

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

.  
.
.



1 Representative Murman offered the following:

2

3 **Amendment (with title amendment)**

4 Remove line 3815 and insert:

5 Section 70. Paragraph (b) of subsection (4) of section  
6 20.19, Florida Statutes, is amended to read:

7 20.19 Department of Children and Family Services.--There  
8 is created a Department of Children and Family Services.

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

10 (b) The following program offices are established:

11 1. Adult Services.

12 2. Child Care Services.

13 ~~3. Developmental Disabilities.~~

14 ~~3.4.~~ Economic Self-Sufficiency Services.

15 ~~4.5.~~ Family Safety.

16 ~~5.6.~~ Mental Health.

Amendment No. (for drafter's use only)

17 ~~6.7.~~ Refugee Services.

18 ~~7.8.~~ Substance Abuse.

19 Section 71. Section 20.197, Florida Statutes, is created  
20 to read:

21 20.197 Agency for Persons with Disabilities.--There is  
22 created the Agency for Persons with Disabilities, housed within  
23 the Department of Children and Family Services for  
24 administrative purposes only. The agency shall be a separate  
25 budget entity not subject to control, supervision, or direction  
26 by the Department of Children and Family Services in any manner,  
27 including, but not limited to, personnel, purchasing,  
28 transactions involving real or personal property, and budgetary  
29 matters.

30 (1) The director of the agency shall be the agency head  
31 for all purposes and shall be appointed by the Governor and  
32 serve at the pleasure of the Governor. The director shall  
33 administer the affairs of the agency and establish  
34 administrative units as needed and may, within available  
35 resources, employ assistants, professional staff, and other  
36 employees as necessary to discharge the powers and duties of the  
37 agency.

38 (2) The agency shall be responsible for the provision of  
39 all services provided to persons with developmental disabilities  
40 pursuant to chapter 393, including the operation of all state  
41 institutional programs and the programmatic management of  
42 Medicaid waivers established to provide services to persons with  
43 developmental disabilities.

294519

Amendment No. (for drafter's use only)

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

47       (4) The agency shall enter into an interagency agreement  
48 that delineates the responsibilities of the Agency for Health  
49 Care Administration for the following:

50       (a) The terms, and execution of contracts with Medicaid  
51 providers for the provision of services provided through  
52 Medicaid, including federally approved waiver programs.

53       (b) The billing, payment, and reconciliation of claims for  
54 Medicaid services reimbursed by the agency.

55       (c) The implementation of utilization management measures,  
56 including the prior authorization of services plans and the  
57 streamlining and consolidation of waivers services, to ensure  
58 the cost-effective provision of needed Medicaid services and to  
59 maximize the number of persons with access to such services.

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

64       Section 72. Section 393.063, Florida Statutes, is amended  
65 to read:

66       393.063 Definitions.--For the purposes of this chapter:

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

Amendment No. (for drafter's use only)

71        ~~(1)(2)~~ "Agency" means the Agency for Persons with  
72 Disabilities ~~Health Care Administration.~~

73        ~~(2)(3)~~ "Autism" means a pervasive, neurologically based  
74 developmental disability of extended duration which causes  
75 severe learning, communication, and behavior disorders with age  
76 of onset during infancy or childhood. Individuals with autism  
77 exhibit impairment in reciprocal social interaction, impairment  
78 in verbal and nonverbal communication and imaginative ability,  
79 and a markedly restricted repertoire of activities and  
80 interests.

81        ~~(3)(4)~~ "Cerebral palsy" means a group of disabling  
82 symptoms of extended duration which results from damage to the  
83 developing brain that may occur before, during, or after birth  
84 and that results in the loss or impairment of control over  
85 voluntary muscles. For the purposes of this definition,  
86 cerebral palsy does not include those symptoms or impairments  
87 resulting solely from a stroke.

88        ~~(4)(5)~~ "Client" means any person determined eligible by  
89 the agency ~~department~~ for ~~developmental~~ services under this  
90 chapter.

91        ~~(5)(6)~~ "Client advocate" means a friend or relative of the  
92 client, or of the client's immediate family, who advocates for  
93 the best interests of the client in any proceedings under this  
94 chapter in which the client or his or her family has the right  
95 or duty to participate.

96        ~~(6)(7)~~ "Comprehensive assessment" means the process ~~which~~  
97 ~~is~~ used to determine eligibility for ~~developmental~~ services  
98 under this chapter ~~and develop the family or individual support~~

294519

Amendment No. (for drafter's use only)

99 | ~~plan. The term includes review and evaluation of information~~  
100 | ~~provided by the applicant, the individual receiving supports or~~  
101 | ~~services through developmental services, or the family, and~~  
102 | ~~others providing supports or services to the individual or~~  
103 | ~~family, as well as the use of formal assessment instruments.~~

104 |     ~~(7)(8)~~ "Comprehensive transitional education program"  
105 | means a group of jointly operating centers or units, the  
106 | collective purpose of which is to provide a sequential series of  
107 | educational care, training, treatment, habilitation, and  
108 | rehabilitation services to persons who have developmental  
109 | disabilities, ~~as defined in subsection (12)~~, and who have severe  
110 | or moderate maladaptive behaviors. However, nothing in this  
111 | subsection shall require such ~~comprehensive transitional~~  
112 | ~~education~~ programs to provide services only to persons with  
113 | developmental disabilities, ~~as defined in subsection (12)~~. All  
114 | such services shall be temporary in nature and delivered in a  
115 | structured residential setting with the primary goal of  
116 | incorporating the normalization principle to establish permanent  
117 | residence for persons with maladaptive behaviors in facilities  
118 | not associated with the comprehensive transitional education  
119 | program. The staff shall include psychologists and teachers  
120 | ~~who, and such staff personnel~~ shall be available to provide  
121 | services in each component center or unit of the program. The  
122 | psychologists shall be individuals who are licensed in this  
123 | state and certified as behavior analysts in this state, or  
124 | individuals who ~~meet the professional requirements established~~  
125 | ~~by the department for district behavior analysts and are~~

294519

Amendment No. (for drafter's use only)

126 certified as behavior analysts pursuant to s. 393.17 ~~in this~~  
127 ~~state.~~

128 (a) Comprehensive transitional education programs shall  
129 include a minimum of two component centers or units, ~~as defined~~  
130 ~~in this paragraph~~, one of which shall be either an intensive  
131 treatment and educational center or a transitional training and  
132 educational center, which provide services to persons with  
133 maladaptive behaviors in the following sequential order:

134 1. Intensive treatment and educational center. This  
135 component is a self-contained residential unit providing  
136 intensive psychological and educational programming for persons  
137 with severe maladaptive behaviors, whose behaviors preclude  
138 placement in a less restrictive environment due to the threat of  
139 danger or injury to themselves or others.

140 2. Transitional training and educational center. This  
141 component is a residential unit for persons with moderate  
142 maladaptive behaviors, providing concentrated psychological and  
143 educational programming emphasizing a transition toward a less  
144 restrictive environment.

145 3. Community transition residence. This component is a  
146 residential center providing educational programs and such  
147 support services, training, and care as are needed to assist  
148 persons with maladaptive behaviors to avoid regression to more  
149 restrictive environments while preparing them for more  
150 independent living. Continuous-shift staff shall be required for  
151 this component.

152 4. Alternative living center. This component is a  
153 residential unit providing an educational and family living

294519

Amendment No. (for drafter's use only)

154 environment for persons with maladaptive behaviors, in a  
155 moderately unrestricted setting. Residential staff shall be  
156 required for this component.

157 5. Independent living education center. This component is  
158 a facility providing a family living environment for persons  
159 with maladaptive behaviors, in a largely unrestricted setting  
160 which includes education and monitoring appropriate to support  
161 the development of independent living skills ~~by the students.~~

162 (b) Centers or units that are components of a  
163 comprehensive transitional education program are subject to the  
164 license issued to the comprehensive transitional education  
165 program and may be located on either single or multiple sites.

166 (c) Comprehensive transitional education programs shall  
167 develop individual education plans for each person with  
168 maladaptive behaviors who receives services therein. Such  
169 individual education plans shall be developed in accordance with  
170 the criteria specified ~~included~~ in ~~Pub. L. No. 94-142~~, 20 U.S.C.  
171 ss. 401 et seq., and 34 C.F.R. part 300.

172 (d) In no instance shall the total number of persons with  
173 maladaptive behaviors being provided services in a comprehensive  
174 transitional education program exceed 120.

175 (e) This subsection shall authorize licensure for  
176 comprehensive transitional education programs which by July 1,  
177 1989:

- 178 1. Are in actual operation; or  
179 2. Own a fee simple interest in real property for which a  
180 county or city government has approved zoning allowing for the  
181 placement of the facilities described in this subsection, and

294519

Amendment No. (for drafter's use only)

182 have registered an intent with the department to operate a  
183 comprehensive transitional education program. However, nothing  
184 shall prohibit the assignment by such a registrant to another  
185 entity at a different site within the state, so long as there is  
186 compliance with all criteria of the comprehensive transitional  
187 education program and local zoning requirements and provided  
188 that each residential facility within the component centers or  
189 units of the program authorized under this subparagraph shall  
190 not exceed a capacity of 15 persons.

191 ~~(9) "Day service" means the care, protection, and~~  
192 ~~supervision of a client for a period of less than 24 hours a day~~  
193 ~~on a regular basis which supplements for the client, in~~  
194 ~~accordance with his or her individual needs, daily care,~~  
195 ~~enrichment opportunities, and health supervision.~~

196 (8)(10) "Day habilitation facility" means any  
197 nonresidential facility which provides day habilitation  
198 services.

199 (9) "Day habilitation service" means assistance with the  
200 acquisition, retention, or improvement in self-help,  
201 socialization, and adaptive skills which takes place in a  
202 nonresidential setting, separate from the home or facility in  
203 which the individual resides. Day habilitation services shall  
204 focus on enabling the individual to attain or maintain his or  
205 her maximum functional level and shall be coordinated with any  
206 physical, occupational, or speech therapies listed in the plan  
207 of care.

208 ~~(11) "Department" means the Department of Children and~~  
209 ~~Family Services.~~

294519



Amendment No. (for drafter's use only)

210        ~~(10)(12)~~ "Developmental disability" means a disorder or  
211 syndrome that is attributable to retardation, cerebral palsy,  
212 autism, spina bifida, or Prader-Willi syndrome and that  
213 constitutes a substantial handicap that can reasonably be  
214 expected to continue indefinitely.

215        ~~(11)(13)~~ "Developmental disabilities services institution"  
216 means a state-owned and state-operated facility, formerly known  
217 as a "Sunland Center," providing for the care, habilitation, and  
218 rehabilitation of clients with developmental disabilities.

219        ~~(14)~~ "~~Developmental training facility~~" means any  
220 ~~nonresidential facility which provides basic training and~~  
221 ~~habilitation to clients.~~

222        ~~(12)(15)~~ "Direct service provider," also known as  
223 "caregiver" in chapters 39 and 415 or "caretaker" in provisions  
224 relating to employment security checks, means a person 18 years  
225 of age or older who has direct contact with individuals with  
226 developmental disabilities, or has access to a client's living  
227 areas or to a client's funds or personal property, and is not a  
228 relative of such ~~unrelated to the individuals with developmental~~  
229 ~~disabilities.~~

230        ~~(a)~~ The term "~~direct service provider~~" also includes any  
231 person, including members of the direct service provider's  
232 family, over 12 years of age who resides with the direct service  
233 provider when:

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

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

294519

Amendment No. (for drafter's use only)

238 ~~3. The person residing with the direct service provider~~  
239 ~~has direct contact with the individual with developmental~~  
240 ~~disabilities during the hours of provision of supports or~~  
241 ~~services.~~

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

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

251 ~~(d) A physician, nurse, or other professional licensed and~~  
252 ~~regulated by the Department of Business and Professional~~  
253 ~~Regulation is not a direct service provider for the purposes of~~  
254 ~~screening if the service he or she is providing to a client is~~  
255 ~~within the scope of practice for which he or she is licensed.~~

256 ~~(e) A person selected by the family or the individual with~~  
257 ~~developmental disabilities and paid by the family or the~~  
258 ~~individual to provide supports or services is not a direct~~  
259 ~~service provider for the purpose of screening.~~

260 ~~(16) "District" means a service district of the~~  
261 ~~department.~~

262 ~~(13)~~~~(17)~~ "Domicile" means the place where a client legally  
263 resides, which place is his or her permanent home. Domicile may  
264 be established as provided in s. 222.17. Domicile may not be  
265 established in Florida by a minor who has no parent domiciled in

294519

Amendment No. (for drafter's use only)

266 Florida, or by a minor who has no legal guardian domiciled in  
267 Florida, or by any alien not classified as a resident alien.

268 ~~(14)(18)~~ "Enclave" means a work station in public or  
269 private business or industry where a small group of persons with  
270 developmental disabilities is employed and receives training and  
271 support services or follow-along services among nonhandicapped  
272 workers.

273 ~~(15)(19)~~ "Epilepsy" means a chronic brain disorder of  
274 various causes which is characterized by recurrent seizures due  
275 to excessive discharge of cerebral neurons. When found  
276 concurrently with retardation, autism, or cerebral palsy,  
277 epilepsy is considered a secondary disability for which the  
278 client is eligible to receive services to ameliorate this  
279 condition pursuant ~~according to the provisions of~~ this chapter.

280 ~~(16)(20)~~ "Express and informed consent" means consent  
281 voluntarily given in writing with sufficient knowledge and  
282 comprehension of the subject matter involved to enable the  
283 person giving consent to make an understanding and enlightened  
284 decision without any element of force, fraud, deceit, duress, or  
285 other form of constraint or coercion.

286 ~~(17)(21)~~ "Family care program" means the program  
287 established in s. 393.068 ~~an alternative to residential~~  
288 ~~placement, in which a direct service provider provides a home~~  
289 ~~for a client and assists him or her to the extent necessary for~~  
290 ~~the client to participate in normal activities and to meet the~~  
291 ~~demands of daily living. The program provides the support needed~~  
292 ~~by the client's family or caretaker to meet the individual needs~~  
293 ~~of the client.~~

294519

Amendment No. (for drafter's use only)

294        (18)~~(22)~~ "Follow-along services" means those support  
295 services ~~which shall be~~ provided to persons with developmental  
296 disabilities in all supported employment programs and may  
297 include, but are not limited to, family support, assistance in  
298 meeting transportation and medical needs, employer intervention,  
299 performance evaluation, advocacy, replacement, retraining or  
300 promotional assistance, or other similar support services.

301        (19)~~(23)~~ "Foster care facility" means a residential  
302 facility which provides a family living environment including  
303 supervision and care necessary to meet the physical, emotional,  
304 and social needs of its residents. The capacity of such a  
305 facility shall not be more than three residents.

306        (20)~~(24)~~ "Group home facility" means a residential  
307 facility which provides a family living environment including  
308 supervision and care necessary to meet the physical, emotional,  
309 and social needs of its residents. The capacity of such a  
310 facility shall be at least 4 ~~residents~~ but not more than 15  
311 residents. For the purposes of this chapter, group home  
312 facilities shall not be considered commercial enterprises.

313        (21)~~(25)~~ "Guardian advocate" means a person appointed by  
314 the circuit court to represent a person with developmental  
315 disabilities in any proceedings brought pursuant to s. 393.12,  
316 and excludes the use of the same term as applied to a guardian  
317 advocate for mentally ill persons in chapter 394.

318        (22)~~(26)~~ "Habilitation" means the process by which a  
319 client is assisted to acquire and maintain those life skills  
320 which enable the client to cope more effectively with the  
321 demands of his or her condition and environment and to raise the

294519

Amendment No. (for drafter's use only)

322 level of his or her physical, mental, and social efficiency. It  
323 includes, but is not limited to, programs of formal structured  
324 education and treatment.

325 ~~(23)~~(27) "High-risk child" means, for the purposes of this  
326 chapter, a child from birth to 5 years of age with one or more  
327 of the following characteristics:

328 (a) A developmental delay in cognition, language, or  
329 physical development.

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

333 (c) A child with a parent or guardian with developmental  
334 disabilities ~~who is developmentally disabled and~~ who requires  
335 assistance in meeting the child's developmental needs.

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

338 ~~(24)~~(28) "Intermediate care facility for the  
339 developmentally disabled" or "ICF/DD" means a residential  
340 facility licensed and certified pursuant to part XI of chapter  
341 400 in accordance with state law, and certified by the Federal  
342 ~~Government pursuant to the Social Security Act, as a provider of~~  
343 ~~Medicaid services to persons who are developmentally disabled.~~  
344 ~~The capacity of such a facility shall not be more than 120~~  
345 ~~clients.~~

346 ~~(25)~~(29) "Job coach" means a person who provides  
347 employment-related training at a work site to individuals with  
348 developmental disabilities.

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

349        ~~(26)~~~~(30)~~ "Medical/dental services" means those services  
350 which are provided or ordered for a client by a ~~person~~ licensed  
351 pursuant to the provisions of chapter 458, chapter 459, or  
352 chapter 466. Such services may include, but are not limited to,  
353 prescription drugs, specialized therapies, nursing supervision,  
354 hospitalization, dietary services, prosthetic devices, surgery,  
355 specialized equipment and supplies, adaptive equipment, and  
356 other services as required to prevent or alleviate a medical or  
357 dental condition.

358        ~~(27)~~~~(31)~~ "Mobile work crew" means a group of workers  
359 employed by an agency that provides services outside the agency,  
360 usually under service contracts.

