

By Senator Peadar

2-1407-05

1 A bill to be entitled

2 An act relating to the Agency for Persons with

3 Disabilities; amending s. 39.202, F.S.;

4 authorizing the release of otherwise

5 confidential information concerning child abuse

6 or neglect to authorized agents and providers

7 of the agency; amending s. 39.502, F.S.;

8 requiring that a person identified as having a

9 mental illness or disability be informed by the

10 court of agency services; amending s. 383.14,

11 F.S.; providing for a representative of the

12 agency to sit on the Genetics and Newborn

13 Screening Advisory Council rather than a

14 representative from the Department of Children

15 and Family Services; repealing s. 393.061,

16 F.S., relating to a short title; amending s.

17 393.062, F.S.; revising legislative findings

18 and intent with respect to providing services

19 for the developmentally disabled; amending s.

20 393.063, F.S.; revising definitions to conform

21 to changes made by the act; defining the term

22 "principles of self-determination"; amending s.

23 393.064, F.S.; requiring that the agency

24 provide additional evaluations and assessments;

25 revising requirements for intervention services

26 and support services; amending s. 393.0641,

27 F.S.; defining the term "severe self-injurious

28 behavior" for purposes of prevention and

29 treatment services that are provided by the

30 agency; amending s. 393.065, F.S.; revising

31 requirements for the agency in determining

1 eligibility for certain services; authorizing
2 the agency to adopt rules; amending s.
3 393.0651, F.S.; revising requirements for the
4 family or individual support plan; amending s.
5 393.0655, F.S., relating to the screening of
6 service providers; authorizing the agency to
7 take additional remedial action; requiring that
8 the agency adopt rules for conducting
9 background screening; amending s. 393.0657,
10 F.S.; clarifying provisions governing the
11 rescreening of human resource personnel;
12 amending s. 393.066, F.S., relating to
13 community-based services; authorizing the
14 agency to adopt rules governing the purchase of
15 services; amending s. 393.067, F.S.; requiring
16 the agency to adopt rules governing the
17 licensure of residential facilities and
18 comprehensive transitional education programs;
19 providing that a licenseholder does not have a
20 property right to that license; revising the
21 requirements for background screening of
22 license applicants; revising the requirements
23 for the comprehensive emergency management
24 plans of homes serving individuals having
25 complex medical conditions; amending s.
26 393.0673, F.S.; clarifying provisions governing
27 administrative fines; amending s. 393.0674,
28 F.S.; providing a penalty for noncompliance
29 with requirements for background screening;
30 amending s. 393.0675, F.S.; clarifying
31 provisions authorizing the agency to seek an

1 injunction under certain circumstances;
2 amending s. 393.0678, F.S.; revising provisions
3 governing receivership proceedings; amending s.
4 393.068, F.S.; including the principles of
5 self-determination within the skills emphasized
6 in a family care program; amending s. 393.0695,
7 F.S.; requiring that the agency reassess
8 in-home subsidies quarterly; amending s.
9 393.075, F.S., relating to liability coverage;
10 conforming terminology to changes made by the
11 act; amending s. 393.11, F.S.; requiring
12 certain assessments for the involuntary
13 commitment of a person with retardation or
14 autism; revising the procedures for the agency
15 with respect to such commitment; requiring that
16 a hearing be held in the county in which the
17 petition is filed; revising the standards for
18 determining the issue of competency; amending
19 s. 393.122, F.S., relating to continued
20 residential services; conforming a
21 cross-reference; amending s. 393.125, F.S.;
22 clarifying the agency's rulemaking duties with
23 respect to service providers; amending s.
24 393.13, F.S., relating to the Bill of Rights of
25 Persons Who are Developmentally Disabled;
26 revising legislative intent; requiring that
27 intermediate care facilities comply with
28 requirements that clients be afforded certain
29 rights and opportunities; amending s. 393.135,
30 F.S., relating to prohibitions against sexual
31 misconduct by employees; conforming provisions

