

By Senator Forman

32-1257-99

1 A bill to be entitled
2 An act relating to developmental disabilities;
3 amending s. 393.063, F.S.; providing an
4 exclusion from the definition of the term
5 "direct service provider"; amending s.
6 393.0655, F.S.; clarifying screening
7 requirements for certain providers; amending s.
8 393.0678, F.S.; providing that the Department
9 of Children and Family Services and the Agency
10 for Health Care Administration share the
11 responsibility for receivership proceedings for
12 intermediate care facilities for the
13 developmentally disabled; amending s. 393.502,
14 F.S.; amending the membership of the family
15 care councils; amending terms of office;
16 providing an effective date.

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

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20 Section 1. Paragraph (f) is added to subsection (15)
21 of section 393.063, Florida Statutes, 1998 Supplement, to
22 read:

23 393.063 Definitions.--For the purposes of this
24 chapter:

25 (15) "Direct service provider," also known as
26 "caregiver" in chapters 39 and 415 or "caretaker" in
27 provisions relating to employment security checks, means a
28 person 18 years of age or older who has direct contact with
29 individuals with developmental disabilities and is unrelated
30 to the individuals with developmental disabilities.

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1 (f) Employees of entities licensed under chapter 400
2 who have undergone background screening under the applicable
3 screening provisions of that chapter are direct service
4 providers for purposes of background screening as provided in
5 s. 393.0655 and need not be rescreened under that section as
6 long as they provide only those services that are authorized
7 under the applicable provisions of chapter 400 and the license
8 held by the employer.

9 Section 2. Subsection (1) of section 393.0655, Florida
10 Statutes, is amended to read:

11 393.0655 Screening of direct service providers.--

12 (1) MINIMUM STANDARDS.--The department shall require
13 employment screening pursuant to chapter 435, using the level
14 2 standards for screening set forth in that chapter, for
15 direct service providers who are unrelated to their clients.
16 Companions and homemakers who are also seeking to provide
17 these services under the developmental services home and
18 community-based services waiver are exempt from the
19 registration requirements of s. 400.509.

20 Section 3. Subsections (1), (2), and (3) of section
21 393.0678, Florida Statutes, are amended to read:

22 393.0678 Receivership proceedings.--

23 (1) The department, in conjunction with the Agency for
24 Health Care Administration, may petition a court of competent
25 jurisdiction for the appointment of a receiver for an
26 intermediate care facility for the developmentally disabled.
27 The department may also petition the court for the appointment
28 of a receiver for a residential habilitation center, or a
29 group home facility owned and operated by a corporation or
30 partnership when any of the following conditions exist:

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1 (a) Any person is operating a facility without a
2 license and refuses to make application for a license as
3 required by s. 393.067 or, in the case of an intermediate care
4 facility for the developmentally disabled, as required by ss.
5 393.067 and 400.062.

6 (b) The licensee is closing the facility or has
7 informed the department or the Agency for Health Care
8 Administration that it intends to close the facility; and
9 adequate arrangements have not been made for relocation of the
10 residents within 7 days, exclusive of weekends and holidays,
11 of the closing of the facility.

12 (c) The department or the Agency for Health Care
13 Administration determines that conditions exist in the
14 facility which present an imminent danger to the health,
15 safety, or welfare of the residents of the facility or which
16 present a substantial probability that death or serious
17 physical harm would result therefrom. Whenever possible, the
18 department, in conjunction with the Agency for Health Care
19 Administration, shall facilitate the continued operation of
20 the program.

21 (d) The licensee cannot meet its financial obligations
22 to provide food, shelter, care, and utilities. Evidence such
23 as the issuance of bad checks or the accumulation of
24 delinquent bills for such items as personnel salaries, food,
25 drugs, or utilities constitutes prima facie evidence that the
26 ownership of the facility lacks the financial ability to
27 operate the home in accordance with the requirements of this
28 chapter and all rules promulgated thereunder.

29 (2)(a) The petition for receivership shall take
30 precedence over other court business unless the court
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1 determines that some other pending proceeding, having similar
2 statutory precedence, has priority.

