

1                                   A bill to be entitled  
2           An act relating to persons with developmental  
3           disabilities; amending s. 393.063, F.S.;  
4           redefining the term "retardation" to revise  
5           certain requirements for the standardized  
6           intelligence test used to make such  
7           determination; requiring that the Department of  
8           Children and Family Services adopt a rule for  
9           supported-living programs; amending s. 393.501,  
10          F.S.; requiring the Department of Children and  
11          Family Services to adopt rules for  
12          administering certain waivers and delivering  
13          services to persons who have developmental  
14          disabilities; amending s. 765.104, F.S.;  
15          authorizing a patient whose legal disability is  
16          removed to amend or revoke the recognition of a  
17          medical proxy and any uncompleted decision made  
18          by that proxy; specifying when the amendment or  
19          revocation takes effect; amending s. 765.401,  
20          F.S.; providing for health care decisions for  
21          persons having a developmental disability;  
22          providing an effective date.

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

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26           Section 1. Subsections (42) and (50) of section  
27   393.063, Florida Statutes, are amended to read:

28           393.063 Definitions.--For the purposes of this  
29   chapter:

30           (42) "Retardation" means significantly subaverage  
31   general intellectual functioning existing concurrently with

1 deficits in adaptive behavior and manifested during the period  
2 from conception to age 18. "Significantly subaverage general  
3 intellectual functioning," for the purpose of this definition,  
4 means performance that ~~which~~ is two or more standard  
5 deviations from the mean score on a standardized intelligence  
6 test administered by a person authorized to administer such a  
7 test under chapter 458, 459, 490 or 491 ~~specified in the rules~~  
8 ~~of the department~~. "Adaptive behavior," for the purpose of  
9 this definition, means the effectiveness or degree with which  
10 an individual meets the standards of personal independence and  
11 social responsibility expected of his or her age, cultural  
12 group, and community.

13 (50) "Supported living" means a category of  
14 individually determined services designed and coordinated in  
15 such a manner as to provide assistance to adult clients who  
16 require ongoing supports to live as independently as possible  
17 in their own homes, to be integrated into the community, and  
18 to participate in community life to the fullest extent  
19 possible. The department shall adopt rules that specify the  
20 number of persons having a developmental disability who may  
21 live together in a single housing unit in a supported-living  
22 program.

23 Section 2. Section 393.501, Florida Statutes, is  
24 amended to read:

25 393.501 Rulemaking.--

26 ~~(1)~~ The department shall adopt rules to administer  
27 ~~carry out the provisions of this chapter. The rules must~~  
28 include:

29 (1) Provisions for administering waivers authorized  
30 under s. 409.906 for developmental services and home and  
31 community-based services, including eligibility criteria for

1 providers and recipients; criteria and procedures for  
2 enrollment and termination; qualifications for providing and  
3 receiving services; criteria for authorizing and using  
4 services; and standards for the quality and delivery of  
5 services.

6 (2) Standards and procedures for coordinating support  
7 services, including criteria for applications and for  
8 determining eligibility for services for developmental  
9 disabilities, procedures for support planning, the  
10 responsibilities of support coordinators, and standards for  
11 the quality and delivery of services.

12 (3) Provisions for establishing a supported living  
13 program, including definitions of terms; standards governing  
14 eligibility for services, selection of housing, selection of  
15 providers by participants, and planning for services; and  
16 requirements for ongoing monitoring.

17 (4)(2) Requirements for ~~Such rules shall address~~ the  
18 number of facilities on a single parcel or adjacent parcels of  
19 land, and, in addition, ~~for ICF/MR,~~ the rate and location of  
20 facility development and level of care for intermediate care  
21 facilities for the developmentally disabled.

22 Section 3. Subsection (4) is added to section 765.104,  
23 Florida Statutes, to read:

24 765.104 Amendment or revocation.--

25 (4) Any patient for whom a medical proxy has been  
26 recognized under s. 765.401 and for whom any previous legal  
27 disability that precluded the patient's ability to consent is  
28 removed may amend or revoke the recognition of the medical  
29 proxy and any uncompleted decision made by that proxy. The  
30 amendment or revocation takes effect when it is communicated  
31 to the proxy, the health care provider, or the health care

1 facility in writing or, if communicated orally, in the  
2 presence of a third person.

3 Section 4. Subsections (1) and (3) of section 765.401,  
4 Florida Statutes, are amended to read:

5 765.401 The proxy.--

6 (1) If an incapacitated ~~the~~ patient has not executed  
7 an advance directive, or designated a surrogate to execute an  
8 advance directive, or the designated or alternate surrogate is  
9 no longer available to make health care decisions, health care  
10 decisions may be made for the patient by any of the following  
11 individuals, in the following order of priority, if no  
12 individual in a prior class is reasonably available, willing,  
13 or competent to act:

14 (a) The judicially appointed guardian of the patient  
15 or the guardian advocate of the person having a developmental  
16 disability as defined in s. 393.063, who has been authorized  
17 to consent to medical treatment, if such guardian has  
18 previously been appointed; however, this paragraph shall not  
19 be construed to require such appointment before a treatment  
20 decision can be made under this subsection;

21 (b) The patient's spouse;

22 (c) An adult child of the patient, or if the patient  
23 has more than one adult child, a majority of the adult  
24 children who are reasonably available for consultation;

25 (d) A parent of the patient;

26 (e) The adult sibling of the patient or, if the  
27 patient has more than one sibling, a majority of the adult  
28 siblings who are reasonably available for consultation;

29 (f) An adult relative of the patient who has exhibited  
30 special care and concern for the patient and who has  
31 maintained regular contact with the patient and who is

1 familiar with the patient's activities, health, and religious  
2 or moral beliefs; or

3 (g) A close friend of the patient.

4 (3) Before exercising the incapacitated patient's  
5 rights to select or decline health care, the proxy must comply  
6 with the provisions of ss. 765.205 and 765.305, except that a  
7 proxy's decision to withhold or withdraw life-prolonging  
8 procedures must be supported by clear and convincing evidence  
9 that the decision would have been the one the patient would  
10 have chosen had the patient been competent or, if there is no  
11 indication of what the patient would have chosen, that the  
12 decision is in the patient's best interest. Before exercising  
13 the rights of a person who has a developmental disability as  
14 defined under s. 393.063(12) to withhold or withdraw  
15 life-prolonging procedures, a proxy must comply with s.  
16 393.12.

17 Section 5. This act shall take effect July 1, 2002.

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