

By the Committee on Children and Families; and Senator Peadar

300-2552-04

1   A bill to be entitled  
2           An act relating to the Department of Children  
3           and Family Services; amending s. 20.19, F.S.;  
4           removing the developmental disabilities program  
5           from the Department of Children and Family  
6           Services; creating s. 20.197, F.S.;  
7           establishing the Agency for Persons with  
8           Disabilities for the purpose of providing  
9           services to persons with developmental  
10          disabilities, including institutional services;  
11          directing the agency to execute interagency  
12          agreements with the Agency for Health Care  
13          Administration for the financial management of  
14          the Medicaid waivers and the Department of  
15          Children and Family Services for administrative  
16          support; amending s. 393.063, F.S.; updating  
17          definitions and deleting obsolete definitions;  
18          amending s. 393.064, F.S.; deleting  
19          requirements that the agency's legislative  
20          budget request include funding for prevention;  
21          amending s. 393.0655, F.S.; requiring Level 2  
22          screening for specified service providers;  
23          amending s. 393.066, F.S.; removing requirement  
24          that services be administered and approved by  
25          the districts; modifying a requirement to  
26          provide certain services; deleting a  
27          requirement for a 5-year plan relating to  
28          community-based services; adding a requirement  
29          to assist clients in gaining employment;  
30          repealing obsolete requirement authorizing the  
31          state to lease or construct residential

1 facilities; deleting authorization to adopt  
2 rules ensuring compliance with federal rules;  
3 amending s. 393.0661, F.S.; deleting an  
4 obsolete provision; modifying provisions  
5 relating to an assessment instrument; adding  
6 requirements for adoption of rate  
7 methodologies; amending s. 393.068, F.S.;  
8 making service provision subject to available  
9 resources; updating list of services to be  
10 provided; deleting provision referring to  
11 5-year plans; amending s. 393.0695, F.S.;  
12 requiring in-home subsidy amounts to be  
13 reassessed annually; amending s. 393.11, F.S.;  
14 deleting provisions referring to districts,  
15 department programs, and the nonexistent  
16 Department of Labor and Employment Security;  
17 amending s. 393.13, F.S.; deleting obsolete  
18 provisions; adding legislative intent relating  
19 to reducing the use of sheltered workshops;  
20 amending s. 393.17, F.S.; authorizing the  
21 agency to contract for the certification of  
22 behavioral analysts; deleting provisions  
23 relating to a certification program and  
24 provisions allowing fees; amending s. 393.22,  
25 F.S.; deleting prohibition preventing transfer  
26 of funds and ensuring financial commitment for  
27 specified developmental conditions; amending s.  
28 393.502, F.S.; removing reference to districts;  
29 deleting a provision permitting appointment of  
30 family care council members if the Governor  
31 does not act; amending ss. 408.301, 408.302,

1 F.S.; amending legislative intent to add the  
2 Agency for Persons with Disabilities and the  
3 Department of Elderly Affairs as agencies that  
4 the Agency for Health Care Administration must  
5 enter into interagency agreement with regarding  
6 persons with special needs; amending s.  
7 409.906, F.S.; clarifying powers of the Agency  
8 for Health Care Administration with respect to  
9 limiting coverage for certain services;  
10 repealing s. 393.14, F.S.; requiring a  
11 multiyear plan; repealing s. 393.165, F.S.,  
12 relating to ICF/DDs; repealing s. 393.166,  
13 F.S., relating to homes for special services;  
14 repealing s. 393.505, F.S., relating to  
15 comprehensive day treatment service projects;  
16 transferring programs and institutions relating  
17 to developmental disabilities from the  
18 Department of Children and Family Services to  
19 the Agency for Persons with Disabilities;  
20 providing duties of those agencies as well as  
21 the Department of Management Services;  
22 providing for substitution of parties in  
23 administrative and judicial proceedings;  
24 providing duties of the Office of Program  
25 Policy Analysis and Government Accountability;  
26 providing for a report; amending ss. 92.53,  
27 397.405, 400.464, 419.001, 914.16, 914.17,  
28 918.16, 943.0585, 943.059, F.S.; conforming  
29 cross-references; amending ss. 393.0641,  
30 393.065, 393.0651, 393.067, 393.0673, 393.0675,  
31 393.0678, 393.071, 393.075, 393.115, 393.12,

1 393.125, 393.14, 393.15, 393.501, 393.503,  
2 393.506, F.S.; conforming to the changes made  
3 by the act; authorizing the Department of  
4 Children and Family Services' Economic  
5 Self-Sufficiency Services Program Office to  
6 provide the eligibility determination function  
7 through department staff or through contract;  
8 providing restrictions; providing an effective  
9 date.

10

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

12

13 Section 1. Paragraph (b) of subsection (4) of section  
14 20.19, Florida Statutes, is amended to read:

15 20.19 Department of Children and Family  
16 Services.--There is created a Department of Children and  
17 Family Services.

18 (4) PROGRAM OFFICES AND SUPPORT OFFICES.--

19 (b) The following program offices are established:

20 1. Adult Services.

21 2. Child Care Services.

22 ~~3. Developmental Disabilities.~~

23 ~~3.4.~~ Economic Self-Sufficiency Services.

24 ~~4.5.~~ Family Safety.

25 ~~5.6.~~ Mental Health.

26 ~~6.7.~~ Refugee Services.

27 ~~7.8.~~ Substance Abuse.

28 Section 2. Section 20.197, Florida Statutes, is  
29 created to read:

30 20.197 Agency for Persons with Disabilities.--There is  
31 created the Agency for Persons with Disabilities, housed

1 within the Department of Children and Family Services for  
2 administrative purposes only. The agency shall be a separate  
3 budget entity not subject to control, supervision, or  
4 direction by the Department of Children and Family Services in  
5 any manner, including, but not limited to, personnel,  
6 purchasing, transactions involving real or personal property,  
7 and budgetary matters.

8       (1) The director of the agency shall be the agency  
9 head for all purposes and shall be appointed by the Governor  
10 and serve at the pleasure of the Governor. The director shall  
11 administer the affairs of the agency and establish  
12 administrative units as needed and may, within available  
13 resources, employ assistants, professional staff, and other  
14 employees as necessary to discharge the powers and duties of  
15 the agency.

16       (2) The agency shall be responsible for the provision  
17 of all services provided to persons with developmental  
18 disabilities pursuant to chapter 393, including the operation  
19 of all state institutional programs and the programmatic  
20 management of Medicaid waivers established to provide services  
21 to persons with developmental disabilities.

22       (3) The agency shall engage in such other  
23 administrative activities as are deemed necessary to  
24 effectively and efficiently address the needs of the agency's  
25 clients.

26       (4) The agency shall enter into an interagency  
27 agreement that delineates the responsibilities of the Agency  
28 for Health Care Administration for the following:

29       (a) The terms, and execution of contracts with  
30 Medicaid providers for the provision of services provided  
31

1 through Medicaid, including federally approved waiver  
2 programs.

3 (b) Billing, payment, and reconciliation of claims for  
4 Medicaid services reimbursed by the agency.

5 (c) The implementation of utilization management  
6 measures, including the prior authorization of services plans  
7 and the streamlining and consolidation of waivers services, to  
8 ensure the cost-effective provision of needed Medicaid  
9 services and to maximize the number of persons with access to  
10 such services.

11 (d) A system of approving each client's plan of care  
12 to ensure that the services on the plan of care are those that  
13 without which the client would require the services of an  
14 intermediate care facility for the developmentally disabled.

15 Section 3. Section 393.063, Florida Statutes, is  
16 amended to read:

17 393.063 Definitions.--For the purposes of this  
18 chapter:

19 ~~(1) "Active treatment" means the provision of services~~  
20 ~~by an interdisciplinary team necessary to maximize a client's~~  
21 ~~individual independence or prevent regression or loss of~~  
22 ~~functional status.~~

23 ~~(1)(2)~~ "Agency" means the Agency for Persons with  
24 Disabilities Health Care Administration.

25 ~~(2)(3)~~ "Autism" means a pervasive, neurologically  
26 based developmental disability of extended duration which  
27 causes severe learning, communication, and behavior disorders  
28 with age of onset during infancy or childhood. Individuals  
29 with autism exhibit impairment in reciprocal social  
30 interaction, impairment in verbal and nonverbal communication  
31

1 and imaginative ability, and a markedly restricted repertoire  
2 of activities and interests.

3 ~~(3)(4)~~ "Cerebral palsy" means a group of disabling  
4 symptoms of extended duration which results from damage to the  
5 developing brain that may occur before, during, or after birth  
6 and that results in the loss or impairment of control over  
7 voluntary muscles. For the purposes of this definition,  
8 cerebral palsy does not include those symptoms or impairments  
9 resulting solely from a stroke.

10 ~~(4)(5)~~ "Client" means any person determined eligible  
11 by the agency department for ~~developmental~~ services under this  
12 chapter.

13 ~~(5)(6)~~ "Client advocate" means a friend or relative of  
14 the client, or of the client's immediate family, who advocates  
15 for the best interests of the client in any proceedings under  
16 this chapter in which the client or his or her family has the  
17 right or duty to participate.

18 ~~(6)(7)~~ "Comprehensive assessment" means the process  
19 ~~which is~~ used to determine eligibility for ~~developmental~~  
20 services under this chapter ~~and develop the family or~~  
21 ~~individual support plan. The term includes review and~~  
22 ~~evaluation of information provided by the applicant, the~~  
23 ~~individual receiving supports or services through~~  
24 ~~developmental services, or the family, and others providing~~  
25 ~~supports or services to the individual or family, as well as~~  
26 ~~the use of formal assessment instruments.~~

27 ~~(7)(8)~~ "Comprehensive transitional education program"  
28 means a group of jointly operating centers or units, the  
29 collective purpose of which is to provide a sequential series  
30 of educational care, training, treatment, habilitation, and  
31 rehabilitation services to persons who have developmental

1 | disabilities, ~~as defined in subsection (12)~~, and who have  
2 | severe or moderate maladaptive behaviors. However, nothing in  
3 | this subsection shall require such ~~comprehensive transitional~~  
4 | ~~education~~ programs to provide services only to persons with  
5 | developmental disabilities, ~~as defined in subsection (12)~~. All  
6 | such services shall be temporary in nature and delivered in a  
7 | structured residential setting with the primary goal of  
8 | incorporating the normalization principle to establish  
9 | permanent residence for persons with maladaptive behaviors in  
10 | facilities not associated with the comprehensive transitional  
11 | education program. The staff shall include psychologists and  
12 | teachers who, ~~and such staff personnel~~ shall be available to  
13 | provide services in each component center or unit of the  
14 | program. The psychologists shall be individuals who are  
15 | licensed in this state and certified as behavior analysts in  
16 | this state, or individuals who ~~meet the professional~~  
17 | ~~requirements established by the department for district~~  
18 | ~~behavior analysts and~~ are certified as behavior analysts  
19 | pursuant to s. 393.17 in this state.

20 |       (a) Comprehensive transitional education programs  
21 | shall include a minimum of two component centers or units, ~~as~~  
22 | ~~defined in this paragraph~~, one of which shall be either an  
23 | intensive treatment and educational center or a transitional  
24 | training and educational center, which provide services to  
25 | persons with maladaptive behaviors in the following sequential  
26 | order:

27 |           1. Intensive treatment and educational center. This  
28 | component is a self-contained residential unit providing  
29 | intensive psychological and educational programming for  
30 | persons with severe maladaptive behaviors, whose behaviors  
31 |



1 preclude placement in a less restrictive environment due to  
2 the threat of danger or injury to themselves or others.

3           2. Transitional training and educational center. This  
4 component is a residential unit for persons with moderate  
5 maladaptive behaviors, providing concentrated psychological  
6 and educational programming emphasizing a transition toward a  
7 less restrictive environment.

8           3. Community transition residence. This component is  
9 a residential center providing educational programs and such  
10 support services, training, and care as are needed to assist  
11 persons with maladaptive behaviors to avoid regression to more  
12 restrictive environments while preparing them for more  
13 independent living. Continuous-shift staff shall be required  
14 for this component.

15           4. Alternative living center. This component is a  
16 residential unit providing an educational and family living  
17 environment for persons with maladaptive behaviors, in a  
18 moderately unrestricted setting. Residential staff shall be  
19 required for this component.

20           5. Independent living education center. This  
21 component is a facility providing a family living environment  
22 for persons with maladaptive behaviors, in a largely  
23 unrestricted setting which includes education and monitoring  
24 appropriate to support the development of independent living  
25 skills ~~by the students~~.

26           (b) Centers or units that are components of a  
27 comprehensive transitional education program are subject to  
28 the license issued to the comprehensive transitional education  
29 program and may be located on either single or multiple sites.

30           (c) Comprehensive transitional education programs  
31 shall develop individual education plans for each person with

1 | maladaptive behaviors who receives services therein. Such  
2 | individual education plans shall be developed in accordance  
3 | with the criteria specified ~~included~~ in ~~Pub. L. No. 94-142~~, 20  
4 | U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.

5 | (d) In no instance shall the total number of persons  
6 | with maladaptive behaviors being provided services in a  
7 | comprehensive transitional education program exceed 120.

8 | (e) This subsection shall authorize licensure for  
9 | comprehensive transitional education programs which by July 1,  
10 | 1989:

- 11 | 1. Are in actual operation; or
- 12 | 2. Own a fee simple interest in real property for  
13 | which a county or city government has approved zoning allowing  
14 | for the placement of the facilities described in this  
15 | subsection, and have registered an intent with the department  
16 | to operate a comprehensive transitional education program.  
17 | However, nothing shall prohibit the assignment by such a  
18 | registrant to another entity at a different site within the  
19 | state, so long as there is compliance with all criteria of the  
20 | comprehensive transitional education program and local zoning  
21 | requirements and provided that each residential facility  
22 | within the component centers or units of the program  
23 | authorized under this subparagraph shall not exceed a capacity  
24 | of 15 persons.

25 | ~~(9) "Day service" means the care, protection, and~~  
26 | ~~supervision of a client for a period of less than 24 hours a~~  
27 | ~~day on a regular basis which supplements for the client, in~~  
28 | ~~accordance with his or her individual needs, daily care,~~  
29 | ~~enrichment opportunities, and health supervision.~~

1           ~~(8)(10)~~ "Day habilitation facility" means any  
2 nonresidential facility which provides day habilitation  
3 services.

4           (9) "Day habilitation service" means assistance with  
5 the acquisition, retention, or improvement in self-help,  
6 socialization, and adaptive skills which takes place in a  
7 nonresidential setting, separate from the home or facility in  
8 which the individual resides. Day habilitation services shall  
9 focus on enabling the individual to attain or maintain his or  
10 her maximum functional level and shall be coordinated with any  
11 physical, occupational, or speech therapies listed in the plan  
12 of care.

13           ~~(11)~~ "~~Department~~" ~~means the Department of Children and~~  
14 ~~Family Services.~~

15           ~~(10)(12)~~ "Developmental disability" means a disorder  
16 or syndrome that is attributable to retardation, cerebral  
17 palsy, autism, spina bifida, or Prader-Willi syndrome and that  
18 constitutes a substantial handicap that can reasonably be  
19 expected to continue indefinitely.

20           ~~(11)(13)~~ "Developmental disabilities services  
21 institution" means a state-owned and state-operated facility,  
22 formerly known as a "Sunland Center," providing for the care,  
23 habilitation, and rehabilitation of clients with developmental  
24 disabilities.

25           ~~(14)~~ "~~Developmental training facility~~" ~~means any~~  
26 ~~nonresidential facility which provides basic training and~~  
27 ~~habilitation to clients.~~

28           ~~(12)(15)~~ "Direct service provider," also known as  
29 "caregiver" in chapters 39 and 415 or "caretaker" in  
30 provisions relating to employment security checks, means a  
31 person 18 years of age or older who has direct contact with

1 individuals with developmental disabilities, or has access to  
2 a client's living areas or to a client's funds or personal  
3 property, and is not a relative of such ~~unrelated to the~~  
4 ~~individuals with developmental disabilities.~~

5 ~~(a) The term "direct service provider" also includes~~  
6 ~~any person, including members of the direct service provider's~~  
7 ~~family, over 12 years of age who resides with the direct~~  
8 ~~service provider when:~~

9 ~~1. The direct service provider provides supports or~~  
10 ~~services in his or her residence;~~

11 ~~2. The direct service provider provides supports or~~  
12 ~~services in a facility adjacent to his or her residence; or~~

13 ~~3. The person residing with the direct service~~  
14 ~~provider has direct contact with the individual with~~  
15 ~~developmental disabilities during the hours of provision of~~  
16 ~~supports or services.~~

17 ~~(b) Persons residing with the direct service provider,~~  
18 ~~including family members, who are between the ages of 12 years~~  
19 ~~and 18 years are not required to be fingerprinted, but shall~~  
20 ~~be screened for delinquency records.~~

21 ~~(c) A volunteer who assists on an intermittent basis~~  
22 ~~for less than 40 hours per month is not a direct service~~  
23 ~~provider for the purposes of screening if the volunteer is~~  
24 ~~under the direct and constant supervision of persons who meet~~  
25 ~~the personnel requirements of s. 393.0655.~~

26 ~~(d) A physician, nurse, or other professional licensed~~  
27 ~~and regulated by the Department of Business and Professional~~  
28 ~~Regulation is not a direct service provider for the purposes~~  
29 ~~of screening if the service he or she is providing to a client~~  
30 ~~is within the scope of practice for which he or she is~~  
31 ~~licensed.~~

1           ~~(c) A person selected by the family or the individual~~  
2 ~~with developmental disabilities and paid by the family or the~~  
3 ~~individual to provide supports or services is not a direct~~  
4 ~~service provider for the purpose of screening.~~

5           ~~(16) "District" means a service district of the~~  
6 ~~department.~~

7           (13)~~(17)~~ "Domicile" means the place where a client  
8 legally resides, which place is his or her permanent home.  
9 Domicile may be established as provided in s. 222.17.  
10 Domicile may not be established in Florida by a minor who has  
11 no parent domiciled in Florida, or by a minor who has no legal  
12 guardian domiciled in Florida, or by any alien not classified  
13 as a resident alien.

