted under the control, direction, and supervision of the state or one of its entities. If the CPT member is found to be acting outside of that control, then sovereign immunity will not protect the team member in a tort lawsuit.

³² *Id.*

³³ Email from Louise St. Laurent, General Counsel, Office of the General Counsel, Florida Department of Health, RE: RE HB 871, regarding contracts between the DOH and CPTs (Mar. 29, 2021).

³⁴ All DOH standard contracts, including those for CPTs, require an indemnification clause, which holds the DOH harmless from all claims, suits, judgments, or damages arising out of any direct or indirect act, actions, neglect, or omissions by the provider, its agents, or employees during the performance or operation of the contract. See, email from Louise St. Laurent, General Counsel, Office of the General Counsel, Florida Department of Health, RE: RE HB 871, regarding contracts between the DOH and CPTs (Mar. 26, 2021). See also examples of the DOH's Indemnification clause on page 2 of the email attachments.

³⁵ *Supra* note 33.

³⁶ *Id.*

³⁷ Email from Meredith Brock Stanfield, Director of Legislative and Cabinet Affairs, Office of Chief Financial Officer Jimmy Patronis, RE: HB 871 (2020), regarding updated information on claims involving Child Protection Team Members (Mar. 25, 2021).

³⁸ Notice was filed with the Division of Risk Management pursuant to s. 768.28(6), F.S., but formal litigation was not instituted.

B. SECTION DIRECTORY:

Section 1: Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.

Section 2: The bill provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to sovereign immunity for Child
3 Protection Teams; amending s. 768.28, F.S.; revising
4 the definition of the term "officer, employee, or
5 agent" as it applies to immunity from personal
6 liability in certain actions to include any member of
7 a Child Protection Team established by the Department
8 of Health in certain circumstances; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Paragraphs (a) and (b) of subsection (9) of
14 section 768.28, Florida Statutes, are amended to read:

15 768.28 Waiver of sovereign immunity in tort actions;
16 recovery limits; limitation on attorney fees; statute of
17 limitations; exclusions; indemnification; risk management
18 programs.—

19 (9) (a) An ~~No~~ officer, employee, or agent of the state or
20 of any of its subdivisions may not ~~shall~~ be held personally
21 liable in tort or named as a party defendant in any action for
22 any injury or damage suffered as a result of any act, event, or
23 omission of action in the scope of her or his employment or
24 function, unless such officer, employee, or agent acted in bad
25 faith or with malicious purpose or in a manner exhibiting wanton

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26 and willful disregard of human rights, safety, or property.
27 However, such officer, employee, or agent shall be considered an
28 adverse witness in a tort action for any injury or damage
29 suffered as a result of any act, event, or omission of action in
30 the scope of her or his employment or function. The exclusive
31 remedy for injury or damage suffered as a result of an act,
32 event, or omission of an officer, employee, or agent of the
33 state or any of its subdivisions or constitutional officers is
34 ~~shall be~~ by action against the governmental entity, or the head
35 of such entity in her or his official capacity, or the
36 constitutional officer of which the officer, employee, or agent
37 is an employee, unless such act or omission was committed in bad
38 faith or with malicious purpose or in a manner exhibiting wanton
39 and willful disregard of human rights, safety, or property. The
40 state or its subdivisions are ~~shall not be~~ liable in tort for
41 the acts or omissions of an officer, employee, or agent
42 committed while acting outside the course and scope of her or
43 his employment or committed in bad faith or with malicious
44 purpose or in a manner exhibiting wanton and willful disregard
45 of human rights, safety, or property.

46 (b) As used in this subsection, the term:

- 47 1. "Employee" includes any volunteer firefighter.
48 2. "Officer, employee, or agent" includes, but is not
49 limited to, any health care provider when providing services
50 pursuant to s. 766.1115; any nonprofit independent college or

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51 university located and chartered in this state which owns or
52 operates an accredited medical school, and its employees or
53 agents, when providing patient services pursuant to paragraph
54 (10) (f); ~~and~~ any public defender or her or his employee or
55 agent, including, ~~among others,~~ an assistant public defender or
56 ~~and~~ an investigator; and any member of a Child Protection Team,
57 as defined in s. 39.01(13), when carrying out her or his duties
58 as a team member under the control, direction, and supervision
59 of the state or any of its agencies or subdivisions.

60 Section 2. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1071 Medicaid Coverage for Former Foster Youth

SPONSOR(S): Roth

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Facilities Subcommittee	16 Y, 1 N	Grabowski	Lloyd
2) Children, Families & Seniors Subcommittee		Grabowski	Brazzell
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect. Florida's child welfare system is administered by the Department for Children and Families (DCF), which works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of Florida's children. When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for children. Foster care can be an appropriate setting for many children, but is also associated with greater needs for certain services.

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration and financed by federal and state funds.

While in foster care, nearly all children are eligible for Medicaid under mandatory eligibility pathways. This means that states must provide coverage because these children receive assistance under the federal Title IV-E foster care program, are disabled, or meet other eligibility criteria. Young adults who age out of the foster care system at age 18 continue to be eligible for Medicaid coverage until age 26, but they have traditionally been required to apply for continued Medicaid coverage when aging out.

The bill requires DCF to develop a program that facilitates the Medicaid enrollment of former foster youth. DCF may collaborate with community-based care organizations to implement the program, which must include:

- Notifying eligible or prospectively eligible young adults, caregivers, group homes, and residential programs about the eligibility and options for enrollment.
- Providing technical assistance to eligible young adults in enrolling.
- Publicizing options for Medicaid enrollment for young adults who have lived in foster care.

The bill modifies Medicaid eligibility standards for former foster youth, consistent with changes to federal law. Under the bill, former foster youth would maintain Medicaid eligibility until reaching age 26. The bill also directs DCF to allow for presumptive eligibility for former foster youth, as required under federal law. DCF is already compliant with the federal requirements codified by the bill.

The bill has a significant, negative recurring fiscal impact to the Medicaid program and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Children and Families

The Department of Children and Families (DCF) 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.¹ DCF must develop a strategic plan to fulfill its mission and establish measureable goals, objectives, performance standards, and quality assurance requirements to ensure the department is accountable to taxpayers.²

Under s. 20.19(4), F.S., DCF must provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

DCF must also deliver services by contract through private providers to the extent allowed by law and funding.³ These private providers include managing entities delivering behavioral health services and community-based care lead agencies (CBCs) delivering child welfare services.

Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect. Florida's child welfare system is administered by DCF, which works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of Florida's children.⁴

DCF contracts for case management, out-of-home care, and related services with lead agencies, also known as CBCs. The model of using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.⁵

CBCs are responsible for providing foster care and related services. These services include, but are not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.⁶ The CBC must give priority to services that are evidence-based and trauma informed.⁷ CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.⁸

¹ S. 20.19(1), F.S.

² Id.

³ Id.

⁴ S. 39.001, F.S.

⁵ Department of Children and Families, *Community-Based Care*, <https://www.myflfamilies.com/service-programs/community-based-care/overview.shtml> (last accessed March 18, 2021).

⁶ Id.

⁷ S. 409.988, F.S.

⁸ Department of Children and Families, *Community Based Care Lead Agency Map*, <https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml> (last accessed March 18, 2021).