1 to the transfer of duties from the Department
2 of Children and Family Services to the Agency
3 for Persons with Disabilities; amending s.
4 393.15, F.S.; revising provisions governing the
5 Community Resources Development Trust Fund to
6 establish the Community Resources Development
7 Loan Program; providing eligibility
8 requirements for a loan; requiring that the
9 agency deposit funds received from enforcement
10 of a lien into the agency's Administrative
11 Trust Fund and be used to fund the program;
12 creating s. 393.18, F.S.; creating the
13 comprehensive transitional education program
14 within the agency as a transitional program for
15 services for persons exhibiting maladaptive
16 behaviors; providing requirements for the
17 services and the staff for such programs;
18 requiring an individual education plan for each
19 person served; limiting the number of residents
20 which may be served by such a program; amending
21 s. 393.501, F.S., relating to the agency's
22 rulemaking authority; removing obsolete
23 provisions governing ICF/MR facilities;
24 amending s. 393.506, F.S.; revising
25 requirements governing the administration of
26 medication; amending s. 397.405, F.S., relating
27 to exemptions from licensure; conforming a
28 cross-reference; amending s. 400.419, F.S.;
29 requiring that the annual list of facilities
30 that are sanctioned or fined by the Agency for
31 Health Care Administration be provided to the

1 Agency for Persons with Disabilities; repealing
2 s. 400.960(1), (6), (7), and (11), F.S.;
3 removing obsolete definitions applicable to
4 intermediate care facilities for
5 developmentally disabled persons; amending s.
6 400.464, F.S., relating to home health
7 agencies; conforming a cross-reference;
8 amending s. 400.967, F.S., relating to rules;
9 conforming provisions to the transfer of duties
10 from the Department of Children and Family
11 Services to the agency; amending s. 402.20,
12 F.S.; providing requirements for county
13 contracts for services and mental health
14 facilities; amending s. 402.22, F.S., relating
15 to education programs for students who reside
16 in residential care facilities; conforming
17 provisions to the transfer of duties from the
18 Department of Children and Family Services to
19 the agency; amending s. 408.036, F.S.;
20 exempting the beds in certain developmental
21 disabilities institutions from
22 certificate-of-need review; amending ss.
23 409.908 and 409.9127, F.S., relating to
24 Medicaid providers and conflicts of interest;
25 conforming a cross-reference and terminology;
26 amending ss. 411.224 and 411.232, F.S.,
27 relating to family support plans and the
28 Children's Early Investment Program; conforming
29 provisions to the transfer of duties from the
30 Department of Children and Family Services to
31 the agency; amending s. 415.102, F.S.;

1 redefining the term "neglect" for purposes of
2 the Adult Protective Services Act to include
3 actions against oneself by a vulnerable adult;
4 amending s. 415.1035, F.S.; providing duties of
5 the agency with respect to the rights of
6 residents of a facility serving vulnerable
7 adults; amending s. 415.1051, F.S.; requiring
8 that certain intervention actions be taken on
9 behalf of a vulnerable adult in need of
10 services; amending ss. 415.1055 and 415.107,
11 F.S.; providing duties of the agency with
12 respect to reports of abuse, neglect, or
13 exploitation and the confidentiality of
14 records; amending s. 419.001, F.S., relating to
15 community residential homes; conforming
16 provisions to the transfer of duties from the
17 Department of Children and Family Services to
18 the agency; amending s. 435.03, F.S.; providing
19 screening requirements for employees and
20 employers of developmental disabilities
21 institutions; amending s. 944.602, F.S.;
22 requiring that the Department of Corrections
23 notify the agency before releasing a mentally
24 retarded inmate; amending ss. 945.025 and
25 947.185, F.S., relating to services for
26 mentally retarded inmates and parolees;
27 specifying duties of the agency; amending ss.
28 984.19, 984.225, and 984.226, F.S., relating to
29 medical screening of children in need of
30 services; conforming provisions to the transfer
31 of duties from the Department of Children and