14           ~~(14)~~(18) "Enclave" means a work station in public or  
15 private business or industry where a small group of persons  
16 with developmental disabilities is employed and receives  
17 training and support services or follow-along services among  
18 nonhandicapped workers.

19           ~~(15)~~(19) "Epilepsy" means a chronic brain disorder of  
20 various causes which is characterized by recurrent seizures  
21 due to excessive discharge of cerebral neurons. When found  
22 concurrently with retardation, autism, or cerebral palsy,  
23 epilepsy is considered a secondary disability for which the  
24 client is eligible to receive services to ameliorate this  
25 condition pursuant ~~according to the provisions of~~ this  
26 chapter.

27           ~~(16)~~(20) "Express and informed consent" means consent  
28 voluntarily given in writing with sufficient knowledge and  
29 comprehension of the subject matter involved to enable the  
30 person giving consent to make an understanding and enlightened  
31

1 decision without any element of force, fraud, deceit, duress,  
2 or other form of constraint or coercion.

3 ~~(17)(21)~~ "Family care program" means the program  
4 established in s. 393.068 ~~an alternative to residential~~  
5 ~~placement, in which a direct service provider provides a home~~  
6 ~~for a client and assists him or her to the extent necessary~~  
7 ~~for the client to participate in normal activities and to meet~~  
8 ~~the demands of daily living. The program provides the support~~  
9 ~~needed by the client's family or caretaker to meet the~~  
10 ~~individual needs of the client.~~

11 ~~(18)(22)~~ "Follow-along services" means those support  
12 services ~~which shall be~~ provided to persons with developmental  
13 disabilities in all supported employment programs and may  
14 include, but are not limited to, family support, assistance in  
15 meeting transportation and medical needs, employer  
16 intervention, performance evaluation, advocacy, replacement,  
17 retraining or promotional assistance, or other similar support  
18 services.

19 ~~(19)(23)~~ "Foster care facility" means a residential  
20 facility which provides a family living environment including  
21 supervision and care necessary to meet the physical,  
22 emotional, and social needs of its residents. The capacity of  
23 such a facility shall not be more than three residents.

24 ~~(20)(24)~~ "Group home facility" means a residential  
25 facility which provides a family living environment including  
26 supervision and care necessary to meet the physical,  
27 emotional, and social needs of its residents. The capacity of  
28 such a facility shall be at least 4 ~~residents~~ but not more  
29 than 15 residents. For the purposes of this chapter, group  
30 home facilities shall not be considered commercial  
31 enterprises.

1           ~~(21)(25)~~ "Guardian advocate" means a person appointed  
2 by the circuit court to represent a person with developmental  
3 disabilities in any proceedings brought pursuant to s. 393.12,  
4 and excludes the use of the same term as applied to a guardian  
5 advocate for mentally ill persons in chapter 394.

6           ~~(22)(26)~~ "Habilitation" means the process by which a  
7 client is assisted to acquire and maintain those life skills  
8 which enable the client to cope more effectively with the  
9 demands of his or her condition and environment and to raise  
10 the level of his or her physical, mental, and social  
11 efficiency. It includes, but is not limited to, programs of  
12 formal structured education and treatment.

13           ~~(23)(27)~~ "High-risk child" means, for the purposes of  
14 this chapter, a child from birth to 5 years of age with one or  
15 more of the following characteristics:

16           (a) A developmental delay in cognition, language, or  
17 physical development.

18           (b) A child surviving a catastrophic infectious or  
19 traumatic illness known to be associated with developmental  
20 delay, when funds are specifically appropriated.

21           (c) A child with a parent or guardian with  
22 developmental disabilities ~~who is developmentally disabled and~~  
23 who requires assistance in meeting the child's developmental  
24 needs.

25           (d) A child who has a physical or genetic anomaly  
26 associated with developmental disability.

27           ~~(24)(28)~~ "Intermediate care facility for the  
28 developmentally disabled" or "ICF/DD" means a residential  
29 facility licensed and certified pursuant to part XI of chapter  
30 400 in accordance with state law, and certified by the Federal  
31 Government pursuant to the Social Security Act, as a provider

1 ~~of Medicaid services to persons who are developmentally~~  
2 ~~disabled. The capacity of such a facility shall not be more~~  
3 ~~than 120 clients.~~

4       ~~(25)(29)~~ "Job coach" means a person who provides  
5 employment-related training at a work site to individuals with  
6 developmental disabilities.

7       ~~(26)(30)~~ "Medical/dental services" means medically  
8 necessary ~~those~~ services which are provided or ordered for a  
9 client by a ~~person~~ licensed physician or dentist and includes  
10 ~~pursuant to the provisions of chapter 458, chapter 459, or~~  
11 ~~chapter 466. Such services may include, but are not limited~~  
12 ~~to,~~ prescription drugs, specialized therapies, nursing  
13 supervision, hospitalization, dietary services, prosthetic  
14 devices, surgery, specialized equipment and supplies, adaptive  
15 equipment, and other services as required to prevent or  
16 alleviate a medical or dental condition.

17       ~~(27)(31)~~ "Mobile work crew" means a group of workers  
18 employed by an agency that provides services outside the  
19 agency, usually under service contracts.

20       ~~(28)(32)~~ "Normalization principle" means the principle  
21 of letting the client obtain an existence as close to the  
22 normal as possible, making available to the client patterns  
23 and conditions of everyday life which are as close as possible  
24 to the norm and patterns of the mainstream of society.

25       ~~(29)(33)~~ "Personal services" include, but are not  
26 limited to, such services as: individual assistance with or  
27 supervision of essential activities of daily living for  
28 self-care, including ambulation, bathing, dressing, eating,  
29 grooming, and toileting, and other similar services that ~~which~~  
30 the agency department ~~may~~ define by rule. "Personal services"  
31 shall not be construed to mean the provision of medical,



1 nursing, dental, or mental health services by the staff of a  
2 facility, except as provided in this chapter. In addition, an  
3 emergency response device installed in the apartment or living  
4 area of a resident shall not be classified as a personal  
5 service.

6 ~~(30)~~~~(34)~~ "Prader-Willi syndrome" means an inherited  
7 condition typified by neonatal hypotonia with failure to  
8 thrive, hyperphagia or an excessive drive to eat which leads  
9 to obesity usually at 18 to 36 months of age, mild to moderate  
10 retardation, hypogonadism, short stature, mild facial  
11 dysmorphism, and a characteristic neurobehavior.

12 ~~(31)~~~~(35)~~ "Reassessment" means a process which  
13 periodically develops, through annual review and revision of a  
14 client's family or individual support plan, a knowledgeable  
15 statement of current needs and past development for each  
16 client.

17 ~~(36)~~ "~~Rehabilitation workshop facility~~" means a place  
18 ~~operated by a for profit or nonprofit agency engaged in the~~  
19 ~~manufacture or production of products or provision of~~  
20 ~~services, which provides gainful rehabilitation to severely~~  
21 ~~handicapped persons until such persons can become employed or~~  
22 ~~which provides gainful work to persons who are developmentally~~  
23 ~~disabled.~~

24 ~~(32)~~~~(37)~~ "Relative" means an individual who is  
25 connected by affinity or consanguinity to the client and who  
26 is 18 years of age or more.

27 ~~(33)~~~~(38)~~ "Resident" means any person who is  
28 developmentally disabled residing at a residential facility in  
29 the state, whether or not such person is a client of the  
30 agency department.

31

1           ~~(34)(39)~~ "Residential facility" means a facility  
2 providing room and board and personal care for persons with  
3 developmental disabilities.

4           (35) "Residential habilitation" means assistance  
5 provided in a residential habitation center with acquisition,  
6 retention, or improvement in skills related to activities of  
7 daily living, such as personal grooming and cleanliness,  
8 bedmaking and household chores, eating and the preparation of  
9 food, and the social and adaptive skills necessary to enable  
10 the individual to reside in a noninstitutional setting.

11           ~~(36)(40)~~ "Residential habilitation center" means a  
12 community residential facility that provides residential  
13 habilitation. ~~operated primarily for the diagnosis, treatment,~~  
14 ~~habilitation, or rehabilitation of its residents, which~~  
15 ~~facility provides, in a structured residential setting,~~  
16 ~~individualized continuing evaluation, planning, 24 hour~~  
17 ~~supervision, and coordination and integration of health or~~  
18 ~~rehabilitative services to help each resident reach his or her~~  
19 ~~maximum functioning capabilities.~~ The capacity of such a  
20 facility shall not be fewer less than nine residents. After  
21 October 1, 1989, no new residential habilitation centers shall  
22 be licensed and the licensed capacity shall not be increased  
23 for any existing residential habilitation center.

24           ~~(37)(41)~~ "Respite service" means appropriate,  
25 short-term, temporary care that is provided to a person with  
26 developmental disabilities to meet the planned or emergency  
27 needs of the person ~~with developmental disabilities~~ or the  
28 family or other direct service provider.

29           ~~(38)(42)~~ "Retardation" means significantly subaverage  
30 general intellectual functioning existing concurrently with  
31 deficits in adaptive behavior and manifested during the period

1 from conception to age 18. "Significantly subaverage general  
2 intellectual functioning," for the purpose of this definition,  
3 means performance which is two or more standard deviations  
4 from the mean score on a standardized intelligence test  
5 specified in the rules of the agency department. "Adaptive  
6 behavior," for the purpose of this definition, means the  
7 effectiveness or degree with which an individual meets the  
8 standards of personal independence and social responsibility  
9 expected of his or her age, cultural group, and community.

10 ~~(43) "Screening," for purposes of employment,~~  
11 ~~contracting, or certification, means the act of assessing the~~  
12 ~~background of direct service providers and independent support~~  
13 ~~coordinators, who are not related to clients for whom they~~  
14 ~~provide services, and includes, but is not limited to,~~  
15 ~~employment history checks, local criminal records checks~~  
16 ~~through local law enforcement agencies, fingerprinting for all~~  
17 ~~purposes and checks in this subsection, statewide criminal~~  
18 ~~records checks through the Department of Law Enforcement, and~~  
19 ~~federal criminal records checks through the Federal Bureau of~~  
20 ~~Investigation; except that screening for volunteers included~~  
21 ~~under the definition of personnel includes only local criminal~~  
22 ~~records checks through local law enforcement agencies for~~  
23 ~~current residence and residence immediately prior to~~  
24 ~~employment as a volunteer, if different; and statewide~~  
25 ~~criminal records correspondence checks through the Department~~  
26 ~~of Law Enforcement.~~

27 ~~(39)(44)~~ "Severe self-injurious behavior" means any  
28 chronic behavior that results in injury to the person's own  
29 body, which includes, but is not limited to, self-hitting,  
30 head banging, self-biting, scratching, and the ingestion of  
31

1 harmful or potentially harmful nutritive or nonnutritive  
2 substances.

3 ~~(40)(45)~~ "Specialized therapies" means those  
4 treatments or activities prescribed by and provided by an  
5 appropriately trained, licensed, or certified professional or  
6 staff person and may include, but are not limited to, physical  
7 therapy, speech therapy, respiratory therapy, occupational  
8 therapy, behavior therapy, physical management services, and  
9 related specialized equipment and supplies.

10 ~~(41)(46)~~ "Spina bifida" means, for purposes of this  
11 chapter, a person with a medical diagnosis of spina bifida  
12 cystica or myelomeningocele.

13 ~~(42)(47)~~ "Support coordinator" means a person who is  
14 designated by the agency ~~department~~ to assist individuals and  
15 families in identifying their ~~desires~~, capacities, needs, and  
16 resources, as well as finding and gaining access to necessary  
17 supports and services; coordinating the delivery of supports  
18 and services; advocating on behalf of the individual and  
19 family; maintaining relevant records; and monitoring and  
20 evaluating the delivery of supports and services to determine  
21 the extent to which they meet the needs and expectations  
22 identified by the individual, family, and others who  
23 participated in the development of the support plan.

24 ~~(43)(48)~~ "Supported employee" means a person ~~whose~~  
25 ~~developmental disability has traditionally kept him or her~~  
26 ~~from integrated, community based employment and who requires~~  
27 and receives supported employment ~~ongoing support or~~  
28 ~~follow along~~ services in order to maintain community-based  
29 employment.

30 ~~(44)(49)~~ "Supported employment" means employment  
31 located or provided in a normal employment setting which

1 provides at least 20 hours employment per week in an  
2 integrated work setting, with earnings paid on a commensurate  
3 wage basis, and for which continued support ~~is or follow along~~  
4 ~~services are~~ needed for ~~continuing~~ job maintenance.

5 ~~(45)(50)~~ "Supported living" means a category of  
6 individually determined services designed and coordinated in  
7 such a manner as to provide assistance to adult clients who  
8 require ongoing supports to live as independently as possible  
9 in their own homes, to be integrated into the community, and  
10 to participate in community life to the fullest extent  
11 possible.

12 ~~(46)(51)~~ "Training" means a planned approach to  
13 assisting a client to attain or maintain his or her maximum  
14 potential and includes services ranging from sensory  
15 stimulation to instruction in skills for independent living  
16 and employment.

17 ~~(47)(52)~~ "Treatment" means the prevention,  
18 amelioration, or cure of a client's physical and mental  
19 disabilities or illnesses.

20 Section 4. Subsections (1), (3), (4), and (5) of  
21 section 393.064, Florida Statutes, are amended to read:

22 393.064 Prevention.--

23 (1) The agency ~~Department of Children and Family~~  
24 ~~Services~~ shall give priority to the development, planning, and  
25 implementation of programs which have the potential to  
26 prevent, correct, cure, or reduce the severity of  
27 developmental disabilities. The agency ~~department~~ shall  
28 direct an interagency ~~interdepartmental~~ and interprogram  
29 effort for the continued development of a prevention plan and  
30 program. The agency ~~department~~ shall identify, through  
31 demonstration projects, through ~~departmental~~ program

1 | evaluation, and through monitoring of programs and projects  
2 | conducted outside of the agency department, any medical,  
3 | social, economic, or educational methods, techniques, or  
4 | procedures that ~~which~~ have the potential to effectively  
5 | ameliorate, correct, or cure developmental disabilities. The  
6 | program department shall determine the costs and benefits that  
7 | would be associated with such prevention efforts and shall  
8 | implement, or recommend the implementation of, those methods,  
9 | techniques, or procedures which are found likely to be  
10 | cost-beneficial. ~~The department in its legislative budget~~  
11 | ~~request shall identify funding needs for such prevention~~  
12 | ~~programs.~~

13 |           (3) Other agencies of state government shall cooperate  
14 | with and assist the agency department, within available  
15 | resources, in implementing programs which have the potential  
16 | to prevent, or reduce the severity of, developmental  
17 | disabilities and shall consider the findings and  
18 | recommendations of the agency department in developing and  
19 | implementing agency programs and formulating agency budget  
20 | requests.

21 |           (4) There is created at the developmental services  
22 | institution in Gainesville a research and education unit.  
23 | Such unit shall be named the Raymond C. Philips Research and  
24 | Education Unit. The functions of such unit shall include:

25 |           (a) Research into the etiology of developmental  
26 | disabilities.

27 |           (b) Ensuring that new knowledge is rapidly  
28 | disseminated throughout the developmental services program of  
29 | the agency Department of Children and Family Services.  
30 |  
31 |

1 (c) Diagnosis of unusual conditions and syndromes  
2 associated with developmental disabilities in clients  
3 identified throughout the developmental services programs.

4 (d) Evaluation of families of clients with  
5 developmental disabilities of genetic origin in order to  
6 provide them with genetic counseling aimed at preventing the  
7 recurrence of the disorder in other family members.

8 (e) Ensuring that health professionals in the  
9 developmental services institution at Gainesville have access  
10 to information systems that will allow them to remain updated  
11 on newer knowledge and maintain their postgraduate education  
12 standards.

13 (f) Enhancing staff training for professionals  
14 throughout the ~~agency department~~ in the areas of genetics and  
15 developmental disabilities.

16 (5) The ~~agency Department of Children and Family~~  
17 ~~Services~~ shall have the authority, within available resources,  
18 to contract for the supervision and management of the Raymond  
19 C. Philips Research and Education Unit, and such contract  
20 shall include specific program objectives.

21 Section 5. Section 393.0655, Florida Statutes, is  
22 amended to read:

23 393.0655 Screening of direct service providers.--

24 (1) MINIMUM STANDARDS.--The ~~agency department~~ shall  
25 require level 2 employment screening pursuant to chapter 435,  
26 ~~using the level 2 standards for screening set forth in that~~  
27 ~~chapter,~~ for direct service providers who are unrelated to  
28 their clients, including support coordinators, and managers  
29 and supervisors of residential facilities or comprehensive  
30 transitional education programs licensed under s. 393.967 and  
31 any other person, including volunteers, who provide care or

1 services, who have access to a client's living areas, or who  
2 have access to a client's funds or personal property.

3 Background screening shall include employment history checks  
4 as provided in s. 435.03(1) and local criminal records checks  
5 through local law enforcement agencies.

