

CHILDREN AND FAMILIES -- DEPARTMENTWIDE

Surplus Retention Limitations for Providers of Rate-Based Services

Motion:

Move to modify contracting requirements for rate-based services purchased by the Department of Health Services (DHS), the Department of Children and Families (DCF), the Department of Corrections (DOC), or by county departments of human services, social services, community programs, or developmental disability services for social services under s. 46.036, public assistance and children and family services by under s. 49.34, and corrections under s. 301.08, as detailed below. Specify that these changes would take effect on January 1, 2018, and would first apply to contracts commencing performance after that date.

Specify that similar to current law for DCF and DHS, in regards to s. 301.08 a "rate-based service" means a service or a group of services, as determined by DOC, that is reimbursed through a prospectively set rate and that is distinguishable from other services or groups of services by the purpose for which funds are provided for that service or group of services and by the source of funding for that service or group of services. Likewise, specify that "provider" means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), and that contracts to provide client services on the basis of a unit rate per client service or a county department that contracts to provide client services on the basis of a unit rate per client service.

Specify that a contract for a rate-based service must allow a provider to retain from a surplus up to 5 percent of the revenue received under the contract until a different percentage is determined by DCF, DOC, or DHS by rule. Require DCF, DHS, and DOC, to consult with one another and promulgate administrative rules: (a) requiring that contracts for rate-based services allow the provider to retain from a surplus up to a rate of 5 percent, or other rate determined by DCF, DHS, and DOC, of the revenue received under the contract; and (b) establishing a procedure for reviewing rate-based service contracts to determine compliance with ss. 46.036, 49.34, and 301.08. Specify that the rates established by DCF, DHS, and DOC by administrative rule shall apply uniformly to all rate-based service contracts.

Repeal current law which provides for a maximum retention of 10% of all revenue received under all current contracts for the same rate-based service. Further, repeal the current law requirement that a provider return the excess over that 10% cumulative maximum to the purchasers in proportion to a purchaser's share of the surplus and to use any excess which is not returned to reduce the provider's unit rate in the next contracting period. Further, repeal current law which requires providers to apply 50% of accumulated reserves to reducing the unit rate in the next contracting period if the provider has held for four consecutive contracting periods an accumulated reserve that is equal to or greater than 10% of the revenue received under all current contracts for the rate-based service. Also, repeal current law regarding accumulated amounts from contract

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periods ending on or before December 31, 1995. Repeal current law which requires the retained surplus to be used for deficits in previous or future contract periods or to address programmatic needs of clients served by the rate-based service that generated the surplus.

Repeal current law requirement for DCF to develop payment levels, based on the assessed level of care of a child, that correspond to the achievement under the measurements used to evaluate the performance of providers in meeting the goals for the children placed in their care and the goals for the out-of-home care system in this state. Further, repeal obsolete requirement for DCF to develop a report for implementing a performance-based contracting system on or before November 1, 2010.

Require that if the aggregate surplus retained by a nonprofit provider of a rate-based service under all contract periods ending in the calendar year for that rate-based service exceeds 5% (or the rate established under rule by DCF, DHS, and DOC) of the total revenues under such contracts as of December 31, then the provider of the rate-based service must provide written notice of the amount of the excess to all purchasers under those contracts. Specify that the provider must return a purchaser's proportional share of the overall excess if that purchaser provides a written request no later than six months after the date the purchaser receives the written notice of the excess. Specify that if DCF, DHS, or DOC determines based on an audit or fiscal review that the amount of the excess identified by the provider is incorrect, then DCF, DHS, and DOC may seek to recover the funds after the six-month period has expired. Require DCF, DHS, and DOC to commence any such audit or fiscal review within six years after the end of the contract period.

Finally, specify that the dollar threshold for DCF, DHS, and DOC to provide a purchaser with a certified financial and compliance audit report is increased from \$25,000 to \$100,000.

Note:

Rate-based service providers contract with state agencies and counties to provide social services throughout the state. Current law permits such providers to retain up to 5% of the contract amount if revenues exceed the cost of the services. These surplus funds must be for the purposes of addressing a funding deficit in previous or future years under that contract. The state or county may specify a maximum retention amount in the contract that is lower than 5%.

Current law also allows providers to accumulate surpluses over multiple contract periods to address deficits in previous or future contract periods. However, if at the end of the contract period the accumulated surplus exceeds 10% of the amounts under all current contracts, the provider must return the funds in excess of 10% upon request of the purchaser and use any excess funds not returned to reduce the per client rate for the rate-based service in the next contract period. If the surplus is in excess of 10% under all current contracts for four consecutive contract periods, then 50% of the accumulated amounts must be used to reduce the per-client rate in the next contract

period.

The motion would modify the contracting process in several ways, including the following:

- Require a contract to allow a provider to retain a surplus of up to 5% of the revenue received under a contract, unless DCF, DHS, or DOC specifies a different maximum by rule. As a result, counties would not be able to specify a lower retention percentage in the contract.
- Eliminate the requirement to spend accumulated funds only on services under the contract from which the surplus came or on the needs of the client of that service.
- Eliminate the 10% accumulated surplus retention limits. Instead, require providers to send written notification to all purchasers that there is, as of December 31 of each year, a surplus of more than 5% of the revenue received. Purchasers would have up to six months within which to request a proportional share of the excess surplus.
- DCF, DHS, and DOC would be able to conduct a fiscal review or audit within six years after the end of a contract period. If the audit or fiscal review shows that the provider retained more than the allowable surplus, DCF, DHS, and/or DOC would be able to recover the funds.

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