Title IV-E Funding for Child Welfare

While states bear primary responsibility for child welfare, Congress appropriates funds to states through a variety of funding streams for services to children who have suffered maltreatment. One of these funding streams is established in Title IV-E of the Social Security Act (SSA).⁹ Title IV-E supports foster care, adoption assistance, and (at state option) guardianship assistance to children who meet federal IV-E eligibility rules. The program may be used for kinship navigator programs meeting IV-E evidence standards, and states may opt to provide selected evidence-based foster care prevention services.¹⁰

Under IV-E, states must provide foster care and adoption aid to eligible children, and the federal government is committed to paying a part of the cost of that aid (50% to 83%, depending on the state); and a part of the cost of administering the program (50% in all states) and for training (75% in all states). States may opt to provide IV-E guardianship aid under this same cost-sharing structure. Nationally, an estimated 703,000 children received Title IV-E support in an average month during federal fiscal year 2019, including adoption aid (504,000), foster care (163,000), or guardianship aid (35,000).¹¹

In general, states must only spend IV-E dollars on children who meet federal eligibility criteria. Rules vary by type of aid. For foster care, they include an income test (applied to the home the child is removed from), removal requirements (typically, a judge must find that a home is “contrary to the welfare” of the child and that “reasonable efforts” to prevent foster care were made), placement in a licensed foster family home or other eligible facility, and age requirements.¹²

Foster Care

When children cannot safely remain at home with parents, Florida’s child welfare system finds safe out-of-home placements for children. After a placement assessment to determine the most appropriate out-of-home placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or residential setting.¹³ When a child is placed in foster care, DCF has placement care and responsibility and may move a child at any time and often without court approval.

Young adults who age out of the foster care system have trouble achieving self-sufficiency. When compared to young adults without foster care involvement, young adults who age out of the foster care system are less likely to earn a high school diploma or GED and have lower rates of college attendance.¹⁴ They suffer more from mental health problems, have a higher rate of involvement with the criminal justice system, and are more likely to have difficulty achieving financial independence.¹⁵ These young adults also have a higher need for public assistance and are more likely to experience housing instability, including homelessness.¹⁶

In Federal Fiscal Year 2017, nationally about 189,000 teens and young adults spent at least one day in foster care.¹⁷ Of those who left care during that year, more than 19,000 aged out of care.¹⁸ This generally means youth reached a state’s legal age of adulthood without having reached permanency.

⁹ 42 U.S.C. § Ch. 7, Subch. IV, Pt. E.

¹⁰ Congressional Research Service, *Child Welfare: Purposes, Federal Programs, and Funding*, March 17, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF10590> (last accessed March 25, 2021).

¹¹ *Id.*

¹² *Id.*

¹³ R. 65C-28.004, F.A.C.

¹⁴ Gypen, L., Vanderfaeillie, J., et al., “Outcomes of Children Who Grew Up in Foster Care: Systematic-Review”, *Children and Youth Services Review*, vol. 76, pp. 74-83, <http://dx.doi.org/10.1016/j.childyouth.2017.02.035> (Last accessed March 22, 2021).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Congressional Research Services, *John H. Chafee Foster Care Program for Successful Transition to Adulthood* (January 15, 2019) <https://fas.org/sqp/crs/misc/IF11070.pdf> (last accessed March 19, 2021).

¹⁸ *Id.*

In State Fiscal Year (SFY) 2019-20, 1,043 young adults 17 years of age were in Florida's foster care system.¹⁹ Of those, 866 (83%) aged out of care at the age of 18.²⁰ A foster youth who ages out of care at 18 can elect to enter Florida's extended foster care program by meeting certain requirements. Of the 866 young adults who aged out at age 18, 487 entered extended foster care and were eligible to receive foster care services until the age of 21, or 22 with a disability.²¹

However, certain young adults who were in foster care may choose to participate in the Postsecondary Education Services and Supports (PESS) program instead of extended foster care. Young adults in the PESS program receive a monthly stipend of \$1,256 per month to pay for housing, utilities, and living expenses.²² The PESS program is available to:

- Young adults who turned 18 while in foster care and who spent a total of at least six months in licensed out-of-home care before turning 18; or
- Young adults who are at least 18 and were adopted from foster care after age 16 or were placed with a court-approved guardian after spending at least 6 months in licensed foster care within the 12 months immediately preceding such adoption or placement and have earned a high school diploma or its equivalent and are attending a college or vocational school that is Florida Bright Futures eligible.

In SFY 2018-19, there were 1,221 young adults in the PESS program.²³

Florida Medicaid Program

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including DCF, which makes eligibility determinations.

The structure of each state's Medicaid program varies, but what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.²⁴ Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The entitlement means that two parts of the Medicaid cost equation – people and utilization – are largely predetermined for the states. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include physician services, hospital services, home health services, and family planning.²⁵ States can add benefits, with federal approval. Florida has added many optional benefits, including prescription drugs, ambulatory surgical center services, and dialysis.²⁶

The Florida Medicaid program covers approximately 4.5 million low-income individuals.²⁷ Medicaid is the second largest single program in the state, behind public education, representing approximately one-third of the total FY 2020-2021 state budget.²⁸

¹⁹ Email from John Paul Fiore, Legislative Specialist, Florida Department of Children and Families, RE: Data Request from H. CFS, (Feb. 25, 2021)(on file with Children, Families, and Seniors Subcommittee staff).

²⁰ *Id.*

²¹ *Id.*

²² Florida Department of Children and Families, Independent Living, Postsecondary Education Services and Supports, <https://www.myflfamilies.com/service-programs/independent-living/postsecondary-education-services.shtml> (last accessed March 25, 2021).

²³ Florida Department of Children and Families, *Independent Living Annual Report* (Jan 31, 2021), <https://www.myflfamilies.com/service-programs/independent-living/postsecondary-education-services.shtml> (last accessed March 25, 2021).

²⁴ Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).

²⁵ S. 409.905, F.S.

²⁶ S. 409.906, F.S.

²⁷ Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report*, December 2020, available at https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last accessed March 18, 2021).

Medicaid for Current Foster Youth

While in foster care, nearly all children are eligible for Medicaid under mandatory eligibility pathways. This means that states must provide coverage because these children receive assistance under the Title IV-E foster care program, are disabled, or meet other eligibility criteria. Under the Title IV-E program, states must inform foster youth within 90 days prior to emancipation about their future options for health care. Title IV-E also directs states to provide these youth with health information and official documentation that they were previously in care. Such documentation may be necessary to determine eligibility for some former foster youth who later apply for Medicaid.²⁹

Medicaid for Former Foster Youth

Former foster youth are also eligible for Medicaid under current law. This includes a young adult who is eligible under Title IV-E of the SSA for subsidized board payments, foster care, or adoption subsidies, or a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption. Current law requires DCF or a CBC to document that current and former foster youth are enrolled in Medicaid.³⁰

The federal Patient Protection and Affordable Care Act³¹ (PPACA, as amended; P.L. 111-148) required states, as of January 1, 2014, to provide Medicaid coverage to former foster youth until their 26th birthday. It parallels another PPACA requirement that health insurance companies provide coverage of children up to age 26 under their parents' private health care plans. There is no income limit for eligibility and the young adult must not be eligible for another Medicaid coverage type. However, the individual must make application for this coverage with ACCESS Florida, the state's platform for managing social services eligibility.³² This requirement is key, as many former foster youth who are eligible for Medicaid never complete the application process.

In 2018, Congress supplemented PPACA requirements by adopting the SUPPORT Act.³³ The Act requires states to provide former foster care youth with Medicaid coverage up to age 26, regardless of what state they lived in when they aged out of the foster care system, by calendar year 2023. Currently, Medicaid must cover youth up to age 26 within the state the youth aged out of foster care, and states have the option to cover youth who age out of another state's foster care system.

In addition, the SUPPORT Act requires states to streamline the process by which former foster youth are covered under Medicaid.³⁴ In compliance with this requirement, DCF implemented automatic enrollment for former foster youth beginning in January 2021.³⁵ This means foster youth who age out of care after January 1, 2021, no longer need to apply for coverage through ACCESS Florida.

Effect of Proposed Changes

The bill requires DCF to develop a program that facilitates the Medicaid enrollment of former foster youth. DCF may collaborate with the CBCs in the implementation of the program, which must include:

²⁸ Ch. 2020-111, L.O.F. See also *Fiscal Analysis in Brief: 2020 Legislative Session*, https://flsenate.gov/UserContent/Committees/Publications/FiscalAnalysisInBrief/2020_Fiscal_Analysis_In_Brief.pdf (last accessed March 18, 2021).