6 (a) A volunteer who assists on an intermittent basis  
7 for less than 40 hours per month does not have to be screened,  
8 if the volunteer is under the direct and constant supervision  
9 of persons who meet the screening requirements of this  
10 section.

11 (b) Licensed physicians, nurses, or other  
12 professionals licensed and regulated by the Department of  
13 Health are not subject to background screening pursuant to  
14 this section if they are providing a service that is within  
15 their scope of licensed practice.

16 (c) A person selected by the family or the individual  
17 with developmental disabilities and paid by the family or the  
18 individual to provide supports or services is not required to  
19 have a background screening under this section.

20 (d) Persons residing with the direct services  
21 provider, including family members, are subject to background  
22 screening; however, such persons who are 12 to 18 years of age  
23 shall be screened for delinquency records only.

24 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency  
25 ~~department~~ may grant exemptions from disqualification from  
26 working with children or adults with developmental  
27 disabilities ~~the developmentally disabled~~ as provided in s.  
28 435.07.

29 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE  
30 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints  
31 and the state criminal records checks shall be borne by the



1 employer or by the employee or individual who is being  
2 screened.

3 (4) EXCLUSION FROM OWNING, OPERATING, OR BEING  
4 EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY;  
5 HEARINGS PROVIDED.--

6 (a) The agency ~~department~~ shall deny, suspend,  
7 terminate, or revoke a license, certification, rate agreement,  
8 purchase order, or contract, or pursue other remedies provided  
9 in s. 393.0673, s. 393.0675, or s. 393.0678 in addition to or  
10 in lieu of denial, suspension, termination, or revocation for  
11 failure to comply with this section.

12 (b) When the agency ~~department~~ has reasonable cause to  
13 believe that grounds for denial or termination of employment  
14 exist, it shall notify, in writing, the employer and the  
15 direct service provider affected, stating the specific record  
16 which indicates noncompliance with the standards in this  
17 section.

18 (c) The procedures established for hearing under  
19 chapter 120 shall be available to the employer and the direct  
20 service provider in order to present evidence relating either  
21 to the accuracy of the basis of exclusion or to the denial of  
22 an exemption from disqualification.

23 (d) Refusal on the part of an employer to dismiss a  
24 direct service provider who has been found to be in  
25 noncompliance with standards of this section shall result in  
26 automatic denial, termination, or revocation of the license,  
27 certification, rate agreement, purchase order, or contract, in  
28 addition to any other remedies pursued by the agency  
29 ~~department~~.

30 Section 6. Section 393.066, Florida Statutes, is  
31 amended to read:

1           393.066 Community services and treatment for persons  
2 who are developmentally disabled.--

3           (1) The agency ~~Department of Children and Family~~  
4 ~~Services~~ shall plan, develop, organize, and implement its  
5 programs of services and treatment for persons who are  
6 developmentally disabled ~~along district lines. The goal of~~  
7 ~~such programs shall be~~ to allow clients to live as  
8 independently as possible in their own homes or communities  
9 and to achieve productive lives as close to normal as  
10 possible.

11           ~~(2) All programs of services and treatment for clients~~  
12 ~~shall be administered through the districts and shall serve~~  
13 ~~all clients regardless of the type of residential setting in~~  
14 ~~which the client lives.~~ All elements of community-based  
15 services shall be made available, ~~in each service district~~ and  
16 eligibility for these services shall be consistent across the  
17 state districts. In addition, all purchased services shall be  
18 approved by the agency district.

19           ~~(2)(3)~~ All services needed shall be purchased instead  
20 of provided directly by the agency department, when such  
21 arrangement is more cost-efficient than having those services  
22 provided directly by the department.

23           ~~(3)(4)~~ Community-based services that are medically  
24 necessary to prevent institutionalization shall, to the extent  
25 of available resources, include:

26           (a) Day habilitation services, including developmental  
27 training services.

28           (b) Family care services.

29           (c) Guardian advocate referral services.

30  
31

1           (d) Medical/dental services, except that medical  
2 services shall not be provided to clients with spina bifida  
3 except as specifically appropriated by the Legislature.

4           (e) Parent training.

5           (f) Recreation.

6           (g) Residential services.

7           (h) Respite services.

8           (i) Social services.

9           (j) Specialized therapies.

10          (k) Supported employment, including enclave, job  
11 coach, mobile work crew, and follow-along services.

12          (l) Supported living.

13          (m) Training, including behavioral programming.

14          (n) Transportation.

15          (o) Other habilitative and rehabilitative services as  
16 needed.

17  
18 ~~Services to clients with spina bifida shall not include~~  
19 ~~medical services except as appropriated by the Legislature.~~

20          ~~(5) Provided it is consistent with the intent of the~~  
21 ~~Legislature, the department shall prioritize increased~~  
22 ~~appropriations provided for community based services for~~  
23 ~~developmentally disabled individuals toward individualized,~~  
24 ~~community based supports and services for consumers and their~~  
25 ~~families. Further, the department's 5 year plan for~~  
26 ~~Developmental Services shall reflect a priority toward~~  
27 ~~individualized, community based supports and services for~~  
28 ~~consumers and their families.~~

29          ~~(4)(6)~~ The agency department shall utilize the  
30 services of private businesses, not-for-profit organizations,  
31 and units of local government whenever such services are more

1 | cost-efficient than such services provided directly by the  
2 | department, including arrangements for provision of  
3 | residential facilities.

4 |       ~~(5)(7)~~ In order to improve the potential for  
5 | utilization of more cost-effective, community-based  
6 | residential facilities, the agency ~~department~~ shall promote  
7 | the statewide development of day habilitation services for  
8 | clients who live with a direct service provider in a  
9 | community-based residential facility and who do not require  
10 | 24-hour-a-day care in a hospital or other health care  
11 | institution, but who may, in the absence of day habilitation  
12 | services, require admission to a developmental disabilities  
13 | ~~services~~ institution. Each day service facility shall provide  
14 | a protective physical environment for clients, ensure that  
15 | direct service providers meet ~~the~~ minimum screening standards  
16 | ~~for good moral character~~ as required ~~contained~~ in s. 393.0655,  
17 | make available to all day habilitation service participants at  
18 | least one meal on each day of operation, provide facilities to  
19 | enable participants to obtain needed rest while attending the  
20 | program, as appropriate, and provide social and educational  
21 | activities designed to stimulate interest and provide  
22 | socialization skills.

23 |       (6) To promote independence and productivity, the  
24 | agency shall provide supports and services, within available  
25 | resources, to assist clients enrolled in Medicaid waivers who  
26 | choose to pursue gainful employment.

27 |       ~~(7)(8)~~ For the purpose of making needed  
28 | community-based residential facilities available at the least  
29 | possible cost to the state, the agency ~~department~~ is  
30 | authorized to lease privately owned residential facilities  
31 | under long-term rental agreements, if such rental agreements

1 are projected to be less costly to the state over the useful  
2 life of the facility than state purchase or state construction  
3 of such a facility. ~~In addition, the department is authorized~~  
4 ~~to permit, on any public land to which the department holds~~  
5 ~~the lease, construction of a residential facility for which~~  
6 ~~the department has entered into a long term rental agreement~~  
7 ~~as specified in this subsection.~~

8       ~~(8)(9)~~ The agency ~~department~~ may adopt rules to ensure  
9 compliance with federal laws or regulations that apply to  
10 services provided pursuant to this section.

11       Section 7. Section 393.0661, Florida Statutes, is  
12 amended to read:

13       393.0661 Home and community-based services delivery  
14 system; comprehensive redesign.--The Legislature finds that  
15 the home and community-based services delivery system for  
16 persons with developmental disabilities and the availability  
17 of appropriated funds are two of the critical elements in  
18 making services available. Therefore, it is the intent of the  
19 Legislature that the Agency for Persons with Disabilities  
20 ~~Department of Children and Family Services~~ shall develop and  
21 implement a comprehensive redesign of the system. The redesign  
22 of the home and community-based services system shall include,  
23 at a minimum, all actions necessary to achieve an appropriate  
24 rate structure, client choice within a specified service  
25 package, appropriate assessment strategies, an efficient  
26 billing process that contains reconciliation and monitoring  
27 components, a redefined role for support coordinators that  
28 avoids potential conflicts of interest, and family/client  
29 budgets linked to levels of need. ~~Prior to the release of~~  
30 ~~funds in the lump sum appropriation, the department shall~~  
31 ~~present a plan to the Executive Office of the Governor, the~~

1 ~~House Fiscal Responsibility Council, and the Senate~~  
2 ~~Appropriations Committee. The plan must result in a full~~  
3 ~~implementation of the redesigned system no later than July 1,~~  
4 ~~2003. At a minimum, the plan must provide that the portions~~  
5 ~~related to direct provider enrollment and billing will be~~  
6 ~~operational no later than March 31, 2003. The plan must~~  
7 ~~further provide that a more effective needs assessment~~  
8 ~~instrument will be deployed by January 1, 2003, and that all~~  
9 ~~clients will be assessed with this device by June 30, 2003.~~

10 ~~(1) In no event may~~ The agency shall use department  
11 ~~select an assessment instrument without appropriate evidence~~  
12 ~~that is it will be~~ reliable and valid for identifying the  
13 support needs of individuals. ~~Once such evidence has been~~  
14 ~~obtained, however, The agency may contract with department~~  
15 ~~shall determine the feasibility of contracting with an~~  
16 ~~external vendor to apply the new assessment device to all~~  
17 ~~clients receiving services through the Medicaid waiver. In~~  
18 ~~lieu of using an external vendor or, the department may use~~  
19 support coordinators to complete client for the assessments if  
20 it develops sufficient safeguards and training to ensure  
21 ongoing significantly improve the inter-rater reliability of  
22 the support coordinators administering the assessment.

23 (2) The agency, with the concurrence of the Agency for  
24 Health Care Administration, may contract for the determination  
25 of medical necessity and establishment of individual budgets.

26 Section 8. Section 393.068, Florida Statutes, is  
27 amended to read:

28 393.068 Family care program.--

29 (1) The family care program is established for the  
30 purpose of providing services and support to families and  
31 individuals with developmental disabilities in order to

1 maintain the individual in the home environment and avoid  
2 costly out-of-home residential placement. ~~The Legislature~~  
3 ~~recognizes the importance of family support in the long range~~  
4 ~~success of deinstitutionalization.~~ Services and support  
5 available to families and individuals with developmental  
6 disabilities shall emphasize community living and enable  
7 individuals with developmental disabilities to enjoy typical  
8 lifestyles. ~~Support and flexibility in coordinating support~~  
9 ~~and services are core elements in caring for the individual~~  
10 ~~who is developmentally disabled.~~ One way to accomplish this is  
11 to recognize that families are the greatest resource available  
12 to individuals who have developmental disabilities and ~~that~~  
13 ~~families~~ must be supported in their role as primary care  
14 givers.

15 (2) Services and support authorized under this program  
16 shall, to the extent of available resources, include the  
17 services listed under s. 393.066 ~~s. 393.066(4)~~ and, in  
18 addition, shall include, but not be limited to:

- 19 (a) Attendant care.  
20 (b) Barrier-free modifications to the home.  
21 (c) Home visitation by agency workers.  
22 (d) In-home subsidies.  
23 (e) Low-interest loans.  
24 ~~(f) Parent training.~~  
25 ~~(g) Respite care.~~  
26 (f)(h) Modifications for vehicles used to transport  
27 the individual with a developmental disability.  
28 (g)(i) Facilitated communication.  
29 (h)(j) Family counseling.  
30 (i)(k) Equipment and supplies.  
31 (j)(l) Self-advocacy training.

1           ~~(k)(m)~~ Roommate services.

2           ~~(l)(n)~~ Integrated community activities.

3           ~~(m)(o)~~ Emergency services.

4           ~~(n)(p)~~ Support coordination.

5           (o) Supported employment.

6           ~~(p)(q)~~ Other support services as identified by the  
7 family or individual.

8           ~~(2) Provided it is consistent with the intent of the~~  
9 ~~Legislature, the department shall prioritize increased~~  
10 ~~appropriations provided for family based services for~~  
11 ~~developmentally disabled individuals toward individualized,~~  
12 ~~family based supports and services for consumers and their~~  
13 ~~families. Further, the department's 5 year plan for~~  
14 ~~developmental services shall reflect a priority toward~~  
15 ~~individualized, family based supports and services for~~  
16 ~~consumers and their families.~~

17           (3) When it is determined by the agency department to  
18 be more cost-effective and in the best interest of the client  
19 to maintain such client in the home of a direct service  
20 provider, the parent or guardian of the client or, if  
21 competent, the client may enroll the client in the family care  
22 program. The direct service provider of a client enrolled in  
23 the family care program shall be reimbursed according to a  
24 rate schedule set by the agency department. In-home subsidies  
25 cited in paragraph (1)(d) shall be provided according to s.  
26 393.0695 and are not subject to any other payment method or  
27 rate schedule provided for in this section.

28           (4) All existing community resources available to the  
29 client shall be utilized to support program objectives.  
30 Additional services may be incorporated into the program as  
31 appropriate and to the extent that resources are available.



1 The agency ~~department~~ is authorized to accept gifts and grants  
2 in order to carry out the program.

3 (5) The agency ~~department~~ may contract for the  
4 provision of any portion of the services required by the  
5 program, except for in-home subsidies cited in paragraph  
6 ~~(2)(d)(1)(d)~~, which shall be provided pursuant to s.  
7 393.0695. Otherwise, purchase of service contracts shall be  
8 used whenever the services so provided are more cost-efficient  
9 than those provided by the agency ~~department~~.

10 (6) When possible, services shall be obtained under  
11 the "Florida Comprehensive Annual Services Program Plan under  
12 Title XX of the Social Security Act" and the "Florida Plan for  
13 Medical Assistance under Title XIX of the Social Security  
14 Act."

15 (7) To provide a range of personal services for the  
16 client, the use of volunteers shall be maximized. The agency  
17 ~~department~~ shall assure appropriate insurance coverage to  
18 protect volunteers from personal liability while acting within  
19 the scope of their volunteer assignments under the program.

20 ~~(8) The department shall submit to the President of~~  
21 ~~the Senate and the Speaker of the House of Representatives, as~~  
22 ~~part of the biennial plan required by s. 393.14, an evaluation~~  
23 ~~report summarizing the progress of the family care program.~~  
24 ~~The report shall include the information and data necessary~~  
25 ~~for an accurate analysis of the costs and benefits associated~~  
26 ~~with the establishment and operation of the programs that were~~  
27 ~~established.~~

28 Section 9. Subsections (1) and (3) of section  
29 393.0695, Florida Statutes, are amended to read:

30 393.0695 Provision of in-home subsidies.--  
31

1           (1) The agency may pay ~~department shall develop by~~  
2 ~~October 1, 1991, a plan for paying~~ in-home subsidies to  
3 clients enrolled in the family care program or supported  
4 living when it is determined to be more cost-effective and in  
5 the best interest of the client to provide a cash supplement  
6 to the client's income to enable the client to remain in the  
7 family home or the client's own home. Payments may be made to  
8 the parent or guardian of the client or, if the client is  
9 competent, directly to the client.

10           (3) In-home subsidies must be based on an individual  
11 determination of need and must not exceed maximum amounts set  
12 by the agency ~~department~~ and reassessed by the agency annually  
13 ~~department quarterly~~.

14           Section 10. Subsection (1), paragraph (a) of  
15 subsection (2), paragraph (a) of subsection (4), paragraphs  
16 (a), (d), and (h) of subsection (5), paragraph (a) of  
17 subsection (6), paragraphs (d) and (e) of subsection (8), and  
18 subsection (13) of section 393.11, Florida Statutes, are  
19 amended to read:

20           393.11 Involuntary admission to residential  
21 services.--

22           (1) JURISDICTION.--When a person is mentally retarded  
23 and requires involuntary admission to residential services  
24 provided by the agency ~~developmental services program of the~~  
25 ~~Department of Children and Family Services~~, the circuit court  
26 of the county in which the person resides shall have  
27 jurisdiction to conduct a hearing and enter an order  
28 involuntarily admitting the person in order that the person  
29 may receive the care, treatment, habilitation, and  
30 rehabilitation which the person needs. For the purpose of  
31 identifying mental retardation, diagnostic capability shall be

1 established by ~~in every program function of the agency~~  
2 ~~department in the districts, including, but not limited to,~~  
3 ~~programs provided by children and families; delinquency~~  
4 ~~services; alcohol, drug abuse, and mental health; and economic~~  
5 ~~services, and by the Department of Labor and Employment~~  
6 ~~Security~~. Except as otherwise specified, the proceedings under  
7 this section shall be governed by the Florida Rules of Civil  
8 Procedure.

9 (2) PETITION.--

10 (a) A petition for involuntary admission to  
11 residential services may be executed by a petitioning  
12 commission. For proposed involuntary admission to residential  
13 services arising out of chapter 916, the petition may be filed  
14 by a petitioning commission, the agency department, the state  
15 attorney of the circuit from which the defendant was  
16 committed, or the defendant's attorney.

17 (4) DEVELOPMENTAL SERVICES PARTICIPATION.--

18 (a) Upon receiving the petition, the court shall  
19 immediately order the developmental services program of the  
20 agency department to examine the person being considered for  
21 involuntary admission to residential services.

22 (5) EXAMINING COMMITTEE.--

23 (a) Upon receiving the petition, the court shall  
24 immediately appoint an examining committee to examine the  
25 person being considered for involuntary admission to  
26 residential services of the developmental services program of  
27 the agency department.

28 (d) Members of the committee shall not be employees of  
29 the agency department or be associated with each other in  
30 practice or in employer-employee relationships. Members of  
31 the committee shall not have served as members of the

1 petitioning commission. Members of the committee shall not be  
2 employees of the members of the petitioning commission or be  
3 associated in practice with members of the commission.

