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## TREASURER OF STATE

- Expands the Pay for Success Contracting Program and requires the Treasurer of State to administer it.
- Allows the Treasurer to enter into pay for success contracts with service intermediaries for delivery of specified services that benefit the state, a political subdivision, or a group of political subdivisions, such as programs addressing education, public health, criminal justice, or natural resource management.
- Requires the Treasurer, in the case of a contract for services that benefit the state, to enter into the contract jointly with the Director of Administrative Services (DAS Director).
- Permits the Treasurer to enter into a pay for success contract upon receiving an appropriation for that purpose or at the request of another state agency, political subdivision, or group of them.
- Specifies required terms for a pay for success contract, including a requirement that the service intermediary be paid only if the performance targets are met.
- Allows the Treasurer to adopt administrative rules to administer the program.
- Establishes funds in the state treasury to hold the moneys the Treasurer will use to make payments to service intermediaries.
- Continues the previous Pay for Success Contracting Program administered by the DAS Director, allowing the Director and the Department of Health to continue to administer certain pilot projects intended to reduce infant mortality.

### Pay for Success Contracting Program

(R.C. 113.60, 113.61, and 113.62; Sections 601.30 and 601.31)

#### Generally

The act expands the Pay for Success Contracting Program, described below under **“Continuation of prior program,”** and requires the Treasurer of State to administer it. The Treasurer may enter into pay for success contracts with service intermediaries for delivery of specified services that benefit the state, a political subdivision, or a group of political subdivisions, such as programs addressing education, public health, criminal justice, or natural resource management. In the case of a contract for services that benefit the state, the Treasurer must enter into the contract jointly with the Director of Administrative Services (DAS Director).

Under the contract, the service intermediary receives payment for providing the services only if the intermediary meets certain performance targets specified in the contract. If the program operated by the service intermediary is unsuccessful, the government is not required to pay the service intermediary.

The Treasurer may enter into a pay for success contract upon receiving an appropriation from the General Assembly for that purpose. Additionally, the Treasurer and, as applicable, the DAS Director, may enter into a pay for success contract on behalf of another state agency, a political subdivision, or a group of state agencies or political subdivisions at their request. In that case, the requesting entity must deposit the cost of the contract with the Treasurer, and the Treasurer is responsible for making payments to the service intermediary. A political subdivision must not use state funds to pay the cost of a contract.

The act also allows the Treasurer to apply for federal grants on behalf of a requesting state agency, political subdivision, or group to pay all or part of the cost of a contract. The Treasurer is prohibited from applying for federal grants without first entering into an agreement with the state agency, political subdivision, or group for the Treasurer to do so.

### **Service intermediaries and service providers**

Any person or entity may be a service intermediary. The service intermediary may act as the service provider that delivers services under the contract or may contract with a separate service provider. Under the previous program, only a nonprofit organization or a wholly owned subsidiary of a nonprofit organization could enter into a pay for success contract.

### **Contract terms**

The act requires a pay for success contract to include provisions that:

- Require the Treasurer, in consultation with the requesting state agency or agencies and the DAS Director, or in consultation with the requesting political subdivision or group of political subdivisions, to specify performance targets to be met by the service provider;
- Require those performance targets to include greater than average improvement compared to other geographical areas if appropriate data exist to make that comparison (see “**Measurement of improvement**,” below);
- Appoint an independent evaluator – who must be a person or government entity, other than an agency, subdivision, or group that requested the contract – to evaluate whether the service provider has met each performance target. The evaluator must be independent from the intermediary and the provider and must not have common owners or administrators, managers, or employees with the intermediary or provider.
- Specify the process or methodology the independent evaluator must use to evaluate whether the service provider has met each performance target;
- Require the Treasurer to pay the intermediary in installments at times determined by the Treasurer that are specified in the contract and are consistent with state law;
- Require the installment payments to the service intermediary to be based on whether the service provider has met each performance target, as determined by the independent evaluator;
- Specify the maximum amount a service intermediary may earn for meeting the performance targets;

- Require a state agency, political subdivision, or group that requested the contract to determine, in accordance with applicable laws, to which data in the possession of the requesting entity, the intermediary will have access for the purpose of fulfilling the contract, along with any limitations on the use of the data. The requesting entity must retain control over the data and provide the data directly to the service intermediary under the contract. If any dispute arises concerning the data, the requesting entity must work directly with the service intermediary to resolve the dispute.