3 (b) A hearing shall be conducted within 5 days of the
4 filing of the petition, at which time all interested parties
5 shall have the opportunity to present evidence pertaining to
6 the petition. The department shall notify the owner or
7 operator of the facility named in the petition of its filing
8 and the date set for the hearing.

9 (c) The court shall grant the petition only upon
10 finding that the health, safety, or welfare of residents of
11 the facility would be threatened if a condition existing at
12 the time the petition was filed is permitted to continue. A
13 receiver may not be appointed ex parte unless the court
14 determines that one or more of the conditions in subsection
15 (1) exist; that the facility owner or operator cannot be
16 found; that all reasonable means of locating the owner or
17 operator and notifying him or her of the petition and hearing
18 have been exhausted; or that the owner or operator after
19 notification of the hearing chooses not to attend. After such
20 findings, the court may appoint any person qualified by
21 education, training, or experience to carry out the
22 responsibilities of receiver pursuant to this section, except
23 that the court may not appoint any owner or affiliate of the
24 facility which is in receivership. Before the appointment as
25 receiver of a person who is the operator, manager, or
26 supervisor of another facility, the court shall determine that
27 the person can reasonably operate, manage, or supervise more
28 than one facility. The receiver may be appointed for up to 90
29 days with the option of petitioning the court for 30-day
30 extensions. The receiver may be selected from a list of
31 persons qualified to act as receivers developed by the

1 department, in conjunction with the Agency for Health Care
2 Administration when the facility is an intermediate care
3 facility for the developmentally disabled,and presented to
4 the court with each petition for receivership. Under no
5 circumstances may the department, the Agency for Health Care
6 Administration,or a designated departmental or agency
7 employee be appointed as a receiver for more than 60 days;
8 however, the departmental or agency receiver may petition the
9 court for 30-day extensions. The court shall grant an
10 extension upon a showing of good cause. The department, in
11 conjunction with the Agency for Health Care Administration,
12 may petition the court to appoint a substitute receiver.

13 (d) During the first 60 days of the receivership, the
14 department, in conjunction with the Agency for Health Care
15 Administration when the facility is an intermediate care
16 facility for the developmentally disabled,may not take action
17 to decertify or revoke the license of a facility unless
18 conditions causing imminent danger to the health and welfare
19 of the residents exist and a receiver has been unable to
20 remove those conditions. After the first 60 days of
21 receivership, and every 60 days thereafter until the
22 receivership is terminated, the department, in conjunction
23 with the Agency for Health Care Administration,shall submit
24 to the court the results of an assessment of the ability of
25 the facility to assure the safety and care of the residents.
26 If the conditions at the facility or the intentions of the
27 owner indicate that the purpose of the receivership is to
28 close the facility rather than to facilitate its continued
29 operation, the department shall place the residents in
30 appropriate alternate residential settings as quickly as
31 possible. If, in the opinion of the court, the department has

1 not been diligent in its efforts to make adequate arrangements
2 for placement, the court shall find the department to be in
3 contempt and shall order the department to submit its plans
4 for moving the residents.

5 (3) The receiver shall make provisions for the
6 continued health, safety, and welfare of all residents of the
7 facility and:

8 (a) Shall exercise those powers and perform those
9 duties set out by the court.

10 (b) Shall operate the facility in such a manner as to
11 assure the residents' safety and adequate health care for the
12 residents.

13 (c) Shall take such action as is reasonably necessary
14 to protect or conserve the assets or property of the facility
15 for which the receiver is appointed, or the proceeds from any
16 transfer thereof, and may use them only in the performance of
17 the powers and duties set forth in this section and by order
18 of the court.

19 (d) Shall honor all leases, mortgages, and secured
20 transactions governing the building in which the facility is
21 located and all goods and fixtures in the building of which
22 the receiver has taken possession, but only to the extent of
23 payments which, in the case of a rental agreement, are for the
24 use of the property during the period of the receivership or
25 which, in the case of a purchase agreement, become due during
26 the period of the receivership.

