

By Senator Webster

9-1683A-04

See HB

1                                   A bill to be entitled  
2           An act relating to mental health and vocational  
3           rehabilitation services; creating part VI of  
4           chapter 394, F.S., relating to self-directed  
5           and family-directed mental health and  
6           vocational rehabilitation services for adults  
7           and piloting family-directed mental health  
8           treatment and support services for certain  
9           children; providing a popular name; providing  
10          legislative intent; providing definitions;  
11          providing a program for self-directed mental  
12          health and vocational rehabilitation services  
13          for adults; providing eligibility and other  
14          program requirements; providing for statewide  
15          and local advisory councils; providing  
16          authority to request certain federal waivers  
17          and to request and use certain grants;  
18          providing for transfer of certain funds;  
19          providing for ongoing review and reports;  
20          providing rulemaking authority; providing for a  
21          pilot program for family-directed mental health  
22          treatment and support services for certain  
23          children based on the self-directed care  
24          program for adults; providing eligibility and  
25          other pilot program requirements; providing  
26          background screening requirements; providing  
27          rulemaking authority; providing for annual  
28          reports; providing for future repeal of the  
29          pilot program; repealing s. 394.9084, F.S.,  
30          relating to the pilot project for  
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1 client-directed and choice-based adult mental  
2 health services; providing an effective date.

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

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6 Section 1. Part VI of chapter 394, Florida Statutes,  
7 consisting of sections 394.9501 and 394.9503, is created to  
8 read:

9 PART VI

10 SELF-DIRECTED AND FAMILY-DIRECTED MENTAL HEALTH

11 AND VOCATIONAL REHABILITATION SERVICES

12 394.9501 Self-directed mental health and vocational  
13 rehabilitation services.--

14 (1) POPULAR NAME.--This section may be cited by the  
15 popular name the "Florida Self-Directed Care (FloridaSDC)  
16 Act."

17 (2) LEGISLATIVE INTENT.--The Legislature embraces the  
18 grassroots philosophy of the self-directed care pilot for  
19 adults with psychiatric disabilities in Northeast Florida and  
20 supports this intent. The Legislature finds that the intent is  
21 to give individuals with psychiatric disabilities the  
22 opportunity to select the providers and services that the  
23 individual deems necessary to achieve recovery from a mental  
24 illness. The Legislature finds that this intent is  
25 accomplished through the creation of a specific mechanism for  
26 providing needed services for adults with serious and  
27 persistent mental illnesses and children with or at risk for  
28 emotional disturbances. The Legislature finds that this  
29 opportunity is based upon well-established models of  
30 self-determination for other populations of individuals with  
31 disabilities. It is the intent of the Legislature to provide

1 adults with serious and persistent mental illnesses and  
2 children with or at risk for emotional disturbances and their  
3 families enrolled in self-directed care a wide range of  
4 choices in and control over the purchased mental health care  
5 and vocational rehabilitation services they receive.

6 (3) DEFINITIONS.--As used in this section, the term:

7 (a) "Agency" means the Agency for Health Care  
8 Administration.

9 (b) "Budget allowance" means the amount of funds made  
10 available to a fiscal intermediary on behalf of a participant  
11 to purchase needed mental health treatment, rehabilitation and  
12 enrichment, and vocational rehabilitation services, based on  
13 the results of a needs assessment.

14 (c) "Department" means the Department of Children and  
15 Family Services.

16 (d) "Division" means the Division of Vocational  
17 Rehabilitation of the Department of Education.

18 (e) "Fiscal intermediary" means an entity approved by  
19 the department that helps the participant manage his or her  
20 budget allowances.

21 (f) "Freedom account" means an account under which the  
22 Social Security Administration would permit supplemental  
23 security income (SSI) eligible individuals to save funds that  
24 will assist them in achieving independence by reaching their  
25 educational and vocational goals.

26 (g) "Participant" means a person who has chosen to  
27 participate in the program, who has met the enrollment  
28 requirements, and who has received approved budget allowances.

29 (h) "Provider" means a person or organization licensed  
30 or otherwise permitted to render services eligible for  
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1 reimbursement under this program for which the participant is  
2 not the employer of record.

3 (i) "Quality advocate" means licensed professional  
4 clinical staff who manage the delivery of direct participant  
5 services.

6 (j) "Recovery coach" means an individual who provides  
7 technical assistance to participants in meeting their  
8 responsibilities under this section.