These contract requirements are similar to the requirements for the prior program, except that the act adds provisions regarding measurement of improvement and requires the state agency, political subdivision, or group that requested the contract to provide the service intermediary with access to relevant data, instead of requiring the Treasurer to ensure that access. And, the act clarifies that a state agency, political subdivision, or group that requested the contract may not serve as the independent evaluator and that a service intermediary must meet a performance target instead of only making progress toward it.

### **Program administration**

The act requires the Treasurer to administer the Pay for Success Contracting Program and to develop procedures for awarding contracts. The Treasurer may take any other action necessary to administer the program.

The Treasurer may adopt rules in accordance with the Administrative Procedure Act to administer the program. The rules may include the procedure for a state agency, political subdivision, or group of them to request the Treasurer and, as applicable, the DAS Director to enter into a contract and to deposit the cost of the contract with the Treasurer. The rules also may address the types of services that are appropriate for a service provider to provide under a pay for success contract.

### **Measurement of improvement**

At least 75% of the contracts under the Pay For Success Contracting Program must specify performance targets that, based on available regional or national data, require the improvement in the status of Ohio or the relevant area, with respect to the issue the contract addresses, to exceed the average improvement in other geographical areas during the period of the contract. The Treasurer must adopt by rule a process to ensure that any regional or national data used to determine whether a service provider has met its performance targets are scientifically valid.

### **Funds**

The act establishes three separate funds in the state treasury to hold the moneys the Treasurer will use to make payments to service intermediaries: the State Pay for Success Contract Fund, the Federal Pay for Success Contract Fund, and the Local Government Pay for Success Contract Fund.

The state fund consists of any money transferred to the Treasurer by state agencies for pay for success contracts and any money appropriated to the fund by the General Assembly. The federal fund consists of any money the Treasurer receives from federal agencies pursuant

to grant agreements for the purpose of entering into pay for success contracts. And, the local government fund consists of any money paid to the Treasurer by political subdivisions for pay for success contracts.

The Treasurer must use the money in the appropriate funds to implement and administer the program. Any investment earnings on the funds are credited to them.

When the term of a pay for success contract expires, the Treasurer must transfer any remaining unencumbered funds received from a state agency, political subdivision, or group of them to the appropriate agency, political subdivision, or group. The Treasurer must dispose of any excess federal grant funds in accordance with the grant agreement.

### **Continuation of prior program – infant mortality initiatives**

The act also continues the previous Pay for Success Contracting Program administered by the DAS Director for a limited purpose. The DAS Director administers a narrower version of the program, under which the Director may enter into contracts with social service intermediaries to achieve certain social goals. A social service intermediary must be either a nonprofit organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or a wholly owned subsidiary of a nonprofit organization, that delivers or contracts for the delivery of social services, raises capital to finance the delivery of social services, and provides ongoing project management and investor relations for those activities.

The required terms of a pay for success contract with the DAS Director are similar to those under the act. However, the law does not establish particular funds from which the DAS Director must make contract payments and does not require the Director to adopt administrative rules.

The act transfers general authority to administer the Pay for Success Contracting Program from the DAS Director to the Treasurer of State, but allows the Director to continue to contract with social service intermediaries, in consultation with the Department of Health, to administer one or two pilot projects established in H.B. 49 of the 132<sup>nd</sup> General Assembly (the FY 2018-FY 2019 operating budget act). The pilot projects are intended to reduce the incidence of infant mortality, low-birthweight births, premature births, and stillbirths in the communities identified as having the highest infant mortality rates and to promote equity in birth outcomes among infants of different races. Under the act, the prior version of the law continues to apply to those pilot project contracts, instead of the act's new version.<sup>121</sup>

### **Background on social impact bonds**

Pay for success contracts allow the state to use a financing model known as social impact bonds to fund government programs. Under this model, a private entity contracts to operate a program on behalf of the government, and the government pays the private entity only if the program achieves the desired results. In order to obtain up-front funding to operate

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<sup>121</sup> See R.C. 3701.142, not in the act.

the program, the private entity may seek investors, who provide that funding in exchange for the right to a share of the money the private entity will receive from the government if the program is successful. As a result, under this model, the private entity or its investors, instead of the government, bear the financial risk that a program will be unsuccessful.<sup>122</sup>

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<sup>122</sup> National Conference of State Legislatures, *Social Impact Bonds*, available at [ncsl.org/research/labor-and-employment/social-impact-bonds.aspx](https://ncsl.org/research/labor-and-employment/social-impact-bonds.aspx).