²⁹ *Id.*

³⁰ S. 409.1451(10), F.S.

³¹ P.L. 111-148, 42 USC 1396a(a)(10)(IX).

³² The DCF, CFOP 170-15, Chapter 2 Medicaid, 2-9.a., available at

<https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-15%20%20Federal%20and%20State%20Funding%20Eligibility/CFOP%20170-15,%20%20Chapter%2002,%20Medicaid.pdf> (last accessed March 19, 2021).

³³ P.L. 115-271. The full title of the legislation is the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act. The former foster youth provisions are in section 1002 of the Act.

³⁴ *Id.* See also 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

³⁵ Department of Children and Families, *Agency Bill Analysis for HB 1071 of 2021*, March 8, 2021 (on file with Finance & Facilities Subcommittee staff).

- Notifying eligible or prospectively eligible young adults, caregivers, group homes, and residential programs about the eligibility and options for enrollment.
- Providing technical assistance to eligible young adults in enrolling.
- Publicizing options for Medicaid enrollment for young adults who have lived in foster care.

Since January 1, 2021, DCF ensures that foster children are automatically enrolled in Medicaid as they age out of the program consistent with federal requirements. The bill will result in an active enrollment effort focused on those youths that aged out of foster care prior to January 1, 2021. That population will shrink each year, until the last such youths have attained the age of 26.

The bill modifies Medicaid eligibility standards for former foster youth, consistent with changes to federal law. Under the bill, former foster youth would maintain Medicaid eligibility until reaching age 26. The bill also directs DCF to allow for presumptive eligibility for former foster youth, as required under PPACA. DCF is already compliant with the federal requirements codified by the bill.

The bill also has the effect of removing certain populations described in s. 409.1451, F.S. from guaranteed Medicaid eligibility. This includes children achieving adoption or guardianship after the age of 16 after spending at least 6 months in licensed care prior to adoption or guardianship, along with meeting additional program requirements. See DRAFTING ISSUES OR OTHER COMMENTS section below.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.1451, F.S.; relating to the Road-to-Independence program.

Section 2: Amends s. 409.903, F.S.; relating to mandatory payment for eligible persons.

Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

AHCA reports that 1,730 young adults (ages 18-26) aged out of foster care prior to January 1, 2021, but did not enroll in Medicaid. The DCF outreach program under the bill would be targeted at this population, and AHCA provided the following information regarding the costs of enrolling these Medicaid-eligible young adults:

	Estimated Fiscal Impact			
	100%	75%	50%	25%
Estimated Number of Individuals	1730	1298	865	433
Rate (average expenditures per member 7/1/19-12/31/19)	\$379.36	\$379.36	\$379.36	\$379.36
Total Computable	\$7,875,522	\$5,906,641	\$3,937,761	\$1,968,880
General Revenue	\$3,050,977	\$2,288,233	\$1,525,489	\$762,744

The percentages in the table reflect the number of eligible young adults enrolled because of outreach efforts. For example, if 50% of the eligible population were enrolled in Medicaid, AHCA would pay an additional \$3.9 million per year in payments to MMA plans for that coverage (\$1.5 million general revenue; \$2.4 million federal match). These costs would decline over time and eventually reach \$0, since DCF has implemented automatic enrollment for former foster youths.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 and AHCA have sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As drafted, the bill would have the effect of removing certain populations described in s. 409.1451, F.S. from guaranteed Medicaid eligibility. This includes children achieving adoption or guardianship after the age of 16 after spending at least 6 months in licensed care prior to adoption or guardianship, along with additional program requirements. If the intent of the bill is to extend Medicaid eligibility to *all* former foster youth to age 26, in compliance with federal requirements, the bill should be amended to address this erroneous drafting. The bill sponsor is expected to offer an amendment in subcommittee to address this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 1071

2021

1 A bill to be entitled
2 An act relating to Medicaid coverage for former foster
3 youth; amending s. 409.1451, F.S.; requiring the
4 Department of Children and Families to develop a
5 program to facilitate enrollment of certain young
6 adults in Medicaid; authorizing the department to
7 coordinate with a community-based care lead agency in
8 implementing the program; specifying requirements for
9 outreach services provided by the program; amending s.
10 409.903, F.S.; revising eligibility for Medicaid
11 coverage for certain young adults formerly eligible
12 for foster care; providing for presumptive eligibility
13 for Medicaid for certain young adults; providing an
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (10) of section 409.1451, Florida
19 Statutes, is amended to read:

20 409.1451 The Road-to-Independence Program.—

21 (10) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN
22 CARE.—

23 (a) Notwithstanding paragraph (2)(a), the department or
24 community-based care lead agency shall develop a program to
25 facilitate the enrollment of ~~document that eligible~~ young adults

HB 1071

2021

26 eligible for ~~are enrolled in~~ Medicaid under s. 409.903(4).

27 (b) The department may coordinate with the community-based
28 care lead agency in implementing the program.

29 (c) The program must provide outreach services that must
30 include:

31 1. Notifying eligible or prospectively eligible young
32 adults, caregivers, group homes, and residential programs about
33 the eligibility and options for enrollment.

34 2. Providing technical assistance to eligible young adults
35 in enrolling.

36 3. Publicizing options for Medicaid enrollment for young
37 adults who have lived in foster care.

38 Section 2. Subsection (4) of section 409.903, Florida
39 Statutes, is amended to read:

40 409.903 Mandatory payments for eligible persons.—The
41 agency shall make payments for medical assistance and related
42 services on behalf of the following persons who the department,
43 or the Social Security Administration by contract with the
44 Department of Children and Families, determines to be eligible,
45 subject to the income, assets, and categorical eligibility tests
46 set forth in federal and state law. Payment on behalf of these
47 Medicaid eligible persons is subject to the availability of
48 moneys and any limitations established by the General
49 Appropriations Act or chapter 216.

50 (4) A child who is eligible under Title IV-E of the Social

51 Security Act for subsidized board payments, foster care, or
52 adoption subsidies, and a child for whom the state has assumed
53 temporary or permanent responsibility and who does not qualify
54 for Title IV-E assistance but is in foster care, shelter or
55 emergency shelter care, or subsidized adoption. This category
56 includes:

57 (a) A young adult who as a child was eligible under Title
58 IV-E of the Social Security Act for foster care or state-
59 provided foster care and was living in licensed care in this
60 state on his or her 18th birthday ~~is eligible to receive~~
61 ~~services under s. 409.1451~~, until the young adult reaches 26 ~~21~~
62 years of age, without regard to any income, resource, or
63 categorical eligibility test that is otherwise required. A young
64 adult who is eligible for Medicaid under this paragraph must be
65 offered the opportunity, subject to federal rules, to be made
66 presumptively eligible.

67 (b) ~~A person who as a child was eligible under Title IV-E~~
68 ~~of the Social Security Act for foster care or the state provided~~
69 ~~foster care and who is a participant in the Road-to-Independence~~
70 ~~Program.~~

71 ~~(c)~~ A child who is eligible for the Guardianship
72 Assistance Program as provided in s. 39.6225.

73 Section 3. This act shall take effect July 1, 2021.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1071 (2021)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ☐ (Y/N)

ADOPTED AS AMENDED ☐ (Y/N)

ADOPTED W/O OBJECTION ☐ (Y/N)

FAILED TO ADOPT ☐ (Y/N)

WITHDRAWN ☐ (Y/N)

OTHER ☐

Committee/Subcommittee hearing bill: Children, Families &
Seniors Subcommittee

Representative Roth offered the following:

Amendment (with title amendment)

Remove lines 57-71 and insert:

(a) A young adult who is eligible to receive services under s. 409.1451, until the young adult reaches 21 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required.