9 (k) "Self-determination" refers to a fiscal mechanism  
10 that provides the individual an opportunity for freedom of  
11 choice in determining the providers and services necessary for  
12 recovery from a psychiatric disability or an emotional  
13 disturbance.

14 (4) SELF-DIRECTED CARE.--

15 (a) Program established.--The department shall  
16 establish the self-directed care (FloridaSDC) program for  
17 adults, which shall be based on the principles of participant  
18 choice and control. The department shall establish interagency  
19 cooperative agreements with and shall work with the agency,  
20 the division, and the Social Security Administration to  
21 implement and administer the FloridaSDC program. The  
22 FloridaSDC program shall provide enrolled persons the  
23 opportunity to choose the providers of services and to direct  
24 the delivery of services to best meet their mental health care  
25 and vocational rehabilitation needs. The department shall  
26 operate the direct services portion of the FloridaSDC program  
27 within the funds appropriated by the Legislature for direct  
28 services and other funds obtained through the agency,  
29 division, and department. Any expansion of the FloridaSDC  
30 program beyond enrollment levels in state fiscal year  
31 2003-2004 is contingent upon appropriations for administrative

1 costs incurred by participating state agencies and for  
2 increased fiscal intermediary capacity. Funds for the  
3 operation of the fiscal intermediary shall not be paid from  
4 appropriations specified for direct participant services. The  
5 FloridaSDC program shall consist of four subcomponents.

6 Participants may participate in any subcomponent for which  
7 they are eligible. At a minimum, a participant must choose to  
8 participate in one of the following subcomponents:

9 1. Department mental health.--This subcomponent  
10 includes participant access to an allowance equal to community  
11 mental health outpatient services, community support services,  
12 and case management services. Self-directed care services  
13 exclude Florida Assertive Community Treatment (FACT) services,  
14 only for adults; residential services; and emergency  
15 stabilization services, including crisis stabilization units,  
16 short-term residential treatment, and inpatient services.

17 2. Agency mental health.--Under this subcomponent the  
18 agency shall apply for a waiver of s. 1115 of the Social  
19 Security Act, 42 U.S.C. s. 1315, to use Medicaid funds for  
20 self-directed mental health care. Services included in the  
21 budget allowance are those contained in the Medicaid Community  
22 Mental Health Services and Mental Health Targeted Case  
23 Management Services handbooks. Participants enrolled in this  
24 subcomponent shall be excluded from enrollment in any program  
25 that prepays Medicaid Community Mental Health or Mental Health  
26 Targeted Case Management benefits or to access such benefits  
27 under a fee-for-service program.

28 3. Vocational rehabilitation.--Under this subcomponent  
29 participation is contingent upon federal legislation allowing  
30 for a demonstration program that will permit vocational  
31 rehabilitation funds to flow through the fiscal intermediary.

1           4. Social Security Administration.--Under this  
2 subcomponent the department shall apply, under s. 1110(b) of  
3 the Social Security Act, to conduct a demonstration that shall  
4 test whether the modification of certain SSI program rules  
5 fosters greater self-sufficiency among SSI beneficiaries  
6 participating in the FloridaSDC program.

7           (b) Eligibility and enrollment.--

8           1. The people who shall be the focus of the FloridaSDC  
9 program are adults with severe and persistent mental illness.  
10 An adult with a severe and persistent mental illness means a  
11 person who is age 18 or older, who has a diagnosis or  
12 diagnostic impression of an Axis I or Axis II mental disorder,  
13 and who meets one of the following criteria:

14           a. Receives supplemental security income (SSI) due to  
15 psychiatric disability.

16           b. Receives social security disability income (SSDI)  
17 due to psychiatric disability.

18           c. Receives disabled veterans income due to  
19 psychiatric disability.

20           d. Receives any other type of disability income due to  
21 psychiatric disability.

22           e. Receives social security income (SSI) for reasons  
23 other than psychiatric disability and does not need, is unable  
24 to apply, or declines to apply for disability income.

25           f. Does not receive disability income due to  
26 psychiatric disability, but has an application in process or  
27 has received such income within the last 5 years.

28           g. Is legally competent to direct his or her own  
29 affairs.

30           h. Is not enrolled in Florida Assertive Community  
31 Treatment (FACT) services.

1           2. Participants in the FloridaSDC program must live in  
2 the district or subdistrict in which the program they  
3 participate in is located.