361        ~~(28)~~~~(32)~~ "Normalization principle" means the principle of  
362 letting the client obtain an existence as close to the normal as  
363 possible, making available to the client patterns and conditions  
364 of everyday life which are as close as possible to the norm and  
365 patterns of the mainstream of society.

366        ~~(29)~~~~(33)~~ "Personal services" include, but are not limited  
367 to, such services as: individual assistance with or supervision  
368 of essential activities of daily living for self-care, including  
369 ambulation, bathing, dressing, eating, grooming, and toileting,  
370 and other similar services that ~~which~~ the agency ~~department~~ may  
371 define by rule. "Personal services" shall not be construed to  
372 mean the provision of medical, nursing, dental, or mental health  
373 services by the staff of a facility, except as provided in this  
374 chapter. In addition, an emergency response device installed in  
375 the apartment or living area of a resident shall not be  
376 classified as a personal service.

294519

Amendment No. (for drafter's use only)

377        ~~(30)(34)~~ "Prader-Willi syndrome" means an inherited  
378 condition typified by neonatal hypotonia with failure to thrive,  
379 hyperphagia or an excessive drive to eat which leads to obesity  
380 usually at 18 to 36 months of age, mild to moderate retardation,  
381 hypogonadism, short stature, mild facial dysmorphism, and a  
382 characteristic neurobehavior.

383        ~~(31)(35)~~ "Reassessment" means a process which periodically  
384 develops, through annual review and revision of a client's  
385 family or individual support plan, a knowledgeable statement of  
386 current needs and past development for each client.

387        ~~(36)~~ ~~"Rehabilitation workshop facility" means a place~~  
388 ~~operated by a for-profit or nonprofit agency engaged in the~~  
389 ~~manufacture or production of products or provision of services,~~  
390 ~~which provides gainful rehabilitation to severely handicapped~~  
391 ~~persons until such persons can become employed or which provides~~  
392 ~~gainful work to persons who are developmentally disabled.~~

393        ~~(32)(37)~~ "Relative" means an individual who is connected  
394 by affinity or consanguinity to the client and who is 18 years  
395 of age or more.

396        ~~(33)(38)~~ "Resident" means any person who is  
397 developmentally disabled residing at a residential facility in  
398 the state, whether or not such person is a client of the agency  
399 department.

400        ~~(34)(39)~~ "Residential facility" means a facility providing  
401 room and board and personal care for persons with developmental  
402 disabilities.

403        (35) "Residential habilitation" means assistance provided  
404 with acquisition, retention, or improvement in skills related to

294519

Amendment No. (for drafter's use only)

405 activities of daily living, such as personal grooming and  
406 cleanliness, bedmaking and household chores, eating and the  
407 preparation of food, and the social and adaptive skills  
408 necessary to enable the individual to reside in a  
409 noninstitutional setting.

410 ~~(36)(40)~~ "Residential habilitation center" means a  
411 community residential facility that provides residential  
412 habilitation. operated primarily for the diagnosis, treatment,  
413 habilitation, or rehabilitation of its residents, which facility  
414 provides, in a structured residential setting, individualized  
415 continuing evaluation, planning, 24-hour supervision, and  
416 coordination and integration of health or rehabilitative  
417 services to help each resident reach his or her maximum  
418 functioning capabilities. The capacity of such a facility shall  
419 not be fewer ~~less~~ than nine residents. After October 1, 1989, no  
420 new residential habilitation centers shall be licensed and the  
421 licensed capacity shall not be increased for any existing  
422 residential habilitation center.

423 ~~(37)(41)~~ "Respite service" means appropriate, short-term,  
424 temporary care that is provided to a person with developmental  
425 disabilities to meet the planned or emergency needs of the  
426 person ~~with developmental disabilities~~ or the family or other  
427 direct service provider.

428 ~~(38)(42)~~ "Retardation" means significantly subaverage  
429 general intellectual functioning existing concurrently with  
430 deficits in adaptive behavior and manifested during the period  
431 from conception to age 18. "Significantly subaverage general  
432 intellectual functioning," for the purpose of this definition,

294519



Amendment No. (for drafter's use only)

433 means performance which is two or more standard deviations from  
434 the mean score on a standardized intelligence test specified in  
435 the rules of the agency ~~department~~. "Adaptive behavior," for  
436 the purpose of this definition, means the effectiveness or  
437 degree with which an individual meets the standards of personal  
438 independence and social responsibility expected of his or her  
439 age, cultural group, and community.

440 ~~(43) "Screening," for purposes of employment, contracting,~~  
441 ~~or certification, means the act of assessing the background of~~  
442 ~~direct service providers and independent support coordinators,~~  
443 ~~who are not related to clients for whom they provide services,~~  
444 ~~and includes, but is not limited to, employment history checks,~~  
445 ~~local criminal records checks through local law enforcement~~  
446 ~~agencies, fingerprinting for all purposes and checks in this~~  
447 ~~subsection, statewide criminal records checks through the~~  
448 ~~Department of Law Enforcement, and federal criminal records~~  
449 ~~checks through the Federal Bureau of Investigation; except that~~  
450 ~~screening for volunteers included under the definition of~~  
451 ~~personnel includes only local criminal records checks through~~  
452 ~~local law enforcement agencies for current residence and~~  
453 ~~residence immediately prior to employment as a volunteer, if~~  
454 ~~different; and statewide criminal records correspondence checks~~  
455 ~~through the Department of Law Enforcement.~~

456 ~~(39)(44)~~ "Severe self-injurious behavior" means any  
457 chronic behavior that results in injury to the person's own  
458 body, which includes, but is not limited to, self-hitting, head  
459 banging, self-biting, scratching, and the ingestion of harmful  
460 or potentially harmful nutritive or nonnutritive substances.

294519

Amendment No. (for drafter's use only)

461        ~~(40)(45)~~ "Specialized therapies" means those treatments or  
462 activities prescribed by and provided by an appropriately  
463 trained, licensed, or certified professional or staff person and  
464 may include, but are not limited to, physical therapy, speech  
465 therapy, respiratory therapy, occupational therapy, behavior  
466 therapy, physical management services, and related specialized  
467 equipment and supplies.

468        ~~(41)(46)~~ "Spina bifida" means, for purposes of this  
469 chapter, a person with a medical diagnosis of spina bifida  
470 cystica or myelomeningocele.

471        ~~(42)(47)~~ "Support coordinator" means a person who is  
472 designated by the agency ~~department~~ to assist individuals and  
473 families in identifying their ~~desires~~, capacities, needs, and  
474 resources, as well as finding and gaining access to necessary  
475 supports and services; coordinating the delivery of supports and  
476 services; advocating on behalf of the individual and family;  
477 maintaining relevant records; and monitoring and evaluating the  
478 delivery of supports and services to determine the extent to  
479 which they meet the needs and expectations identified by the  
480 individual, family, and others who participated in the  
481 development of the support plan.

482        ~~(43)(48)~~ "Supported employee" means a person whose  
483 ~~developmental disability has traditionally kept him or her from~~  
484 ~~integrated, community-based employment and~~ who requires and  
485 receives supported employment ~~ongoing support or follow-along~~  
486 services in order to maintain community-based employment.

487        ~~(44)(49)~~ "Supported employment" means employment located  
488 or provided in a normal employment setting which provides at

294519

Amendment No. (for drafter's use only)

489 least 20 hours employment per week in an integrated work  
490 setting, with earnings paid on a commensurate wage basis, and  
491 for which continued support ~~is or follow-along services are~~  
492 needed for ~~continuing~~ job maintenance.

493 ~~(45)(50)~~ "Supported living" means a category of  
494 individually determined services designed and coordinated in  
495 such a manner as to provide assistance to adult clients who  
496 require ongoing supports to live as independently as possible in  
497 their own homes, to be integrated into the community, and to  
498 participate in community life to the fullest extent possible.

499 ~~(46)(51)~~ "Training" means a planned approach to assisting  
500 a client to attain or maintain his or her maximum potential and  
501 includes services ranging from sensory stimulation to  
502 instruction in skills for independent living and employment.

503 ~~(47)(52)~~ "Treatment" means the prevention, amelioration,  
504 or cure of a client's physical and mental disabilities or  
505 illnesses.

506 Section 73. Subsections (1), (3), (4), and (5) of section  
507 393.064, Florida Statutes, are amended to read:

508 393.064 Prevention.--

509 (1) The agency ~~Department of Children and Family Services~~  
510 shall give priority to the development, planning, and  
511 implementation of programs which have the potential to prevent,  
512 correct, cure, or reduce the severity of developmental  
513 disabilities. The agency ~~department~~ shall direct an interagency  
514 ~~interdepartmental~~ and interprogram effort for the continued  
515 development of a prevention plan and program. The agency  
516 ~~department~~ shall identify, through demonstration projects,

294519

Amendment No. (for drafter's use only)

517 through ~~departmental~~ program evaluation, and through monitoring  
518 of programs and projects conducted outside of the agency  
519 ~~department~~, any medical, social, economic, or educational  
520 methods, techniques, or procedures that ~~which~~ have the potential  
521 to effectively ameliorate, correct, or cure developmental  
522 disabilities. The program department shall determine the costs  
523 and benefits that would be associated with such prevention  
524 efforts and shall implement, or recommend the implementation of,  
525 those methods, techniques, or procedures which are found likely  
526 to be cost-beneficial. ~~The department in its legislative budget~~  
527 ~~request shall identify funding needs for such prevention~~  
528 ~~programs.~~

529 (3) Other agencies of state government shall cooperate  
530 with and assist the agency department, within available  
531 resources, in implementing programs which have the potential to  
532 prevent, or reduce the severity of, developmental disabilities  
533 and shall consider the findings and recommendations of the  
534 agency department in developing and implementing agency programs  
535 and formulating agency budget requests.

536 (4) There is created at the developmental services  
537 institution in Gainesville a research and education unit. Such  
538 unit shall be named the Raymond C. Philips Research and  
539 Education Unit. The functions of such unit shall include:

540 (a) Research into the etiology of developmental  
541 disabilities.

542 (b) Ensuring that new knowledge is rapidly disseminated  
543 throughout the developmental services program of the agency  
544 ~~Department of Children and Family Services.~~

294519

Amendment No. (for drafter's use only)

545 (c) Diagnosis of unusual conditions and syndromes  
546 associated with developmental disabilities in clients identified  
547 throughout the developmental services programs.

548 (d) Evaluation of families of clients with developmental  
549 disabilities of genetic origin in order to provide them with  
550 genetic counseling aimed at preventing the recurrence of the  
551 disorder in other family members.

552 (e) Ensuring that health professionals in the  
553 developmental services institution at Gainesville have access to  
554 information systems that will allow them to remain updated on  
555 newer knowledge and maintain their postgraduate education  
556 standards.

557 (f) Enhancing staff training for professionals throughout  
558 the agency ~~department~~ in the areas of genetics and developmental  
559 disabilities.

560 (5) The agency ~~Department of Children and Family Services~~  
561 shall have the authority, within available resources, to  
562 contract for the supervision and management of the Raymond C.  
563 Philips Research and Education Unit, and such contract shall  
564 include specific program objectives.

565 Section 74. Section 393.0655, Florida Statutes, is amended  
566 to read:

567 393.0655 Screening of direct service providers.--

568 (1) MINIMUM STANDARDS.--The agency ~~department~~ shall  
569 require level 2 employment screening pursuant to chapter 435,  
570 ~~using the level 2 standards for screening set forth in that~~  
571 ~~chapter~~, for direct service providers who are unrelated to their  
572 clients, including support coordinators, and managers and

294519

Amendment No. (for drafter's use only)

573 supervisors of residential facilities or comprehensive  
574 transitional education programs licensed under s. 393.967 and  
575 any other person, including volunteers, who provide care or  
576 services, who have access to a client's living areas, or who  
577 have access to a client's funds or personal property. Background  
578 screening shall include employment history checks as provided in  
579 s. 435.03(1) and local criminal records checks through local law  
580 enforcement agencies.

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

585 (b) Licensed physicians, nurses, or other professionals  
586 licensed and regulated by the Department of Health are not  
587 subject to background screening pursuant to this section if they  
588 are providing a service that is within their scope of licensed  
589 practice.

590 (c) A person selected by the family or the individual with  
591 developmental disabilities and paid by the family or the  
592 individual to provide supports or services is not required to  
593 have a background screening under this section.

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

598 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency  
599 ~~department~~ may grant exemptions from disqualification from

Amendment No. (for drafter's use only)

600 working with children or adults with developmental disabilities  
601 ~~the developmentally disabled~~ as provided in s. 435.07.

602 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE  
603 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints  
604 and the state criminal records checks shall be borne by the  
605 employer or by the employee or individual who is being screened.

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

609 (a) The agency department shall deny, suspend, terminate,  
610 or revoke a license, certification, rate agreement, purchase  
611 order, or contract, or pursue other remedies provided in s.  
612 393.0673, s. 393.0675, or s. 393.0678 in addition to or in lieu  
613 of denial, suspension, termination, or revocation for failure to  
614 comply with this section.

615 (b) When the agency department has reasonable cause to  
616 believe that grounds for denial or termination of employment  
617 exist, it shall notify, in writing, the employer and the direct  
618 service provider affected, stating the specific record which  
619 indicates noncompliance with the standards in this section.

620 (c) The procedures established for hearing under chapter  
621 120 shall be available to the employer and the direct service  
622 provider in order to present evidence relating either to the  
623 accuracy of the basis of exclusion or to the denial of an  
624 exemption from disqualification.

625 (d) Refusal on the part of an employer to dismiss a direct  
626 service provider who has been found to be in noncompliance with  
627 standards of this section shall result in automatic denial,

294519

Amendment No. (for drafter's use only)

628 termination, or revocation of the license, certification, rate  
629 agreement, purchase order, or contract, in addition to any other  
630 remedies pursued by the agency ~~department~~.

631 Section 75. Section 393.066, Florida Statutes, is amended  
632 to read:

633 393.066 Community services and treatment for persons who  
634 are developmentally disabled.--

635 (1) The agency ~~Department of Children and Family Services~~  
636 shall plan, develop, organize, and implement its programs of  
637 services and treatment for persons who are developmentally  
638 disabled ~~along district lines. The goal of such programs shall~~  
639 ~~be~~ to allow clients to live as independently as possible in  
640 their own homes or communities and to achieve productive lives  
641 as close to normal as possible.

642 ~~(2) All programs of services and treatment for clients~~  
643 ~~shall be administered through the districts and shall serve all~~  
644 ~~clients regardless of the type of residential setting in which~~  
645 ~~the client lives. All elements of community-based services~~  
646 shall be made available, ~~in each service district~~ and  
647 eligibility for these services shall be consistent across the  
648 state districts. In addition, all purchased services shall be  
649 approved by the agency ~~district~~.

650 ~~(2)(3)~~ All services needed shall be purchased instead of  
651 provided directly by the agency ~~department~~, when such  
652 arrangement is more cost-efficient than having those services  
653 provided directly ~~by the department~~.



Amendment No. (for drafter's use only)

654        ~~(3)(4)~~ Community-based services that are medically  
655 necessary to prevent institutionalization shall, to the extent  
656 of available resources, include:

657            (a) Day habilitation services, including developmental  
658 training services.

659            (b) Family care services.

660            (c) Guardian advocate referral services.

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

664            (e) Parent training.

665            (f) Recreation.

666            (g) Residential services.

667            (h) Respite services.

668            (i) Social services.

669            (j) Specialized therapies.

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

672            (l) Supported living.

673            (m) Training, including behavioral programming.

674            (n) Transportation.

675            (o) Other habilitative and rehabilitative services as  
676 needed.

677  
678 ~~Services to clients with spina bifida shall not include medical~~  
679 ~~services except as appropriated by the Legislature.~~

680        ~~(5) Provided it is consistent with the intent of the~~  
681 ~~Legislature, the department shall prioritize increased~~

Amendment No. (for drafter's use only)

682 ~~appropriations provided for community-based services for~~  
683 ~~developmentally disabled individuals toward individualized,~~  
684 ~~community-based supports and services for consumers and their~~  
685 ~~families. Further, the department's 5-year plan for~~  
686 ~~Developmental Services shall reflect a priority toward~~  
687 ~~individualized, community-based supports and services for~~  
688 ~~consumers and their families.~~

689       (4)(6) The agency department shall utilize the services of  
690 private businesses, not-for-profit organizations, and units of  
691 local government whenever such services are more cost-efficient  
692 than such services provided directly by the department,  
693 including arrangements for provision of residential facilities.

694       (5)(7) In order to improve the potential for utilization  
695 of more cost-effective, community-based residential facilities,  
696 the agency department shall promote the statewide development of  
697 day habilitation services for clients who live with a direct  
698 service provider in a community-based residential facility and  
699 who do not require 24-hour-a-day care in a hospital or other  
700 health care institution, but who may, in the absence of day  
701 habilitation services, require admission to a developmental  
702 disabilities ~~services~~ institution. Each day service facility  
703 shall provide a protective physical environment for clients,  
704 ensure that direct service providers meet the minimum screening  
705 standards ~~for good moral character~~ as required ~~contained~~ in s.  
706 393.0655, make available to all day habilitation service  
707 participants at least one meal on each day of operation, provide  
708 facilities to enable participants to obtain needed rest while  
709 attending the program, as appropriate, and provide social and

294519

Amendment No. (for drafter's use only)

710 educational activities designed to stimulate interest and  
711 provide socialization skills.