4 (h) The agency ~~department~~ shall develop and prescribe  
5 by rule one or more standard forms to be used as a guide for  
6 members of the examining committee.

7 (6) COUNSEL; GUARDIAN AD LITEM.--

8 (a) The person with mental retardation shall be  
9 represented by counsel at all stages of the judicial  
10 proceeding. In the event the person is indigent and cannot  
11 afford counsel, the court shall appoint a public defender not  
12 less than 20 working days before the scheduled hearing. The  
13 person's counsel shall have full access to the records of the  
14 service provider and the agency ~~department~~. In all cases, the  
15 attorney shall represent the rights and legal interests of the  
16 person with mental retardation, regardless of who may initiate  
17 the proceedings or pay the attorney's fee.

18 (8) ORDER.--

19 (d) If an order of involuntary admission to  
20 residential services provided by the developmental services  
21 program of the agency ~~department~~ is entered by the court, a  
22 copy of the written order shall be served upon the person, the  
23 person's counsel, the agency ~~department~~, and the state  
24 attorney and the person's defense counsel, if applicable. The  
25 order of involuntary admission sent to the agency ~~department~~  
26 shall also be accompanied by a copy of the examining  
27 committee's report and other reports contained in the court  
28 file.

29 (e) Upon receiving the order, the agency ~~department~~  
30 shall, within 45 days, provide the court with a copy of the  
31 person's family or individual support plan and copies of all

1 examinations and evaluations, outlining the treatment and  
2 rehabilitative programs. The agency ~~department~~ shall document  
3 that the person has been placed in the most appropriate, least  
4 restrictive and cost-beneficial residential facility. A copy  
5 of the family or individual support plan and other  
6 examinations and evaluations shall be served upon the person  
7 and the person's counsel at the same time the documents are  
8 filed with the court.

9 (13) HABEAS CORPUS.--At any time and without notice,  
10 any person involuntarily admitted to the developmental  
11 services program of the agency ~~department~~, or the person's  
12 parent or legal guardian in his or her behalf, is entitled to  
13 a writ of habeas corpus to question the cause, legality, and  
14 appropriateness of the person's involuntary admission. Each  
15 person, or the person's parent or legal guardian, shall  
16 receive specific written notice of the right to petition for a  
17 writ of habeas corpus at the time of his or her involuntary  
18 placement.

19 Section 11. Paragraphs (a), (b), and (d) of subsection  
20 (2), subsection (3), paragraphs (b), (g), (i), and (j) of  
21 subsection (4), and subsection (6) of section 393.13, Florida  
22 Statutes, are amended to read:

23 393.13 Personal treatment of persons who are  
24 developmentally disabled.--

25 (2) LEGISLATIVE INTENT.--

26 (a) The Legislature finds and declares that the system  
27 of care provided ~~which the state provides~~ to individuals who  
28 are developmentally disabled must be designed to meet the  
29 needs of the clients as well as protect the integrity of their  
30 legal and human rights. ~~Further, the current system of care~~  
31 ~~for persons who are developmentally disabled is in need of~~

1 ~~substantial improvement in order to provide truly meaningful~~  
2 ~~treatment and habilitation.~~

3 (b) The Legislature further finds and declares that  
4 the design and delivery of treatment and services to persons  
5 who are developmentally disabled should be directed by the  
6 principles of normalization and therefore should:

7 1. Abate the use of large institutions.

8 2. Continue the development of community-based  
9 services which provide reasonable alternatives to  
10 institutionalization in settings that are least restrictive to  
11 the client.

12 3. Provide training and education to individuals who  
13 are developmentally disabled which will maximize their  
14 potential to lead independent and productive lives and which  
15 will afford opportunities for outward mobility from  
16 institutions.

17 4. Reduce the use of sheltered workshops and other  
18 noncompetitive employment day activities and promote  
19 opportunities for gainful employment for persons with  
20 developmental disabilities who choose to seek such employment.

21 (d) It is the intent of the Legislature:

22 1. To articulate the existing legal and human rights  
23 of persons who are developmentally disabled so that they may  
24 be exercised and protected. Persons with developmental  
25 disabilities shall have all the rights enjoyed by citizens of  
26 the state and the United States.

27 2. To provide a mechanism for the identification,  
28 evaluation, and treatment of persons with developmental  
29 disabilities.

30 3. To divert those individuals from institutional  
31 commitment who, by virtue of comprehensive assessment, can be

1 placed in less costly, more effective community environments  
2 and programs.

3 ~~4. To develop a plan which will indicate the most~~  
4 ~~effective and efficient manner in which to implement treatment~~  
5 ~~programs which are meaningful to individuals with~~  
6 ~~developmental disabilities, while safeguarding and respecting~~  
7 ~~the legal and human rights of such individuals.~~

8 ~~4.5. Once the plan developed under the provisions of~~  
9 ~~subparagraph 4. is presented to the Legislature, To fund~~  
10 improvements in the program in accordance with the  
11 availability of state resources and yearly priorities  
12 determined by the Legislature.

13 ~~5.6.~~ To ensure that persons with developmental  
14 disabilities receive treatment and habilitation which fosters  
15 the developmental potential of the individual.

16 ~~6.7.~~ To provide programs for the proper habilitation  
17 and treatment of persons with developmental disabilities which  
18 shall include, but not be limited to, comprehensive  
19 medical/dental care, education, recreation, specialized  
20 therapies, training, social services, transportation,  
21 guardianship, family care programs, day habilitation services,  
22 and habilitative and rehabilitative services suited to the  
23 needs of the individual regardless of age, degree of  
24 disability, or handicapping condition. No person with  
25 developmental disabilities shall be deprived of these  
26 enumerated services by reason of inability to pay.

27 ~~7.8.~~ To fully effectuate the normalization principle  
28 through the establishment of community services for persons  
29 with developmental disabilities as a viable and practical  
30 alternative to institutional care at each stage of individual  
31

1 life development. If care in a residential facility becomes  
2 necessary, it shall be in the least restrictive setting.

3 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL  
4 DISABILITIES.--The rights described in this subsection shall  
5 apply to all persons with developmental disabilities, whether  
6 or not such persons are clients of the agency ~~department~~.

7 (a) Persons with developmental disabilities shall have  
8 a right to dignity, privacy, and humane care, including the  
9 right to be free from sexual abuse in residential facilities.

10 (b) Persons with developmental disabilities shall have  
11 the right to religious freedom and practice. Nothing shall  
12 restrict or infringe on a person's right to religious  
13 preference and practice.

14 (c) Persons with developmental disabilities shall  
15 receive services, within available sources, which protect the  
16 personal liberty of the individual and which are provided in  
17 the least restrictive conditions necessary to achieve the  
18 purpose of treatment.

19 (d) Persons who are developmentally disabled shall  
20 have a right to participate in an appropriate program of  
21 quality education and training services, within available  
22 resources, regardless of chronological age or degree of  
23 disability. Such persons may be provided with instruction in  
24 sex education, marriage, and family planning.

25 (e) Persons who are developmentally disabled shall  
26 have a right to social interaction and to participate in  
27 community activities.

28 (f) Persons who are developmentally disabled shall  
29 have a right to physical exercise and recreational  
30 opportunities.

31



1 (g) Persons who are developmentally disabled shall  
2 have a right to be free from harm, including unnecessary  
3 physical, chemical, or mechanical restraint, isolation,  
4 excessive medication, abuse, or neglect.

5 (h) Persons who are developmentally disabled shall  
6 have a right to consent to or refuse treatment, subject to the  
7 provisions of s. 393.12(2)(a) or chapter 744.

8 (i) No otherwise qualified person shall, by reason of  
9 having a developmental disability, be excluded from  
10 participation in, or be denied the benefits of, or be subject  
11 to discrimination under, any program or activity which  
12 receives public funds, and all prohibitions set forth under  
13 any other statute shall be actionable under this statute.

14 (j) No otherwise qualified person shall, by reason of  
15 having a developmental disability, be denied the right to vote  
16 in public elections.

17 (4) CLIENT RIGHTS.--For purposes of this subsection,  
18 the term "client," as defined in s. 393.063, shall also  
19 include any person served in a facility licensed pursuant to  
20 s. 393.067.

21 (b) Each client has the right to the possession and  
22 use of his or her own clothing and personal effects, except in  
23 those specific instances where the use of some of these items  
24 as reinforcers is essential for training the client as part of  
25 an appropriately approved behavioral program. The chief  
26 administrator of the facility may take temporary custody of  
27 such effects when it is essential to do so for medical or  
28 safety reasons. Custody of such personal effects shall be  
29 promptly recorded in the client's record, and a receipt for  
30 such effects shall be immediately given to the client, if  
31 competent, or the client's parent or legal guardian.

1           1. All money belonging to a client held by the agency  
2 ~~department~~ shall be held in compliance with s. 402.17(2).

3           2. All interest on money received and held for the  
4 personal use and benefit of a client shall be the property of  
5 that client and shall not accrue to the general welfare of all  
6 clients or be used to defray the cost of residential care.  
7 Interest so accrued shall be used or conserved for the  
8 personal use or benefit of the individual client as provided  
9 in s. 402.17(2).

10          3. Upon the discharge or death of a client, a final  
11 accounting shall be made of all personal effects and money  
12 belonging to the client held by the agency ~~department~~. All  
13 such personal effects and money, including interest, shall be  
14 promptly turned over to the client or his or her heirs.

15          (g) No client shall be subjected to a treatment  
16 program to eliminate bizarre or unusual behaviors without  
17 first being examined by a physician who in his or her best  
18 judgment determines that such behaviors are not organically  
19 caused.

20          1. Treatment programs involving the use of noxious or  
21 painful stimuli shall be prohibited.

22          2. All alleged violations of this paragraph shall be  
23 reported immediately to the chief administrative officer of  
24 the facility or the district administrator, the agency  
25 ~~department~~ head, and the Florida local advocacy council. A  
26 thorough investigation of each incident shall be conducted and  
27 a written report of the finding and results of such  
28 investigation shall be submitted to the chief administrative  
29 officer of the facility or the district administrator and to  
30 the agency ~~department~~ head within 24 hours of the occurrence  
31 or discovery of the incident.

1           3. The agency ~~department~~ shall adopt ~~promulgate~~ by  
2 rule a system for the oversight of behavioral programs. Such  
3 system shall establish guidelines and procedures governing the  
4 design, approval, implementation, and monitoring of all  
5 behavioral programs involving clients. The system shall  
6 ensure statewide and local review by committees of  
7 professionals certified as behavior analysts pursuant to s.  
8 393.17. No behavioral program shall be implemented unless  
9 reviewed according to the rules established by the agency  
10 ~~department~~ under this section. Nothing stated in this section  
11 shall prohibit the review of programs by the Florida statewide  
12 or local advocacy councils.

13           (i) Clients shall have the right to be free from  
14 unnecessary physical, chemical, or mechanical restraint.  
15 Restraints shall be employed only in emergencies or to protect  
16 the client from imminent injury to himself or herself or  
17 others. Restraints shall not be employed as punishment, for  
18 the convenience of staff, or as a substitute for a  
19 habilitative plan. Restraints shall impose the least possible  
20 restrictions consistent with their purpose and shall be  
21 removed when the emergency ends. Restraints shall not cause  
22 physical injury to the client and shall be designed to allow  
23 the greatest possible comfort.

24           1. Mechanical supports used in normative situations to  
25 achieve proper body position and balance shall not be  
26 considered restraints, but shall be prescriptively designed  
27 and applied under the supervision of a qualified professional  
28 with concern for principles of good body alignment,  
29 circulation, and allowance for change of position.

30           2. Totally enclosed cribs and barred enclosures shall  
31 be considered restraints.

1           3. Daily reports on the employment of physical,  
2 chemical, or mechanical restraints by those specialists  
3 authorized in the use of such restraints shall be made to the  
4 appropriate chief administrator of the facility, and a monthly  
5 summary of such reports shall be relayed to the district  
6 administrator and the Florida local advocacy council. The  
7 reports shall summarize all such cases of restraints, the type  
8 used, the duration of usage, and the reasons therefor.  
9 Districts shall submit districtwide quarterly reports of these  
10 summaries to the state Developmental Disabilities Program  
11 Office.

12           4. The agency ~~department~~ shall post a copy of the  
13 rules adopted ~~promulgated~~ under this section in each living  
14 unit of residential facilities. A copy of the rules adopted  
15 ~~promulgated~~ under this section shall be given to all staff  
16 members of licensed facilities and made a part of all  
17 preservice and inservice training programs.

18           (j)1. Each client shall have a central record. The  
19 record shall include data pertaining to admission and such  
20 other information as may be required under rules of the agency  
21 ~~department~~.

22           2. Unless waived by the client, if competent, or the  
23 client's parent or legal guardian if the client is  
24 incompetent, the client's central record shall be confidential  
25 and exempt from the provisions of s. 119.07(1), and no part of  
26 it shall be released except:

27           a. The record may be released to physicians,  
28 attorneys, and government agencies having need of the record  
29 to aid the client, as designated by the client, if competent,  
30 or the client's parent or legal guardian, if the client is  
31 incompetent.

1           b. The record shall be produced in response to a  
2 subpoena or released to persons authorized by order of court,  
3 excluding matters privileged by other provisions of law.

4           c. The record or any part thereof may be disclosed to  
5 a qualified researcher, a staff member of the facility, or an  
6 employee of the agency ~~department~~ when the administrator of  
7 the facility or the director ~~secretary~~ of the agency  
8 ~~department~~ deems it necessary for the treatment of the client,  
9 maintenance of adequate records, compilation of treatment  
10 data, or evaluation of programs.

11           d. Information from the records may be used for  
12 statistical and research purposes if the information is  
13 abstracted in such a way to protect the identity of  
14 individuals.

15           3. All central records for each client in residential  
16 facilities shall be kept on uniform forms distributed by the  
17 agency ~~department~~. The central record shall accurately  
18 summarize each client's history and present condition.

19           4. The client, if competent, or the client's parent or  
20 legal guardian if the client is incompetent, shall be supplied  
21 with a copy of the client's central record upon request.

22           (6) NOTICE OF RIGHTS.--Each person with developmental  
23 disabilities, if competent, or parent or legal guardian of  
24 such person if the person is incompetent, shall promptly  
25 receive from the agency ~~Department of Children and Family~~  
26 ~~Services~~ or the Department of Education a written copy of this  
27 act. Each person with developmental disabilities able to  
28 comprehend shall be promptly informed, in the language or  
29 other mode of communication which such person understands, of  
30 the above legal rights of persons with developmental  
31 disabilities.

1           Section 12. Section 393.17, Florida Statutes, is  
2 amended to read:

3           393.17 Behavioral programs; certification of behavior  
4 analysts; ~~fees.~~ --The agency may recognize the certification of  
5 behavior analysts awarded by a nonprofit corporation whose  
6 mission is to meet professional credentialing needs identified  
7 by behavior analysts, state governments, and consumers of  
8 behavior analysis services and whose work has the support of  
9 the Association for Behavior Analysis International. The  
10 ~~department shall by rule implement a certification program to~~  
11 ~~ensure that qualified persons oversee the design and~~  
12 ~~implementation of behavioral programs for persons who are~~  
13 ~~developmentally disabled. Certification and recertification~~  
14 ~~minimum standards must comply with departmental rules and must~~  
15 ~~include, for initial certification, examination of~~  
16 ~~competencies in applying behavior analysis with persons who~~  
17 ~~are developmentally disabled within established competency~~  
18 ~~clusters. These competency clusters shall include, but not be~~  
19 ~~limited to, behavioral assessments, observation and recording,~~  
20 ~~behavioral program development and monitoring, and other areas~~  
21 ~~as determined by professional practitioners of behavior~~  
22 ~~analysis. Fees shall be charged for certification not to~~  
23 ~~exceed the cost of development and administration of the~~  
24 ~~examination and periodic renewal of certification. The~~  
25 ~~department shall establish by rule the procedures for~~  
26 ~~certification and certification renewal.~~

27           Section 13. Section 393.22, Florida Statutes, is  
28 amended to read:

29           393.22 ~~Transfer of appropriations; barriers to~~  
30 ~~services;~~ Financial commitment to community services  
31 programs.--

1           ~~(1) No funds appropriated for developmental services~~  
2 ~~programs shall be transferred pursuant to s. 216.292, unless~~  
3 ~~there is a finding by the secretary that treatment programs~~  
4 ~~for developmental disabilities will not be adversely affected~~  
5 ~~by the transfer.~~

6           ~~(2) Development of programs for other disabilities~~  
7 ~~shall not effectuate a reduction or dilution of the ongoing~~  
8 ~~financial commitment of the state through appropriations for~~  
9 ~~programs and services for persons with mental retardation,~~  
10 ~~cerebral palsy, autism, or spina bifida.~~

11           ~~(3) In order to The Department of Children and Family~~  
12 ~~Services and the Agency for Health Care Administration jointly~~  
13 ~~shall ensure that whenever a number of persons move from an~~  
14 ~~institution serving persons with developmental disabilities~~  
15 ~~which is sufficient to allow an entire residential unit within~~  
16 ~~that institution to be closed, no less than 80 percent of the~~  
17 ~~direct costs of providing services to persons who had resided~~  
18 ~~in that unit shall be reallocated for community services.~~

19           Section 14. Section 393.502, Florida Statutes, is  
20 amended to read:

21           393.502 Family care councils.--

22           (1) CREATION.--There shall be established and located  
23 within each service area of the agency ~~district of the~~  
24 ~~department~~ a ~~district~~ family care council.