4           3. Additional eligibility requirements to participate  
5 in the FloridaSDC program are as follows:

6           a. To be eligible to participate in the agency mental  
7 health subcomponent, the individual must be eligible for  
8 Medicaid as defined in the waiver of s. 1115 of the Social  
9 Security Act, 42 U.S.C. s. 1315.

10           b. To be eligible to participate in the vocational  
11 rehabilitation subcomponent, the individual must be eligible  
12 as defined by the Rehabilitation Act of 1973, as amended.

13           4. Participation in the FloridaSDC program is  
14 voluntary. Individuals who wish to disenroll may do so at any  
15 time. Upon disenrollment, the individual shall have access to  
16 mental health services for which he or she is eligible, based  
17 on the level of need. A participant's disenrollment from the  
18 agency mental health subcomponent will be effective the  
19 beginning of the month subsequent to his or her disenrollment  
20 decision.

21           (c) Budget allowances.--Budget allowances shall be  
22 managed on behalf of participants by a fiscal intermediary  
23 approved by the department. Budget allowances for any funding  
24 from the department shall be based on the average cost to  
25 provide the services described in subparagraph (4)(a)1. to an  
26 individual with a serious and persistent mental illness in the  
27 district or subdistrict of service for the previous fiscal  
28 year. This methodology shall be used for budgeting purposes on  
29 an aggregate level. Individual budget allowances may vary in  
30 accordance with the participants' approved recovery plans. The  
31 total of the budget allowances must not exceed the total

1 budget for the FloridaSDC program. These allowances shall be  
2 transferred from the department to the fiscal intermediary for  
3 mental health services provided to participants. The  
4 department shall develop purchasing guidelines to assist  
5 participants in using the budget allowances to purchase  
6 needed, cost-effective mental health and vocational  
7 rehabilitation services. Funding for budget allowances shall  
8 be provided through department funding, agency funds obtained  
9 through any waiver of s. 1115 of the Social Security Act, 42  
10 U.S.C. s. 1315, or division funds.

11 (d) Services.--The fiscal intermediary shall use  
12 budget allowances only to pay for community-based services  
13 that meet the participant's mental health care and vocational  
14 rehabilitation needs based on the individual's recovery plan  
15 and that are a cost-efficient use of such funds. Such funds  
16 shall not be used to supplant services available to the  
17 individual through other state and federal funding sources.  
18 The department, in collaboration with the statewide advisory  
19 council, the agency, and the division, shall develop  
20 purchasing requirements that meet state and federal  
21 regulations.

22 (e) Participant roles and  
23 responsibilities.--Participants shall choose the providers of  
24 services, as well as when and how the services are provided.  
25 The roles and responsibilities of participants include, but  
26 are not limited to, the following:

- 27 1. Communicating needs, preferences, and expectations  
28 about services being purchased.
- 29 2. Ending the services of an unsatisfactory provider.
- 30 3. Providing the fiscal intermediary with all  
31 information necessary for provider payments.



1           (f) Department roles and responsibilities.--The roles  
2 and responsibilities of the department include, but are not  
3 limited to, the following:

4           1. Establishing standards for approval of the fiscal  
5 intermediary and approving the fiscal intermediary. The fiscal  
6 intermediary may not be a provider of behavioral health care  
7 services or be a managed care organization.

8           2. Establishing, in consultation with the agency and  
9 the division, the minimum qualifications for all providers and  
10 being the final arbiter of the fitness of any individual or  
11 organization to be a provider.

12           3. Establishing, at the beginning of each fiscal year,  
13 the number of available openings in the program for each  
14 district.

15           (g) Fiscal intermediary roles and responsibilities.--

16           1. The roles and responsibilities of the fiscal  
17 intermediary include, but are not limited to, the following:

18           a. Providing recordkeeping and fiscal processing  
19 services and providing for an audit by an independent  
20 certified public accountant annually.

21           b. Retaining the participant-directed care funds in  
22 distinct categories by program subcomponent, processing  
23 provider enrollment information, if any, reviewing records to  
24 ensure correctness, making payments to providers for services,  
25 ensuring timely account activity and balance reporting to  
26 participants and FloridaSDC program staff, and maintaining  
27 district-level FloridaSDC service staff.

28           c. Employing recovery coaches who shall provide  
29 training, technical assistance, and support to participants.  
30 The fiscal intermediary may not provide direct services to  
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1 participants beyond those provided by the recovery coaches and  
2 quality advocates.