712 (6) To promote independence and productivity, the agency  
713 shall provide supports and services, within available resources,  
714 to assist clients enrolled in Medicaid waivers who choose to  
715 pursue gainful employment.

716 ~~(7)(8) For the purpose of making needed community-based~~  
717 ~~residential facilities available at the least possible cost to~~  
718 ~~the state, the agency ~~department~~ is authorized to lease~~  
719 ~~privately owned residential facilities under long-term rental~~  
720 ~~agreements, if such rental agreements are projected to be less~~  
721 ~~costly to the state over the useful life of the facility than~~  
722 ~~state purchase or state construction of such a facility. In~~  
723 ~~addition, the department is authorized to permit, on any public~~  
724 ~~land to which the department holds the lease, construction of a~~  
725 ~~residential facility for which the department has entered into a~~  
726 ~~long-term rental agreement as specified in this subsection.~~

727 ~~(8)(9) The agency ~~department~~ may adopt rules to ensure~~  
728 ~~compliance with federal laws or regulations that apply to~~  
729 ~~services provided pursuant to this section.~~

730 Section 76. Section 393.0661, Florida Statutes, is amended  
731 to read:

732 393.0661 Home and community-based services delivery  
733 system; comprehensive redesign.--The Legislature finds that the  
734 home and community-based services delivery system for persons  
735 with developmental disabilities and the availability of  
736 appropriated funds are two of the critical elements in making  
737 services available. Therefore, it is the intent of the

294519

Amendment No. (for drafter's use only)

738 Legislature that the Agency for Persons with Disabilities  
739 ~~Department of Children and Family Services~~ shall develop and  
740 implement a comprehensive redesign of the system.

741 (1) The redesign of the home and community-based services  
742 system shall include, at a minimum, all actions necessary to  
743 achieve an appropriate rate structure, client choice within a  
744 specified service package, appropriate assessment strategies, an  
745 efficient billing process that contains reconciliation and  
746 monitoring components, a redefined role for support coordinators  
747 that avoids potential conflicts of interest, and ensures that  
748 family/client budgets are linked to levels of need. ~~Prior to the~~  
749 ~~release of funds in the lump sum appropriation, the department~~  
750 ~~shall present a plan to the Executive Office of the Governor,~~  
751 ~~the House Fiscal Responsibility Council, and the Senate~~  
752 ~~Appropriations Committee. The plan must result in a full~~  
753 ~~implementation of the redesigned system no later than July 1,~~  
754 ~~2003. At a minimum, the plan must provide that the portions~~  
755 ~~related to direct provider enrollment and billing will be~~  
756 ~~operational no later than March 31, 2003. The plan must further~~  
757 ~~provide that a more effective needs assessment instrument will~~  
758 ~~be deployed by January 1, 2003, and that all clients will be~~  
759 ~~assessed with this device by June 30, 2003.~~

760 (a) ~~In no event may~~ The agency shall use department select  
761 an assessment instrument ~~without appropriate evidence that~~ is it  
762 ~~will be~~ reliable and valid. ~~Once such evidence has been~~  
763 ~~obtained, however,~~ The agency may contract with department shall  
764 ~~determine the feasibility of contracting with an external vendor~~  
765 ~~to apply the new assessment device to all clients receiving~~

294519

Amendment No. (for drafter's use only)

766 ~~services through the Medicaid waiver. In lieu of using an~~  
767 ~~external vendor or, the department~~ may use support coordinators  
768 to complete client for the assessments if it develops sufficient  
769 safeguards and training to ensure ongoing ~~significantly improve~~  
770 ~~the inter-rater reliability of the support coordinators~~  
771 ~~administering the assessment.~~

772 (b) The agency, with the concurrence of the Agency for  
773 Health Care Administration, may contract for the determination  
774 of medical necessity and establishment of individual budgets.

775 (2) A provider of services rendered to persons with  
776 developmental disabilities pursuant to a federally-approved  
777 waiver shall be reimbursed according to a rate methodology based  
778 upon an analysis of the expenditure history and prospective  
779 costs of providers participating in the waiver program, or under  
780 any other methodology developed by the Agency for Health Care  
781 Administration, in consultation with the Agency for Persons with  
782 Disabilities, and approved by the Federal Government in  
783 accordance with the waiver.

784 (3) Pending the adoption of rate methodologies pursuant to  
785 non-emergency rulemaking under s. 120.54, the Agency for Health  
786 Care Administration may, at any time, adopt emergency rules  
787 under s. 120.54(4) in order to comply with subsection (4). In  
788 adopting such emergency rules, the agency need not make the  
789 findings required by s. 120.54(4)(a), and such rules shall be  
790 exempt from time limitations provided in s. 120.54(4)(c) and  
791 shall remain in effect until replaced by another emergency rule  
792 or the non-emergency adoption of the rate methodology.

294519

Amendment No. (for drafter's use only)

793       (4) Nothing in this section or in any administrative rule  
794 shall be construed to prevent or limit the Agency for Health  
795 Care Administration, in consultation with the Agency for Persons  
796 with Disabilities, from adjusting fees, reimbursement rates,  
797 lengths of stay, number of visits, or number of services, or  
798 from limiting enrollment, or making any other adjustment  
799 necessary to comply with the availability of moneys and any  
800 limitations or directions provided for in the General  
801 Appropriations Act. If at any time, based upon an analysis by  
802 the Agency for Health Care Administration in consultation with  
803 the Agency for Persons with Disabilities, the cost of home and  
804 community-based waiver services are expected to exceed the  
805 appropriated amount, the Agency for Health Care Administration  
806 may implement any adjustment, including provider rate  
807 reductions, within 30 days in order to remain within the  
808 appropriation.

809       Section 77. Section 393.068, Florida Statutes, is amended  
810 to read:

811       393.068 Family care program.--

812       (1) The family care program is established for the purpose  
813 of providing services and support to families and individuals  
814 with developmental disabilities in order to maintain the  
815 individual in the home environment and avoid costly out-of-home  
816 residential placement. ~~The Legislature recognizes the~~  
817 ~~importance of family support in the long-range success of~~  
818 ~~deinstitutionalization.~~ Services and support available to  
819 families and individuals with developmental disabilities shall  
820 emphasize community living and enable individuals with

294519

Amendment No. (for drafter's use only)

821 developmental disabilities to enjoy typical lifestyles. ~~Support~~  
 822 ~~and flexibility in coordinating support and services are core~~  
 823 ~~elements in caring for the individual who is developmentally~~  
 824 ~~disabled.~~ One way to accomplish this is to recognize that  
 825 families are the greatest resource available to individuals who  
 826 have developmental disabilities and ~~that families~~ must be  
 827 supported in their role as primary care givers.

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

- 832       (a) Attendant care.
- 833       (b) Barrier-free modifications to the home.
- 834       (c) Home visitation by agency workers.
- 835       (d) In-home subsidies.
- 836       (e) Low-interest loans.

837       ~~(f) Parent training.~~

838       ~~(g) Respite care.~~

839       (f)(h) Modifications for vehicles used to transport the  
 840 individual with a developmental disability.

841       (g)(i) Facilitated communication.

842       (h)(j) Family counseling.

843       (i)(k) Equipment and supplies.

844       (j)(l) Self-advocacy training.

845       (k)(m) Roommate services.

846       (l)(n) Integrated community activities.

847       (m)(o) Emergency services.

848       (n)(p) Support coordination.

Amendment No. (for drafter's use only)

- 849        (o) Supported employment.
- 850        (p)~~(q)~~ Other support services as identified by the family  
851 or individual.
- 852        ~~(2) Provided it is consistent with the intent of the~~  
853 ~~Legislature, the department shall prioritize increased~~  
854 ~~appropriations provided for family-based services for~~  
855 ~~developmentally disabled individuals toward individualized,~~  
856 ~~family-based supports and services for consumers and their~~  
857 ~~families. Further, the department's 5-year plan for~~  
858 ~~developmental services shall reflect a priority toward~~  
859 ~~individualized, family-based supports and services for consumers~~  
860 ~~and their families.~~
- 861        (3) When it is determined by the agency ~~department~~ to be  
862 more cost-effective and in the best interest of the client to  
863 maintain such client in the home of a direct service provider,  
864 the parent or guardian of the client or, if competent, the  
865 client may enroll the client in the family care program. The  
866 direct service provider of a client enrolled in the family care  
867 program shall be reimbursed according to a rate schedule set by  
868 the agency ~~department~~. In-home subsidies cited in  
869 paragraph(1)(d) shall be provided according to s. 393.0695 and  
870 are not subject to any other payment method or rate schedule  
871 provided for in this section.
- 872        (4) All existing community resources available to the  
873 client shall be utilized to support program objectives.  
874 Additional services may be incorporated into the program as  
875 appropriate and to the extent that resources are available. The



Amendment No. (for drafter's use only)

876 agency department is authorized to accept gifts and grants in  
877 order to carry out the program.

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

885 (6) When possible, services shall be obtained under the  
886 "Florida Comprehensive Annual Services Program Plan under Title  
887 XX of the Social Security Act" and the "Florida Plan for Medical  
888 Assistance under Title XIX of the Social Security Act."

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

894 ~~(8) The department shall submit to the President of the~~  
895 ~~Senate and the Speaker of the House of Representatives, as part~~  
896 ~~of the biennial plan required by s. 393.14, an evaluation report~~  
897 ~~summarizing the progress of the family care program. The report~~  
898 ~~shall include the information and data necessary for an accurate~~  
899 ~~analysis of the costs and benefits associated with the~~  
900 ~~establishment and operation of the programs that were~~  
901 ~~established.~~

902 Section 78. Subsections (1) and (3) of section 393.0695,  
903 Florida Statutes, are amended to read:

294519

Amendment No. (for drafter's use only)

904 393.0695 Provision of in-home subsidies.--

905 (1) The agency may pay ~~department shall develop by October~~  
906 ~~1, 1991, a plan for paying~~ in-home subsidies to clients enrolled  
907 in the family care program or supported living when it is  
908 determined to be more cost-effective and in the best interest of  
909 the client to provide a cash supplement to the client's income  
910 to enable the client to remain in the family home or the  
911 client's own home. Payments may be made to the parent or  
912 guardian of the client or, if the client is competent, directly  
913 to the client.

914 (3) In-home subsidies must be based on an individual  
915 determination of need and must not exceed maximum amounts set by  
916 the agency ~~department~~ and reassessed by the agency annually  
917 ~~department quarterly~~.

918 Section 79. Subsection (1), paragraph (a) of subsection  
919 (2), paragraph (a) of subsection(4), paragraphs (a), (d), and  
920 (h) of subsection (5), paragraph (a) of subsection (6),  
921 paragraphs (d) and (e) of subsection (8), and subsection (13) of  
922 section 393.11, Florida Statutes, are amended to read:

923 393.11 Involuntary admission to residential services.--

924 (1) JURISDICTION.--When a person is mentally retarded and  
925 requires involuntary admission to residential services provided  
926 by the agency ~~developmental services program of the Department~~  
927 ~~of Children and Family Services~~, the circuit court of the county  
928 in which the person resides shall have jurisdiction to conduct a  
929 hearing and enter an order involuntarily admitting the person in  
930 order that the person may receive the care, treatment,  
931 habilitation, and rehabilitation which the person needs. For

294519

Amendment No. (for drafter's use only)

932 the purpose of identifying mental retardation, diagnostic  
933 capability shall be established by ~~in every program function of~~  
934 ~~the agency department in the districts, including, but not~~  
935 ~~limited to, programs provided by children and families;~~  
936 ~~delinquency services; alcohol, drug abuse, and mental health;~~  
937 ~~and economic services, and by the Department of Labor and~~  
938 ~~Employment Security.~~ Except as otherwise specified, the  
939 proceedings under this section shall be governed by the Florida  
940 Rules of Civil Procedure.

941 (2) PETITION.--

942 (a) A petition for involuntary admission to residential  
943 services may be executed by a petitioning commission. For  
944 proposed involuntary admission to residential services arising  
945 out of chapter 916, the petition may be filed by a petitioning  
946 commission, the agency department, the state attorney of the  
947 circuit from which the defendant was committed, or the  
948 defendant's attorney.

949 (4) DEVELOPMENTAL SERVICES PARTICIPATION.--

950 (a) Upon receiving the petition, the court shall  
951 immediately order the developmental services program of the  
952 agency department to examine the person being considered for  
953 involuntary admission to residential services.

954 (5) EXAMINING COMMITTEE.--

955 (a) Upon receiving the petition, the court shall  
956 immediately appoint an examining committee to examine the person  
957 being considered for involuntary admission to residential  
958 services of the developmental services program of the agency  
959 department.

294519

Amendment No. (for drafter's use only)

960 (d) Members of the committee shall not be employees of the  
961 agency department or be associated with each other in practice  
962 or in employer-employee relationships. Members of the committee  
963 shall not have served as members of the petitioning commission.  
964 Members of the committee shall not be employees of the members  
965 of the petitioning commission or be associated in practice with  
966 members of the commission.

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

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

971 (a) The person with mental retardation shall be  
972 represented by counsel at all stages of the judicial proceeding.  
973 In the event the person is indigent and cannot afford counsel,  
974 the court shall appoint a public defender not less than 20  
975 working days before the scheduled hearing. The person's counsel  
976 shall have full access to the records of the service provider  
977 and the agency department. In all cases, the attorney shall  
978 represent the rights and legal interests of the person with  
979 mental retardation, regardless of who may initiate the  
980 proceedings or pay the attorney's fee.

981 (8) ORDER.--

982 (d) If an order of involuntary admission to residential  
983 services provided by the developmental services program of the  
984 agency department is entered by the court, a copy of the written  
985 order shall be served upon the person, the person's counsel, the  
986 agency department, and the state attorney and the person's  
987 defense counsel, if applicable. The order of involuntary

294519

Amendment No. (for drafter's use only)

988 admission sent to the agency department shall also be  
989 accompanied by a copy of the examining committee's report and  
990 other reports contained in the court file.

991 (e) Upon receiving the order, the agency department shall,  
992 within 45 days, provide the court with a copy of the person's  
993 family or individual support plan and copies of all examinations  
994 and evaluations, outlining the treatment and rehabilitative  
995 programs. The agency department shall document that the person  
996 has been placed in the most appropriate, least restrictive and  
997 cost-beneficial residential facility. A copy of the family or  
998 individual support plan and other examinations and evaluations  
999 shall be served upon the person and the person's counsel at the  
1000 same time the documents are filed with the court.

1001 (13) HABEAS CORPUS.--At any time and without notice, any  
1002 person involuntarily admitted to the developmental services  
1003 program of the agency department, or the person's parent or  
1004 legal guardian in his or her behalf, is entitled to a writ of  
1005 habeas corpus to question the cause, legality, and  
1006 appropriateness of the person's involuntary admission. Each  
1007 person, or the person's parent or legal guardian, shall receive  
1008 specific written notice of the right to petition for a writ of  
1009 habeas corpus at the time of his or her involuntary placement.

1010 Section 80. Paragraphs (a), (b), and (d) of subsection  
1011 (2), subsection (3), paragraphs(b), (g), (i), and (j) of  
1012 subsection (4), and subsection (6) of section 393.13, Florida  
1013 Statutes, are amended to read:

1014 393.13 Personal treatment of persons who are  
1015 developmentally disabled.--

294519

Amendment No. (for drafter's use only)

1016 (2) LEGISLATIVE INTENT.--

1017 (a) The Legislature finds and declares that the system of  
1018 care provided ~~which the state provides~~ to individuals who are  
1019 developmentally disabled must be designed to meet the needs of  
1020 the clients as well as protect the integrity of their legal and  
1021 human rights. ~~Further, the current system of care for persons~~  
1022 ~~who are developmentally disabled is in need of substantial~~  
1023 ~~improvement in order to provide truly meaningful treatment and~~  
1024 ~~habilitation.~~

1025 (b) The Legislature further finds and declares that the  
1026 design and delivery of treatment and services to persons who are  
1027 developmentally disabled should be directed by the principles of  
1028 normalization and therefore should:

1029 1. Abate the use of large institutions.

1030 2. Continue the development of community-based services  
1031 which provide reasonable alternatives to institutionalization in  
1032 settings that are least restrictive to the client.

1033 3. Provide training and education to individuals who are  
1034 developmentally disabled which will maximize their potential to  
1035 lead independent and productive lives and which will afford  
1036 opportunities for outward mobility from institutions.

1037 4. Reduce the use of sheltered workshops and other  
1038 noncompetitive employment day activities and promote  
1039 opportunities for gainful employment for persons with  
1040 developmental disabilities who choose to seek such employment.

1041 (d) It is the intent of the Legislature:

1042 1. To articulate the existing legal and human rights of  
1043 persons who are developmentally disabled so that they may be

294519

Amendment No. (for drafter's use only)

1044 exercised and protected. Persons with developmental disabilities  
1045 shall have all the rights enjoyed by citizens of the state and  
1046 the United States.

1047 2. To provide a mechanism for the identification,  
1048 evaluation, and treatment of persons with developmental  
1049 disabilities.

1050 3. To divert those individuals from institutional  
1051 commitment who, by virtue of comprehensive assessment, can be  
1052 placed in less costly, more effective community environments and  
1053 programs.