1 Family Services to the agency; amending s.
2 985.224, F.S.; requiring that the agency
3 conduct certain assessments of a child who is
4 alleged to be delinquent; amending s. 1003.58,
5 F.S.; providing duties of the Department of
6 Education with respect to children in
7 residential care facilities of the agency;
8 repealing s. 114 of ch. 2004-267, Laws of
9 Florida, relating to the Economic
10 Self-Sufficiency Services Program; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraphs (a) and (h) of subsection (2) of
16 section 39.202, Florida Statutes, are amended to read:

17 39.202 Confidentiality of reports and records in cases
18 of child abuse or neglect.--

19 (2) Except as provided in subsection (4), access to
20 such records, excluding the name of the reporter which shall
21 be released only as provided in subsection (5), shall be
22 granted only to the following persons, officials, and
23 agencies:

24 (a) Employees, authorized agents, or contract
25 providers of the department, the Department of Health, the
26 Agency for Persons with Disabilities, or county agencies
27 responsible for carrying out:

- 28 1. Child or adult protective investigations;
29 2. Ongoing child or adult protective services;
30 3. Healthy Start services; or
31

1 4. Licensure or approval of adoptive homes, foster
2 homes, ~~or~~ child care facilities, facilities licensed under
3 chapter 393, or family day care homes or informal child care
4 providers who receive subsidized child care funding, or other
5 homes used to provide for the care and welfare of children.

6 5. Services for victims of domestic violence when
7 provided by certified domestic violence centers working at the
8 department's request as case consultants or with shared
9 clients.

10
11 Also, employees or agents of the Department of Juvenile
12 Justice responsible for the provision of services to children,
13 pursuant to chapters 984 and 985.

14 (h) Any appropriate official of the department or the
15 Agency for Persons with Disabilities who is responsible for:

16 1. Administration or supervision of the department's
17 program for the prevention, investigation, or treatment of
18 child abuse, abandonment, or neglect, or abuse, neglect, or
19 exploitation of a vulnerable adult, when carrying out his or
20 her official function;

21 2. Taking appropriate administrative action concerning
22 an employee of the department or agency who is alleged to have
23 perpetrated child abuse, abandonment, or neglect, or abuse,
24 neglect, or exploitation of a vulnerable adult; or

25 3. Employing and continuing employment of personnel of
26 the department or agency.

27 Section 2. Subsection (15) of section 39.502, Florida
28 Statutes, is amended to read:

29 39.502 Notice, process, and service.--

30 (15) A party who is identified as a person with mental
31 illness or with a developmental disability must be informed by

1 | the court of the availability of advocacy services through the
2 | department, the Agency for Persons with Disabilities
3 | ~~Association for Retarded Citizens~~, or other appropriate mental
4 | health or developmental disability advocacy groups and
5 | encouraged to seek such services.

6 | Section 3. Subsection (5) of section 383.14, Florida
7 | Statutes, is amended to read:

8 | 383.14 Screening for metabolic disorders, other
9 | hereditary and congenital disorders, and environmental risk
10 | factors.--

11 | (5) ADVISORY COUNCIL.--There is established a Genetics
12 | and Newborn Screening Advisory Council made up of 15 members
13 | appointed by the Secretary of Health. The council shall be
14 | composed of two consumer members, three practicing
15 | pediatricians, at least one of whom must be a pediatric
16 | hematologist, one representative from each of the four medical
17 | schools in the state, the Secretary of Health or his or her
18 | designee, one representative from the Department of Health
19 | representing Children's Medical Services, one representative
20 | from the Florida Hospital Association, one individual with
21 | experience in newborn screening programs, one individual
22 | representing audiologists, and one representative from the
23 | Agency for Persons with Disabilities ~~Developmental~~
24 | ~~Disabilities Program Office of the Department of Children and~~
25 | ~~Family Services~~. All appointments shall be for a term of 4
26 | years. The chairperson of the council shall be elected from
27 | the membership of the council and shall serve for a period of
28 | 2 years. The council shall meet at least semiannually or upon
29 | the call of the chairperson. The council may establish ad hoc
30 | or temporary technical advisory groups to assist the council
31 | with specific topics which come before the council. Council

1 members shall serve without pay. Pursuant to the provisions of
2 s. 112.061, the council members are entitled to be reimbursed
3 for per diem and travel expenses. It is the purpose of the
4 council to advise the department about:

5 (a) Conditions for which testing should be included
6 under the screening program and the genetics program.