25           (2) MEMBERSHIP.--

26           (a) Each local ~~district~~ family care council shall  
27 consist of at least 10 and no more than 15 members recommended  
28 by a majority vote of the local ~~district~~ family care council  
29 and appointed by the Governor.

30           (b) At least three of the members of the council must  
31 be consumers. One such member shall be a consumer who received

1 ~~developmental~~ services within the 4 years prior to the date of  
2 recommendation, or the legal guardian of such a consumer. The  
3 remainder of the council members shall be parents, guardians,  
4 or siblings of persons with developmental disabilities who  
5 qualify for ~~developmental~~ services pursuant to this chapter.

6 (c) A person who is currently serving on another board  
7 or council of the agency ~~department~~ may not be appointed to a  
8 local ~~district~~ family care council.

9 (d) Employees of the agency ~~department~~ are not  
10 eligible to serve on a local ~~district~~ family care council.

11 (e) Persons related by consanguinity or affinity  
12 within the third degree shall not serve on the same local  
13 ~~district~~ family care council at the same time.

14 (f) A chair for the council shall be chosen by the  
15 council members to serve for 1 year. A person may serve no  
16 more than four 1-year terms as chair.

17 (3) TERMS; VACANCIES.--

18 (a) Council members shall be appointed for a 3-year  
19 term, except as provided in subsection (8), and may be  
20 reappointed to one additional term.

21 (b) A member who has served two consecutive terms  
22 shall not be eligible to serve again until 12 months have  
23 elapsed since ending his or her service on the local ~~district~~  
24 council.

25 (c) Upon expiration of a term or in the case of any  
26 other vacancy, the local ~~district~~ council shall, by majority  
27 vote, recommend to the Governor for appointment a person for  
28 each vacancy. ~~If the Governor does not act on the council's~~  
29 ~~recommendations within 45 days after receiving them, the~~  
30 ~~persons recommended shall be considered to be appointed.~~



1           (4) COMMITTEE APPOINTMENTS.--The chair of the local  
2 ~~district~~ family care council may appoint persons to serve on  
3 council committees. Such persons may include former members of  
4 the council and persons not eligible to serve on the council.

5           (5) TRAINING.--

6           (a) The agency department, in consultation with the  
7 local district councils, shall establish a training program  
8 for local district family care council members. Each local  
9 area district shall provide the training program when new  
10 persons are appointed to the local district council and at  
11 other times as the secretary deems necessary.

12           (b) The training shall assist the council members to  
13 understand the laws, rules, and policies applicable to their  
14 duties and responsibilities.

15           (c) All persons appointed to a local district council  
16 must complete this training within 90 days after their  
17 appointment. A person who fails to meet this requirement shall  
18 be considered to have resigned from the council.

19           (6) MEETINGS.--Council members shall serve on a  
20 voluntary basis without payment for their services but shall  
21 be reimbursed for per diem and travel expenses as provided for  
22 in s. 112.061. The council shall meet at least six times per  
23 year.

24           (7) PURPOSE.--The purpose of the local district family  
25 care councils shall be to advise the agency department and its  
26 ~~district advisory boards~~, to develop a plan for the delivery  
27 of ~~developmental services~~ family support services within the  
28 local area district, and to monitor the implementation and  
29 effectiveness of services and support provided under the plan.  
30 The primary functions of the local district family care  
31 councils shall be to:

1 (a) Assist in providing information and outreach to  
2 families.

3 (b) Review the effectiveness of service ~~developmental~~  
4 ~~services~~ programs and make recommendations with respect to  
5 program implementation.

6 (c) Advise the agency ~~district developmental services~~  
7 ~~administrators~~ with respect to policy issues relevant to the  
8 community and family support system in the local area  
9 ~~district~~.

10 (d) Meet and share information with other local  
11 ~~district~~ family care councils.

12 (8) NEW COUNCILS.--When a local ~~district~~ family care  
13 council is established for the first time in a local area  
14 ~~district~~, the Governor shall appoint the first four council  
15 members, who shall serve 3-year terms. These members shall  
16 submit to the Governor, within 90 days after their  
17 appointment, recommendations for at least six additional  
18 members, selected by majority vote. ~~If the Governor does not~~  
19 ~~act on the recommendations within 45 days after receiving~~  
20 ~~them, the persons recommended shall be considered to be~~  
21 ~~appointed. Those members recommended for appointment by the~~  
22 ~~Governor shall serve for 2 years.~~

23 (9) FUNDING; FINANCIAL REVIEW.--The local ~~district~~  
24 family care council may apply for, receive, and accept grants,  
25 gifts, donations, bequests, and other payments from any public  
26 or private entity or person. Each local ~~district~~ council is  
27 ~~shall be~~ subject to an annual financial review by ~~district~~  
28 staff assigned by the agency ~~district administrator~~. Each  
29 local ~~district~~ council shall exercise care and prudence in the  
30 expenditure of funds. The local ~~district~~ family care councils  
31 shall comply with state expenditure requirements.

1           Section 15. Section 408.301, Florida Statutes, is  
2 amended to read:

3           408.301 Legislative findings.--The Legislature has  
4 found that access to quality, affordable, health care for all  
5 Floridians is an important goal for the state. The Legislature  
6 recognizes that there are Floridians with special health care  
7 and social needs which require particular attention. The  
8 people served by the Department of Children and Family  
9 Services, the Agency for Persons with Disabilities, and the  
10 Department of Health, and the Department of Elderly Affairs  
11 are examples of citizens with special needs. The Legislature  
12 further recognizes that the Medicaid program is an intricate  
13 part of the service delivery system for the special needs  
14 citizens ~~served by or through the Department of Children and~~  
15 ~~Family Services and the Department of Health.~~ However, the  
16 Agency for Health Care Administration is not a service  
17 provider and does not develop or direct programs for the  
18 special needs citizens ~~served by or through the Department of~~  
19 ~~Children and Family Services and the Department of Health.~~  
20 Therefore, it is the intent of the Legislature that the Agency  
21 for Health Care Administration work closely with the  
22 Department of Children and Family Services, the Agency for  
23 Persons with Disabilities, and the Department of Health, and  
24 the Department of Elderly Affairs in developing plans for  
25 assuring access to all Floridians in order to assure that the  
26 needs of special citizens are met.

27           Section 16. Section 408.302, Florida Statutes, is  
28 amended to read:

29           408.302 Interagency agreement.--

30           (1) The Agency for Health Care Administration shall  
31 enter into an interagency agreement with the Department of

1 Children and Family Services, the Agency for Persons with  
2 Disabilities, and the Department of Health, and the Department  
3 of Elderly Affairs to assure coordination and cooperation in  
4 serving special needs citizens. The agreement shall include  
5 the requirement that the secretaries or directors ~~secretary~~ of  
6 the Department of Children and Family Services, the Agency for  
7 Persons with Disabilities, and the secretary of the Department  
8 of Health, and the Department of Elderly Affairs approve,  
9 prior to adoption, any rule developed by the Agency for Health  
10 Care Administration where such rule has a direct impact on the  
11 mission of the respective state agencies ~~Department of~~  
12 ~~Children and Family Services and the Department of Health,~~  
13 their programs, or their budgets.

14 (2) For rules which indirectly impact on the mission  
15 of the Department of Children and Family Services, the Agency  
16 for Persons with Disabilities, and the Department of Health,  
17 and the Department of Elderly Affairs, their programs, or  
18 their budgets, the concurrence of the respective secretaries  
19 or directors ~~secretary of the Department of Children and~~  
20 ~~Family Services and the secretary of the Department of Health~~  
21 on the rule is required.

22 (3) For all other rules developed by the Agency for  
23 Health Care Administration, coordination with the Department  
24 of Children and Family Services, the Agency for Persons with  
25 Disabilities, and the Department of Health, and the Department  
26 of Elderly Affairs is encouraged.

27 (4) The interagency agreement shall also include any  
28 other provisions necessary to ensure a continued cooperative  
29 working relationship between the Agency for Health Care  
30 Administration and the Department of Children and Family  
31 Services, the Agency for Persons with Disabilities, and the

1 Department of Health, and the Department of Elderly Affairs as  
2 each strives to meet the needs of the citizens of Florida.

3 Section 17. Subsection (13) of section 409.906,  
4 Florida Statutes, is amended to read:

5 409.906 Optional Medicaid services.--Subject to  
6 specific appropriations, the agency may make payments for  
7 services which are optional to the state under Title XIX of  
8 the Social Security Act and are furnished by Medicaid  
9 providers to recipients who are determined to be eligible on  
10 the dates on which the services were provided. Any optional  
11 service that is provided shall be provided only when medically  
12 necessary and in accordance with state and federal law.

13 Optional services rendered by providers in mobile units to  
14 Medicaid recipients may be restricted or prohibited by the  
15 agency. Nothing in this section shall be construed to prevent  
16 or limit the agency from adjusting fees, reimbursement rates,  
17 lengths of stay, number of visits, or number of services, or  
18 making any other adjustments necessary to comply with the  
19 availability of moneys and any limitations or directions  
20 provided for in the General Appropriations Act or chapter 216.

21 If necessary to safeguard the state's systems of providing  
22 services to elderly and disabled persons and subject to the  
23 notice and review provisions of s. 216.177, the Governor may  
24 direct the Agency for Health Care Administration to amend the  
25 Medicaid state plan to delete the optional Medicaid service  
26 known as "Intermediate Care Facilities for the Developmentally  
27 Disabled." Optional services may include:

28 (13) HOME AND COMMUNITY-BASED SERVICES.--The agency  
29 may pay for home-based or community-based services that are  
30 rendered to a recipient in accordance with a federally  
31 approved waiver program. The agency may limit or eliminate

1 | coverage for certain ~~Project AIDS Care Waiver~~ services,  
2 | preauthorize high-cost or highly utilized services, or make  
3 | any other adjustments necessary to comply with any limitations  
4 | or directions provided for in the General Appropriations Act.

5 |       Section 18. Sections 393.14, 393.165, 393.166, and  
6 | 393.505, Florida Statutes, are repealed.

7 |       Section 19. (1) Effective October 1, 2004, the  
8 | developmental disabilities program and the developmental  
9 | services institutions in the Department of Children and Family  
10 | Services shall be transferred to the Agency for Persons with  
11 | Disabilities by a type two transfer pursuant to section 20.06,  
12 | Florida Statutes. Prior to that date:

13 |       (a) The Agency for Persons with Disabilities and the  
14 | Department of Children and Family Services, in consultation  
15 | with the Department of Management Services, shall determine  
16 | the number of positions and resources within the department  
17 | dedicated to the developmental disabilities program which  
18 | shall be transferred to the agency and will develop an  
19 | agreement that delineates who within the department will  
20 | provide administrative support to the agency.

21 |       (b) The Director of the Agency for Persons with  
22 | Disabilities, in consultation with the Secretaries of the  
23 | Department of Children and Family Services and the Agency for  
24 | Health Care Administration or their designees, shall prepare a  
25 | transition plan that must address, at a minimum, building  
26 | leases, information support systems, cash ownership and  
27 | transfer, administrative support functions, inventory and  
28 | transfers of equipment and structures, expenditure transfers,  
29 | budget authority and positions, and certifications forward.  
30 | This plan shall be submitted by September 1, 2004, to the  
31 |

1 Executive Office of the Governor, the President of the Senate,  
2 and the Speaker of the House of Representatives.

3 (c) The Agency for Persons with Disabilities and the  
4 Department of Children and Family Services shall work with the  
5 Agency for Health Care Administration to develop a plan that  
6 ensures that all of the necessary electronic and paper-based  
7 data of the Developmental Disabilities program is accessible  
8 to the Medicaid program and that all electronic records will  
9 be migrated to a new data system that is compatible with the  
10 Florida Medicaid Management Information System.

11 (d) The Agency for Persons with Disabilities and the  
12 Agency for Health Care Administration shall develop a plan for  
13 the orderly relocation of the noncentral-office staff of the  
14 Agency for Persons with Disabilities to the area offices of  
15 the Agency for Health Care Administration. Such plan shall  
16 include a schedule that takes into consideration the  
17 availability of space, the expiration of current leases, and  
18 the initiation of new leases that can accommodate the  
19 relocated staff, as well as appropriate reimbursement for  
20 collocation costs, including office space and other operating  
21 expenses.

22 (2) Effective October 1, 2004, the agency shall enter  
23 into an interagency agreement with the Department of Children  
24 and Family Services for the provision of the necessary  
25 day-to-day administrative and operational needs of the agency,  
26 including, but not limited to, personnel, purchasing,  
27 information technology support, legal support, and other  
28 related services. This interagency agreement shall continue  
29 until the agency no longer requires the provision of services  
30 through such agreement.

31

1           (3) This act does not affect the validity of any  
2 judicial or administrative proceeding pending on October 30,  
3 2004, and the Agency for Persons with Disabilities is  
4 substituted as a real party in interest with respect to any  
5 proceeding pending on that date which involves the  
6 developmental services programs of the Department of Children  
7 and Family Services.

8           Section 20. The Office of Program Policy Analysis and  
9 Government Accountability shall identify and evaluate  
10 statewide entities receiving state funding for the purpose of  
11 addressing the interests of, but not directly providing  
12 services for, persons with disabilities.

13           (1) The purpose of the analysis shall be to provide  
14 information with respect to:

15           (a) The extent to which activities of these entities  
16 are coordinated;

17           (b) The similarities and differences in the  
18 organizational missions of these entities; and

19           (c) The amount of state funds provided to these  
20 entities for the purpose of addressing the interests of  
21 persons with disabilities, the uses of these funds, and  
22 whether they duplicate the efforts of other private or  
23 federally funded entities.

24           (2) The report shall be completed and provided to the  
25 Governor and Legislature by December 2005.

26           Section 21. Subsection (1) of section 92.53, Florida  
27 Statutes, is amended to read:

28           92.53 Videotaping of testimony of victim or witness  
29 under age 16 or person with mental retardation.--

30           (1) On motion and hearing in camera and a finding that  
31 there is a substantial likelihood that a victim or witness who



1 | is under the age of 16 or who is a person with mental  
2 | retardation as defined in s. 393.063 ~~s. 393.063(42)~~ would  
3 | suffer at least moderate emotional or mental harm due to the  
4 | presence of the defendant if the child or person with mental  
5 | retardation is required to testify in open court, or that such  
6 | victim or witness is otherwise unavailable as defined in s.  
7 | 90.804(1), the trial court may order the videotaping of the  
8 | testimony of the victim or witness in a case, whether civil or  
9 | criminal in nature, in which videotaped testimony is to be  
10 | utilized at trial in lieu of trial testimony in open court.

11 |       Section 22. Subsections (1), (2), and (3), paragraph  
12 | (i) of subsection (4), and subsections (5), (8), (9), (10),  
13 | (11), (12), (13), (14), and (17) of 393.067, Florida Statutes,  
14 | are amended to read:

15 |       393.067 Licensure of residential facilities and  
16 | comprehensive transitional education programs.--

17 |       (1) The agency ~~department~~ shall provide through its  
18 | licensing authority a system of provider qualifications,  
19 | standards, training criteria for meeting standards, and  
20 | monitoring for residential facilities and comprehensive  
21 | transitional education programs.

22 |       (2) The agency ~~department~~ shall conduct inspections  
23 | and reviews of residential facilities and comprehensive  
24 | transitional education programs annually.

25 |       (3) An application for a license for a residential  
26 | facility or a comprehensive transitional education program  
27 | shall be made to the agency ~~Department of Children and Family~~  
28 | ~~Services~~ on a form furnished by it and shall be accompanied by  
29 | the appropriate license fee.

30 |       (4) The application shall be under oath and shall  
31 | contain the following:

1           (i) Such other information as the ~~agency department~~  
2 determines is necessary to carry out the provisions of this  
3 chapter.

4           (5) The applicant shall submit evidence which  
5 establishes the good moral character of the manager or  
6 supervisor of the facility or program and the direct service  
7 providers in the facility or program and its component centers  
8 or units. A license may be issued if all the screening  
9 materials have been timely submitted; however, a license may  
10 not be issued or renewed if any of the direct service  
11 providers have failed the screening required by s. 393.0655.

12           (a)1. A licensed residential facility or comprehensive  
13 transitional education program which applies for renewal of  
14 its license shall submit to the ~~agency department~~ a list of  
15 direct service providers who have worked on a continuous basis  
16 at the applicant facility or program since submitting  
17 fingerprints to the agency or the Department of Children and  
18 Family Services, identifying those direct service providers  
19 for whom a written assurance of compliance was provided by the  
20 agency or department and identifying those direct service  
21 providers who have recently begun working at the facility or  
22 program and are awaiting the results of the required  
23 fingerprint check along with the date of the submission of  
24 those fingerprints for processing. The ~~agency department~~ shall  
25 by rule determine the frequency of requests to the Department  
26 of Law Enforcement to run state criminal records checks for  
27 such direct service providers except for those direct service  
28 providers awaiting the results of initial fingerprint checks  
29 for employment at the applicant facility or program. The  
30 ~~agency department~~ shall review the records of the direct  
31 service providers at the applicant facility or program with

1 | respect to the crimes specified in s. 393.0655 and shall  
2 | notify the facility or program of its findings. When  
3 | disposition information is missing on a criminal record, it is  
4 | ~~shall be~~ the responsibility of the person being screened, upon  
5 | request of the agency department, to obtain and supply within  
6 | 30 days the missing disposition information to the agency  
7 | ~~department~~. Failure to supply the missing information within  
8 | 30 days or to show reasonable efforts to obtain such  
9 | information shall result in automatic disqualification.