1054 ~~4. To develop a plan which will indicate the most~~  
1055 ~~effective and efficient manner in which to implement treatment~~  
1056 ~~programs which are meaningful to individuals with developmental~~  
1057 ~~disabilities, while safeguarding and respecting the legal and~~  
1058 ~~human rights of such individuals.~~

1059 ~~4.5. Once the plan developed under the provisions of~~  
1060 ~~subparagraph 4. is presented to the Legislature, To fund~~  
1061 ~~improvements in the program in accordance with the availability~~  
1062 ~~of state resources and yearly priorities determined by the~~  
1063 ~~Legislature.~~

1064 ~~5.6.~~ To ensure that persons with developmental  
1065 disabilities receive treatment and habilitation which fosters  
1066 the developmental potential of the individual.

1067 ~~6.7.~~ To provide programs for the proper habilitation and  
1068 treatment of persons with developmental disabilities which shall  
1069 include, but not be limited to, comprehensive medical/dental  
1070 care, education, recreation, specialized therapies, training,  
1071 social services, transportation, guardianship, family care

294519

Amendment No. (for drafter's use only)

1072 programs, day habilitation services, and habilitative and  
1073 rehabilitative services suited to the needs of the individual  
1074 regardless of age, degree of disability, or handicapping  
1075 condition. No person with developmental disabilities shall be  
1076 deprived of these enumerated services by reason of inability to  
1077 pay.

1078 ~~7.8.~~ To fully effectuate the normalization principle  
1079 through the establishment of community services for persons with  
1080 developmental disabilities as a viable and practical alternative  
1081 to institutional care at each stage of individual life  
1082 development. If care in a residential facility becomes  
1083 necessary, it shall be in the least restrictive setting.

1084 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL  
1085 DISABILITIES.--The rights described in this subsection shall  
1086 apply to all persons with developmental disabilities, whether or  
1087 not such persons are clients of the agency ~~department~~.

1088 (a) Persons with developmental disabilities shall have a  
1089 right to dignity, privacy, and humane care, including the right  
1090 to be free from sexual abuse in residential facilities.

1091 (b) Persons with developmental disabilities shall have the  
1092 right to religious freedom and practice. Nothing shall restrict  
1093 or infringe on a person's right to religious preference and  
1094 practice.

1095 (c) Persons with developmental disabilities shall receive  
1096 services, within available sources, which protect the personal  
1097 liberty of the individual and which are provided in the least  
1098 restrictive conditions necessary to achieve the purpose of  
1099 treatment.

294519



Amendment No. (for drafter's use only)

1100 (d) Persons who are developmentally disabled shall have a  
1101 right to participate in an appropriate program of quality  
1102 education and training services, within available resources,  
1103 regardless of chronological age or degree of disability. Such  
1104 persons may be provided with instruction in sex education,  
1105 marriage, and family planning.

1106 (e) Persons who are developmentally disabled shall have a  
1107 right to social interaction and to participate in community  
1108 activities.

1109 (f) Persons who are developmentally disabled shall have a  
1110 right to physical exercise and recreational opportunities.

1111 (g) Persons who are developmentally disabled shall have a  
1112 right to be free from harm, including unnecessary physical,  
1113 chemical, or mechanical restraint, isolation, excessive  
1114 medication, abuse, or neglect.

1115 (h) Persons who are developmentally disabled shall have a  
1116 right to consent to or refuse treatment, subject to the  
1117 provisions of s. 393.12(2)(a) or chapter 744.

1118 (i) No otherwise qualified person shall, by reason of  
1119 having a developmental disability, be excluded from  
1120 participation in, or be denied the benefits of, or be subject to  
1121 discrimination under, any program or activity which receives  
1122 public funds, and all prohibitions set forth under any other  
1123 statute shall be actionable under this statute.

1124 (j) No otherwise qualified person shall, by reason of  
1125 having a developmental disability, be denied the right to vote  
1126 in public elections.

294519

Amendment No. (for drafter's use only)

1127 (4) CLIENT RIGHTS.--For purposes of this subsection, the  
1128 term "client," as defined in s. 393.063, shall also include any  
1129 person served in a facility licensed pursuant to s. 393.067.

1130 (b) Each client has the right to the possession and use of  
1131 his or her own clothing and personal effects, except in those  
1132 specific instances where the use of some of these items as  
1133 reinforcers is essential for training the client as part of an  
1134 appropriately approved behavioral program. The chief  
1135 administrator of the facility may take temporary custody of such  
1136 effects when it is essential to do so for medical or safety  
1137 reasons. Custody of such personal effects shall be promptly  
1138 recorded in the client's record, and a receipt for such effects  
1139 shall be immediately given to the client, if competent, or the  
1140 client's parent or legal guardian.

1141 1. All money belonging to a client held by the agency  
1142 ~~department~~ shall be held in compliance with s. 402.17(2).

1143 2. All interest on money received and held for the  
1144 personal use and benefit of a client shall be the property of  
1145 that client and shall not accrue to the general welfare of all  
1146 clients or be used to defray the cost of residential care.  
1147 Interest so accrued shall be used or conserved for the personal  
1148 use or benefit of the individual client as provided in s.  
1149 402.17(2).

1150 3. Upon the discharge or death of a client, a final  
1151 accounting shall be made of all personal effects and money  
1152 belonging to the client held by the agency ~~department~~. All such  
1153 personal effects and money, including interest, shall be  
1154 promptly turned over to the client or his or her heirs.

294519

Amendment No. (for drafter's use only)

1155 (g) No client shall be subjected to a treatment program to  
1156 eliminate bizarre or unusual behaviors without first being  
1157 examined by a physician who in his or her best judgment  
1158 determines that such behaviors are not organically caused.

1159 1. Treatment programs involving the use of noxious or  
1160 painful stimuli shall be prohibited.

1161 2. All alleged violations of this paragraph shall be  
1162 reported immediately to the chief administrative officer of the  
1163 facility or the district administrator, the agency ~~department~~  
1164 head, and the Florida local advocacy council. A thorough  
1165 investigation of each incident shall be conducted and a written  
1166 report of the finding and results of such investigation shall be  
1167 submitted to the chief administrative officer of the facility or  
1168 the district administrator and to the agency ~~department~~ head  
1169 within 24 hours of the occurrence or discovery of the incident.

1170 3. The agency ~~department~~ shall adopt ~~promulgate~~ by rule a  
1171 system for the oversight of behavioral programs. Such system  
1172 shall establish guidelines and procedures governing the design,  
1173 approval, implementation, and monitoring of all behavioral  
1174 programs involving clients. The system shall ensure statewide  
1175 and local review by committees of professionals certified as  
1176 behavior analysts pursuant to s. 393.17. No behavioral program  
1177 shall be implemented unless reviewed according to the rules  
1178 established by the agency ~~department~~ under this section.

1179 Nothing stated in this section shall prohibit the review of  
1180 programs by the Florida statewide or local advocacy councils.

1181 (i) Clients shall have the right to be free from  
1182 unnecessary physical, chemical, or mechanical restraint.

294519

Amendment No. (for drafter's use only)

1183 Restraints shall be employed only in emergencies or to protect  
1184 the client from imminent injury to himself or herself or others.  
1185 Restraints shall not be employed as punishment, for the  
1186 convenience of staff, or as a substitute for a habilitative  
1187 plan. Restraints shall impose the least possible restrictions  
1188 consistent with their purpose and shall be removed when the  
1189 emergency ends. Restraints shall not cause physical injury to  
1190 the client and shall be designed to allow the greatest possible  
1191 comfort.

1192 1. Mechanical supports used in normative situations to  
1193 achieve proper body position and balance shall not be considered  
1194 restraints, but shall be prescriptively designed and applied  
1195 under the supervision of a qualified professional with concern  
1196 for principles of good body alignment, circulation, and  
1197 allowance for change of position.

1198 2. Totally enclosed cribs and barred enclosures shall be  
1199 considered restraints.

1200 3. Daily reports on the employment of physical, chemical,  
1201 or mechanical restraints by those specialists authorized in the  
1202 use of such restraints shall be made to the appropriate chief  
1203 administrator of the facility, and a monthly summary of such  
1204 reports shall be relayed to the district administrator and the  
1205 Florida local advocacy council. The reports shall summarize all  
1206 such cases of restraints, the type used, the duration of usage,  
1207 and the reasons therefor. Districts shall submit districtwide  
1208 quarterly reports of these summaries to the state Developmental  
1209 Disabilities Program Office.

294519

Amendment No. (for drafter's use only)

1210           4. The agency ~~department~~ shall post a copy of the rules  
1211 adopted ~~promulgated~~ under this section in each living unit of  
1212 residential facilities. A copy of the rules adopted ~~promulgated~~  
1213 under this section shall be given to all staff members of  
1214 licensed facilities and made a part of all preservice and  
1215 inservice training programs.

1216           (j)1. Each client shall have a central record. The record  
1217 shall include data pertaining to admission and such other  
1218 information as may be required under rules of the agency  
1219 ~~department~~.

1220           2. Unless waived by the client, if competent, or the  
1221 client's parent or legal guardian if the client is incompetent,  
1222 the client's central record shall be confidential and exempt  
1223 from the provisions of s. 119.07(1), and no part of it shall be  
1224 released except:

1225           a. The record may be released to physicians, attorneys,  
1226 and government agencies having need of the record to aid the  
1227 client, as designated by the client, if competent, or the  
1228 client's parent or legal guardian, if the client is incompetent.

1229           b. The record shall be produced in response to a subpoena  
1230 or released to persons authorized by order of court, excluding  
1231 matters privileged by other provisions of law.

1232           c. The record or any part thereof may be disclosed to a  
1233 qualified researcher, a staff member of the facility, or an  
1234 employee of the agency ~~department~~ when the administrator of the  
1235 facility or the director ~~secretary~~ of the agency ~~department~~  
1236 deems it necessary for the treatment of the client, maintenance

294519

Amendment No. (for drafter's use only)

1237 of adequate records, compilation of treatment data, or  
1238 evaluation of programs.

1239 d. Information from the records may be used for  
1240 statistical and research purposes if the information is  
1241 abstracted in such a way to protect the identity of individuals.

1242 3. All central records for each client in residential  
1243 facilities shall be kept on uniform forms distributed by the  
1244 agency department. The central record shall accurately  
1245 summarize each client's history and present condition.

1246 4. The client, if competent, or the client's parent or  
1247 legal guardian if the client is incompetent, shall be supplied  
1248 with a copy of the client's central record upon request.

1249 (6) NOTICE OF RIGHTS.--Each person with developmental  
1250 disabilities, if competent, or parent or legal guardian of such  
1251 person if the person is incompetent, shall promptly receive from  
1252 the agency Department of Children and Family Services or the  
1253 Department of Education a written copy of this act. Each person  
1254 with developmental disabilities able to comprehend shall be  
1255 promptly informed, in the language or other mode of  
1256 communication which such person understands, of the above legal  
1257 rights of persons with developmental disabilities.

1258 Section 81. Section 393.17, Florida Statutes, is amended  
1259 to read:

1260 393.17 Behavioral programs; certification of behavior  
1261 analysts; ~~fees~~.--The agency may recognize the certification of  
1262 behavior analysts awarded by a nonprofit corporation whose  
1263 mission is to meet professional credentialing needs identified  
1264 by behavior analysts, state governments, and consumers of

294519

Amendment No. (for drafter's use only)

1265 behavior analysis services and whose work has the support of the  
1266 Association for Behavior Analysis International. ~~The department~~  
1267 ~~shall by rule implement a certification program to ensure that~~  
1268 ~~qualified persons oversee the design and implementation of~~  
1269 ~~behavioral programs for persons who are developmentally~~  
1270 ~~disabled. Certification and recertification minimum standards~~  
1271 ~~must comply with departmental rules and must include, for~~  
1272 ~~initial certification, examination of competencies in applying~~  
1273 ~~behavior analysis with persons who are developmentally disabled~~  
1274 ~~within established competency clusters. These competency~~  
1275 ~~clusters shall include, but not be limited to, behavioral~~  
1276 ~~assessments, observation and recording, behavioral program~~  
1277 ~~development and monitoring, and other areas as determined by~~  
1278 ~~professional practitioners of behavior analysis. Fees shall be~~  
1279 ~~charged for certification not to exceed the cost of development~~  
1280 ~~and administration of the examination and periodic renewal of~~  
1281 ~~certification. The department shall establish by rule the~~  
1282 ~~procedures for certification and certification renewal.~~

1283 Section 82. Section 393.22, Florida Statutes, is amended  
1284 to read:

1285 393.22 ~~Transfer of appropriations; barriers to services;~~  
1286 Financial commitment to community services programs.--

1287 (1) ~~No funds appropriated for developmental services~~  
1288 ~~programs shall be transferred pursuant to s. 216.292, unless~~  
1289 ~~there is a finding by the secretary that treatment programs for~~  
1290 ~~developmental disabilities will not be adversely affected by the~~  
1291 ~~transfer.~~

294519

Amendment No. (for drafter's use only)

1292       ~~(2) Development of programs for other disabilities shall~~  
1293 ~~not effectuate a reduction or dilution of the ongoing financial~~  
1294 ~~commitment of the state through appropriations for programs and~~  
1295 ~~services for persons with mental retardation, cerebral palsy,~~  
1296 ~~autism, or spina bifida.~~

1297       ~~(3) In order to The Department of Children and Family~~  
1298 ~~Services and the Agency for Health Care Administration jointly~~  
1299 ~~shall ensure that whenever a number of persons move from an~~  
1300 ~~institution serving persons with developmental disabilities~~  
1301 ~~which is sufficient to allow an entire residential unit within~~  
1302 ~~that institution to be closed, no less than 80 percent of the~~  
1303 ~~direct costs of providing services to persons who had resided in~~  
1304 ~~that unit shall be reallocated for community services.~~

1305       Section 83. Section 393.502, Florida Statutes, is amended  
1306 to read:

1307       393.502 Family care councils.--

1308       (1) CREATION.--There shall be established and located  
1309 within each service area of the agency ~~district of the~~  
1310 ~~department~~ a ~~district~~ family care council.

1311       (2) MEMBERSHIP.--

1312       (a) Each local ~~district~~ family care council shall consist  
1313 of at least 10 and no more than 15 members recommended by a  
1314 majority vote of the local ~~district~~ family care council and  
1315 appointed by the Governor.

1316       (b) At least three of the members of the council must be  
1317 consumers. One such member shall be a consumer who received  
1318 ~~developmental~~ services within the 4 years prior to the date of  
1319 recommendation, or the legal guardian of such a consumer. The

294519



Amendment No. (for drafter's use only)

1320 remainder of the council members shall be parents, guardians, or  
1321 siblings of persons with developmental disabilities who qualify  
1322 for ~~developmental~~ services pursuant to this chapter.

1323 (c) A person who is currently serving on another board or  
1324 council of the agency ~~department~~ may not be appointed to a local  
1325 ~~district~~ family care council.

1326 (d) Employees of the agency ~~department~~ are not eligible to  
1327 serve on a local ~~district~~ family care council.

1328 (e) Persons related by consanguinity or affinity within  
1329 the third degree shall not serve on the same local ~~district~~  
1330 family care council at the same time.

1331 (f) A chair for the council shall be chosen by the council  
1332 members to serve for 1 year. A person may serve no more than  
1333 four 1-year terms as chair.

1334 (3) TERMS; VACANCIES.--

1335 (a) Council members shall be appointed for a 3-year term,  
1336 except as provided in subsection (8), and may be reappointed to  
1337 one additional term.

1338 (b) A member who has served two consecutive terms shall  
1339 not be eligible to serve again until 12 months have elapsed  
1340 since ending his or her service on the local ~~district~~ council.

1341 (c) Upon expiration of a term or in the case of any other  
1342 vacancy, the local ~~district~~ council shall, by majority vote,  
1343 recommend to the Governor for appointment a person for each  
1344 vacancy. ~~If the Governor does not act on the council's~~  
1345 ~~recommendations within 45 days after receiving them, the persons~~  
1346 ~~recommended shall be considered to be appointed.~~

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

1347 (4) COMMITTEE APPOINTMENTS.--The chair of the local  
1348 ~~district~~ family care council may appoint persons to serve on  
1349 council committees. Such persons may include former members of  
1350 the council and persons not eligible to serve on the council.

1351 (5) TRAINING.--

1352 (a) The agency department, in consultation with the local  
1353 ~~district~~ councils, shall establish a training program for local  
1354 ~~district~~ family care council members. Each local area district  
1355 shall provide the training program when new persons are  
1356 appointed to the local district council and at other times as  
1357 the secretary deems necessary.

1358 (b) The training shall assist the council members to  
1359 understand the laws, rules, and policies applicable to their  
1360 duties and responsibilities.

1361 (c) All persons appointed to a local district council must  
1362 complete this training within 90 days after their appointment. A  
1363 person who fails to meet this requirement shall be considered to  
1364 have resigned from the council.

1365 (6) MEETINGS.--Council members shall serve on a voluntary  
1366 basis without payment for their services but shall be reimbursed  
1367 for per diem and travel expenses as provided for in s. 112.061.  
1368 The council shall meet at least six times per year.

1369 (7) PURPOSE.--The purpose of the local district family  
1370 care councils shall be to advise the agency department and its  
1371 ~~district advisory boards~~, to develop a plan for the delivery of  
1372 ~~developmental services~~ family support services within the local  
1373 area district, and to monitor the implementation and  
1374 effectiveness of services and support provided under the plan.

294519

Amendment No. (for drafter's use only)

1375 The primary functions of the local ~~district~~ family care councils  
1376 shall be to:

1377 (a) Assist in providing information and outreach to  
1378 families.

1379 (b) Review the effectiveness of service ~~developmental~~  
1380 ~~services~~ programs and make recommendations with respect to  
1381 program implementation.