7 (b) Procedures for collection and transmission of
8 specimens and recording of results.

9 (c) Methods whereby screening programs and genetics
10 services for children now provided or proposed to be offered
11 in the state may be more effectively evaluated, coordinated,
12 and consolidated.

13 Section 4. Section 393.061, Florida Statutes, is
14 repealed.

15 Section 5. Section 393.062, Florida Statutes, is
16 amended to read:

17 393.062 Legislative findings and declaration of
18 intent.--The Legislature finds and declares that existing
19 state programs for the treatment of individuals who are
20 developmentally disabled, which often unnecessarily place
21 clients in institutions, are unreasonably costly, are
22 ineffective in bringing the individual client to his or her
23 maximum potential, and are in fact debilitating to many a
24 ~~great majority of~~ clients. A redirection in state treatment
25 programs for individuals who are developmentally disabled is
26 necessary if any significant amelioration of the problems
27 faced by such individuals is ever to take place. Such
28 redirection should place primary emphasis on programs that
29 ~~have the potential to~~ prevent or reduce the severity of
30 developmental disabilities. Further, the ~~Legislature declares~~
31 ~~that~~ greatest priority should ~~shall~~ be given to the

1 development and implementation of community-based residential
2 placements, services, and treatment programs that for
3 ~~individuals who are developmentally disabled which~~ will enable
4 ~~such~~ individuals who are developmentally disabled to achieve
5 their greatest potential for independent and productive
6 living, ~~which will~~ enable them to live in their own homes or
7 in residences located in their own communities, and ~~which will~~
8 permit them to be diverted or removed from unnecessary
9 institutional placements. This goal, ~~The Legislature finds~~
10 ~~that the eligibility criteria for intermediate care facilities~~
11 ~~for the developmentally disabled which are specified in the~~
12 ~~Medicaid state plan in effect on the effective date of this~~
13 ~~act are essential to the system of residential services. The~~
14 ~~Legislature declares that the goal of this act,~~ to improve the
15 quality of life of all developmentally disabled persons by the
16 development and implementation of community-based residential
17 placements, services, and treatment, cannot be met without
18 ensuring the availability of community residential
19 opportunities for developmentally disabled persons in the
20 residential areas of this state. The Legislature, therefore,
21 declares that all persons with developmental disabilities who
22 live in licensed community homes shall have a family living
23 environment comparable to other Floridians. ~~The Legislature~~
24 ~~intends that~~ Such residences shall be considered and treated
25 as a functional equivalent of a family unit and not as an
26 institution, business, or boarding home. Therefore, the
27 Legislature declares that, in developing community-based
28 programs and services for individuals who are developmentally
29 disabled, private businesses, not-for-profit corporations,
30 units of local government, and other organizations capable of
31 providing needed services to clients in a cost-efficient

1 manner shall be given preference in lieu of operation of
2 programs directly by state agencies. Finally, it is the
3 intent of the Legislature that all caretakers unrelated to
4 individuals with developmental disabilities receiving care
5 shall be of good moral character.

6 Section 6. Section 393.063, Florida Statutes, is
7 amended to read:

8 393.063 Definitions.--For the purposes of this
9 chapter, the term:

10 (1) "Agency" means the Agency for Persons with
11 Disabilities established in s. 20.197.

12 (2) "Autism" means a pervasive, neurologically based
13 developmental disability of extended duration which causes
14 severe learning, communication, and behavior disorders with
15 age of onset during infancy or childhood. Individuals with
16 autism exhibit impairment in reciprocal social interaction,
17 impairment in verbal and nonverbal communication and
18 imaginative ability, and a markedly restricted repertoire of
19 activities and interests.

20 (3) "Cerebral palsy" means a group of disabling
21 symptoms of extended duration which results from damage to the
22 developing brain that may occur before, during, or after birth
23 and that results in the loss or impairment of control over
24 voluntary muscles. For the purposes of this definition,
25 cerebral palsy does not include those symptoms or impairments
26 resulting solely from a stroke.