(b) Notwithstanding paragraph (a), a young adult who as a child was eligible under Title IV-E of the Social Security Act for foster care or state-provided foster care and was living in out-of-home care in this state on his or her 18th birthday until the young adult reaches 26 years of age, without regard to any income, resource, or categorical eligibility test that is

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1071 (2021)

Amendment No. 1

17 ~~otherwise required A person who as a child was eligible under~~
18 ~~Title IV-E of the Social Security Act for foster care or the~~
19 ~~state-provided foster care and who is a participant in the Road-~~
20 ~~to-Independence Program.~~

21 (c) A child who is eligible for the Guardianship
22

23 -----

24 **T I T L E A M E N D M E N T**

25 Remove lines 12-13 and insert:

26 for foster care; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425 Task Force on the Monitoring of Children in Out-of-home Care

SPONSOR(S): Williams

TIED BILLS: **IDEN./SIM. BILLS:** SB 1582

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Woodruff	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

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 these children.

The 2002 disappearance of Rilya Wilson raised national awareness of the problem of children becoming missing while under the care of child welfare agencies. Since then, Florida has enacted legislation and implemented policies intended to improve tracking of children in state care. Current law outlines reporting requirements when the whereabouts of a child involved with DCF becomes unknown and provides specific rulemaking authority for reporting, locating, recovering, and stabilizing children whose whereabouts are unknown and for preventing recurrence of such incidents.

HB 1425 creates the Task Force on the Monitoring of Children in Out-of-Home care within DCF. The task force is required to develop a statewide system for collecting information on and monitoring the whereabouts and safety of children in out-of-home care. It must explore ways to improve the use of technology, training, communication, and cooperation among all entities involved in the child welfare system in order to improve the quality of care for children placed in out-of-home care and identify children who are risk for being lost. It also requires the task force to develop statewide uniform guidelines, standards, and protocols to effectively respond when a child in out-of-home care is missing.

The task force must be composed of 15 members representing DCF, the Department of Law Enforcement, the Guardian ad Litem program, Safe Kids Florida within the Department of Health, CBCs, and Child Protection Teams. The Governor, the President of the Senate, and the Speaker of the House of Representatives will appoint task force members.

The bill requires the task force to submit monthly reports on the number of children who have gone missing and the reasons why, if known, to DCF's Secretary. Beginning January 2, 2022, and every year thereafter, the task force must submit its recommendations for developing a statewide monitoring system and uniform guidelines to the Governor, the President of the Senate, and to the Speaker of the House of Representatives.

The bill has no fiscal impact on state government or local governments.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

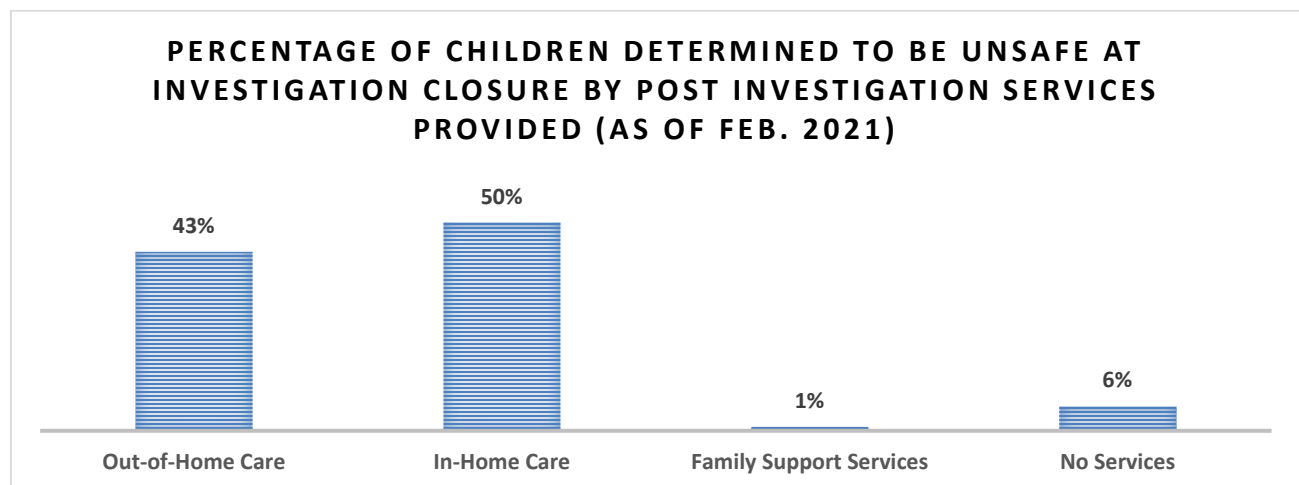
A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. 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 these children.

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. The graph below shows the responses for children determined to be unsafe, depicting the percentage of such children placed in out-of-home placements, receiving services in the home or through family support services, which are offered to families on a voluntary basis, and receiving no services.¹



DCF contracts for case management, out-of-home services, and related services with CBCs. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.

DCF directly performs a number of child welfare functions, including operating the central abuse hotline, conducting child protective investigations, and providing children's legal services.² Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.³

Out-of-Home Care

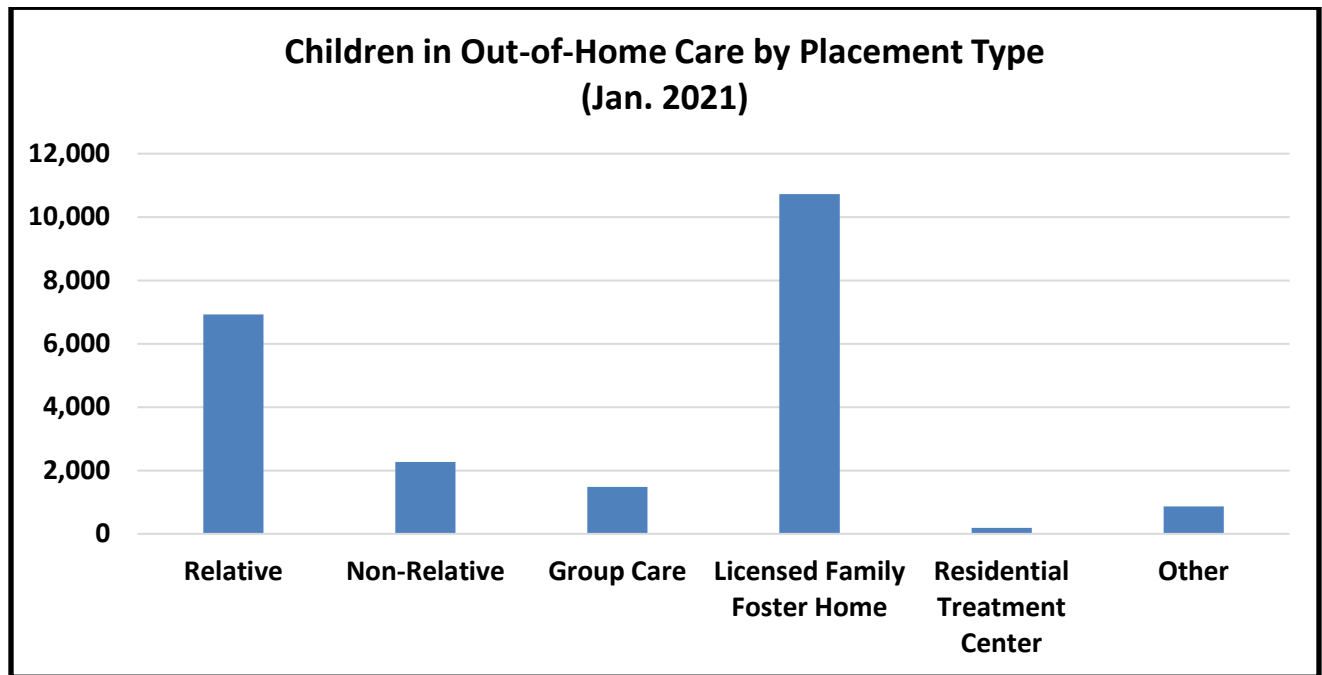
When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for children. After an assessment to determine the most appropriate out-of-home

¹ Florida Department of Children and Families, Child Welfare Key Indicators Monthly Report, (Feb. 2021), http://centerforchildwelfare.fmhi.usf.edu/ga/cwkeyindicator/KI_Monthly_Report_Feb%202021.pdf (last visited Mar. 21, 2021).