1382 (c) Advise the agency ~~district developmental services~~  
1383 ~~administrators~~ with respect to policy issues relevant to the  
1384 community and family support system in the local area ~~district~~.

1385 (d) Meet and share information with other local ~~district~~  
1386 family care councils.

1387 (8) NEW COUNCILS.--When a local ~~district~~ family care  
1388 council is established for the first time in a local area  
1389 ~~district~~, the Governor shall appoint the first four council  
1390 members, who shall serve 3-year terms. These members shall  
1391 submit to the Governor, within 90 days after their appointment,  
1392 recommendations for at least six additional members, selected by  
1393 majority vote. ~~If the Governor does not act on the~~  
1394 ~~recommendations within 45 days after receiving them, the persons~~  
1395 ~~recommended shall be considered to be appointed. Those members~~  
1396 ~~recommended for appointment by the Governor shall serve for 2~~  
1397 ~~years.~~

1398 (9) FUNDING; FINANCIAL REVIEW.--The local ~~district~~ family  
1399 care council may apply for, receive, and accept grants, gifts,  
1400 donations, bequests, and other payments from any public or  
1401 private entity or person. Each local ~~district~~ council ~~is~~ shall  
1402 be subject to an annual financial review by ~~district~~ staff

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

1403 assigned by the agency ~~district administrator~~. Each local  
1404 ~~district~~ council shall exercise care and prudence in the  
1405 expenditure of funds. The local ~~district~~ family care councils  
1406 shall comply with state expenditure requirements.

1407 Section 84. Section 408.301, Florida Statutes, is amended  
1408 to read:

1409 408.301 Legislative findings.--The Legislature has found  
1410 that access to quality, affordable, health care for all  
1411 Floridians is an important goal for the state. The Legislature  
1412 recognizes that there are Floridians with special health care  
1413 and social needs which require particular attention. The people  
1414 served by the Department of Children and Family Services, the  
1415 Agency for Persons with Disabilities, ~~and~~ the Department of  
1416 Health, and the Department of Elderly Affairs are examples of  
1417 citizens with special needs. The Legislature further recognizes  
1418 that the Medicaid program is an intricate part of the service  
1419 delivery system for the special needs citizens ~~served by or~~  
1420 ~~through the Department of Children and Family Services and the~~  
1421 ~~Department of Health~~. However, the Agency for Health Care  
1422 Administration is not a service provider and does not develop or  
1423 direct programs for the special needs citizens ~~served by or~~  
1424 ~~through the Department of Children and Family Services and the~~  
1425 ~~Department of Health~~. Therefore, it is the intent of the  
1426 Legislature that the Agency for Health Care Administration work  
1427 closely with the Department of Children and Family Services, the  
1428 Agency for Persons with Disabilities, ~~and~~ the Department of  
1429 Health, and the Department of Elderly Affairs in developing

294519

Amendment No. (for drafter's use only)

1430 plans for assuring access to all Floridians in order to assure  
1431 that the needs of special citizens are met.

1432 Section 85. Section 408.302, Florida Statutes, is amended  
1433 to read:

1434 408.302 Interagency agreement.--

1435 (1) The Agency for Health Care Administration shall enter  
1436 into an interagency agreement with the Department of Children  
1437 and Family Services, the Agency for Persons with Disabilities,  
1438 ~~and the Department of Health, and the Department of Elderly~~  
1439 Affairs to assure coordination and cooperation in serving  
1440 special needs citizens. The agreement shall include the  
1441 requirement that the secretaries or directors ~~secretary~~ of the  
1442 Department of Children and Family Services, the Agency for  
1443 Persons with Disabilities, ~~and the secretary of~~ the Department  
1444 of Health, and the Department of Elderly Affairs approve, prior  
1445 to adoption, any rule developed by the Agency for Health Care  
1446 Administration where such rule has a direct impact on the  
1447 mission of the respective state agencies ~~Department of Children~~  
1448 ~~and Family Services and the Department of Health,~~ their  
1449 programs, or their budgets.

1450 (2) For rules which indirectly impact on the mission of  
1451 the Department of Children and Family Services, the Agency for  
1452 Persons with Disabilities, ~~and the Department of Health, and the~~  
1453 Department of Elderly Affairs, their programs, or their budgets,  
1454 the concurrence of the respective secretaries or directors  
1455 ~~secretary of the Department of Children and Family Services and~~  
1456 ~~the secretary of the Department of Health~~ on the rule is  
1457 required.

294519

Amendment No. (for drafter's use only)

1458 (3) For all other rules developed by the Agency for Health  
1459 Care Administration, coordination with the Department of  
1460 Children and Family Services, the Agency for Persons with  
1461 Disabilities, and the Department of Health, and the Department  
1462 of Elderly Affairs is encouraged.

1463 (4) The interagency agreement shall also include any other  
1464 provisions necessary to ensure a continued cooperative working  
1465 relationship between the Agency for Health Care Administration  
1466 and the Department of Children and Family Services, the Agency  
1467 for Persons with Disabilities, and the Department of Health, and  
1468 the Department of Elderly Affairs as each strives to meet the  
1469 needs of the citizens of Florida.

1470 Section 86. Subsection (13) of section 409.906, Florida  
1471 Statutes, is amended to read:

1472 409.906 Optional Medicaid services.--Subject to specific  
1473 appropriations, the agency may make payments for services which  
1474 are optional to the state under Title XIX of the Social Security  
1475 Act and are furnished by Medicaid providers to recipients who  
1476 are determined to be eligible on the dates on which the services  
1477 were provided. Any optional service that is provided shall be  
1478 provided only when medically necessary and in accordance with  
1479 state and federal law. Optional services rendered by providers  
1480 in mobile units to Medicaid recipients may be restricted or  
1481 prohibited by the agency. Nothing in this section shall be  
1482 construed to prevent or limit the agency from adjusting fees,  
1483 reimbursement rates, lengths of stay, number of visits, or  
1484 number of services, or making any other adjustments necessary to  
1485 comply with the availability of moneys and any limitations or

294519

Amendment No. (for drafter's use only)

1486 directions provided for in the General Appropriations Act or  
1487 chapter 216. If necessary to safeguard the state's systems of  
1488 providing services to elderly and disabled persons and subject  
1489 to the notice and review provisions of s. 216.177, the Governor  
1490 may direct the Agency for Health Care Administration to amend  
1491 the Medicaid state plan to delete the optional Medicaid service  
1492 known as "Intermediate Care Facilities for the Developmentally  
1493 Disabled." Optional services may include:

1494 (13) HOME AND COMMUNITY-BASED SERVICES.--The agency may  
1495 pay for home-based or community-based services that are rendered  
1496 to a recipient in accordance with a federally approved waiver  
1497 program. The agency may limit or eliminate coverage for certain  
1498 ~~Project AIDS Care Waiver~~ services, preauthorize high-cost or  
1499 highly utilized services, or make any other adjustments  
1500 necessary to comply with any limitations or directions provided  
1501 for in the General Appropriations Act.

1502 Section 87. Sections 393.14, 393.165, 393.166, and  
1503 393.505, Florida Statutes, are repealed.

1504 Section 88. (1) Effective October 1, 2004, the  
1505 developmental disabilities program and the developmental  
1506 services institutions in the Department of Children and Family  
1507 Services shall be transferred to the Agency for Persons with  
1508 Disabilities by a type two transfer pursuant to s. 20.06,  
1509 Florida Statutes. Prior to that date:

1510 (a) The Agency for Persons with Disabilities and the  
1511 Department of Children and Family Services, in consultation with  
1512 the Department of Management Services, shall determine the  
1513 number of positions and resources within the department

294519

Amendment No. (for drafter's use only)

1514 dedicated to the developmental disabilities program which shall  
1515 be transferred to the agency and will develop an agreement that  
1516 delineates who within the Department of Children and Family  
1517 Services will provide administrative support to the agency.

1518 (b) The Director of the Agency for Persons with  
1519 Disabilities, in consultation with the Secretaries of the  
1520 Department of Children and Family Services and the Agency for  
1521 Health Care Administration or their designees, shall prepare a  
1522 transition plan that must address, at a minimum, building  
1523 leases, information support systems, cash ownership and  
1524 transfer, administrative support functions, inventory and  
1525 transfers of equipment and structures, expenditure transfers,  
1526 budget authority and positions, and certifications forward. This  
1527 plan shall be submitted by September 1, 2004, to the Executive  
1528 Office of the Governor, the President of the Senate, and the  
1529 Speaker of the House of Representatives.

1530 (c) The Agency for Persons with Disabilities and the  
1531 Department of Children and Family Services shall work with the  
1532 Agency for Health Care Administration to develop a plan that  
1533 ensures that all of the necessary electronic and paper-based  
1534 data of the Developmental Disabilities program is accessible to  
1535 the Medicaid program and that all electronic records will be  
1536 migrated to a new data system that is compatible with the  
1537 Florida Medicaid Management Information System.

1538 (d) The Agency for Persons with Disabilities and the  
1539 Agency for Health Care Administration shall develop a plan for  
1540 the orderly relocation of the noncentral-office staff of the  
1541 Agency for Persons with Disabilities to the area offices of the

294519



Amendment No. (for drafter's use only)

1542 Agency for Health Care Administration. Such plan shall include a  
1543 schedule that takes into consideration the availability of  
1544 space, the expiration of current leases, and the initiation of  
1545 new leases that can accommodate the relocated staff, as well as  
1546 appropriate reimbursement for collocation costs, including  
1547 office space and other operating expenses.

1548 (2) Effective October 1, 2004, the agency shall enter into  
1549 an interagency agreement with the Department of Children and  
1550 Family Services for the provision of the necessary day-to-day  
1551 administrative and operational needs of the agency, including,  
1552 but not limited to, personnel, purchasing, information  
1553 technology support, legal support, and other related services.  
1554 This interagency agreement shall continue until the agency no  
1555 longer requires the provision of services through such  
1556 agreement.

1557 (3) This act does not affect the validity of any judicial  
1558 or administrative proceeding pending on October 30, 2004, and  
1559 the Agency for Persons with Disabilities is substituted as a  
1560 real party in interest with respect to any proceeding pending on  
1561 that date which involves the developmental services programs of  
1562 the Department of Children and Family Services.

1563 Section 89. The Office of Program Policy Analysis and  
1564 Government Accountability shall identify and evaluate statewide  
1565 entities receiving state funding for the purpose of addressing  
1566 the interests of, but not directly providing services for,  
1567 persons with disabilities.

1568 (1) The purpose of the analysis shall be to provide  
1569 information with respect to:

294519

Amendment No. (for drafter's use only)

1570       (a) The extent to which activities of these entities are  
1571 coordinated;

1572       (b) The similarities and differences in the organizational  
1573 missions of these entities; and

1574       (c) The amount of state funds provided to these entities  
1575 for the purpose of addressing the interests of persons with  
1576 disabilities, the uses of these funds, and whether they  
1577 duplicate the efforts of other private or federally funded  
1578 entities.

1579       (2) The report shall be completed and provided to the  
1580 Governor and Legislature by December 2005.

1581       Section 90. Subsection (1) of section 92.53, Florida  
1582 Statutes, is amended to read:

1583       92.53 Videotaping of testimony of victim or witness under  
1584 age 16 or person with mental retardation.--

1585       (1) On motion and hearing in camera and a finding that  
1586 there is a substantial likelihood that a victim or witness who  
1587 is under the age of 16 or who is a person with mental  
1588 retardation as defined in s. 393.063(42) would suffer at least  
1589 moderate emotional or mental harm due to the presence of the  
1590 defendant if the child or person with mental retardation is  
1591 required to testify in open court, or that such victim or  
1592 witness is otherwise unavailable as defined in s. 90.804(1), the  
1593 trial court may order the videotaping of the testimony of the  
1594 victim or witness in a case, whether civil or criminal in  
1595 nature, in which videotaped testimony is to be utilized at trial  
1596 in lieu of trial testimony in open court.

294519

Amendment No. (for drafter's use only)

1597 Section 91. Subsections (1), (2), and (3), paragraph (i)  
1598 of subsection (4), and subsections (5), (8), (9), (10), (11),  
1599 (12), (13), (14), and (17) of 393.067, Florida Statutes, are  
1600 amended to read:

1601 393.067 Licensure of residential facilities and  
1602 comprehensive transitional education programs.--

1603 (1) The agency ~~department~~ shall provide through its  
1604 licensing authority a system of provider qualifications,  
1605 standards, training criteria for meeting standards, and  
1606 monitoring for residential facilities and comprehensive  
1607 transitional education programs.

1608 (2) The agency ~~department~~ shall conduct inspections and  
1609 reviews of residential facilities and comprehensive transitional  
1610 education programs annually.

1611 (3) An application for a license for a residential  
1612 facility or a comprehensive transitional education program shall  
1613 be made to the agency ~~Department of Children and Family Services~~  
1614 on a form furnished by it and shall be accompanied by the  
1615 appropriate license fee.

1616 (4) The application shall be under oath and shall contain  
1617 the following:

1618 (i) Such other information as the agency ~~department~~  
1619 determines is necessary to carry out the provisions of this  
1620 chapter.

1621 (5) The applicant shall submit evidence which establishes  
1622 the good moral character of the manager or supervisor of the  
1623 facility or program and the direct service providers in the  
1624 facility or program and its component centers or units. A

294519

Amendment No. (for drafter's use only)

1625 license may be issued if all the screening materials have been  
1626 timely submitted; however, a license may not be issued or  
1627 renewed if any of the direct service providers have failed the  
1628 screening required by s. 393.0655.

1629 (a)1. A licensed residential facility or comprehensive  
1630 transitional education program which applies for renewal of its  
1631 license shall submit to the agency ~~department~~ a list of direct  
1632 service providers who have worked on a continuous basis at the  
1633 applicant facility or program since submitting fingerprints to  
1634 the agency or the Department of Children and Family Services,  
1635 identifying those direct service providers for whom a written  
1636 assurance of compliance was provided by the agency or department  
1637 and identifying those direct service providers who have recently  
1638 begun working at the facility or program and are awaiting the  
1639 results of the required fingerprint check along with the date of  
1640 the submission of those fingerprints for processing. The agency  
1641 ~~department~~ shall by rule determine the frequency of requests to  
1642 the Department of Law Enforcement to run state criminal records  
1643 checks for such direct service providers except for those direct  
1644 service providers awaiting the results of initial fingerprint  
1645 checks for employment at the applicant facility or program. The  
1646 agency ~~department~~ shall review the records of the direct service  
1647 providers at the applicant facility or program with respect to  
1648 the crimes specified in s. 393.0655 and shall notify the  
1649 facility or program of its findings. When disposition  
1650 information is missing on a criminal record, it is ~~shall be~~ the  
1651 responsibility of the person being screened, upon request of the  
1652 agency ~~department~~, to obtain and supply within 30 days the

294519

Amendment No. (for drafter's use only)

1653 missing disposition information to the agency ~~department~~.

1654 Failure to supply the missing information within 30 days or to  
1655 show reasonable efforts to obtain such information shall result  
1656 in automatic disqualification.

1657 2. The applicant shall sign an affidavit under penalty of  
1658 perjury stating that all new direct service providers have been  
1659 fingerprinted and that the facility's or program's remaining  
1660 direct service providers have worked at the applicant facility  
1661 or program on a continuous basis since being initially screened  
1662 at that facility or program or have a written assurance of  
1663 compliance from the agency or department.

1664 (b) As a prerequisite for issuance of the initial license  
1665 to a residential facility or comprehensive transitional  
1666 education program:

1667 1. The applicant shall submit to the agency ~~department~~ a  
1668 complete set of fingerprints, taken by an authorized law  
1669 enforcement agency or an employee of the agency ~~department~~ who  
1670 is trained to take fingerprints, for the manager, supervisor, or  
1671 direct service providers of the facility or program;

1672 2. The agency ~~department~~ shall submit the fingerprints to  
1673 the Department of Law Enforcement for state processing and for  
1674 federal processing by the Federal Bureau of Investigation; and

1675 3. The agency ~~department~~ shall review the record of the  
1676 manager or supervisor with respect to the crimes specified in s.  
1677 393.0655(1) and shall notify the applicant of its findings. When  
1678 disposition information is missing on a criminal record, it is  
1679 ~~shall be~~ the responsibility of the manager or supervisor, upon  
1680 request of the agency ~~department~~, to obtain and supply within 30

294519

Amendment No. (for drafter's use only)

1681 days the missing disposition information to the agency  
1682 ~~department~~. Failure to supply the missing information within 30  
1683 days or to show reasonable efforts to obtain such information  
1684 shall result in automatic disqualification.

1685 (c) The agency ~~department~~ or a residential facility or  
1686 comprehensive transitional education program may not use the  
1687 criminal records or juvenile records of a person obtained under  
1688 this subsection for any purpose other than determining if that  
1689 person meets the minimum standards for good moral character for  
1690 a manager or supervisor of, or direct service provider in, such  
1691 a facility or program. The criminal records or juvenile records  
1692 obtained by the agency ~~department~~ or a residential facility or  
1693 comprehensive transitional education program for determining the  
1694 moral character of a manager, supervisor, or direct service  
1695 provider are exempt from s. 119.07(1).

1696 (8) The agency ~~department~~ shall adopt ~~promulgate~~ rules  
1697 establishing minimum standards for licensure of residential  
1698 facilities and comprehensive transitional education programs,  
1699 including rules requiring facilities and programs to train staff  
1700 to detect and prevent sexual abuse of residents and clients,  
1701 minimum standards of quality and adequacy of care, and uniform  
1702 firesafety standards established by the State Fire Marshal which  
1703 are appropriate to the size of the facility or of the component  
1704 centers or units of the program.