10 |         2. The applicant shall sign an affidavit under penalty  
11 | of perjury stating that all new direct service providers have  
12 | been fingerprinted and that the facility's or program's  
13 | remaining direct service providers have worked at the  
14 | applicant facility or program on a continuous basis since  
15 | being initially screened at that facility or program or have a  
16 | written assurance of compliance from the agency or department.

17 |         (b) As a prerequisite for issuance of the initial  
18 | license to a residential facility or comprehensive  
19 | transitional education program:

20 |         1. The applicant shall submit to the agency department  
21 | a complete set of fingerprints, taken by an authorized law  
22 | enforcement agency or an employee of the agency department who  
23 | is trained to take fingerprints, for the manager, supervisor,  
24 | or direct service providers of the facility or program;

25 |         2. The agency department shall submit the fingerprints  
26 | to the Department of Law Enforcement for state processing and  
27 | for federal processing by the Federal Bureau of Investigation;  
28 | and

29 |         3. The agency department shall review the record of  
30 | the manager or supervisor with respect to the crimes specified  
31 | in s. 393.0655(1) and shall notify the applicant of its

1 findings. When disposition information is missing on a  
2 criminal record, it ~~is shall be~~ the responsibility of the  
3 manager or supervisor, upon request of the agency department,  
4 to obtain and supply within 30 days the missing disposition  
5 information to the agency department. Failure to supply the  
6 missing information within 30 days or to show reasonable  
7 efforts to obtain such information shall result in automatic  
8 disqualification.

9 (c) The agency department or a residential facility or  
10 comprehensive transitional education program may not use the  
11 criminal records or juvenile records of a person obtained  
12 under this subsection for any purpose other than determining  
13 if that person meets the minimum standards for good moral  
14 character for a manager or supervisor of, or direct service  
15 provider in, such a facility or program. The criminal records  
16 or juvenile records obtained by the agency department or a  
17 residential facility or comprehensive transitional education  
18 program for determining the moral character of a manager,  
19 supervisor, or direct service provider are exempt from s.  
20 119.07(1).

21 (8) The agency department shall adopt promulgate rules  
22 establishing minimum standards for licensure of residential  
23 facilities and comprehensive transitional education programs,  
24 including rules requiring facilities and programs to train  
25 staff to detect and prevent sexual abuse of residents and  
26 clients, minimum standards of quality and adequacy of care,  
27 and uniform firesafety standards established by the State Fire  
28 Marshal which are appropriate to the size of the facility or  
29 of the component centers or units of the program.

30 (9) The agency department and the Agency for Health  
31 Care Administration, after consultation with the Department of

1 | Community Affairs, shall adopt rules for residential  
2 | facilities under the respective regulatory jurisdiction of  
3 | each establishing minimum standards for the preparation and  
4 | annual update of a comprehensive emergency management plan. At  
5 | a minimum, the rules must provide for plan components that  
6 | address emergency evacuation transportation; adequate  
7 | sheltering arrangements; postdisaster activities, including  
8 | emergency power, food, and water; postdisaster transportation;  
9 | supplies; staffing; emergency equipment; individual  
10 | identification of residents and transfer of records; and  
11 | responding to family inquiries. The comprehensive emergency  
12 | management plan for all comprehensive transitional education  
13 | programs and for homes serving individuals who have complex  
14 | medical conditions is subject to review and approval by the  
15 | local emergency management agency. During its review, the  
16 | local emergency management agency shall ensure that the  
17 | following agencies, at a minimum, are given the opportunity to  
18 | review the plan: the Agency for Health Care Administration,  
19 | the Agency for Persons with Disabilities ~~Department of~~  
20 | ~~Children and Family Services~~, and the Department of Community  
21 | Affairs. Also, appropriate volunteer organizations must be  
22 | given the opportunity to review the plan. The local emergency  
23 | management agency shall complete its review within 60 days and  
24 | either approve the plan or advise the facility of necessary  
25 | revisions.

26 |           (10) The agency ~~department~~ may conduct unannounced  
27 | inspections to determine compliance by residential facilities  
28 | and comprehensive transitional education programs with the  
29 | applicable provisions of this chapter and the rules adopted  
30 | pursuant hereto, including the rules adopted for training  
31 | staff of a facility or a program to detect and prevent sexual

1 | abuse of residents and clients. The facility or program shall  
2 | make copies of inspection reports available to the public upon  
3 | request.

4 |         (11) An alternative living center and an independent  
5 | living education center, as defined in s. 393.063 ~~s.~~  
6 | ~~393.063(8)~~, shall be subject to the provisions of s. 419.001,  
7 | except that such centers shall be exempt from the  
8 | 1,000-foot-radius requirement of s. 419.001(2) if:

9 |         (a) Such centers are located on a site zoned in a  
10 | manner so that all the component centers of a comprehensive  
11 | transition education center may be located thereon; or

12 |         (b) There are no more than three such centers within  
13 | said radius of 1,000 feet.

14 |         (12) Each residential facility or comprehensive  
15 | transitional education program licensed by the agency  
16 | ~~department~~ shall forward annually to the agency ~~department~~ a  
17 | true and accurate sworn statement of its costs of providing  
18 | care to clients funded by the agency ~~department~~.

19 |         (13) The agency ~~department~~ may audit the records of  
20 | any residential facility or comprehensive transitional  
21 | education program that ~~which~~ it has reason to believe may not  
22 | be in full compliance with the provisions of this section;  
23 | provided that, any financial audit of such facility or program  
24 | shall be limited to the records of clients funded by the  
25 | agency ~~department~~.

26 |         (14) The agency ~~department~~ shall establish, for the  
27 | purpose of control of licensure costs, a uniform management  
28 | information system and a uniform reporting system with uniform  
29 | definitions and reporting categories.

30 |         (17) The agency ~~department~~ shall not be required to  
31 | contract with new facilities licensed after October 1, 1989,

1 pursuant to this chapter. Pursuant to chapter 287, the agency  
2 ~~department~~ shall continue to contract within available  
3 resources for residential services with facilities licensed  
4 prior to October 1, 1989, if such facilities comply with the  
5 provisions of this chapter and all other applicable laws and  
6 regulations.

7 Section 23. Subsection (9) of section 397.405, Florida  
8 Statutes, is amended to read:

9 397.405 Exemptions from licensure.--The following are  
10 exempt from the licensing provisions of this chapter:

11 (9) Facilities licensed under s. 393.063 ~~s. 393.063(8)~~  
12 that, in addition to providing services to persons who are  
13 developmentally disabled as defined therein, also provide  
14 services to persons developmentally at risk as a consequence  
15 of exposure to alcohol or other legal or illegal drugs while  
16 in utero.

17  
18 The exemptions from licensure in this section do not apply to  
19 any service provider that receives an appropriation, grant, or  
20 contract from the state to operate as a service provider as  
21 defined in this chapter or to any substance abuse program  
22 regulated pursuant to s. 397.406. Furthermore, this chapter  
23 may not be construed to limit the practice of a physician  
24 licensed under chapter 458 or chapter 459, a psychologist  
25 licensed under chapter 490, or a psychotherapist licensed  
26 under chapter 491 who provides substance abuse treatment, so  
27 long as the physician, psychologist, or psychotherapist does  
28 not represent to the public that he or she is a licensed  
29 service provider and does not provide services to clients  
30 pursuant to part V of this chapter. Failure to comply with any  
31 requirement necessary to maintain an exempt status under this

1 section is a misdemeanor of the first degree, punishable as  
2 provided in s. 775.082 or s. 775.083.

3 Section 24. Paragraph (b) of subsection (5) of section  
4 400.464, Florida Statutes, is amended to read:

5 400.464 Home health agencies to be licensed;  
6 expiration of license; exemptions; unlawful acts; penalties.--

7 (5) The following are exempt from the licensure  
8 requirements of this part:

9 (b) Home health services provided by a state agency,  
10 either directly or through a contractor with:

11 1. The Department of Elderly Affairs.

12 2. The Department of Health, a community health  
13 center, or a rural health network that furnishes home visits  
14 for the purpose of providing environmental assessments, case  
15 management, health education, personal care services, family  
16 planning, or followup treatment, or for the purpose of  
17 monitoring and tracking disease.

18 3. Services provided to persons who have developmental  
19 disabilities, as defined in s. 393.063 ~~s. 393.063(12)~~.

20 4. Companion and sitter organizations that were  
21 registered under s. 400.509(1) on January 1, 1999, and were  
22 authorized to provide personal services under s. 393.063(33)  
23 under a developmental services provider certificate on January  
24 1, 1999, may continue to provide such services to past,  
25 present, and future clients of the organization who need such  
26 services, notwithstanding the provisions of this act.

27 5. The Department of Children and Family Services.

28 Section 25. Paragraph (d) of subsection (1) of section  
29 419.001, Florida Statutes, is amended to read:

30 419.001 Site selection of community residential  
31 homes.--



1 (1) For the purposes of this section, the following  
2 definitions shall apply:

3 (d) "Resident" means any of the following: a frail  
4 elder as defined in s. 400.618; a physically disabled or  
5 handicapped person as defined in s. 760.22(7)(a); a  
6 developmentally disabled person as defined in s. 393.063 ~~s.~~  
7 ~~393.063(12)~~; a nondangerous mentally ill person as defined in  
8 s. 394.455(18); or a child as defined in s. 39.01(14), s.  
9 984.03(9) or (12), or s. 985.03(8).

10 Section 26. Section 914.16, Florida Statutes, is  
11 amended to read:

12 914.16 Child abuse and sexual abuse of victims under  
13 age 16 or persons with mental retardation; limits on  
14 interviews.--The chief judge of each judicial circuit, after  
15 consultation with the state attorney and the public defender  
16 for the judicial circuit, the appropriate chief law  
17 enforcement officer, and any other person deemed appropriate  
18 by the chief judge, shall provide by order reasonable limits  
19 on the number of interviews that a victim of a violation of s.  
20 794.011, s. 800.04, or s. 827.03 who is under 16 years of age  
21 or a victim of a violation of s. 794.011, s. 800.02, s.  
22 800.03, or s. 825.102 who is a person with mental retardation  
23 as defined in s. 393.063 ~~s. 393.063(42)~~ must submit to for law  
24 enforcement or discovery purposes. The order shall, to the  
25 extent possible, protect the victim from the psychological  
26 damage of repeated interrogations while preserving the rights  
27 of the public, the victim, and the person charged with the  
28 violation.

29 Section 27. Subsection (2) of section 914.17, Florida  
30 Statutes, is amended to read:

31

1           914.17 Appointment of advocate for victims or  
2 witnesses who are minors or persons with mental retardation.--

3           (2) An advocate shall be appointed by the court to  
4 represent a person with mental retardation as defined in s.  
5 393.063 ~~s. 393.063(42)~~ in any criminal proceeding if the  
6 person with mental retardation is a victim of or witness to  
7 abuse or neglect, or if the person with mental retardation is  
8 a victim of a sexual offense or a witness to a sexual offense  
9 committed against a minor or person with mental retardation.  
10 The court may appoint an advocate in any other criminal  
11 proceeding in which a person with mental retardation is  
12 involved as either a victim or a witness. The advocate shall  
13 have full access to all evidence and reports introduced during  
14 the proceedings, may interview witnesses, may make  
15 recommendations to the court, shall be noticed and have the  
16 right to appear on behalf of the person with mental  
17 retardation at all proceedings, and may request additional  
18 examinations by medical doctors, psychiatrists, or  
19 psychologists. It is the duty of the advocate to perform the  
20 following services:

21           (a) To explain, in language understandable to the  
22 person with mental retardation, all legal proceedings in which  
23 the person shall be involved;

24           (b) To act, as a friend of the court, to advise the  
25 judge, whenever appropriate, of the person with mental  
26 retardation's ability to understand and cooperate with any  
27 court proceedings; and

28           (c) To assist the person with mental retardation and  
29 the person's family in coping with the emotional effects of  
30 the crime and subsequent criminal proceedings in which the  
31 person with mental retardation is involved.

1           Section 28. Subsection (1) of section 918.16, Florida  
2 Statutes, is amended to read:

3           918.16 Sex offenses; testimony of person under age 16  
4 or person with mental retardation; testimony of victim;  
5 courtroom cleared; exceptions.--

6           (1) Except as provided in subsection (2), in the trial  
7 of any case, civil or criminal, when any person under the age  
8 of 16 or any person with mental retardation as defined in s.  
9 393.063 ~~s. 393.063(42)~~ is testifying concerning any sex  
10 offense, the court shall clear the courtroom of all persons  
11 except parties to the cause and their immediate families or  
12 guardians, attorneys and their secretaries, officers of the  
13 court, jurors, newspaper reporters or broadcasters, court  
14 reporters, and, at the request of the victim, victim or  
15 witness advocates designated by the state attorney's office.

16           Section 29. Paragraph (a) of subsection (4) of section  
17 943.0585, Florida Statutes, is amended to read:

18           943.0585 Court-ordered expunction of criminal history  
19 records.--The courts of this state have jurisdiction over  
20 their own procedures, including the maintenance, expunction,  
21 and correction of judicial records containing criminal history  
22 information to the extent such procedures are not inconsistent  
23 with the conditions, responsibilities, and duties established  
24 by this section. Any court of competent jurisdiction may order  
25 a criminal justice agency to expunge the criminal history  
26 record of a minor or an adult who complies with the  
27 requirements of this section. The court shall not order a  
28 criminal justice agency to expunge a criminal history record  
29 until the person seeking to expunge a criminal history record  
30 has applied for and received a certificate of eligibility for  
31 expunction pursuant to subsection (2). A criminal history

1 record that relates to a violation of s. 787.025, chapter 794,  
2 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,  
3 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
4 893.135, or a violation enumerated in s. 907.041 may not be  
5 expunged, without regard to whether adjudication was withheld,  
6 if the defendant was found guilty of or pled guilty or nolo  
7 contendere to the offense, or if the defendant, as a minor,  
8 was found to have committed, or pled guilty or nolo contendere  
9 to committing, the offense as a delinquent act. The court may  
10 only order expunction of a criminal history record pertaining  
11 to one arrest or one incident of alleged criminal activity,  
12 except as provided in this section. The court may, at its sole  
13 discretion, order the expunction of a criminal history record  
14 pertaining to more than one arrest if the additional arrests  
15 directly relate to the original arrest. If the court intends  
16 to order the expunction of records pertaining to such  
17 additional arrests, such intent must be specified in the  
18 order. A criminal justice agency may not expunge any record  
19 pertaining to such additional arrests if the order to expunge  
20 does not articulate the intention of the court to expunge a  
21 record pertaining to more than one arrest. This section does  
22 not prevent the court from ordering the expunction of only a  
23 portion of a criminal history record pertaining to one arrest  
24 or one incident of alleged criminal activity. Notwithstanding  
25 any law to the contrary, a criminal justice agency may comply  
26 with laws, court orders, and official requests of other  
27 jurisdictions relating to expunction, correction, or  
28 confidential handling of criminal history records or  
29 information derived therefrom. This section does not confer  
30 any right to the expunction of any criminal history record,  
31

1 and any request for expunction of a criminal history record  
2 may be denied at the sole discretion of the court.

3 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
4 criminal history record of a minor or an adult which is  
5 ordered expunged by a court of competent jurisdiction pursuant  
6 to this section must be physically destroyed or obliterated by  
7 any criminal justice agency having custody of such record;  
8 except that any criminal history record in the custody of the  
9 department must be retained in all cases. A criminal history  
10 record ordered expunged that is retained by the department is  
11 confidential and exempt from the provisions of s. 119.07(1)  
12 and s. 24(a), Art. I of the State Constitution and not  
13 available to any person or entity except upon order of a court  
14 of competent jurisdiction. A criminal justice agency may  
15 retain a notation indicating compliance with an order to  
16 expunge.

17 (a) The person who is the subject of a criminal  
18 history record that is expunged under this section or under  
19 other provisions of law, including former s. 893.14, former s.  
20 901.33, and former s. 943.058, may lawfully deny or fail to  
21 acknowledge the arrests covered by the expunged record, except  
22 when the subject of the record:

- 23 1. Is a candidate for employment with a criminal  
24 justice agency;
- 25 2. Is a defendant in a criminal prosecution;
- 26 3. Concurrently or subsequently petitions for relief  
27 under this section or s. 943.059;
- 28 4. Is a candidate for admission to The Florida Bar;
- 29 5. Is seeking to be employed or licensed by or to  
30 contract with the Department of Children and Family Services  
31 or the Department of Juvenile Justice or to be employed or

1 used by such contractor or licensee in a sensitive position  
2 having direct contact with children, the developmentally  
3 disabled, the aged, or the elderly as provided in s.  
4 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.  
5 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.  
6 415.102(4), s. 985.407, or chapter 400; or

7 6. Is seeking to be employed or licensed by the Office  
8 of Teacher Education, Certification, Staff Development, and  
9 Professional Practices of the Department of Education, any  
10 district school board, or any local governmental entity that  
11 licenses child care facilities.

12 Section 30. Paragraph (a) of subsection (4) of section  
13 943.059, Florida Statutes, is amended to read:

14 943.059 Court-ordered sealing of criminal history  
15 records.--The courts of this state shall continue to have  
16 jurisdiction over their own procedures, including the  
17 maintenance, sealing, and correction of judicial records  
18 containing criminal history information to the extent such  
19 procedures are not inconsistent with the conditions,  
20 responsibilities, and duties established by this section. Any  
21 court of competent jurisdiction may order a criminal justice  
22 agency to seal the criminal history record of a minor or an  
23 adult who complies with the requirements of this section. The  
24 court shall not order a criminal justice agency to seal a  
25 criminal history record until the person seeking to seal a  
26 criminal history record has applied for and received a  
27 certificate of eligibility for sealing pursuant to subsection  
28 (2). A criminal history record that relates to a violation of  
29 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.  
30 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
31 s. 847.0145, s. 893.135, or a violation enumerated in s.