² OPPAGA, report 06-50.

³ *Id.*

placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or residential setting.⁴ While in out-of-home care, the child and his or her parents receive services to address problems that led to the removal so that reunification or other permanency options may be reached as quickly as possible.⁵



Missing Children in DCF's Custody

The 2002 disappearance of Rilya Wilson⁶ raised national awareness of the problem of children becoming missing while under the care of child welfare agencies. Since then, Florida has enacted legislation and implemented policies to better monitor the location of children in state care.⁷

In the wake of Rilya Wilson's disappearance, at the direction of Governor Jeb Bush, DCF and the Florida Department of Law Enforcement (FDLE) teamed up to locate 393 missing children who were under DCF's custody.⁸ The multi-agency, statewide effort was entitled "Operation SafeKids" (Operation). Seven Regional Child Location Strike Forces were created in each of FDLE's seven regions. The results of the Operation included:

- 292 (75%) children were located or cases were closed.
- 13 (3%) children aged out of care and were no longer under the custody of DCF but still had active cases with law enforcement.
- 88 (22%) children were not located and remained under active investigation by the local law enforcement agency and DCF. Of these, 20 were included in the Endangered/Parental Abduction/Involuntary group, and 68 were included in the Runaway group.⁹

⁴ R. 65C-28.004, F.A.C.

⁵ Child Welfare Information Gateway, *Out-of- Home Care Overview*, <https://www.childwelfare.gov/topics/outofhome/overview/#:~:text=Out%2Dof%2Dhome%20care%20is,to%20abuse%20and%20for%20neglect>. (last visited Mar. 13, 2021).

⁶ Four-year old Rilya Wilson went missing while in DCF's custody after the termination of her mother's parental rights. DCF did not discover her disappearance until two years later, when Rilya was not founding living at the home of her grandmother. The Florida Legislature passed and the Governor signed a bill into law that created the Rilya Wilson Act. Section 39.604, F.S., to require a child from birth to the age of school entry, who is under court-ordered protective supervision or in out-of-home care and is enrolled in an early education or child care program to attend the program 5 days a week unless the court grants an exemption.

⁷ Florida Senate, The Committee on Children, Families, and Elder Affairs, *Missing Children*, Interim Project Report 2008-106 (Oct. 2007) <https://www.flsenate.gov/UserContent/Committees/Publications/InterimWorkProgram/2008/pdf/2008-106cf.pdf> (last visited Mar. 25, 2021).

⁸ Florida Department of Law Enforcement and Florida Department of Children and Families, *Operation SafeKids, Results, Findings & Recommendations* (Dec. 17, 2002), https://popcenter.asu.edu/sites/default/files/problems/runaways/PDFs/FL%20DOC&F_2002.pdf.

⁹ *Id.*

The table below provides the results of the Operation as of December 2002.

Original 393 Missing Children (Dec. 10, 2002)¹⁰				
Category	Missing at Start	Located	Emancipated (case open with law enforcement)	Still missing (case open with DCF and law enforcement)
Parental	31	21	0	10
Involuntary	4	0	0	4
Endangered	19	13	0	6
Runaway	339	258	13	68
TOTAL	393	292	13	88

The children still classified as missing remained as active investigations with local law enforcement and DCF.¹¹ The final report on the Operation included a variety a reasons children had not been located including:

- Children hiding, as evidenced by those children who made non-traceable telephone contact with their case managers or non-custodial parent, advising of their well-being but indicating they will not disclose their whereabouts until reaching the age of 18.¹²
- Parents fearing arrest or termination of their parental rights.

In addition to locating missing children, the Operation was required to implement standard procedures for opening missing person cases for every child discovered to be missing while in DCF's custody.

In 2008, Florida made additional changes to statute through HB 7077 which¹³:

- Gave DCF rule-making authority for addressing missing children. The law directed DCF to promulgate rules to provide comprehensive, explicit and consistent guidelines for its employees and contracted providers.
- Required DCF and its contracted providers to report a child as missing to the appropriate law enforcement agency, after making reasonable but unsuccessful efforts to locate the child and determining that it is necessary to report the child as missing.
- Specified that a law enforcement agency must take reports of missing children not only from parents and guardians but also from DCF or its contracted providers.

DCF requires caregivers, legal guardians, and child welfare professionals to immediately report a child missing to law enforcement when the child:

- Is under the age of 13.
- Has a physical or mental incapacity, or a developmental or behavioral challenge that renders the situation more dangerous than it would be for a child with more maturity or resources.
- Is with others who may endanger his or her safety.
- Is missing under circumstances inconsistent with established behaviors.¹⁴

In all other situations, a report to law enforcement may be made at least four hours from the time the child is first discovered missing to actively search for and attempt to locate the child.¹⁵ After notifying law enforcement, the caregiver or legal guardian must immediately notify child welfare professionals that the child's whereabouts are unknown. Child welfare professionals must make efforts to locate the child at least once a week until the child is located, reaches 18, or the child protective investigator has obtained sufficient information to close the investigation.¹⁶

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Chapter 2008-245, L.O.F.

¹⁴ R. 65C-30.019(1)(a), F.A.C.

¹⁵ R. 65C-30.019(1)(b), F.A.C.

¹⁶ R. 65C-30.019(5), F.A.C.

After DCF makes an initial missing child report to the appropriate local law enforcement agency, the law enforcement agency then enters the case into the Florida Crime Information System (FCIC). This entry ensures all law enforcement and criminal justice professionals nationwide are notified of the Florida missing child. Additionally, DCF creates a record about the missing child in its case management system, Florida Safe Families Network (FSFN) as described below.¹⁷

A DCF liaison co-located within FDLE's Missing Endangered Persons Information Clearinghouse (MEPIC) quality controls the information in FSFN using internal DCF information and the missing child's FCIC entry. This information is electronically transferred from the DCF liaison to members of MEPIC who facilitate its entry into MEPIC's Missing Persons Database (MPDB). In addition to populating a variety of Florida systems and access points to the information, MPDB also electronically transfers the information regarding the child to the National Center for Missing and Exploited Children (NCMEC).¹⁸

Florida law allows DCF and the law enforcement agency primarily responsible for investigating the incident to release information to the public when it believes the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child.¹⁹

Collection of Information

FSFN is the state's comprehensive, automated case management system that helps social workers manage foster care and adoption cases.²⁰ FSFN serves as the statewide electronic case record for all child abuse investigations and case management activities in Florida. FSFN also captures information on missing children who are in the custody of DCF.²¹ This information includes:

- When the child ran, if the child is missing due to running away.
- Location from where the child ran, if the child is missing due to running away.
- The child's characteristics.
- The child's picture.
- The police report number.
- Any information on a companion or abductor.
- A narrative of events or valuable information on occurrences before a child's disappearance.

FSFN activates an alert when a child is missing and captures the history of all missing child episodes entered into FSFN.²²

Measures Regarding Children in the Child Welfare System Who Are Missing

DCF publishes a monthly key indicators report on the overall performance of the child welfare system. The monthly report includes information on the average number of children categorized as missing while in DCF's care, the timeliness of reports of missing children entered into FSFN, and whether missing child entries in FSFN were resolved within 3 days.²³

In January 2021, there were 187 children reported as missing from DCF's care.²⁴ The following graph shows the trend of reported missing children from SFY 2016-17 to SFY 2019-20.

¹⁷ Florida Department of Law Enforcement, *2021 FDLE Agency Bill Analysis for HB 1425*, (Mar. 10, 2021).

¹⁸ *Id.*

¹⁹ S. 39.202(4), F.S.