1705 (9) The agency ~~department~~ and the Agency for Health Care  
1706 Administration, after consultation with the Department of  
1707 Community Affairs, shall adopt rules for residential facilities  
1708 under the respective regulatory jurisdiction of each

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

1709 establishing minimum standards for the preparation and annual  
1710 update of a comprehensive emergency management plan. At a  
1711 minimum, the rules must provide for plan components that address  
1712 emergency evacuation transportation; adequate sheltering  
1713 arrangements; postdisaster activities, including emergency  
1714 power, food, and water; postdisaster transportation; supplies;  
1715 staffing; emergency equipment; individual identification of  
1716 residents and transfer of records; and responding to family  
1717 inquiries. The comprehensive emergency management plan for all  
1718 comprehensive transitional education programs and for homes  
1719 serving individuals who have complex medical conditions is  
1720 subject to review and approval by the local emergency management  
1721 agency. During its review, the local emergency management agency  
1722 shall ensure that the following agencies, at a minimum, are  
1723 given the opportunity to review the plan: the Agency for Health  
1724 Care Administration, the Agency for Persons with Disabilities  
1725 ~~Department of Children and Family Services~~, and the Department  
1726 of Community Affairs. Also, appropriate volunteer organizations  
1727 must be given the opportunity to review the plan. The local  
1728 emergency management agency shall complete its review within 60  
1729 days and either approve the plan or advise the facility of  
1730 necessary revisions.

1731 (10) The agency ~~department~~ may conduct unannounced  
1732 inspections to determine compliance by residential facilities  
1733 and comprehensive transitional education programs with the  
1734 applicable provisions of this chapter and the rules adopted  
1735 pursuant hereto, including the rules adopted for training staff  
1736 of a facility or a program to detect and prevent sexual abuse of

294519

Amendment No. (for drafter's use only)

1737 residents and clients. The facility or program shall make copies  
1738 of inspection reports available to the public upon request.

1739 (11) An alternative living center and an independent  
1740 living education center, as defined in s. 393.063(8), shall be  
1741 subject to the provisions of s. 419.001, except that such  
1742 centers shall be exempt from the 1,000-foot-radius requirement  
1743 of s. 419.001(2) if:

1744 (a) Such centers are located on a site zoned in a manner  
1745 so that all the component centers of a comprehensive transition  
1746 education center may be located thereon; or

1747 (b) There are no more than three such centers within said  
1748 radius of 1,000 feet.

1749 (12) Each residential facility or comprehensive  
1750 transitional education program licensed by the agency ~~department~~  
1751 shall forward annually to the agency ~~department~~ a true and  
1752 accurate sworn statement of its costs of providing care to  
1753 clients funded by the agency ~~department~~.

1754 (13) The agency ~~department~~ may audit the records of any  
1755 residential facility or comprehensive transitional education  
1756 program that ~~which~~ it has reason to believe may not be in full  
1757 compliance with the provisions of this section; provided that,  
1758 any financial audit of such facility or program shall be limited  
1759 to the records of clients funded by the agency ~~department~~.

1760 (14) The agency ~~department~~ shall establish, for the  
1761 purpose of control of licensure costs, a uniform management  
1762 information system and a uniform reporting system with uniform  
1763 definitions and reporting categories.

294519



Amendment No. (for drafter's use only)

1764 (17) The agency ~~department~~ shall not be required to  
1765 contract with new facilities licensed after October 1, 1989,  
1766 pursuant to this chapter. Pursuant to chapter 287, the agency  
1767 ~~department~~ shall continue to contract within available resources  
1768 for residential services with facilities licensed prior to  
1769 October 1, 1989, if such facilities comply with the provisions  
1770 of this chapter and all other applicable laws and regulations.

1771 Section 92. Subsection (9) of section 397.405, Florida  
1772 Statutes, is amended to read:

1773 397.405 Exemptions from licensure.--The following are  
1774 exempt from the licensing provisions of this chapter:

1775 (9) Facilities licensed under s. 393.063~~(8)~~ that, in  
1776 addition to providing services to persons who are  
1777 developmentally disabled as defined therein, also provide  
1778 services to persons developmentally at risk as a consequence of  
1779 exposure to alcohol or other legal or illegal drugs while in  
1780 utero.

1781  
1782 The exemptions from licensure in this section do not apply to  
1783 any service provider that receives an appropriation, grant, or  
1784 contract from the state to operate as a service provider as  
1785 defined in this chapter or to any substance abuse program  
1786 regulated pursuant to s. 397.406. Furthermore, this chapter may  
1787 not be construed to limit the practice of a physician licensed  
1788 under chapter 458 or chapter 459, a psychologist licensed under  
1789 chapter 490, or a psychotherapist licensed under chapter 491 who  
1790 provides substance abuse treatment, so long as the physician,  
1791 psychologist, or psychotherapist does not represent to the

294519

Amendment No. (for drafter's use only)

1792 public that he or she is a licensed service provider and does  
1793 not provide services to clients pursuant to part V of this  
1794 chapter. Failure to comply with any requirement necessary to  
1795 maintain an exempt status under this section is a misdemeanor of  
1796 the first degree, punishable as provided in s. 775.082 or s.  
1797 775.083.

1798 Section 93. Paragraph (b) of subsection (5) of section  
1799 400.464, Florida Statutes, is amended to read:

1800 400.464 Home health agencies to be licensed; expiration of  
1801 license; exemptions; unlawful acts; penalties.--

1802 (5) The following are exempt from the licensure  
1803 requirements of this part:

1804 (b) Home health services provided by a state agency,  
1805 either directly or through a contractor with:

1806 1. The Department of Elderly Affairs.

1807 2. The Department of Health, a community health center, or  
1808 a rural health network that furnishes home visits for the  
1809 purpose of providing environmental assessments, case management,  
1810 health education, personal care services, family planning, or  
1811 followup treatment, or for the purpose of monitoring and  
1812 tracking disease.

1813 3. Services provided to persons who have developmental  
1814 disabilities, as defined in s. 393.063(12).

1815 4. Companion and sitter organizations that were registered  
1816 under s. 400.509(1) on January 1, 1999, and were authorized to  
1817 provide personal services under s. 393.063(33) under a  
1818 developmental services provider certificate on January 1, 1999,  
1819 may continue to provide such services to past, present, and

294519

Amendment No. (for drafter's use only)

1820 future clients of the organization who need such services,  
1821 notwithstanding the provisions of this act.

1822 5. The Department of Children and Family Services.

1823 Section 94. Paragraph (d) of subsection (1) of section  
1824 419.001, Florida Statutes, is amended to read:

1825 419.001 Site selection of community residential homes.--

1826 (1) For the purposes of this section, the following  
1827 definitions shall apply:

1828 (d) "Resident" means any of the following: a frail elder  
1829 as defined in s. 400.618; a physically disabled or handicapped  
1830 person as defined in s. 760.22(7)(a); a developmentally disabled  
1831 person as defined in s. 393.063~~(12)~~; a nondangerous mentally ill  
1832 person as defined in s. 394.455(18); or a child as defined in s.  
1833 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).

1834 Section 95. Section 914.16, Florida Statutes, is amended  
1835 to read:

1836 914.16 Child abuse and sexual abuse of victims under age  
1837 16 or persons with mental retardation; limits on  
1838 interviews.--The chief judge of each judicial circuit, after  
1839 consultation with the state attorney and the public defender for  
1840 the judicial circuit, the appropriate chief law enforcement  
1841 officer, and any other person deemed appropriate by the chief  
1842 judge, shall provide by order reasonable limits on the number of  
1843 interviews that a victim of a violation of s. 794.011, s.  
1844 800.04, or s. 827.03 who is under 16 years of age or a victim of  
1845 a violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102  
1846 who is a person with mental retardation as defined in s.  
1847 393.063~~(42)~~ must submit to for law enforcement or discovery

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

1848 purposes. The order shall, to the extent possible, protect the  
1849 victim from the psychological damage of repeated interrogations  
1850 while preserving the rights of the public, the victim, and the  
1851 person charged with the violation.

1852 Section 96. Subsection (2) of section 914.17, Florida  
1853 Statutes, is amended to read:

1854 914.17 Appointment of advocate for victims or witnesses  
1855 who are minors or persons with mental retardation.--

1856 (2) An advocate shall be appointed by the court to  
1857 represent a person with mental retardation as defined in s.  
1858 393.063~~(42)~~ in any criminal proceeding if the person with mental  
1859 retardation is a victim of or witness to abuse or neglect, or if  
1860 the person with mental retardation is a victim of a sexual  
1861 offense or a witness to a sexual offense committed against a  
1862 minor or person with mental retardation. The court may appoint  
1863 an advocate in any other criminal proceeding in which a person  
1864 with mental retardation is involved as either a victim or a  
1865 witness. The advocate shall have full access to all evidence and  
1866 reports introduced during the proceedings, may interview  
1867 witnesses, may make recommendations to the court, shall be  
1868 noticed and have the right to appear on behalf of the person  
1869 with mental retardation at all proceedings, and may request  
1870 additional examinations by medical doctors, psychiatrists, or  
1871 psychologists. It is the duty of the advocate to perform the  
1872 following services:

1873 (a) To explain, in language understandable to the person  
1874 with mental retardation, all legal proceedings in which the  
1875 person shall be involved;

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

1876 (b) To act, as a friend of the court, to advise the judge,  
1877 whenever appropriate, of the person with mental retardation's  
1878 ability to understand and cooperate with any court proceedings;  
1879 and

1880 (c) To assist the person with mental retardation and the  
1881 person's family in coping with the emotional effects of the  
1882 crime and subsequent criminal proceedings in which the person  
1883 with mental retardation is involved.

1884 Section 97. Subsection (1) of section 918.16, Florida  
1885 Statutes, is amended to read:

1886 918.16 Sex offenses; testimony of person under age 16 or  
1887 person with mental retardation; testimony of victim; courtroom  
1888 cleared; exceptions.--

1889 (1) Except as provided in subsection (2), in the trial of  
1890 any case, civil or criminal, when any person under the age of 16  
1891 or any person with mental retardation as defined in s.  
1892 393.063(42) is testifying concerning any sex offense, the court  
1893 shall clear the courtroom of all persons except parties to the  
1894 cause and their immediate families or guardians, attorneys and  
1895 their secretaries, officers of the court, jurors, newspaper  
1896 reporters or broadcasters, court reporters, and, at the request  
1897 of the victim, victim or witness advocates designated by the  
1898 state attorney's office.

1899 Section 98. Paragraph (a) of subsection (4) of section  
1900 943.0585, Florida Statutes, is amended to read:

1901 943.0585 Court-ordered expunction of criminal history  
1902 records.--The courts of this state have jurisdiction over their  
1903 own procedures, including the maintenance, expunction, and

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

1904 correction of judicial records containing criminal history  
1905 information to the extent such procedures are not inconsistent  
1906 with the conditions, responsibilities, and duties established by  
1907 this section. Any court of competent jurisdiction may order a  
1908 criminal justice agency to expunge the criminal history record  
1909 of a minor or an adult who complies with the requirements of  
1910 this section. The court shall not order a criminal justice  
1911 agency to expunge a criminal history record until the person  
1912 seeking to expunge a criminal history record has applied for and  
1913 received a certificate of eligibility for expunction pursuant to  
1914 subsection (2). A criminal history record that relates to a  
1915 violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
1916 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.  
1917 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in  
1918 s. 907.041 may not be expunged, without regard to whether  
1919 adjudication was withheld, if the defendant was found guilty of  
1920 or pled guilty or nolo contendere to the offense, or if the  
1921 defendant, as a minor, was found to have committed, or pled  
1922 guilty or nolo contendere to committing, the offense as a  
1923 delinquent act. The court may only order expunction of a  
1924 criminal history record pertaining to one arrest or one incident  
1925 of alleged criminal activity, except as provided in this  
1926 section. The court may, at its sole discretion, order the  
1927 expunction of a criminal history record pertaining to more than  
1928 one arrest if the additional arrests directly relate to the  
1929 original arrest. If the court intends to order the expunction of  
1930 records pertaining to such additional arrests, such intent must  
1931 be specified in the order. A criminal justice agency may not

294519

Amendment No. (for drafter's use only)

1932 expunge any record pertaining to such additional arrests if the  
1933 order to expunge does not articulate the intention of the court  
1934 to expunge a record pertaining to more than one arrest. This  
1935 section does not prevent the court from ordering the expunction  
1936 of only a portion of a criminal history record pertaining to one  
1937 arrest or one incident of alleged criminal activity.

1938 Notwithstanding any law to the contrary, a criminal justice  
1939 agency may comply with laws, court orders, and official requests  
1940 of other jurisdictions relating to expunction, correction, or  
1941 confidential handling of criminal history records or information  
1942 derived therefrom. This section does not confer any right to the  
1943 expunction of any criminal history record, and any request for  
1944 expunction of a criminal history record may be denied at the  
1945 sole discretion of the court.

1946 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
1947 criminal history record of a minor or an adult which is ordered  
1948 expunged by a court of competent jurisdiction pursuant to this  
1949 section must be physically destroyed or obliterated by any  
1950 criminal justice agency having custody of such record; except  
1951 that any criminal history record in the custody of the  
1952 department must be retained in all cases. A criminal history  
1953 record ordered expunged that is retained by the department is  
1954 confidential and exempt from the provisions of s. 119.07(1) and  
1955 s. 24(a), Art. I of the State Constitution and not available to  
1956 any person or entity except upon order of a court of competent  
1957 jurisdiction. A criminal justice agency may retain a notation  
1958 indicating compliance with an order to expunge.

294519

Amendment No. (for drafter's use only)

1959 (a) The person who is the subject of a criminal history  
1960 record that is expunged under this section or under other  
1961 provisions of law, including former s. 893.14, former s. 901.33,  
1962 and former s. 943.058, may lawfully deny or fail to acknowledge  
1963 the arrests covered by the expunged record, except when the  
1964 subject of the record:

1965 1. Is a candidate for employment with a criminal justice  
1966 agency;

1967 2. Is a defendant in a criminal prosecution;

1968 3. Concurrently or subsequently petitions for relief under  
1969 this section or s. 943.059;

1970 4. Is a candidate for admission to The Florida Bar;

1971 5. Is seeking to be employed or licensed by or to contract  
1972 with the Department of Children and Family Services or the  
1973 Department of Juvenile Justice or to be employed or used by such  
1974 contractor or licensee in a sensitive position having direct  
1975 contact with children, the developmentally disabled, the aged,  
1976 or the elderly as provided in s. 110.1127(3), s. 393.063~~(15)~~, s.  
1977 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

1978 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 400; or

1979 6. Is seeking to be employed or licensed by the Office of  
1980 Teacher Education, Certification, Staff Development, and  
1981 Professional Practices of the Department of Education, any  
1982 district school board, or any local governmental entity that  
1983 licenses child care facilities.

1984 Section 99. Paragraph (a) of subsection (4) of section  
1985 943.059, Florida Statutes, is amended to read:

294519



HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

1986           943.059 Court-ordered sealing of criminal history  
1987 records.--The courts of this state shall continue to have  
1988 jurisdiction over their own procedures, including the  
1989 maintenance, sealing, and correction of judicial records  
1990 containing criminal history information to the extent such  
1991 procedures are not inconsistent with the conditions,  
1992 responsibilities, and duties established by this section. Any  
1993 court of competent jurisdiction may order a criminal justice  
1994 agency to seal the criminal history record of a minor or an  
1995 adult who complies with the requirements of this section. The  
1996 court shall not order a criminal justice agency to seal a  
1997 criminal history record until the person seeking to seal a  
1998 criminal history record has applied for and received a  
1999 certificate of eligibility for sealing pursuant to subsection  
2000 (2). A criminal history record that relates to a violation of s.  
2001 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.  
2002 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.  
2003 847.0145, s. 893.135, or a violation enumerated in s. 907.041  
2004 may not be sealed, without regard to whether adjudication was  
2005 withheld, if the defendant was found guilty of or pled guilty or  
2006 nolo contendere to the offense, or if the defendant, as a minor,  
2007 was found to have committed or pled guilty or nolo contendere to  
2008 committing the offense as a delinquent act. The court may only  
2009 order sealing of a criminal history record pertaining to one  
2010 arrest or one incident of alleged criminal activity, except as  
2011 provided in this section. The court may, at its sole discretion,  
2012 order the sealing of a criminal history record pertaining to  
2013 more than one arrest if the additional arrests directly relate

294519

Amendment No. (for drafter's use only)

2014 to the original arrest. If the court intends to order the  
2015 sealing of records pertaining to such additional arrests, such  
2016 intent must be specified in the order. A criminal justice agency  
2017 may not seal any record pertaining to such additional arrests if  
2018 the order to seal does not articulate the intention of the court  
2019 to seal records pertaining to more than one arrest. This section  
2020 does not prevent the court from ordering the sealing of only a  
2021 portion of a criminal history record pertaining to one arrest or  
2022 one incident of alleged criminal activity. Notwithstanding any  
2023 law to the contrary, a criminal justice agency may comply with  
2024 laws, court orders, and official requests of other jurisdictions  
2025 relating to sealing, correction, or confidential handling of  
2026 criminal history records or information derived therefrom. This  
2027 section does not confer any right to the sealing of any criminal  
2028 history record, and any request for sealing a criminal history  
2029 record may be denied at the sole discretion of the court.