27 (4) "Client" means any person determined eligible by
28 the agency for services under this chapter.

29 (5) "Client advocate" means a friend or relative of
30 the client, or of the client's immediate family, who advocates
31 for the best interests of the client in any proceedings under

1 | this chapter in which the client or his or her family has the
2 | right or duty to participate.

3 | (6) "Comprehensive assessment" means the process used
4 | to determine eligibility for services under this chapter.

5 | (7) "Comprehensive transitional education program"
6 | means the program established in s. 393.18. ~~a group of jointly~~
7 | ~~operating centers or units, the collective purpose of which is~~
8 | ~~to provide a sequential series of educational care, training,~~
9 | ~~treatment, habilitation, and rehabilitation services to~~
10 | ~~persons who have developmental disabilities and who have~~
11 | ~~severe or moderate maladaptive behaviors. However, nothing in~~
12 | ~~this subsection shall require such programs to provide~~
13 | ~~services only to persons with developmental disabilities. All~~
14 | ~~such services shall be temporary in nature and delivered in a~~
15 | ~~structured residential setting with the primary goal of~~
16 | ~~incorporating the normalization principle to establish~~
17 | ~~permanent residence for persons with maladaptive behaviors in~~
18 | ~~facilities not associated with the comprehensive transitional~~
19 | ~~education program. The staff shall include psychologists and~~
20 | ~~teachers who shall be available to provide services in each~~
21 | ~~component center or unit of the program. The psychologists~~
22 | ~~shall be individuals who are licensed in this state and~~
23 | ~~certified as behavior analysts in this state, or individuals~~
24 | ~~who are certified as behavior analysts pursuant to s. 393.17.~~

25 | ~~(a) Comprehensive transitional education programs~~
26 | ~~shall include a minimum of two component centers or units, one~~
27 | ~~of which shall be either an intensive treatment and~~
28 | ~~educational center or a transitional training and educational~~
29 | ~~center, which provide services to persons with maladaptive~~
30 | ~~behaviors in the following sequential order:~~
31 |

1 ~~1. Intensive treatment and educational center. This~~
2 ~~component is a self contained residential unit providing~~
3 ~~intensive psychological and educational programming for~~
4 ~~persons with severe maladaptive behaviors, whose behaviors~~
5 ~~preclude placement in a less restrictive environment due to~~
6 ~~the threat of danger or injury to themselves or others.~~

7 ~~2. Transitional training and educational center. This~~
8 ~~component is a residential unit for persons with moderate~~
9 ~~maladaptive behaviors, providing concentrated psychological~~
10 ~~and educational programming emphasizing a transition toward a~~
11 ~~less restrictive environment.~~

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

19 ~~4. Alternative living center. This component is a~~
20 ~~residential unit providing an educational and family living~~
21 ~~environment for persons with maladaptive behaviors, in a~~
22 ~~moderately unrestricted setting. Residential staff shall be~~
23 ~~required for this component.~~

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

29 ~~(b) Centers or units that are components of a~~
30 ~~comprehensive transitional education program are subject to~~
31

1 ~~the license issued to the comprehensive transitional education~~
2 ~~program and may be located on either single or multiple sites.~~

3 ~~(c) Comprehensive transitional education programs~~
4 ~~shall develop individual education plans for each person with~~
5 ~~maladaptive behaviors who receives services therein. Such~~
6 ~~individual education plans shall be developed in accordance~~
7 ~~with the criteria specified in 20 U.S.C. ss. 401 et seq., and~~
8 ~~34 C.F.R. part 300.~~

9 ~~(d) In no instance shall the total number of persons~~
10 ~~with maladaptive behaviors being provided services in a~~
11 ~~comprehensive transitional education program exceed 120.~~

12 ~~(e) This subsection shall authorize licensure for~~
13 ~~comprehensive transitional education programs which by July 1,~~
14 ~~1989:~~

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

29 (8) "Day habilitation facility" means any
30 nonresidential facility which provides day habilitation
31 services.