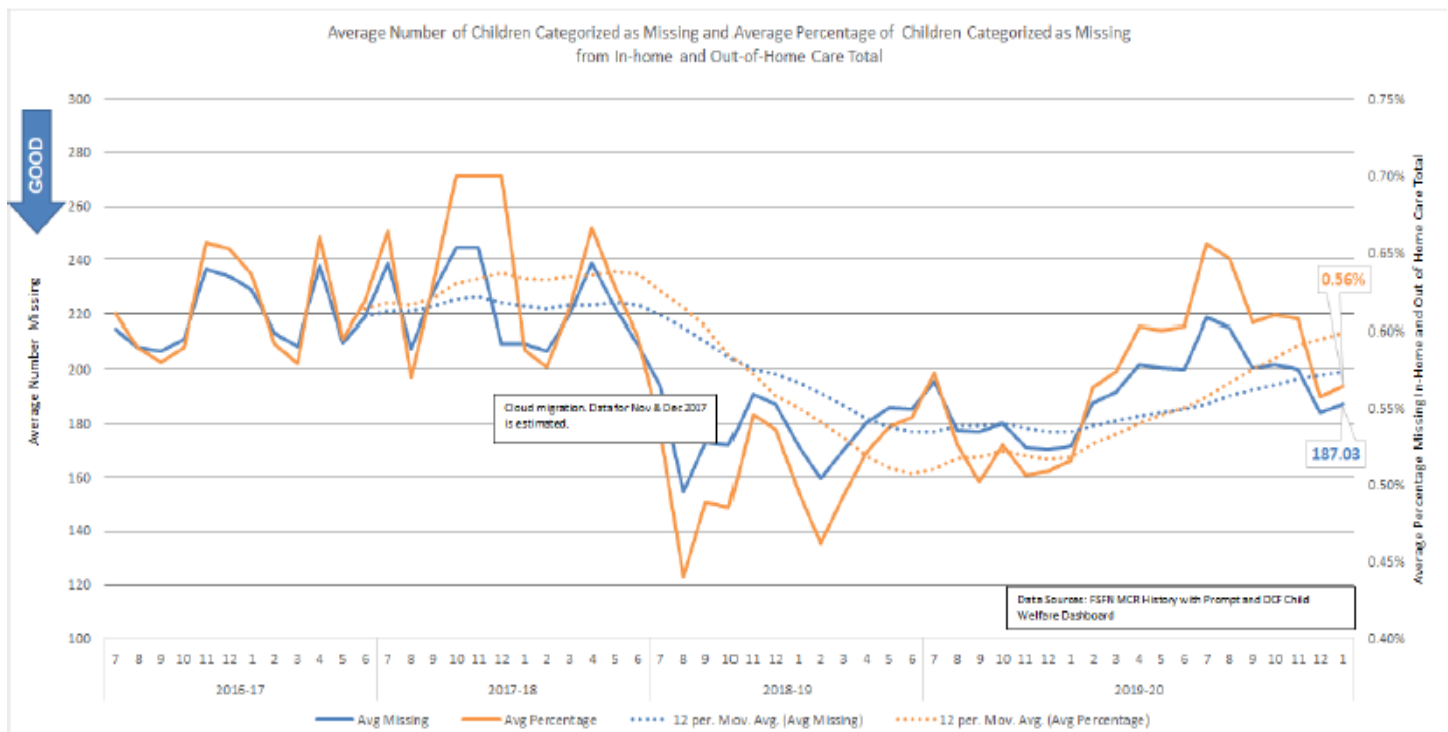
²⁰ 65C-38.001, F.A.C.

²¹ Florida Department of Children and Families, *2021 Agency Bill Analysis for HB 1425* (March 12, 2021).

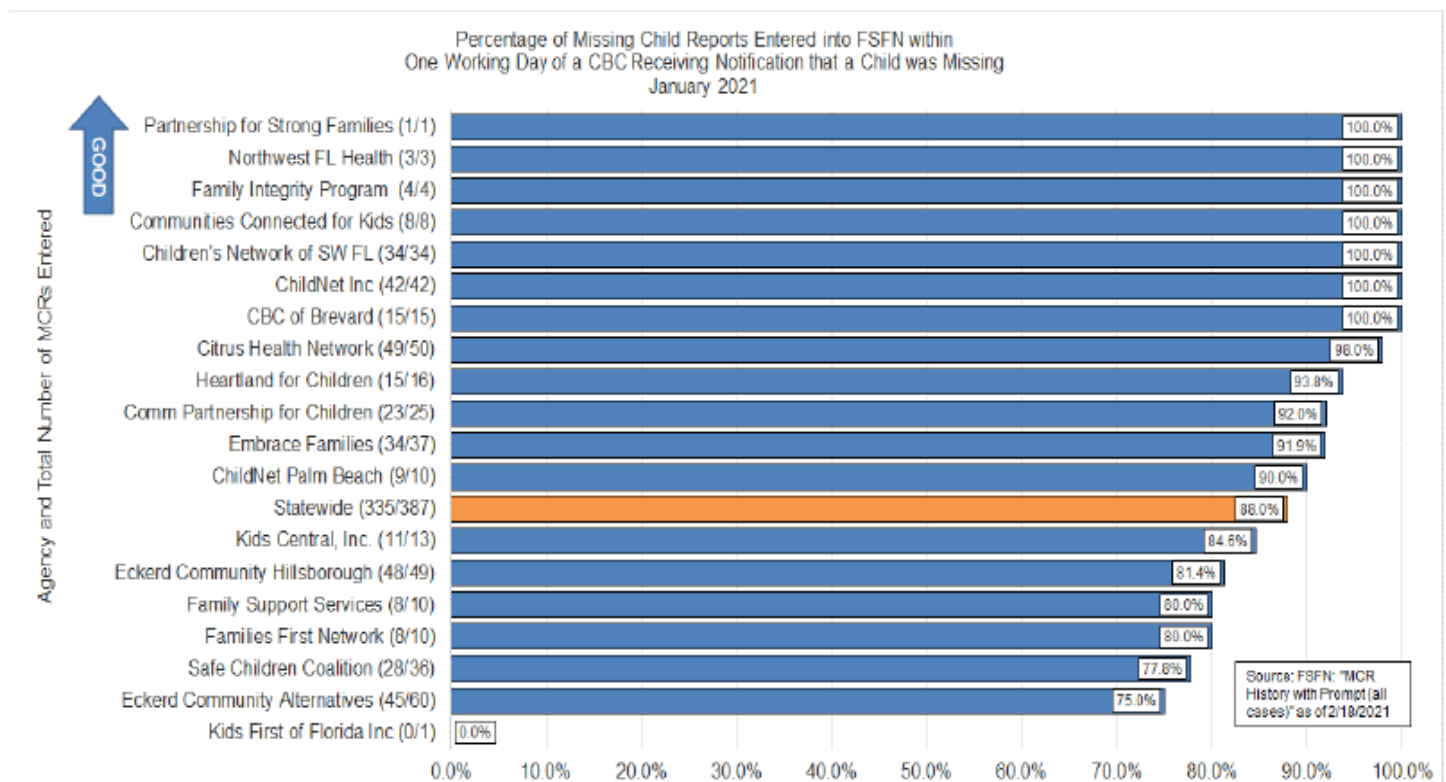
²² *Id.*

²³ Florida Department of Children and Families, Child Welfare Key Indicators Monthly Report (Feb. 2021), http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_Feb%202021.pdf.