2030 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
2031 history record of a minor or an adult which is ordered sealed by  
2032 a court of competent jurisdiction pursuant to this section is  
2033 confidential and exempt from the provisions of s. 119.07(1) and  
2034 s. 24(a), Art. I of the State Constitution and is available only  
2035 to the person who is the subject of the record, to the subject's  
2036 attorney, to criminal justice agencies for their respective  
2037 criminal justice purposes, or to those entities set forth in  
2038 subparagraphs (a)1., 4., 5., and 6. for their respective  
2039 licensing and employment purposes.

2040 (a) The subject of a criminal history record sealed under  
2041 this section or under other provisions of law, including former

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2042 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
2043 deny or fail to acknowledge the arrests covered by the sealed  
2044 record, except when the subject of the record:

2045 1. Is a candidate for employment with a criminal justice  
2046 agency;

2047 2. Is a defendant in a criminal prosecution;

2048 3. Concurrently or subsequently petitions for relief under  
2049 this section or s. 943.0585;

2050 4. Is a candidate for admission to The Florida Bar;

2051 5. Is seeking to be employed or licensed by or to contract  
2052 with the Department of Children and Family Services or the  
2053 Department of Juvenile Justice or to be employed or used by such  
2054 contractor or licensee in a sensitive position having direct  
2055 contact with children, the developmentally disabled, the aged,  
2056 or the elderly as provided in s. 110.1127(3), s. 393.063~~(15)~~, s.  
2057 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
2058 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter  
2059 400; or

2060 6. Is seeking to be employed or licensed by the Office of  
2061 Teacher Education, Certification, Staff Development, and  
2062 Professional Practices of the Department of Education, any  
2063 district school board, or any local governmental entity which  
2064 licenses child care facilities.

2065 Section 100. Subsections (3) and (4) of section 393.0641,  
2066 Florida Statutes, are amended to read:

2067 393.0641 Program for the prevention and treatment of  
2068 severe self-injurious behavior.--

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2069 (3) The agency ~~department~~ may contract for the provision  
2070 of any portion or all of the services required by the program.

2071 (4) The agency has ~~department shall have~~ the authority to  
2072 license this program and shall adopt ~~promulgate~~ rules to  
2073 implement the program.

2074 Section 101. Section 393.065, Florida Statutes, is amended  
2075 to read:

2076 393.065 Application and eligibility determination.--

2077 (1) Application for services shall be made in writing to  
2078 the agency ~~Department of Children and Family Services~~, in the  
2079 district in which the applicant resides. Employees of the  
2080 agency's ~~department's~~ developmental services program shall  
2081 review each applicant for eligibility within 45 days after the  
2082 date the application is signed for children under 6 years of age  
2083 and within 60 days after the date the application is signed for  
2084 all other applicants. When necessary to definitively identify  
2085 individual conditions or needs, the agency ~~department~~ shall  
2086 provide a comprehensive assessment. Only individuals whose  
2087 domicile is in Florida are ~~shall be~~ eligible for services.  
2088 Information accumulated by other agencies, including  
2089 professional reports and collateral data, shall be considered in  
2090 this process when available.

2091 (2) In order to provide immediate services or crisis  
2092 intervention to applicants, the agency ~~department~~ shall arrange  
2093 for emergency eligibility determination, with a full eligibility  
2094 review to be accomplished within 45 days of the emergency  
2095 eligibility determination.

294519

Amendment No. (for drafter's use only)

2096 (3) The agency ~~department~~ shall notify each applicant, in  
2097 writing, of its eligibility decision. Any applicant determined  
2098 by the agency ~~department~~ to be ineligible for developmental  
2099 services has ~~shall have~~ the right to appeal this decision  
2100 pursuant to ss. 120.569 and 120.57.

2101 (4) The agency ~~department~~ shall assess the level of need  
2102 and medical necessity for prospective residents of intermediate-  
2103 care facilities for the developmentally disabled after October  
2104 1, 1999. The agency ~~department~~ may enter into an agreement with  
2105 the Department of Elderly Affairs for its Comprehensive  
2106 Assessment and Review for Long-Term-Care Services (CARES)  
2107 program to conduct assessments to determine the level of need  
2108 and medical necessity for long-term-care services under this  
2109 chapter. To the extent permissible under federal law, the  
2110 assessments must be funded under Title XIX of the Social  
2111 Security Act.

2112 Section 102. Section 393.0651, Florida Statutes, is  
2113 amended to read:

2114 393.0651 Family or individual support plan.--The agency  
2115 ~~department~~ shall provide for an appropriate family support plan  
2116 for children ages birth to 18 years of age and an individual  
2117 support plan for each client. The parent or guardian of the  
2118 client or, if competent, the client, or, when appropriate, the  
2119 client advocate, shall be consulted in the development of the  
2120 plan and shall receive a copy of the plan. Each plan shall  
2121 include the most appropriate, least restrictive, and most cost-  
2122 beneficial environment for accomplishment of the objectives for  
2123 client progress and a specification of all services authorized.

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2124 The plan shall include provisions for the most appropriate level  
2125 of care for the client. Within the specification of needs and  
2126 services for each client, when residential care is necessary,  
2127 the agency ~~department~~ shall move toward placement of clients in  
2128 residential facilities based within the client's community. The  
2129 ultimate goal of each plan, whenever possible, shall be to  
2130 enable the client to live a dignified life in the least  
2131 restrictive setting, be that in the home or in the community.  
2132 For children under 6 years of age, the family support plan shall  
2133 be developed within the 45-day application period as specified  
2134 in s. 393.065(1); for all applicants 6 years of age or older,  
2135 the family or individual support plan shall be developed within  
2136 the 60-day period as specified in that subsection.

2137 (1) The agency ~~department~~ shall develop and specify by  
2138 rule the core components of support plans to be used by each  
2139 district.

2140 (2)(a) The family or individual support plan shall be  
2141 integrated with the individual education plan (IEP) for all  
2142 clients who are public school students entitled to a free  
2143 appropriate public education under the Individuals with  
2144 Disabilities Education Act, I.D.E.A., as amended. The family or  
2145 individual support plan and IEP shall be implemented to maximize  
2146 the attainment of educational and habilitation goals. If the IEP  
2147 for a student enrolled in a public school program indicates  
2148 placement in a public or private residential program is  
2149 necessary to provide special education and related services to a  
2150 client, the local education agency shall provide for the costs  
2151 of that service in accordance with the requirements of the

294519

Amendment No. (for drafter's use only)

2152 Individuals with Disabilities Education Act, I.D.E.A., as  
2153 amended. This shall not preclude local education agencies and  
2154 the agency ~~department~~ from sharing the residential service costs  
2155 of students who are clients and require residential placement.  
2156 Under no circumstances shall clients entitled to a public  
2157 education or their parents be assessed a fee by the agency  
2158 ~~department~~ under s. 402.33 for placement in a residential  
2159 program.

2160 (b) For clients who are entering or exiting the school  
2161 system, an interdepartmental staffing team composed of  
2162 representatives of the agency ~~department~~ and the local school  
2163 system shall develop a written transitional living and training  
2164 plan with the participation of the client or with the parent or  
2165 guardian of the client, or the client advocate, as appropriate.

2166 (3) Each family or individual support plan shall be  
2167 facilitated through case management designed solely to advance  
2168 the individual needs of the client.

2169 (4) In the development of the family or individual support  
2170 plan, a client advocate may be appointed by the support planning  
2171 team for a client who is a minor or for a client who is not  
2172 capable of express and informed consent when:

2173 (a) The parent or guardian cannot be identified;

2174 (b) The whereabouts of the parent or guardian cannot be  
2175 discovered; or

2176 (c) The state is the only legal representative of the  
2177 client.

2178

294519

Amendment No. (for drafter's use only)

2179 Such appointment shall not be construed to extend the powers of  
2180 the client advocate to include any of those powers delegated by  
2181 law to a legal guardian.

2182 (5) The agency ~~department~~ shall place a client in the most  
2183 appropriate and least restrictive, and cost-beneficial,  
2184 residential facility according to his or her individual  
2185 habilitation plan. The parent or guardian of the client or, if  
2186 competent, the client, or, when appropriate, the client  
2187 advocate, and the administrator of the residential facility to  
2188 which placement is proposed shall be consulted in determining  
2189 the appropriate placement for the client. Considerations for  
2190 placement shall be made in the following order:

2191 (a) Client's own home or the home of a family member or  
2192 direct service provider.

2193 (b) Foster care facility.

2194 (c) Group home facility.

2195 (d) Intermediate care facility for the developmentally  
2196 disabled.

2197 (e) Other facilities licensed by the agency ~~department~~  
2198 which offer special programs for people with developmental  
2199 disabilities.

2200 (f) Developmental services institution.

2201 (6) In developing a client's annual family or individual  
2202 support plan, the individual or family with the assistance of  
2203 the support planning team shall identify measurable objectives  
2204 for client progress and shall specify a time period expected for  
2205 achievement of each objective.

294519



HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2206 (7) The individual, family, and support coordinator shall  
2207 review progress in achieving the objectives specified in each  
2208 client's family or individual support plan, and shall revise the  
2209 plan annually, following consultation with the client, if  
2210 competent, or with the parent or guardian of the client, or,  
2211 when appropriate, the client advocate. The agency ~~department~~  
2212 shall annually report in writing to the client, if competent, or  
2213 to the parent or guardian of the client, or to the client  
2214 advocate, when appropriate, with respect to the client's  
2215 habilitative and medical progress.

2216 (8) Any client, or any parent of a minor client, or  
2217 guardian, authorized guardian advocate, or client advocate for a  
2218 client, who is substantially affected by the client's initial  
2219 family or individual support plan, or the annual review thereof,  
2220 shall have the right to file a notice to challenge the decision  
2221 pursuant to ss. 120.569 and 120.57. Notice of such right to  
2222 appeal shall be included in all support plans provided by the  
2223 agency ~~department~~.

2224 Section 103. Section 393.0673, Florida Statutes, is  
2225 amended to read:

2226 393.0673 Denial, suspension, revocation of license;  
2227 moratorium on admissions; administrative fines; procedures.--

2228 (1) The agency ~~Department of Children and Family Services~~  
2229 may deny, revoke, or suspend a license or impose an  
2230 administrative fine, not to exceed \$1,000 per violation per day,  
2231 for a violation of any provision of s. 393.0655 or s. 393.067 or  
2232 rules adopted pursuant thereto. All hearings shall be held

294519

Amendment No. (for drafter's use only)

2233 within the county in which the licensee or applicant operates or  
2234 applies for a license to operate a facility as defined herein.

2235 (2) The agency ~~department~~, as a part of any final order  
2236 issued by it under the provisions of this chapter, may impose  
2237 such fine as it deems proper, except that such fine may not  
2238 exceed \$1,000 for each violation. Each day a violation of this  
2239 chapter occurs constitutes a separate violation and is subject  
2240 to a separate fine, but in no event may the aggregate amount of  
2241 any fine exceed \$10,000. Fines paid by any facility licensee  
2242 under the provisions of this subsection shall be deposited in  
2243 the Resident Protection Trust Fund and expended as provided in  
2244 s. 400.063.

2245 (3) The agency ~~department~~ may issue an order immediately  
2246 suspending or revoking a license when it determines that any  
2247 condition in the facility presents a danger to the health,  
2248 safety, or welfare of the residents in the facility.

2249 (4) The agency ~~department~~ may impose an immediate  
2250 moratorium on admissions to any facility when the department  
2251 determines that any condition in the facility presents a threat  
2252 to the health, safety, or welfare of the residents in the  
2253 facility.

2254 Section 104. Subsections (1) and (3) of section 393.0675,  
2255 Florida Statutes, are amended to read:

2256 393.0675 Injunctive proceedings authorized.--

2257 (1) The agency ~~Department of Children and Family Services~~  
2258 may institute injunctive proceedings in a court of competent  
2259 jurisdiction to:

294519

Amendment No. (for drafter's use only)

2260 (a) Enforce the provisions of this chapter or any minimum  
2261 standard, rule, regulation, or order issued or entered pursuant  
2262 thereto; or

2263 (b) Terminate the operation of facilities licensed  
2264 pursuant to this chapter when any of the following conditions  
2265 exist:

2266 1. Failure by the facility to take preventive or  
2267 corrective measures in accordance with any order of the agency  
2268 ~~department~~.

2269 2. Failure by the facility to abide by any final order of  
2270 the agency ~~department~~ once it has become effective and binding.

2271 3. Any violation by the facility constituting an emergency  
2272 requiring immediate action as provided in s. 393.0673.

2273 (3) The agency ~~department~~ may institute proceedings for an  
2274 injunction in a court of competent jurisdiction to terminate the  
2275 operation of a provider of supports or services if such provider  
2276 has willfully and knowingly refused to comply with the screening  
2277 requirement for direct service providers or has refused to  
2278 terminate direct service providers found not to be in compliance  
2279 with the requirements for good moral character.

2280 Section 105. Subsection (1), paragraphs (b), (c), and (d)  
2281 of subsection (2), and paragraph(e) of subsection (3) of section  
2282 393.0678, Florida Statutes, are amended to read:

2283 393.0678 Receivership proceedings.--

2284 (1) The agency ~~department~~ may petition a court of  
2285 competent jurisdiction for the appointment of a receiver for an  
2286 intermediate care facility for the developmentally disabled, a  
2287 residential habilitation center, or a group home facility owned

294519

Amendment No. (for drafter's use only)

2288 and operated by a corporation or partnership when any of the  
2289 following conditions exist:

2290 (a) Any person is operating a facility without a license  
2291 and refuses to make application for a license as required by s.  
2292 393.067 or, in the case of an intermediate care facility for the  
2293 developmentally disabled, as required by ss. 393.067 and  
2294 400.062.

2295 (b) The licensee is closing the facility or has informed  
2296 the department that it intends to close the facility; and  
2297 adequate arrangements have not been made for relocation of the  
2298 residents within 7 days, exclusive of weekends and holidays, of  
2299 the closing of the facility.

2300 (c) The agency ~~department~~ determines that conditions exist  
2301 in the facility which present an imminent danger to the health,  
2302 safety, or welfare of the residents of the facility or which  
2303 present a substantial probability that death or serious physical  
2304 harm would result therefrom. Whenever possible, the agency  
2305 ~~department~~ shall facilitate the continued operation of the  
2306 program.

2307 (d) The licensee cannot meet its financial obligations to  
2308 provide food, shelter, care, and utilities. Evidence such as the  
2309 issuance of bad checks or the accumulation of delinquent bills  
2310 for such items as personnel salaries, food, drugs, or utilities  
2311 constitutes prima facie evidence that the ownership of the  
2312 facility lacks the financial ability to operate the home in  
2313 accordance with the requirements of this chapter and all rules  
2314 promulgated thereunder.

2315 (2)

294519

Amendment No. (for drafter's use only)

2316 (b) A hearing shall be conducted within 5 days of the  
2317 filing of the petition, at which time all interested parties  
2318 shall have the opportunity to present evidence pertaining to the  
2319 petition. The agency department shall notify the owner or  
2320 operator of the facility named in the petition of its filing and  
2321 the date set for the hearing.

2322 (c) The court shall grant the petition only upon finding  
2323 that the health, safety, or welfare of residents of the facility  
2324 would be threatened if a condition existing at the time the  
2325 petition was filed is permitted to continue. A receiver may not  
2326 be appointed ex parte unless the court determines that one or  
2327 more of the conditions in subsection (1) exist; that the  
2328 facility owner or operator cannot be found; that all reasonable  
2329 means of locating the owner or operator and notifying him or her  
2330 of the petition and hearing have been exhausted; or that the  
2331 owner or operator after notification of the hearing chooses not  
2332 to attend. After such findings, the court may appoint any person  
2333 qualified by education, training, or experience to carry out the  
2334 responsibilities of receiver pursuant to this section, except  
2335 that the court may not appoint any owner or affiliate of the  
2336 facility which is in receivership. Before the appointment as  
2337 receiver of a person who is the operator, manager, or supervisor  
2338 of another facility, the court shall determine that the person  
2339 can reasonably operate, manage, or supervise more than one  
2340 facility. The receiver may be appointed for up to 90 days with  
2341 the option of petitioning the court for 30-day extensions. The  
2342 receiver may be selected from a list of persons qualified to act  
2343 as receivers developed by the agency department and presented to

294519

Amendment No. (for drafter's use only)

2344 the court with each petition for receivership. Under no  
2345 circumstances may the agency department or designated agency  
2346 ~~departmental~~ employee be appointed as a receiver for more than  
2347 60 days; however, the agency departmental receiver may petition  
2348 the court for 30-day extensions. The court shall grant an  
2349 extension upon a showing of good cause. The agency department  
2350 may petition the court to appoint a substitute receiver.

2351 (d) During the first 60 days of the receivership, the  
2352 agency department may not take action to decertify or revoke the  
2353 license of a facility unless conditions causing imminent danger  
2354 to the health and welfare of the residents exist and a receiver  
2355 has been unable to remove those conditions. After the first 60  
2356 days of receivership, and every 60 days thereafter until the  
2357 receivership is terminated, the agency department shall submit  
2358 to the court the results of an assessment of the ability of the  
2359 facility to assure the safety and care of the residents. If the  
2360 conditions at the facility or the intentions of the owner  
2361 indicate that the purpose of the receivership is to close the  
2362 facility rather than to facilitate its continued operation, the  
2363 agency department shall place the residents in appropriate  
2364 alternate residential settings as quickly as possible. If, in  
2365 the opinion of the court, the agency department has not been  
2366 diligent in its efforts to make adequate arrangements for  
2367 placement, the court shall find the agency department to be in  
2368 contempt and shall order the agency department to submit its  
2369 plans for moving the residents.