3 d. Establishing controls to prevent overspending of  
4 budget allowances and separate accounting for each program  
5 subcomponent, and ensuring that funds expended meet all  
6 federal requirements and purchasing guidelines established by  
7 the department.

8 e. Maintaining the participant's freedom account under  
9 s. 1110(b) of the Social Security Act.

10 f. Assessing each participant's mental health care and  
11 vocational rehabilitation needs, helping with the recovery  
12 plan, and providing ongoing support with the service plan.

13 g. Expediting linkages for FloridaSDC participants to  
14 other mental health services not available through the  
15 program.

16 h. Educating each participant about the use of  
17 advanced medical and psychiatric directives.

18 2. Employees, board members, or owners of the fiscal  
19 intermediary may not serve on boards of mental health care  
20 providers or any other entity that would result in conflict of  
21 interest.

22 (5) ADVISORY COUNCILS.--A statewide advisory council  
23 shall guide the FloridaSDC program. The statewide advisory  
24 council shall be comprised of local advisory council members.  
25 Local advisory councils shall guide the FloridaSDC program in  
26 each participating district. Each local advisory council shall  
27 adhere to the intent of the FloridaSDC program. The department  
28 shall develop policies and rules regarding appointment,  
29 operation, and terms of memberships for both the state and  
30 local advisory councils. At least 51 percent of state and  
31 local advisory council members shall be participants of the

1 FloridaSDC program. The remaining 49 percent of the council  
2 memberships shall be comprised of family members of  
3 participants of the FloridaSDC program and other interested  
4 parties. Providers of behavioral health care services, or  
5 their staff, owners, or board members, are not eligible to  
6 serve on any advisory council. Although the statewide and  
7 local advisory councils will not have financial management  
8 responsibility for the FloridaSDC program, each council shall  
9 function as a stakeholder in each program in which it is  
10 involved. The department shall consider requests and  
11 recommendations from the statewide advisory council for  
12 improvements to the FloridaSDC program. Members of local and  
13 statewide advisory councils shall serve without compensation  
14 but are entitled to reimbursement for travel and per diem  
15 expenses pursuant to s. 112.061. The department has final  
16 authority on and responsibility for operation of the  
17 FloridaSDC program.

18 (6) FEDERAL WAIVERS; GRANTS.--

19 (a) The department shall take all necessary action to  
20 ensure state compliance with federal regulations. The agency,  
21 in collaboration with the department, shall seek a waiver of  
22 s. 1115 of the Social Security Act, 42 U.S.C. s. 1315; the  
23 department shall expeditiously seek any available Supplemental  
24 Security Administration (SSA) waivers under s. 1110(b) of the  
25 Social Security Act; and the division, in collaboration with  
26 the department, shall seek federal approval to participate in  
27 the FloridaSDC program.

28 (b) The department may apply for and use any funds  
29 from private, state, and federal grants provided for  
30 self-directed care, voucher, and self-determination programs,  
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1 including those providing substance abuse and mental health  
2 care.

3 (c) The approval of all waivers is not required for  
4 implementation and operation of the FloridaSDC program, but  
5 the program may not provide services for which a waiver is  
6 required without first obtaining approval for that waiver.

7 (7) FUNDS TRANSFER.--The department, the agency, and  
8 the division may transfer funds as identified in paragraph  
9 (4)(a) to the fiscal intermediary.

10 (8) REVIEWS AND REPORTS.--The department, the agency,  
11 and the division shall each, on an ongoing basis, review and  
12 assess the implementation of the FloridaSDC program. Beginning  
13 January 31, 2005, the department shall biannually submit a  
14 written report to the chairs of the appropriate substantive  
15 committees of the Legislature that includes review of the  
16 FloridaSDC program by the department, the agency, and the  
17 division and that contains recommendations for improvements to  
18 the program.

19 (9) RULES.--The department, the agency, and the  
20 division shall have rulemaking authority to implement the  
21 provisions of this section. These rules shall be for the  
22 purpose of enhancing choice in and control over the purchased  
23 mental health and vocational rehabilitative services received  
24 by FloridaSDC participants. The statewide advisory council and  
25 other interested stakeholders may participate in the  
26 development and review of such rules prior to their adoption.