²⁴ *Id.*



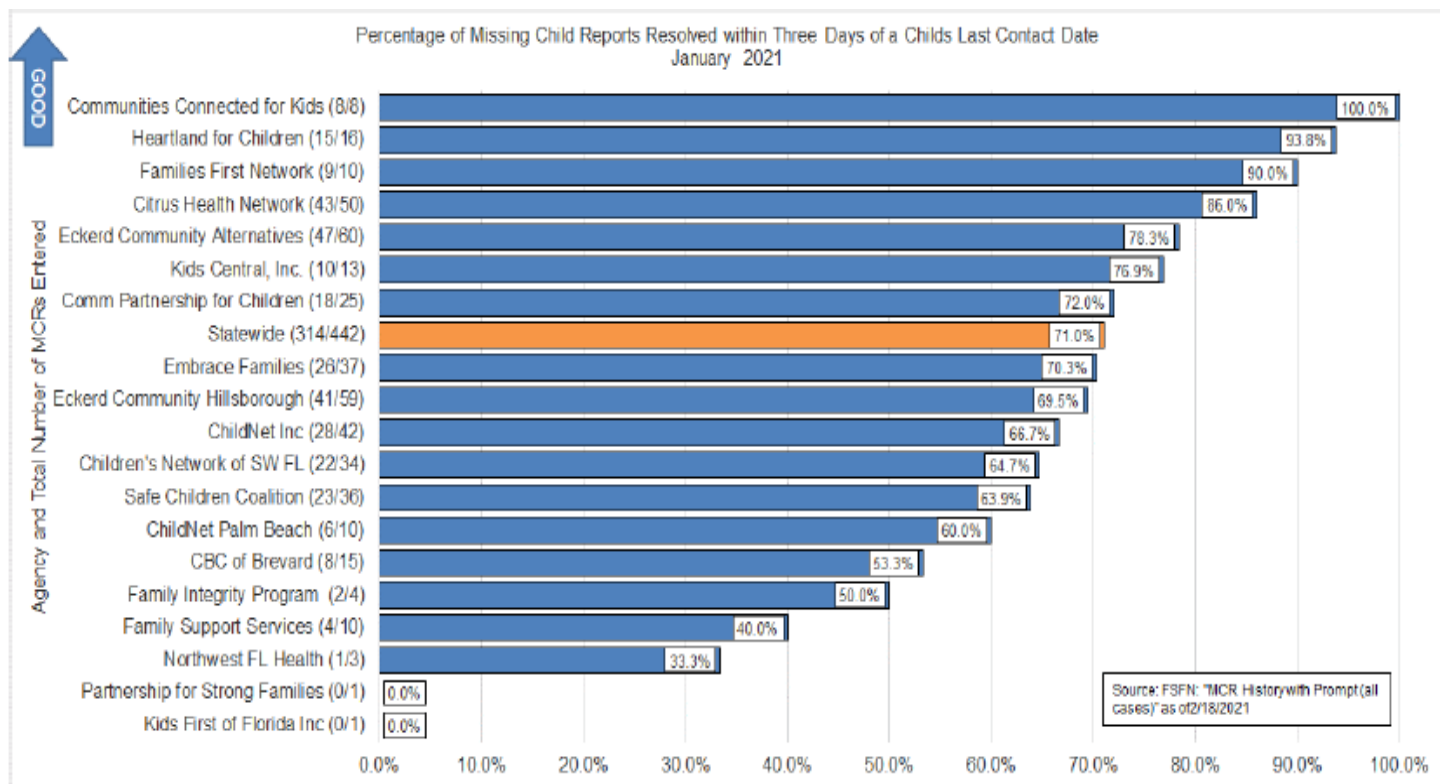
The following graph provides information of the timeliness of reports entered into FSFN on missing children by CBC for January 2021.²⁵



The graph below provides the percentage of missing child entries in FSFN that were resolved within 3 days by CBC for January 2021.²⁶

²⁵ Id.

²⁶ Id.



Task Forces, Councils, and Commissions

Section 20.03, F.S., includes definitions related to organizational structure. It defines a "task force" as an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.²⁷

Florida has established a number of task forces in the past related to child welfare. These have typically been created either by the Governor or DCF's Secretary in response to a tragic incident involving a child under DCF's custody. Examples of these include, in part:

- The Nubia Report, the Investigative Panel's Findings and Recommendations, 2011.²⁸
- Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings, 2007.²⁹
- Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse, 2010.³⁰
- Governor's Blue Ribbon Panel on Child Protection, 2003 (Rilya Wilson).³¹

There is currently no task force that monitors children in out-of-home care.

Effect of Proposed Changes

²⁷ S. 20.30(8), F.S.

²⁸ Lawrence, D., Martinez, R., and Sewell, J., *The Nubia Report, The Investigative Panel's Findings and Recommendations*, <http://centerforchildwelfare.org/kb/bppub/NubiasStory.pdf>

²⁹ Florida Department of Children and Families, *Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings*, <http://centerforchildwelfare.org/kb/FIPPerformance/cclark%20QA%20Initial%20Findings.pdf>

³⁰ Florida Department of Children and Families, *Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse*, <https://www.myflfamilies.com/initiatives/GMWorkgroup/docs/Gabriel%20Myers%20COC%20Report%20May%2014%202010.pdf>

³¹ Florida Department of Children and Families, *Governor's Blue Ribbon Panel on Child Protection*, <http://centerforchildwelfare.org/kb/FIPPerformance/BlueRibbonFinal110703.pdf>

HB 1425 creates the Task Force on the Monitoring of Children in Out-of-Home Care within DCF. The task force must be composed of 15 members. The bill specifies membership to include representatives from DCF, the Department of Law Enforcement, the Guardian ad Litem program, Safe Kids Florida within the Department of Health, CBCs, and Child Protection Teams. The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint five members.

Each member serves at the pleasure of the appointing official, and a vacancy on the task force must be filled in the same manner as the original appointment. The members must annually elect a chair from among its members.

The bill requires the task force to develop a statewide system for collecting information on, and monitoring the whereabouts and safety of children in, out-of-home care. It must explore ways to improve the use of technology, training, communication, and cooperation among all entities involved in the child welfare system in order to improve the quality of care for children placed in out-of-home care and identify children who are risk for being lost. It requires the task force to develop statewide uniform guidelines, standards, and protocols to effectively respond when a child in out-of-home care is missing.

The bill requires the task force to submit monthly reports on the number of children who have gone missing and the reasons why, if known, to DCF's Secretary. Beginning January 2, 2022, and every year thereafter, the task force must submit its recommendations for developing a statewide monitoring system and uniform guidelines to the Governor, the President of the Senate, and to the Speaker of the House of Representatives.

The bill requires the task force to meet as necessary in order to complete its duties and allows the task force to conduct meetings through teleconference or other similar electronic means. Members are not entitled to receive reimbursement for per diem or travel expenses.

B. SECTION DIRECTORY:

Section 1: Creating s. 39.4092, F.S., relating to a task force on the monitoring of children in out-of-home care.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the Task Force on the Monitoring of
3 Children in Out-of-Home Care; creating s. 39.4092,
4 F.S.; creating the Task Force on the Monitoring of
5 Children in Out-of-Home Care for specified purposes;
6 providing for membership; authorizing the task force
7 to conduct meetings through teleconferences;
8 prohibiting members from being reimbursed for per diem
9 or travel expenses; requiring monthly reports to the
10 Secretary of the Department of Children and Families;
11 requiring the task force to annually submit certain
12 recommendations to the Governor and Legislature;
13 providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 39.4092, Florida Statutes, is created
18 to read:

19 39.4092 Task Force on the Monitoring of Children in Out-
20 of-Home Care.—

21 (1) The Task Force on the Monitoring of Children in Out-
22 of-Home Care, a task force as defined in s. 20.03(8), is
23 established within the Department of Children and Families. The
24 task force shall be composed of 15 members. Five members shall
25 be appointed by the Governor, five members shall be appointed by

26 the President of the Senate, and five members shall be appointed
27 by the Speaker of the House of Representatives. The task force
28 shall be composed of representatives from the Department of
29 Children and Families, the Department of Law Enforcement, the
30 Guardian Ad Litem Program, Safe Kids Florida within the
31 Department of Health, community based care lead agencies, and
32 Child Protection Teams. Each member shall serve at the pleasure
33 of the appointing official. A vacancy on the task force shall be
34 filled in the same manner as the original appointment.