294519

Amendment No. (for drafter's use only)

2370 (3) The receiver shall make provisions for the continued  
2371 health, safety, and welfare of all residents of the facility  
2372 and:

2373 (e) May use the building, fixtures, furnishings, and any  
2374 accompanying consumable goods in the provision of care and  
2375 services to residents and to any other persons receiving  
2376 services from the facility at the time the petition for  
2377 receivership was filed. The receiver shall collect payments for  
2378 all goods and services provided to residents or others during  
2379 the period of the receivership at the same rate of payment  
2380 charged by the owner at the time the petition for receivership  
2381 was filed, or at a fair and reasonable rate otherwise approved  
2382 by the court for private, paying residents. The receiver may  
2383 apply to the agency ~~department~~ for a rate increase for residents  
2384 under Title XIX of the Social Security Act if the facility is  
2385 not receiving the state reimbursement cap and if expenditures  
2386 justify an increase in the rate.

2387 Section 106. Section 393.071, Florida Statutes, is amended  
2388 to read:

2389 393.071 Client fees.--The agency ~~Department of Children~~  
2390 ~~and Family Services~~ shall charge fees for services provided to  
2391 clients in accordance with s. 402.33.

2392 Section 107. Subsection (2) of section 393.075, Florida  
2393 Statutes, is amended to read:

2394 393.075 General liability coverage.--

2395 (2) The Division of Risk Management of the Department of  
2396 Financial Services shall provide coverage through the agency  
2397 ~~Department of Children and Family Services~~ to any person who

294519

Amendment No. (for drafter's use only)

2398 owns or operates a foster care facility or group home facility  
2399 solely for the agency ~~Department of Children and Family~~  
2400 ~~Services~~, who cares for children placed by developmental  
2401 services staff of the agency ~~department~~, and who is licensed  
2402 pursuant to s. 393.067 to provide such supervision and care in  
2403 his or her place of residence. The coverage shall be provided  
2404 from the general liability account of the State Risk Management  
2405 Trust Fund. The coverage is limited to general liability claims  
2406 arising from the provision of supervision and care of children  
2407 in a foster care facility or group home facility pursuant to an  
2408 agreement with the agency ~~department~~ and pursuant to guidelines  
2409 established through policy, rule, or statute. Coverage shall be  
2410 subject to the limits provided in ss. 284.38 and 284.385, and  
2411 the exclusions set forth therein, together with other exclusions  
2412 as may be set forth in the certificate of coverage issued by the  
2413 trust fund. A person covered under the general liability account  
2414 pursuant to this subsection shall immediately notify the  
2415 Division of Risk Management of the Department of Financial  
2416 Services of any potential or actual claim.

2417 Section 108. Section 393.115, Florida Statutes, is amended  
2418 to read:

2419 393.115 Discharge.--

2420 (1) DISCHARGE AT THE AGE OF MAJORITY.--

2421 (a) When any residential client reaches his or her 18th  
2422 birthday, the agency ~~department~~ shall give the resident or legal  
2423 guardian the option to continue residential services or to be  
2424 discharged from residential services.

294519



Amendment No. (for drafter's use only)

2425 (b) If the resident appears to meet the criteria for  
2426 involuntary admission to residential services, as defined in s.  
2427 393.11, the agency department shall file a petition to determine  
2428 the appropriateness of continued residential placement on an  
2429 involuntary basis. The agency department shall file the petition  
2430 for involuntary admission in the county in which the client  
2431 resides. If the resident was originally involuntarily admitted  
2432 to residential services pursuant to s. 393.11, then the agency  
2433 ~~department~~ shall file the petition in the court having  
2434 continuing jurisdiction over the case.

2435 (c) Nothing in this section shall in any way limit or  
2436 restrict the resident's right to a writ of habeas corpus or the  
2437 right of the agency department to transfer a resident receiving  
2438 residential care to a program of appropriate services provided  
2439 by the agency department when such program is the appropriate  
2440 habilitative setting for the resident.

2441 (2) DISCHARGE AFTER CRIMINAL OR JUVENILE COMMITMENT.--Any  
2442 person with developmental disabilities committed to the custody  
2443 of the agency department pursuant to the provisions of the  
2444 applicable criminal or juvenile court law shall be discharged in  
2445 accordance with the requirements of the applicable criminal or  
2446 juvenile court law.

2447 Section 109. Subsection (3) of section 393.12, Florida  
2448 Statutes, is amended to read:

2449 393.12 Capacity; appointment of guardian advocate.--

2450 (3) COURT COSTS.--In all proceedings under this section,  
2451 no court costs shall be charged against the agency department.

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2452 Section 110. Section 393.125, Florida Statutes, is amended  
2453 to read:

2454 393.125 Hearing rights.--

2455 (1) REVIEW OF AGENCY ~~DEPARTMENT~~ DECISIONS.--

2456 (a) Any developmental services applicant or client, or his  
2457 or her parent, guardian, guardian advocate, or authorized  
2458 representative, who has any substantial interest determined by  
2459 the agency ~~department~~, has ~~shall have~~ the right to request an  
2460 administrative hearing pursuant to ss. 120.569 and 120.57.

2461 (b) Notice of the right to an administrative hearing shall  
2462 be given, both verbally and in writing, to the applicant or  
2463 client, and his or her parent, guardian, guardian advocate, or  
2464 authorized representative, at the same time that the agency  
2465 ~~department~~ gives the applicant or client notice of the agency's  
2466 ~~department's~~ action. The notice shall be given, both verbally  
2467 and in writing, in the language of the client or applicant and  
2468 in English.

2469 (c) A request for a hearing under this section shall be  
2470 made to the agency ~~department~~, in writing, within 30 days of the  
2471 applicant's or client's receipt of the notice.

2472 (2) REVIEW OF PROVIDER DECISIONS.--The agency ~~department~~  
2473 shall adopt ~~promulgate~~ rules to establish uniform guidelines for  
2474 the agency ~~department~~ and service providers relevant to  
2475 termination, suspension, or reduction of client services by the  
2476 service provider. The rules shall ensure the due process rights  
2477 of service providers and clients.

2478 Section 111. Subsections (3), (4), (5), and (6) of section  
2479 393.15, Florida Statutes, are amended to read:

294519

Amendment No. (for drafter's use only)

2480           393.15 Legislative intent; Community Resources Development  
2481 Trust Fund.--

2482           (3) There is created a Community Resources Development  
2483 Trust Fund in the State Treasury to be used by the agency  
2484 ~~Department of Children and Family Services~~ for the purpose of  
2485 granting loans to eligible programs for the initial costs of  
2486 development of the programs. Loans shall be made only to those  
2487 facilities which are in compliance with the zoning regulations  
2488 of the local community. Costs of development may include  
2489 structural modification, the purchase of equipment and fire and  
2490 safety devices, preoperational staff training, and the purchase  
2491 of insurance. Such costs shall not include the actual  
2492 construction of a facility.

2493           (4) The agency ~~department~~ may grant to an eligible program  
2494 a lump-sum loan in one payment not to exceed the cost to the  
2495 program of providing 2 months' services, care, or maintenance to  
2496 each person who is developmentally disabled to be placed in the  
2497 program by the agency ~~department~~, or the actual cost of  
2498 firesafety renovations to a facility required by the state,  
2499 whichever is greater. Loans granted to programs shall not be in  
2500 lieu of payment for maintenance, services, or care provided, but  
2501 shall stand separate and distinct. The agency ~~department~~ shall  
2502 adopt ~~promulgate~~ rules, as provided in chapter 120, to determine  
2503 the standards under which a program shall be eligible to receive  
2504 a loan as provided in this section and criteria for the  
2505 equitable allocation of loan trust funds when eligible  
2506 applications exceed the funds available.

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2507 (5) Any loan granted by the agency ~~department~~ under this  
2508 section shall be repaid by the program within 5 years. A  
2509 program that ~~which~~ operates as a nonprofit corporation meeting  
2510 the requirements of s. 501(c)(3) of the Internal Revenue Code,  
2511 and that ~~which~~ seeks forgiveness of its loan shall submit to the  
2512 agency ~~department~~ a statement setting forth the service it has  
2513 provided during the year together with such other information as  
2514 the agency ~~department~~ by rule shall require, and, upon approval  
2515 of each such annual statement, the agency ~~department~~ shall  
2516 forgive 20 percent of the principal of any such loan granted  
2517 after June 30, 1975.

2518 (6) If any program that ~~which~~ has received a loan under  
2519 this section ceases to accept, or provide care, services, or  
2520 maintenance to persons placed in the program by the department,  
2521 or if such program files ~~shall file~~ papers of bankruptcy, at  
2522 that point in time the loan shall become an interest-bearing  
2523 loan at the rate of 5 percent per annum on the entire amount of  
2524 the initial loan which shall be repaid within a 1-year period  
2525 from the date on which the program ceases to provide care,  
2526 services, or maintenance, or files papers in bankruptcy, and the  
2527 amount of the loan due plus interest shall constitute a lien in  
2528 favor of the state against all real and personal property of the  
2529 program. The lien shall be perfected by the appropriate officer  
2530 of the agency ~~department~~ by executing and acknowledging a  
2531 statement of the name of the program and the amount due on the  
2532 loan and a copy of the promissory note, which shall be recorded  
2533 by the agency ~~department~~ with the clerk of the circuit court in  
2534 the county wherein the program is located. If the program has

294519

Amendment No. (for drafter's use only)

2535 filed a petition for bankruptcy, the agency ~~department~~ shall  
2536 file and enforce the lien in the bankruptcy proceedings.  
2537 Otherwise, the lien shall be enforced in the manner provided in  
2538 s. 85.011. All funds received by the agency ~~department~~ from the  
2539 enforcement of the lien shall be deposited in the Community  
2540 Resources Development Trust Fund.

2541 Section 112. Subsection (1) of section 393.501, Florida  
2542 Statutes, is amended to read:

2543 393.501 Rulemaking.--

2544 (1) The agency ~~department~~ shall adopt rules to carry out  
2545 the provisions of this chapter.

2546 Section 113. Section 393.503, Florida Statutes, is amended  
2547 to read:

2548 393.503 Respite and family care subsidy expenditures;  
2549 funding.--The agency ~~Department of Children and Family Services~~  
2550 shall determine the amount of expenditures per fiscal year for  
2551 the respite and family care subsidy to families and individuals  
2552 with developmental disabilities living in their own homes. This  
2553 information shall be made available to the family care councils  
2554 and to others requesting the information. The family care  
2555 councils shall review the expenditures and make recommendations  
2556 to the agency ~~department~~ with respect to any new funds that are  
2557 made available for family care.

2558 Section 114. Subsection (2) of section 393.506, Florida  
2559 Statutes, is amended to read:

2560 393.506 Administration of medication.--

2561 (2) Each facility, institution, or program must include in  
2562 its policies and procedures a plan for training designated staff

294519

Amendment No. (for drafter's use only)

2563 | to ensure the safe handling, storage, and administration of  
2564 | prescription medication. These policies and procedures must be  
2565 | approved by the agency ~~department~~ before unlicensed direct care  
2566 | services staff assist with medication.

2567 |       Section 115. Effective upon this act becoming a law, the  
2568 | Economic Self-Sufficiency Services program of the Department of  
2569 | Children and Family Services may provide its eligibility  
2570 | determination functions either with department staff or through  
2571 | contracts with at least two private vendors, with the following  
2572 | restrictions:

2573 |       (a) With the exception of information technology, no  
2574 | contract shall be for a geographic area larger than a combined  
2575 | seven districts or combined three zones without the prior  
2576 | approval of the Legislative Budget Commission; and

2577 |       (b) Department employees must provide the functions in at  
2578 | least one area of the state if their proposed cost is  
2579 | competitive with private vendors.

2580 |       Section 116. Except as otherwise expressly provided in  
2581 | this act, this act shall take effect July 1, 2004.

2582 |  
2583 | ===== T I T L E   A M E N D M E N T =====

2584 |       Remove line(s) 215 and insert:  
2585 |       amending s. 20.19, F.S.; removing the developmental  
2586 |       disabilities program from the Department of Children and  
2587 |       Family Services; creating s. 20.197, F.S.; establishing  
2588 |       the Agency for Persons with Disabilities for the purpose  
2589 |       of providing services to persons with developmental  
2590 |       disabilities, including institutional services; directing

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2591 the agency to execute interagency agreements with the  
2592 Agency for Health Care Administration for the financial  
2593 management of the Medicaid waivers and the Department of  
2594 Children and Family Services for administrative support;  
2595 amending s. 393.063, F.S.; updating definitions and  
2596 deleting obsolete definitions; amending s. 393.064, F.S.;  
2597 deleting requirements that the agency's legislative budget  
2598 request include funding for prevention; amending s.  
2599 393.0655, F.S.; requiring Level 2 screening for specified  
2600 persons and service providers; providing a limitation on  
2601 the screening requirement in certain circumstances  
2602 involving children between 12 and 18 years of age;  
2603 amending s. 393.066, F.S.; removing requirement that  
2604 services be administered and approved by the districts;  
2605 modifying a requirement to provide certain services;  
2606 deleting a requirement for a 5-year plan relating to  
2607 community-based services; adding a requirement to assist  
2608 clients in gaining employment; repealing obsolete  
2609 requirement authorizing the state to lease or construct  
2610 residential facilities; deleting authorization to adopt  
2611 rules ensuring compliance with federal rules; amending s.  
2612 393.0661, F.S.; authorizing the Agency for Disabled  
2613 Persons to enter into certain contracts; providing for  
2614 reimbursement to certain providers of services to the  
2615 developmentally disabled pursuant a methodology; requiring  
2616 the Agency for Health Care administration, in consultation  
2617 with the Agency for Disabled Persons, to adopt rules  
2618 related to such methodology; authorizing the Agency for

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2619 Health Care Administration to adopt emergency rules in  
2620 certain circumstances; limiting the applicability of such  
2621 emergency rules; authorizing the Agency for Health Care  
2622 Administration, in consultation with the Agency for  
2623 Disabled Persons, to make certain adjustments necessary to  
2624 comply with the availability of appropriations; deleting  
2625 an obsolete provision; modifying provisions relating to an  
2626 assessment instrument; adding requirements for adoption of  
2627 rate methodologies; amending s. 393.068, F.S.; making  
2628 service provision subject to available resources; updating  
2629 list of services to be provided; deleting provision  
2630 referring to 5-year plans; amending s. 393.0695, F.S.;  
2631 requiring in-home subsidy amounts to be reassessed  
2632 annually; amending s. 393.11, F.S.; deleting provisions  
2633 referring to districts, department programs, and the  
2634 nonexistent Department of Labor and Employment Security;  
2635 amending s. 393.13, F.S.; deleting obsolete provisions;  
2636 adding legislative intent relating to reducing the use of  
2637 sheltered workshops; amending s. 393.17, F.S.; authorizing  
2638 the agency to contract for the certification of behavioral  
2639 analysts; deleting provisions relating to a certification  
2640 program and provisions allowing fees; amending s. 393.22,  
2641 F.S.; deleting prohibition preventing transfer of funds  
2642 and ensuring financial commitment for specified  
2643 developmental conditions; amending s. 393.502, F.S.;  
2644 removing reference to districts; deleting a provision  
2645 permitting appointment of family care council members if  
2646 the Governor does not act; amending ss. 408.301 and

294519



HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2647 408.302, F.S.; amending legislative intent to add the  
2648 Agency for Persons with Disabilities and the Department of  
2649 Elderly Affairs as agencies that the Agency for Health  
2650 Care Administration must enter into interagency agreement  
2651 with regarding persons with special needs; amending s.  
2652 409.906, F.S.; clarifying powers of the Agency for Health  
2653 Care Administration with respect to limiting coverage for  
2654 certain services; repealing s. 393.14, F.S.; requiring a  
2655 multiyear plan; repealing s. 393.165, F.S., relating to  
2656 ICF/DDs; repealing s. 393.166, F.S., relating to homes for  
2657 special services; repealing s. 393.505, F.S., relating to  
2658 comprehensive day treatment service projects; transferring  
2659 programs and institutions relating to developmental  
2660 disabilities from the Department of Children and Family  
2661 Services to the Agency for Persons with Disabilities;  
2662 providing duties of those agencies as well as the  
2663 Department of Management Services; providing for  
2664 substitution of parties in administrative and judicial  
2665 proceedings; providing duties of the Office of Program  
2666 Policy Analysis and Government Accountability; providing  
2667 for a report; amending ss. 92.53, 397.405, 400.464,  
2668 419.001, 914.16, 914.17, 918.16, 943.0585, and 943.059,  
2669 F.S.; conforming cross references; amending ss. 393.0641,  
2670 393.065, 393.0651, 393.067, 393.0673, 393.0675, 393.0678,  
2671 393.071, 393.075, 393.115, 393.12, 393.125, 393.15,  
2672 393.501, 393.503, and 393.506, F.S.; conforming to the  
2673 changes made by the act; providing applicability;  
2674 authorizing the Department of Children and Family Services

294519

HOUSE AMENDMENT

Bill No. HB 1823 CS

Amendment No. (for drafter's use only)

2675 | to enter into contracts for providing eligibility  
2676 | determinations in certain circumstances; providing  
2677 | effective dates.

294519