1 907.041 may not be sealed, without regard to whether  
2 adjudication was withheld, if the defendant was found guilty  
3 of or pled guilty or nolo contendere to the offense, or if the  
4 defendant, as a minor, was found to have committed or pled  
5 guilty or nolo contendere to committing the offense as a  
6 delinquent act. The court may only order sealing of a criminal  
7 history record pertaining to one arrest or one incident of  
8 alleged criminal activity, except as provided in this section.  
9 The court may, at its sole discretion, order the sealing of a  
10 criminal history record pertaining to more than one arrest if  
11 the additional arrests directly relate to the original arrest.  
12 If the court intends to order the sealing of records  
13 pertaining to such additional arrests, such intent must be  
14 specified in the order. A criminal justice agency may not seal  
15 any record pertaining to such additional arrests if the order  
16 to seal does not articulate the intention of the court to seal  
17 records pertaining to more than one arrest. This section does  
18 not prevent the court from ordering the sealing of only a  
19 portion of a criminal history record pertaining to one arrest  
20 or one incident of alleged criminal activity. Notwithstanding  
21 any law to the contrary, a criminal justice agency may comply  
22 with laws, court orders, and official requests of other  
23 jurisdictions relating to sealing, correction, or confidential  
24 handling of criminal history records or information derived  
25 therefrom. This section does not confer any right to the  
26 sealing of any criminal history record, and any request for  
27 sealing a criminal history record may be denied at the sole  
28 discretion of the court.

29 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A  
30 criminal history record of a minor or an adult which is  
31 ordered sealed by a court of competent jurisdiction pursuant

1 | to this section is confidential and exempt from the provisions  
2 | of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
3 | and is available only to the person who is the subject of the  
4 | record, to the subject's attorney, to criminal justice  
5 | agencies for their respective criminal justice purposes, or to  
6 | those entities set forth in subparagraphs (a)1., 4., 5., and  
7 | 6. for their respective licensing and employment purposes.

8 |         (a) The subject of a criminal history record sealed  
9 | under this section or under other provisions of law, including  
10 | former s. 893.14, former s. 901.33, and former s. 943.058, may  
11 | lawfully deny or fail to acknowledge the arrests covered by  
12 | the sealed record, except when the subject of the record:

13 |             1. Is a candidate for employment with a criminal  
14 | justice agency;

15 |             2. Is a defendant in a criminal prosecution;

16 |             3. Concurrently or subsequently petitions for relief  
17 | under this section or s. 943.0585;

18 |             4. Is a candidate for admission to The Florida Bar;

19 |             5. Is seeking to be employed or licensed by or to  
20 | contract with the Department of Children and Family Services  
21 | or the Department of Juvenile Justice or to be employed or  
22 | used by such contractor or licensee in a sensitive position  
23 | having direct contact with children, the developmentally  
24 | disabled, the aged, or the elderly as provided in s.

25 | 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.  
26 | 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.  
27 | 415.102(4), s. 415.103, s. 985.407, or chapter 400; or

28 |             6. Is seeking to be employed or licensed by the Office  
29 | of Teacher Education, Certification, Staff Development, and  
30 | Professional Practices of the Department of Education, any  
31 |



1 district school board, or any local governmental entity which  
2 licenses child care facilities.

3 Section 31. Subsections (3) and (4) of section  
4 393.0641, Florida Statutes, are amended to read:

5 393.0641 Program for the prevention and treatment of  
6 severe self-injurious behavior.--

7 (3) The agency ~~department~~ may contract for the  
8 provision of any portion or all of the services required by  
9 the program.

10 (4) The agency ~~has department shall have~~ the authority  
11 to license this program and shall adopt ~~promulgate~~ rules to  
12 implement the program.

13 Section 32. Section 393.065, Florida Statutes, is  
14 amended to read:

15 393.065 Application and eligibility determination.--

16 (1) Application for services shall be made in writing  
17 to the agency ~~Department of Children and Family Services~~, in  
18 the district in which the applicant resides. Employees of the  
19 agency's ~~department's~~ developmental services program shall  
20 review each applicant for eligibility within 45 days after the  
21 date the application is signed for children under 6 years of  
22 age and within 60 days after the date the application is  
23 signed for all other applicants. When necessary to  
24 definitively identify individual conditions or needs, the  
25 agency ~~department~~ shall provide a comprehensive assessment.  
26 Only individuals whose domicile is in Florida are ~~shall be~~  
27 eligible for services. Information accumulated by other  
28 agencies, including professional reports and collateral data,  
29 shall be considered in this process when available.

30 (2) In order to provide immediate services or crisis  
31 intervention to applicants, the agency ~~department~~ shall

1 arrange for emergency eligibility determination, with a full  
2 eligibility review to be accomplished within 45 days of the  
3 emergency eligibility determination.

4 (3) The agency ~~department~~ shall notify each applicant,  
5 in writing, of its eligibility decision. Any applicant  
6 determined by the agency ~~department~~ to be ineligible for  
7 developmental services has ~~shall have~~ the right to appeal this  
8 decision pursuant to ss. 120.569 and 120.57.

9 (4) The agency ~~department~~ shall assess the level of  
10 need and medical necessity for prospective residents of  
11 intermediate-care facilities for the developmentally disabled  
12 after October 1, 1999. The agency ~~department~~ may enter into an  
13 agreement with the Department of Elderly Affairs for its  
14 Comprehensive Assessment and Review for Long-Term-Care  
15 Services (CARES) program to conduct assessments to determine  
16 the level of need and medical necessity for long-term-care  
17 services under this chapter. To the extent permissible under  
18 federal law, the assessments must be funded under Title XIX of  
19 the Social Security Act.

20 Section 33. Section 393.0651, Florida Statutes, is  
21 amended to read:

22 393.0651 Family or individual support plan.--The  
23 agency ~~department~~ shall provide for an appropriate family  
24 support plan for children ages birth to 18 years of age and an  
25 individual support plan for each client. The parent or  
26 guardian of the client or, if competent, the client, or, when  
27 appropriate, the client advocate, shall be consulted in the  
28 development of the plan and shall receive a copy of the plan.  
29 Each plan shall include the most appropriate, least  
30 restrictive, and most cost-beneficial environment for  
31 accomplishment of the objectives for client progress and a

1 specification of all services authorized. The plan shall  
2 include provisions for the most appropriate level of care for  
3 the client. Within the specification of needs and services for  
4 each client, when residential care is necessary, the agency  
5 ~~department~~ shall move toward placement of clients in  
6 residential facilities based within the client's community.  
7 The ultimate goal of each plan, whenever possible, shall be to  
8 enable the client to live a dignified life in the least  
9 restrictive setting, be that in the home or in the community.  
10 For children under 6 years of age, the family support plan  
11 shall be developed within the 45-day application period as  
12 specified in s. 393.065(1); for all applicants 6 years of age  
13 or older, the family or individual support plan shall be  
14 developed within the 60-day period as specified in that  
15 subsection.

16 (1) The agency ~~department~~ shall develop and specify by  
17 rule the core components of support plans to be used by each  
18 district.

19 (2)(a) The family or individual support plan shall be  
20 integrated with the individual education plan (IEP) for all  
21 clients who are public school students entitled to a free  
22 appropriate public education under the Individuals with  
23 Disabilities Education Act, I.D.E.A., as amended. The family  
24 or individual support plan and IEP shall be implemented to  
25 maximize the attainment of educational and habilitation goals.  
26 If the IEP for a student enrolled in a public school program  
27 indicates placement in a public or private residential program  
28 is necessary to provide special education and related services  
29 to a client, the local education agency shall provide for the  
30 costs of that service in accordance with the requirements of  
31 the Individuals with Disabilities Education Act, I.D.E.A., as

1 amended. This shall not preclude local education agencies and  
2 the ~~agency department~~ from sharing the residential service  
3 costs of students who are clients and require residential  
4 placement. Under no circumstances shall clients entitled to a  
5 public education or their parents be assessed a fee by the  
6 ~~agency department~~ under s. 402.33 for placement in a  
7 residential program.

8 (b) For clients who are entering or exiting the school  
9 system, an interdepartmental staffing team composed of  
10 representatives of the ~~agency department~~ and the local school  
11 system shall develop a written transitional living and  
12 training plan with the participation of the client or with the  
13 parent or guardian of the client, or the client advocate, as  
14 appropriate.

15 (3) Each family or individual support plan shall be  
16 facilitated through case management designed solely to advance  
17 the individual needs of the client.

18 (4) In the development of the family or individual  
19 support plan, a client advocate may be appointed by the  
20 support planning team for a client who is a minor or for a  
21 client who is not capable of express and informed consent  
22 when:

23 (a) The parent or guardian cannot be identified;

24 (b) The whereabouts of the parent or guardian cannot  
25 be discovered; or

26 (c) The state is the only legal representative of the  
27 client.

28  
29 Such appointment shall not be construed to extend the powers  
30 of the client advocate to include any of those powers  
31 delegated by law to a legal guardian.

1           (5) The ~~agency department~~ shall place a client in the  
2 most appropriate and least restrictive, and cost-beneficial,  
3 residential facility according to his or her individual  
4 habilitation plan. The parent or guardian of the client or, if  
5 competent, the client, or, when appropriate, the client  
6 advocate, and the administrator of the residential facility to  
7 which placement is proposed shall be consulted in determining  
8 the appropriate placement for the client. Considerations for  
9 placement shall be made in the following order:

10           (a) Client's own home or the home of a family member  
11 or direct service provider.

12           (b) Foster care facility.

13           (c) Group home facility.

14           (d) Intermediate care facility for the developmentally  
15 disabled.

16           (e) Other facilities licensed by the ~~agency department~~  
17 which offer special programs for people with developmental  
18 disabilities.

19           (f) Developmental services institution.

20           (6) In developing a client's annual family or  
21 individual support plan, the individual or family with the  
22 assistance of the support planning team shall identify  
23 measurable objectives for client progress and shall specify a  
24 time period expected for achievement of each objective.

25           (7) The individual, family, and support coordinator  
26 shall review progress in achieving the objectives specified in  
27 each client's family or individual support plan, and shall  
28 revise the plan annually, following consultation with the  
29 client, if competent, or with the parent or guardian of the  
30 client, or, when appropriate, the client advocate. The ~~agency~~  
31 ~~department~~ shall annually report in writing to the client, if

1 competent, or to the parent or guardian of the client, or to  
2 the client advocate, when appropriate, with respect to the  
3 client's habilitative and medical progress.

4 (8) Any client, or any parent of a minor client, or  
5 guardian, authorized guardian advocate, or client advocate for  
6 a client, who is substantially affected by the client's  
7 initial family or individual support plan, or the annual  
8 review thereof, shall have the right to file a notice to  
9 challenge the decision pursuant to ss. 120.569 and 120.57.

10 Notice of such right to appeal shall be included in all  
11 support plans provided by the agency ~~department~~.

12 Section 34. Section 393.0673, Florida Statutes, is  
13 amended to read:

14 393.0673 Denial, suspension, revocation of license;  
15 moratorium on admissions; administrative fines; procedures.--

16 (1) The agency ~~Department of Children and Family~~  
17 ~~Services~~ may deny, revoke, or suspend a license or impose an  
18 administrative fine, not to exceed \$1,000 per violation per  
19 day, for a violation of any provision of s. 393.0655 or s.  
20 393.067 or rules adopted pursuant thereto. All hearings shall  
21 be held within the county in which the licensee or applicant  
22 operates or applies for a license to operate a facility as  
23 defined herein.

24 (2) The agency ~~department~~, as a part of any final  
25 order issued by it under the provisions of this chapter, may  
26 impose such fine as it deems proper, except that such fine may  
27 not exceed \$1,000 for each violation. Each day a violation of  
28 this chapter occurs constitutes a separate violation and is  
29 subject to a separate fine, but in no event may the aggregate  
30 amount of any fine exceed \$10,000. Fines paid by any facility  
31 licensee under the provisions of this subsection shall be

1 deposited in the Resident Protection Trust Fund and expended  
2 as provided in s. 400.063.

3 (3) The agency ~~department~~ may issue an order  
4 immediately suspending or revoking a license when it  
5 determines that any condition in the facility presents a  
6 danger to the health, safety, or welfare of the residents in  
7 the facility.

8 (4) The agency ~~department~~ may impose an immediate  
9 moratorium on admissions to any facility when the department  
10 determines that any condition in the facility presents a  
11 threat to the health, safety, or welfare of the residents in  
12 the facility.

13 Section 35. Subsections (1) and (3) of section  
14 393.0675, Florida Statutes, are amended to read:

15 393.0675 Injunctive proceedings authorized.--

16 (1) The agency ~~Department of Children and Family~~  
17 ~~Services~~ may institute injunctive proceedings in a court of  
18 competent jurisdiction to:

19 (a) Enforce the provisions of this chapter or any  
20 minimum standard, rule, regulation, or order issued or entered  
21 pursuant thereto; or

22 (b) Terminate the operation of facilities licensed  
23 pursuant to this chapter when any of the following conditions  
24 exist:

25 1. Failure by the facility to take preventive or  
26 corrective measures in accordance with any order of the agency  
27 ~~department~~.

28 2. Failure by the facility to abide by any final order  
29 of the agency ~~department~~ once it has become effective and  
30 binding.

31

1           3. Any violation by the facility constituting an  
2 emergency requiring immediate action as provided in s.  
3 393.0673.

4           (3) The agency ~~department~~ may institute proceedings  
5 for an injunction in a court of competent jurisdiction to  
6 terminate the operation of a provider of supports or services  
7 if such provider has willfully and knowingly refused to comply  
8 with the screening requirement for direct service providers or  
9 has refused to terminate direct service providers found not to  
10 be in compliance with the requirements for good moral  
11 character.

12           Section 36. Subsection (1), paragraphs (b), (c), and  
13 (d) of subsection (2), and paragraph (e) of subsection (3) of  
14 section 393.0678, Florida Statutes, are amended to read:

15           393.0678 Receivership proceedings.--

16           (1) The agency ~~department~~ may petition a court of  
17 competent jurisdiction for the appointment of a receiver for  
18 an intermediate care facility for the developmentally  
19 disabled, a residential habilitation center, or a group home  
20 facility owned and operated by a corporation or partnership  
21 when any of the following conditions exist:

22           (a) Any person is operating a facility without a  
23 license and refuses to make application for a license as  
24 required by s. 393.067 or, in the case of an intermediate care  
25 facility for the developmentally disabled, as required by ss.  
26 393.067 and 400.062.

27           (b) The licensee is closing the facility or has  
28 informed the department that it intends to close the facility;  
29 and adequate arrangements have not been made for relocation of  
30 the residents within 7 days, exclusive of weekends and  
31 holidays, of the closing of the facility.



1           (c) The agency ~~department~~ determines that conditions  
2 exist in the facility which present an imminent danger to the  
3 health, safety, or welfare of the residents of the facility or  
4 which present a substantial probability that death or serious  
5 physical harm would result therefrom. Whenever possible, the  
6 agency ~~department~~ shall facilitate the continued operation of  
7 the program.

8           (d) The licensee cannot meet its financial obligations  
9 to provide food, shelter, care, and utilities. Evidence such  
10 as the issuance of bad checks or the accumulation of  
11 delinquent bills for such items as personnel salaries, food,  
12 drugs, or utilities constitutes prima facie evidence that the  
13 ownership of the facility lacks the financial ability to  
14 operate the home in accordance with the requirements of this  
15 chapter and all rules promulgated thereunder.

16           (2)

17           (b) A hearing shall be conducted within 5 days of the  
18 filing of the petition, at which time all interested parties  
19 shall have the opportunity to present evidence pertaining to  
20 the petition. The agency ~~department~~ shall notify the owner or  
21 operator of the facility named in the petition of its filing  
22 and the date set for the hearing.

23           (c) The court shall grant the petition only upon  
24 finding that the health, safety, or welfare of residents of  
25 the facility would be threatened if a condition existing at  
26 the time the petition was filed is permitted to continue. A  
27 receiver may not be appointed ex parte unless the court  
28 determines that one or more of the conditions in subsection  
29 (1) exist; that the facility owner or operator cannot be  
30 found; that all reasonable means of locating the owner or  
31 operator and notifying him or her of the petition and hearing

1 | have been exhausted; or that the owner or operator after  
2 | notification of the hearing chooses not to attend. After such  
3 | findings, the court may appoint any person qualified by  
4 | education, training, or experience to carry out the  
5 | responsibilities of receiver pursuant to this section, except  
6 | that the court may not appoint any owner or affiliate of the  
7 | facility which is in receivership. Before the appointment as  
8 | receiver of a person who is the operator, manager, or  
9 | supervisor of another facility, the court shall determine that  
10 | the person can reasonably operate, manage, or supervise more  
11 | than one facility. The receiver may be appointed for up to 90  
12 | days with the option of petitioning the court for 30-day  
13 | extensions. The receiver may be selected from a list of  
14 | persons qualified to act as receivers developed by the agency  
15 | ~~department~~ and presented to the court with each petition for  
16 | receivership. Under no circumstances may the agency ~~department~~  
17 | or designated agency ~~departmental~~ employee be appointed as a  
18 | receiver for more than 60 days; however, the agency  
19 | ~~departmental~~ receiver may petition the court for 30-day  
20 | extensions. The court shall grant an extension upon a showing  
21 | of good cause. The agency ~~department~~ may petition the court  
22 | to appoint a substitute receiver.