27 394.9503 Family-directed care (FloridaFDC) pilot  
28 program.--

29 (1) The Department of Children and Family Services  
30 shall develop a family-directed care (FloridaFDC) pilot  
31 program in a district selected by the department. The

1 FloridaFDC pilot program shall provide mental health treatment  
2 and support services for children who are at risk of emotional  
3 disturbance or who have an emotional disturbance or a serious  
4 emotional disturbance. The FloridaFDC pilot program shall be  
5 organized and operated in the same manner as the self-directed  
6 care (FloridaSDC) program established under s. 394.9501. The  
7 department may use for the FloridaFDC pilot program any funds  
8 of the FloridaSDC program secured from grants provided for  
9 substance abuse and mental health services that are restricted  
10 to services for children.

11 (2) Participants in the FloridaFDC pilot program shall  
12 be children who are at risk of emotional disturbance or who  
13 have an emotional disturbance or a serious emotional  
14 disturbance. The child must be living at home with his or her  
15 family or legal guardian in order to participate in the  
16 FloridaFDC pilot program.

17 (a) A child at risk of emotional disturbance is a  
18 person under 18 years of age who is currently referred for  
19 mental health treatment in a program for students with  
20 emotional disabilities in accordance with the Individuals with  
21 Disabilities Education Act and for whom there are strong  
22 clinical indicators that in the near future such child will  
23 require treatment and care from the public mental health care  
24 system.

25 (b) A child with an emotional disturbance means a  
26 person under 18 years of age who meets one of the following  
27 criteria:

28 1. Has a diagnosis listed in the Diagnostic and  
29 Statistical Manual of the American Psychiatric Association and  
30 a Children's Global Assessment Scale score of 51-60.

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1           2. Is currently classified as a student with an  
2 emotional disturbance by a local school district.

3           (c) A child with a serious emotional disturbance is a  
4 person under 18 years of age who meets one of the following  
5 criteria:

6           1. Has a diagnosis of schizophrenia or other psychotic  
7 disorder, major depression, mood disorder, or personality  
8 disorder.

9           2. Has a diagnosis listed in the Diagnostic and  
10 Statistical Manual of the American Psychiatric Association and  
11 a Children's Global Assessment Scale score of 50 or below.

12           3. Is currently classified as a student with serious  
13 emotional disturbance by a local school district.

14           4. Is currently receiving supplemental security income  
15 (SSI) benefits for a psychiatric disability.

16           (3) The following children are not eligible to  
17 participate in the FloridaFDC pilot program:

18           (a) Children who are in the custody of the Department  
19 of Children and Family Services.

20           (b) Children with a primary diagnosis of developmental  
21 disability, pervasive developmental disorder, substance abuse,  
22 communication disorder, learning disorder, or autism.

23           (4) All persons who render care to children under this  
24 section must comply with the requirements of s. 435.05 and  
25 shall be excluded from employment pursuant to s. 435.06.  
26 Persons excluded from employment may request an exemption from  
27 disqualification, as provided in s. 435.07. Persons not  
28 subject to certification or professional licensure may request  
29 an exemption from the Department of Children and Family  
30 Services. In considering a request for an exemption, the  
31 department shall comply with the provisions of s. 435.07. For

1 purposes of this section, a person who has undergone  
2 screening, who is qualified for employment under this section  
3 and applicable rules, and who has not been unemployed for more  
4 than 180 days following such screening is not required to be  
5 rescreened. Such person must attest under penalty of perjury  
6 to not having been convicted of a disqualifying offense since  
7 completing such screening.

8 (5) The Department of Children and Family Services,  
9 the Agency for Health Care Administration, and the Division of  
10 Vocational Rehabilitation of the Department of Education shall  
11 have rulemaking authority to implement the provisions of this  
12 section. These rules shall be for the purpose of enhancing  
13 choice in and control over the purchased mental health and  
14 vocational rehabilitative services received by FloridaFDC  
15 pilot program participants. The statewide advisory council  
16 created under s. 394.9501 and other interested stakeholders  
17 may participate in the development and review of such rules  
18 prior to their adoption.

19 (6) The Department of Children and Family Services  
20 shall submit a report concerning the progress of the  
21 FloridaFDC pilot program to the appropriate legislative  
22 committees by December 1 of each year of the pilot program.

23 (7) This section is repealed July 1, 2008.

24 Section 2. Section 394.9084, Florida Statutes, is  
25 repealed.

26 Section 3. This act shall take effect July 1, 2004.  
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