35 (2) The task force shall annually elect a chair from among
36 its members.

37 (3) The task force shall meet as necessary in order to
38 complete its task. The task force may conduct its meetings
39 through teleconferences or other similar electronic means.
40 Members of the task force are not entitled to receive
41 reimbursement for per diem or travel expenses.

42 (4) The task force shall develop a statewide system for
43 collecting information on, and monitoring the whereabouts and
44 safety of, children who have been placed in out-of-home care.
45 The task force shall explore ways to improve the use of
46 technology, training, communication, and cooperation among all
47 entities involved in the child welfare system in order to
48 improve the quality of care of children placed in out-of-home
49 care and to identify children who are at risk for being lost.
50 The task force shall develop statewide uniform guidelines,

51 standards, and protocols to effectively respond when a child in
52 out-of-home care is reported missing.

53 (5) The task force shall submit monthly reports on the
54 number of children who have gone missing, and the reason why, if
55 known, from out-of-home care to the Secretary of the Department
56 of Children and Families. Beginning January 1, 2022, and every
57 year thereafter, the task force shall submit its recommendations
58 for developing a statewide monitoring system and uniform
59 guidelines as required under subsection (4) to the Governor, the
60 President of the Senate, and the Speaker of the House of
61 Representatives.

62 Section 2. This act shall take effect July 1, 2021.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1425 (2021)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ☐ (Y/N)

ADOPTED AS AMENDED ☐ (Y/N)

ADOPTED W/O OBJECTION ☐ (Y/N)

FAILED TO ADOPT ☐ (Y/N)

WITHDRAWN ☐ (Y/N)

OTHER ☐

Committee/Subcommittee hearing bill: Children, Families &
Seniors Subcommittee

Representative Williams offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 39.4092, Florida Statutes, is created
to read:

39.4092 Task Force on the Monitoring of Children in Out-
of-Home Care.—

(1) CREATION. -The Task Force on the Monitoring of
Children in Out-of-Home Care, a task force as defined in s.
20.03(8), is established within the Florida Department of Law
Enforcement. The Florida Department of Law Enforcement shall
provide administrative and staff support services relating to
the functions of the task force.

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Amendment No. 1

17 (2) PURPOSE. -The purpose of the task force is to identify
18 and counter root causes of why, and to ensure that prompt and
19 effective action is taken to address, children becoming missing
20 while in out-of-home care. The task force shall examine and
21 recommend improvements to current policies, procedures,
22 programs, and initiatives to prevent children from becoming
23 missing while in out-of-home care and to ensure that timely and
24 comprehensive steps are taken when children are missing for any
25 reason, including, but not limited to, running away, human
26 trafficking, and abduction by or absconding with a parent or an
27 individual who does not have care or custody of the child.

28 (3) MEMBERSHIP; MEETINGS.-

29 (a) The task force shall be composed of 13 members as
30 follows:

31 1. A member of the Senate, appointed by the President of
32 the Senate.

33 2. A member of the House of Representatives, appointed by
34 the Speaker of the House of Representatives.

35 3. The Secretary, or designee.

36 4. The Secretary of the Department of Juvenile Justice, or
37 designee.

38 5. The Executive Director of the Guardian ad Litem Office,
39 or designee.

40 6. The Executive Director of the Florida Department of Law
41 Enforcement, or designee.

7. A representative from Safe Kids Florida, appointed by the Surgeon General.

8. A representative from the Statewide Council on Human Trafficking, appointed by the Attorney General.

9. A representative from a community-based care lead agency delivering child welfare services in a rural county, appointed by the secretary.

10. A representative from a community-based care lead agency delivering child welfare services in an urban county, appointed by the secretary.

11. A licensed foster parent, appointed by the secretary.

12. A representative from a residential group care provider, appointed by the secretary.

13. A young adult who aged out of the foster care system, appointed by the secretary.

(b) Appointments to the task force must be made by August 1, 2021. Members shall be appointed to serve at the pleasure of the official who appointed the member. A vacancy on the task force shall be filled in the same manner as the original appointment.

(c) The task force shall elect a chair from among its members.

(d) The task force shall convene no later than September 1, 2021. The task force shall meet monthly or upon the call of the

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66 chair. The task force shall hold its meetings through
67 teleconference or other electronic means.

68 (4) DUTIES.—The duties of the task force include the
69 following:

70 (a) Analyzing statistical data regarding children in out-
71 of-home care who are missing, and the reasons why children are
72 missing, if known.

73 (b) Identifying the root causes of why children become
74 missing while in out-of-home care and how to prevent children
75 from becoming missing while in out-of-home care.

76 (c) Assessing the relationship between children becoming
77 missing from out-of-home care and the risks of such children
78 becoming victims of human trafficking.

79 (d) Assessing the comprehensiveness and effectiveness of
80 existing policies and procedures for preventing children in out-
81 of-home care from becoming missing, promptly determining whether
82 such children are missing, and locating them.

83 (e) Evaluating the state's approaches to reporting on the
84 individual status of children missing from out-of-home care and
85 the results of efforts to locate them, including, but not
86 limited to, the use of technology, training, communication, and
87 cooperation.

88 (f) Measuring the overall performance of the efforts to
89 locate and recover children missing from out-of-home, including,
90 but not limited to, the communication and response between

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91 community-based care lead agencies, the department, and other
92 entities.

93 (g) Collaborating with the Florida Institute for Child
94 Welfare to identify best practices used in other states for the
95 monitoring of the location of children in out-of-home care who
96 become missing, and evaluating whether they should be adopted in
97 this state.

98 (h) Submitting recommendations to improve policies,
99 procedures, and systems including, but not limited to,
100 technology, training, communication, and cooperation, so all
101 entities are effectively monitoring children in out-of-home
102 care, responding to such children who are missing, and
103 preventing children from becoming missing while in out-of-home
104 care.

105 (5) Until October 1, 2022, the department shall submit
106 monthly reports to the task force to assist the task force in
107 fulfilling its duties. The monthly reports must, at a minimum,
108 address the number and percentage of children in out-of-home
109 care who have been reported missing and the reasons why, if
110 known, and the length of time between when children are reported
111 missing and their recovery or return. This shall be reported by
112 age, county, community-based care lead-agency, and reason.

113 (6) The Florida Institute for Child Welfare shall conduct
114 focus groups with children in out-of-home care and young adults
115 who aged out of the foster care system to assist the task force

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116 in fulfilling its duties. The focus groups must, at a minimum,
117 consider reasons why children seek to leave their placements,
118 and identify opportunities and resources to assist and prevent
119 children from leaving placements, and, if they become missing,
120 facilitate their return. The Institute shall submit findings
121 from the focus groups to the task force by April 1, 2022.

122 (7) REPORTS.— The task force shall submit a report by
123 October 1, 2022, addressing the topics in subsections (4), (5),
124 and (6) to the Governor, the President of the Senate, and the
125 Speaker of the House of Representatives.

126 (8) This section is repealed June 30, 2023, unless saved
127 from repeal through reenactment by the Legislature.

128 -----
129

T I T L E A M E N D M E N T

130 Remove everything before the enacting clause and insert:
131 An act relating to the Task Force on the Monitoring of
132 Children in Out-of-Home Care; creating s. 39.4092, F.S.;
133 creating the Task Force on the Monitoring of Children in
134 Out-of-Home Care for specified purposes; providing for
135 membership; authorizing the task force to conduct meetings
136 through teleconference; requiring the department to submit
137 monthly reports to the task force; requiring the Florida
138 Institute for Child Welfare to conduct focus groups and
139 submit findings; requiring the task force to submit a
140

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1425 (2021)

Amendment No. 1

141 | report to the Governor and Legislature; providing a repeal
142 | date unless saved from repeal by the Legislature; providing
143 | an effective date.