23 |         (d) During the first 60 days of the receivership, the  
24 | agency ~~department~~ may not take action to decertify or revoke  
25 | the license of a facility unless conditions causing imminent  
26 | danger to the health and welfare of the residents exist and a  
27 | receiver has been unable to remove those conditions. After  
28 | the first 60 days of receivership, and every 60 days  
29 | thereafter until the receivership is terminated, the agency  
30 | ~~department~~ shall submit to the court the results of an  
31 | assessment of the ability of the facility to assure the safety

1 and care of the residents. If the conditions at the facility  
2 or the intentions of the owner indicate that the purpose of  
3 the receivership is to close the facility rather than to  
4 facilitate its continued operation, the agency ~~department~~  
5 shall place the residents in appropriate alternate residential  
6 settings as quickly as possible. If, in the opinion of the  
7 court, the agency ~~department~~ has not been diligent in its  
8 efforts to make adequate arrangements for placement, the court  
9 shall find the agency ~~department~~ to be in contempt and shall  
10 order the agency ~~department~~ to submit its plans for moving the  
11 residents.

12 (3) The receiver shall make provisions for the  
13 continued health, safety, and welfare of all residents of the  
14 facility and:

15 (e) May use the building, fixtures, furnishings, and  
16 any accompanying consumable goods in the provision of care and  
17 services to residents and to any other persons receiving  
18 services from the facility at the time the petition for  
19 receivership was filed. The receiver shall collect payments  
20 for all goods and services provided to residents or others  
21 during the period of the receivership at the same rate of  
22 payment charged by the owner at the time the petition for  
23 receivership was filed, or at a fair and reasonable rate  
24 otherwise approved by the court for private, paying residents.  
25 The receiver may apply to the agency ~~department~~ for a rate  
26 increase for residents under Title XIX of the Social Security  
27 Act if the facility is not receiving the state reimbursement  
28 cap and if expenditures justify an increase in the rate.

29 Section 37. Section 393.071, Florida Statutes, is  
30 amended to read:  
31

1           393.071 Client fees.--The agency ~~Department of~~  
2 ~~Children and Family Services~~ shall charge fees for services  
3 provided to clients in accordance with s. 402.33.

4           Section 38. Subsection (2) of section 393.075, Florida  
5 Statutes, is amended to read:

6           393.075 General liability coverage.--

7           (2) The Division of Risk Management of the Department  
8 of Financial Services shall provide coverage through the  
9 agency ~~Department of Children and Family Services~~ to any  
10 person who owns or operates a foster care facility or group  
11 home facility solely for the agency ~~Department of Children and~~  
12 ~~Family Services~~, who cares for children placed by  
13 developmental services staff of the agency ~~department~~, and who  
14 is licensed pursuant to s. 393.067 to provide such supervision  
15 and care in his or her place of residence. The coverage shall  
16 be provided from the general liability account of the State  
17 Risk Management Trust Fund. The coverage is limited to  
18 general liability claims arising from the provision of  
19 supervision and care of children in a foster care facility or  
20 group home facility pursuant to an agreement with the agency  
21 ~~department~~ and pursuant to guidelines established through  
22 policy, rule, or statute. Coverage shall be subject to the  
23 limits provided in ss. 284.38 and 284.385, and the exclusions  
24 set forth therein, together with other exclusions as may be  
25 set forth in the certificate of coverage issued by the trust  
26 fund. A person covered under the general liability account  
27 pursuant to this subsection shall immediately notify the  
28 Division of Risk Management of the Department of Financial  
29 Services of any potential or actual claim.

30           Section 39. Section 393.115, Florida Statutes, is  
31 amended to read:

1           393.115 Discharge.--

2           (1) DISCHARGE AT THE AGE OF MAJORITY.--

3           (a) When any residential client reaches his or her  
4 18th birthday, the agency ~~department~~ shall give the resident  
5 or legal guardian the option to continue residential services  
6 or to be discharged from residential services.

7           (b) If the resident appears to meet the criteria for  
8 involuntary admission to residential services, as defined in  
9 s. 393.11, the agency ~~department~~ shall file a petition to  
10 determine the appropriateness of continued residential  
11 placement on an involuntary basis. The agency ~~department~~ shall  
12 file the petition for involuntary admission in the county in  
13 which the client resides. If the resident was originally  
14 involuntarily admitted to residential services pursuant to s.  
15 393.11, then the agency ~~department~~ shall file the petition in  
16 the court having continuing jurisdiction over the case.

17           (c) Nothing in this section shall in any way limit or  
18 restrict the resident's right to a writ of habeas corpus or  
19 the right of the agency ~~department~~ to transfer a resident  
20 receiving residential care to a program of appropriate  
21 services provided by the agency ~~department~~ when such program  
22 is the appropriate habilitative setting for the resident.

23           (2) DISCHARGE AFTER CRIMINAL OR JUVENILE  
24 COMMITMENT.--Any person with developmental disabilities  
25 committed to the custody of the agency ~~department~~ pursuant to  
26 the provisions of the applicable criminal or juvenile court  
27 law shall be discharged in accordance with the requirements of  
28 the applicable criminal or juvenile court law.

29           Section 40. Subsection (3) of section 393.12, Florida  
30 Statutes, is amended to read:

31           393.12 Capacity; appointment of guardian advocate.--

1           (3) COURT COSTS.--In all proceedings under this  
2 section, no court costs shall be charged against the agency  
3 ~~department~~.

4           Section 41. Section 393.125, Florida Statutes, is  
5 amended to read:

6           393.125 Hearing rights.--

7           (1) REVIEW OF AGENCY ~~DEPARTMENT~~ DECISIONS.--

8           (a) Any developmental services applicant or client, or  
9 his or her parent, guardian, guardian advocate, or authorized  
10 representative, who has any substantial interest determined by  
11 the agency department, ~~has shall have~~ the right to request an  
12 administrative hearing pursuant to ss. 120.569 and 120.57.

13           (b) Notice of the right to an administrative hearing  
14 shall be given, both verbally and in writing, to the applicant  
15 or client, and his or her parent, guardian, guardian advocate,  
16 or authorized representative, at the same time that the agency  
17 ~~department~~ gives the applicant or client notice of the  
18 agency's department's ~~department's~~ action. The notice shall be given, both  
19 verbally and in writing, in the language of the client or  
20 applicant and in English.

21           (c) A request for a hearing under this section shall  
22 be made to the agency department, ~~department~~, in writing, within 30 days  
23 of the applicant's or client's receipt of the notice.

24           (2) REVIEW OF PROVIDER DECISIONS.--The agency  
25 ~~department~~ shall adopt promulgate rules to establish uniform  
26 guidelines for the agency department ~~department~~ and service providers  
27 relevant to termination, suspension, or reduction of client  
28 services by the service provider. The rules shall ensure the  
29 due process rights of service providers and clients.

30           Section 42. Section 393.14, Florida Statutes, is  
31 amended to read:

1           393.14 Multiyear plan.--

2           (1) The agency ~~may~~ ~~department is authorized to~~ begin  
3 implementation of the provisions of this act within the limits  
4 of current appropriations. The agency ~~department~~ shall  
5 develop a multiyear plan which will provide for the phased-in  
6 implementation of the provisions of this act over the decade  
7 following first presentation of the plan to the Legislature.  
8 The multiyear plan for implementation shall be presented to  
9 the Legislature by January 31, 1990, and every 2 years  
10 thereafter. The plan shall include, but not be limited to:

11           (a) An analysis and inventory of existing programs,  
12 facilities, and services dealing with persons who are  
13 developmentally disabled.

14           (b) A survey and analysis outlining the needs of the  
15 system of care for persons who are developmentally disabled to  
16 accomplish the purpose and intent of this act. This analysis  
17 shall include:

18           1. Comprehensive information relating to the  
19 conceptual basis and statement of criteria which will be used  
20 for the identification and categorization of all agency  
21 ~~department~~ clients and the expected level and amount of  
22 service each category of client will require.

23           2. A description of the present client population,  
24 based on the above criteria.

25           3. Client population forecasts.

26           4. Client profiles.

27           5. Service area resources, needs, and capabilities.

28           6. Residential and nonresidential community programs.

29           7. An analysis of the future functions of institutions  
30 and their profile.

31

1           8. An analysis of the financing necessary to implement  
2 needs, which shall include a statement of the actual cost  
3 necessary to implement each program and the actual cost of  
4 each unit of service to the client for both institutional and  
5 community placements.

6           9. A clear and detailed description of the needs of  
7 persons waiting for services and the cost to the state in both  
8 human and economic terms if those persons are not served  
9 within the fiscal year the plan is submitted.

10           (c) A plan for the coordination of the state's  
11 service, programs, and facilities for persons who are  
12 developmentally disabled.

13           (d) A detailed study of methods to implement  
14 alternatives to institutionalization and how those methods can  
15 best be utilized.

16           (2) Every 2 years, commencing with the 1990 fiscal  
17 year, the agency ~~department~~ shall render a written report to  
18 the Legislature updating the plan, making recommendations for  
19 modification or improvement, and giving a detailed analysis of  
20 the manner and method, including funding, by which the  
21 Legislature can continue to implement the overall goals of the  
22 plan.

23           Section 43. Subsections (3), (4), (5), and (6) of  
24 section 393.15, Florida Statutes, are amended to read:

25           393.15 Legislative intent; Community Resources  
26 Development Trust Fund.--

27           (3) There is created a Community Resources Development  
28 Trust Fund in the State Treasury to be used by the agency  
29 ~~Department of Children and Family Services~~ for the purpose of  
30 granting loans to eligible programs for the initial costs of  
31 development of the programs. Loans shall be made only to



1 | those facilities which are in compliance with the zoning  
2 | regulations of the local community. Costs of development may  
3 | include structural modification, the purchase of equipment and  
4 | fire and safety devices, preoperational staff training, and  
5 | the purchase of insurance. Such costs shall not include the  
6 | actual construction of a facility.

7 |         (4) The agency ~~department~~ may grant to an eligible  
8 | program a lump-sum loan in one payment not to exceed the cost  
9 | to the program of providing 2 months' services, care, or  
10 | maintenance to each person who is developmentally disabled to  
11 | be placed in the program by the agency ~~department~~, or the  
12 | actual cost of firesafety renovations to a facility required  
13 | by the state, whichever is greater. Loans granted to programs  
14 | shall not be in lieu of payment for maintenance, services, or  
15 | care provided, but shall stand separate and distinct. The  
16 | agency ~~department~~ shall adopt ~~promulgate~~ rules, as provided in  
17 | chapter 120, to determine the standards under which a program  
18 | shall be eligible to receive a loan as provided in this  
19 | section and criteria for the equitable allocation of loan  
20 | trust funds when eligible applications exceed the funds  
21 | available.

22 |         (5) Any loan granted by the agency ~~department~~ under  
23 | this section shall be repaid by the program within 5 years. A  
24 | program that ~~which~~ operates as a nonprofit corporation meeting  
25 | the requirements of s. 501(c)(3) of the Internal Revenue Code,  
26 | and that ~~which~~ seeks forgiveness of its loan shall submit to  
27 | the agency ~~department~~ a statement setting forth the service it  
28 | has provided during the year together with such other  
29 | information as the agency ~~department~~ by rule shall require,  
30 | and, upon approval of each such annual statement, the agency  
31 |

1 ~~department~~ shall forgive 20 percent of the principal of any  
2 such loan granted after June 30, 1975.

3 (6) If any program ~~that~~ which has received a loan  
4 under this section ceases to accept, or provide care,  
5 services, or maintenance to persons placed in the program by  
6 the department, or if such program files ~~shall file~~ papers of  
7 bankruptcy, at that point in time the loan shall become an  
8 interest-bearing loan at the rate of 5 percent per annum on  
9 the entire amount of the initial loan which shall be repaid  
10 within a 1-year period from the date on which the program  
11 ceases to provide care, services, or maintenance, or files  
12 papers in bankruptcy, and the amount of the loan due plus  
13 interest shall constitute a lien in favor of the state against  
14 all real and personal property of the program. The lien shall  
15 be perfected by the appropriate officer of the agency  
16 ~~department~~ by executing and acknowledging a statement of the  
17 name of the program and the amount due on the loan and a copy  
18 of the promissory note, which shall be recorded by the agency  
19 ~~department~~ with the clerk of the circuit court in the county  
20 wherein the program is located. If the program has filed a  
21 petition for bankruptcy, the agency ~~department~~ shall file and  
22 enforce the lien in the bankruptcy proceedings. Otherwise,  
23 the lien shall be enforced in the manner provided in s.  
24 85.011. All funds received by the agency ~~department~~ from the  
25 enforcement of the lien shall be deposited in the Community  
26 Resources Development Trust Fund.

27 Section 44. Subsection (1) of section 393.501, Florida  
28 Statutes, is amended to read:

29 393.501 Rulemaking.--

30 (1) The agency ~~department~~ shall adopt rules to carry  
31 out the provisions of this chapter.

1           Section 45. Section 393.503, Florida Statutes, is  
2 amended to read:

3           393.503 Respite and family care subsidy expenditures;  
4 funding.--The ~~agency Department of Children and Family~~  
5 ~~Services~~ shall determine the amount of expenditures per fiscal  
6 year for the respite and family care subsidy to families and  
7 individuals with developmental disabilities living in their  
8 own homes. This information shall be made available to the  
9 family care councils and to others requesting the information.  
10 The family care councils shall review the expenditures and  
11 make recommendations to the ~~agency department~~ with respect to  
12 any new funds that are made available for family care.

13           Section 46. Subsection (2) of section 393.506, Florida  
14 Statutes, is amended to read:

15           393.506 Administration of medication.--

16           (2) Each facility, institution, or program must  
17 include in its policies and procedures a plan for training  
18 designated staff to ensure the safe handling, storage, and  
19 administration of prescription medication. These policies and  
20 procedures must be approved by the ~~agency department~~ before  
21 unlicensed direct care services staff assist with medication.

22           Section 47. (1) In the Department of Children and  
23 Family Services' Economic Self-Sufficiency Services Program  
24 Office, the department may provide its eligibility  
25 determination functions either with department staff or  
26 through contract with one or more private vendors, with the  
27 following restrictions:

28           (a) With the exception of information technology, a  
29 contract may not include a geographic area larger than a  
30 combined seven districts or combined three zones without the  
31 prior approval of the Legislative Budget Commission;

1           (b) All jobs made available through any contract must  
2 be located within the United States, with preference given to  
3 contractors whose jobs will be provided to residents of this  
4 state; and

5           (c) Department employees must provide the functions in  
6 at least two districts or one zone.

7           (2) This section shall take effect upon this act  
8 becoming a law.

9           Section 48. Except as otherwise expressly provided in  
10 this act, this act shall take effect July 1, 2004.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   Senate Bill 1280

4  
5 Removes the Developmental Disabilities program from the  
6 Department of Children and Family Services (the department or  
7 DCF) and establishes the program as "The Agency for Persons  
8 with Disabilities" (APD).

9 Houses the newly created agency within the department for  
10 administrative purposes but establishes the agency as a  
11 separate budget entity that is not subject to the control,  
12 supervision, or the direction of the department.

13 Specifies that the director for this agency is to be appointed  
14 by the Governor to administer the affairs of the agency and is  
15 authorized to hire staff within available resources.

16 Provides that the agency has programmatic responsibility for  
17 the provision of all services for persons with developmental  
18 disabilities pursuant to chapter 393 of the Florida Statutes.

19 Specifies that the fiscal management of the home and  
20 community-based waiver services is to be managed by the Agency  
21 for Health Care Administration (AHCA).

22 Directs that the agency will retain the fiscal and  
23 programmatic management of the developmental disabilities  
24 institutions and those community-based services funded by  
25 general revenue.

26 Deletes the current provisions relating to the certification  
27 of behavior analysts and provides language authorizing the  
28 agency to recognize the certification of behavior analysts  
29 that is awarded by a nonprofit corporation that meets certain  
30 requirements.

31 Requires that the Developmental Disabilities program and the  
developmental disabilities institutional programs in the  
department are to be transferred to APD by a type 2 transfer  
effective October 1, 2004.

Directs the agency and the department to work with the  
Department of Management Services to determine the number of  
positions and the resources within the department that are to  
be transferred to the agency including staff persons from the  
department who are to provide administrative support.

Directs the Director of APD to work with the Secretaries from  
DCF and the Agency for Health Care Administration (AHCA) or  
their designees to develop a transition plan that is to be  
submitted to the Executive Office of the Governor and the  
Legislature by September 1, 2004.

Requires the agency is to enter into inter-agency agreements  
with AHCA and DCF that delineate the responsibilities of each  
organization and that also address the operational support of  
the new agency as well as reimbursement mechanisms.

1 Directs APD, AHCA, and DCF to work together to develop a plan  
2 to ensure all necessary electronic and paper-based data is  
3 accessible to the Medicaid program. Electronic records are to  
4 be migrated to a new system that is compatible with the  
5 Florida Medicaid Management Information System.

6 Directs that a plan be developed by APD and AHCA for the  
7 relocation of the local APD staff to the AHCA area offices.

8 Requires APD to enter into an agreement with DCF for the  
9 provision of day-to-day administrative and operational needs  
10 or until APD is no longer in need of such services.

11 Directs the Office of Program Policy and Government  
12 Accountability to identify and evaluate statewide entities  
13 receiving state funding to provide services for persons with  
14 disabilities and provide a report to the Governor and the  
15 Legislature by December 2005.

16 Authorizes DCF to provide its eligibility determination  
17 functions with either department staff or through a  
18 contractual agreement with one or more private vendors with  
19 certain restrictions applied.

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