27 (e) May use the building, fixtures, furnishings, and
28 any accompanying consumable goods in the provision of care and
29 services to residents and to any other persons receiving
30 services from the facility at the time the petition for
31 receivership was filed. The receiver shall collect payments

1 for all goods and services provided to residents or others
2 during the period of the receivership at the same rate of
3 payment charged by the owner at the time the petition for
4 receivership was filed, or at a fair and reasonable rate
5 otherwise approved by the court for private, paying residents.
6 The receiver may apply to the Agency for Health Care
7 Administration ~~department~~ for a rate increase for residents
8 under Title XIX of the Social Security Act if the facility is
9 not receiving the state reimbursement cap and if expenditures
10 justify an increase in the rate.

11 (f) May correct or eliminate any deficiency in the
12 structure, furnishings, or staffing of the facility which
13 endangers the safety or health of residents while they remain
14 in the facility, provided the total cost of correction does
15 not exceed \$3,000. The court may order expenditures for this
16 purpose in excess of \$3,000 on application from the receiver
17 after notice to the owner. A hearing may be requested by the
18 owner within 72 hours.

19 (g) May let contracts and hire agents and employees to
20 carry out the powers and duties of the receiver under this
21 section.

22 (h) Shall have full power to direct, manage, hire, and
23 discharge employees of the facility subject to any contract
24 rights they may have. The receiver shall hire and pay
25 employees at the rate of compensation, including benefits,
26 approved by the court. Receivership does not relieve the owner
27 of any obligations to employees which had been made before the
28 appointment of a receiver and were not carried out by the
29 receiver.

30 (i) Shall be entitled to take possession of all
31 property or assets of residents which are in the possession of

1 a facility or its owner. The receiver shall preserve all such
2 property or assets and all resident records of which the
3 receiver takes possession; and he or she shall provide for the
4 prompt transfer of the property, assets, and records of any
5 resident transferred to the resident's new placement. An
6 inventory list certified by the owner and receiver shall be
7 made at the time the receiver takes possession of the
8 facility.

9 Section 4. Subsection (1) of section 393.502, Florida
10 Statutes, is amended to read:

11 393.502 Family care councils.--

12 (1) CREATION; APPOINTMENT.--There shall be established
13 and located within each service district of the Department of
14 Children and Family ~~Health and Rehabilitative~~ Services a
15 family care council. The council shall consist of ~~nine~~
16 persons recommended and appointed by the district health and
17 human services board. The councils shall consist of clients
18 who receive services from the department and family members or
19 legal guardians of clients. Each council shall have a minimum
20 of 8 members and a maximum of 12 members, including at least 3
21 members who have developmental disabilities. Alternate members
22 may be recommended and appointed by the district health and
23 human services board. Alternate members have full rights of
24 membership except that they may not vote, nor does their
25 presence count towards a quorum. A member who cannot attend a
26 meeting may give his or her proxy vote to an alternate member.
27 ~~One-half of the members of the council must be consumers who~~
28 ~~are family members or legal guardians of persons with~~
29 ~~developmental disabilities. At least one-half of the members~~
30 ~~of the council shall be current consumers of developmental~~
31 ~~services.~~ A chairperson for the council must be chosen by the

1 members to serve for 2 years ~~1 year~~. Members shall be
2 appointed for a 3-year ~~2-year~~ term and may be reappointed to
3 not more than one additional term. A person who is currently
4 serving on another board or council of the department may not
5 be appointed to a family care council.

6 Section 5. This act shall take effect upon becoming a
7 law.

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SENATE SUMMARY

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Relates to developmental disabilities. Provides an exclusion from the definition of the term "direct service provider." Clarifies screening requirements for developmental services home and community-based services waiver providers. Provides that the Department of Children and Family Services and the Agency for Health Care Administration share the responsibility for receivership proceedings for intermediate care facilities for the developmentally disabled. Amends the membership of the family care councils and lengthens the terms of office of council members and chairpersons.