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

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

15 (11) "Developmental disabilities institution" means a
16 state-owned and state-operated facility, formerly known as a
17 "Sunland Center," providing for the care, habilitation, and
18 rehabilitation of clients with developmental disabilities.

19 (12) "Direct service provider," also known as
20 "caregiver" in chapters 39 and 415 or "caretaker" in
21 provisions relating to employment security checks, means a
22 person 18 years of age or older who has direct contact with
23 individuals with developmental disabilities, or has access to
24 a client's living areas or to a client's funds or personal
25 property, and is not a relative of such individuals.

26 ~~(13) "Domicile" means the place where a client legally~~
27 ~~resides, which place is his or her permanent home. Domicile~~
28 ~~may be established as provided in s. 222.17. Domicile may not~~
29 ~~be established in Florida by a minor who has no parent~~
30 ~~domiciled in Florida, or by a minor who has no legal guardian~~

31

1 ~~domiciled in Florida, or by any alien not classified as a~~
2 ~~resident alien.~~

3 ~~(14) "Enclave" means a work station in public or~~
4 ~~private business or industry where a small group of persons~~
5 ~~with developmental disabilities is employed and receives~~
6 ~~training and support services or follow along services among~~
7 ~~nonhandicapped workers.~~

8 ~~(13)(15)~~ "Epilepsy" means a chronic brain disorder of
9 various causes which is characterized by recurrent seizures
10 due to excessive discharge of cerebral neurons. When found
11 concurrently with retardation, autism, or cerebral palsy,
12 epilepsy is considered a secondary disability for which the
13 client is eligible to receive services to ameliorate this
14 condition pursuant to this chapter.

15 ~~(14)(16)~~ "Express and informed consent" means consent
16 voluntarily given in writing with sufficient knowledge and
17 comprehension of the subject matter involved to enable the
18 person giving consent to make an understanding and enlightened
19 decision without any element of force, fraud, deceit, duress,
20 or other form of constraint or coercion.

21 ~~(15)(17)~~ "Family care program" means the program
22 established in s. 393.068.

23 ~~(18) "Follow along services" means those support~~
24 ~~services provided to persons with developmental disabilities~~
25 ~~in all supported employment programs and may include, but are~~
26 ~~not limited to, family support, assistance in meeting~~
27 ~~transportation and medical needs, employer intervention,~~
28 ~~performance evaluation, advocacy, replacement, retraining or~~
29 ~~promotional assistance, or other similar support services.~~

30 ~~(16)(19)~~ "Foster care facility" means a residential
31 facility which provides a family living environment including

1 supervision and care necessary to meet the physical,
2 emotional, and social needs of its residents. The capacity of
3 such a facility shall not be more than three residents.

4 ~~(17)~~(20) "Group home facility" means a residential
5 facility which provides a family living environment including
6 supervision and care necessary to meet the physical,
7 emotional, and social needs of its residents. The capacity of
8 such a facility shall be at least 4 but not more than 15
9 residents. For the purposes of this chapter, group home
10 facilities shall not be considered commercial enterprises.

11 ~~(18)~~(21) "Guardian advocate" means a person appointed
12 by a written order of the court to represent a person with
13 developmental disabilities under s. 393.12.

14 ~~(19)~~(22) "Habilitation" means the process by which a
15 client is assisted to acquire and maintain those life skills
16 which enable the client to cope more effectively with the
17 demands of his or her condition and environment and to raise
18 the level of his or her physical, mental, and social
19 efficiency. It includes, but is not limited to, programs of
20 formal structured education and treatment.

21 ~~(20)~~(23) "High-risk child" means, for the purposes of
22 this chapter, a child from birth to 5 years of age with one or
23 more of the following characteristics:

24 (a) A developmental delay in cognition, language, or
25 physical development.

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

29 (c) A child with a parent or guardian with
30 developmental disabilities who requires assistance in meeting
31 the child's developmental needs.

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

3 ~~(21)(24)~~ "Intermediate care facility" means a facility
4 for the developmentally disabled which is disabled ~~or~~
5 ~~"ICF/DD" means a residential facility licensed and certified~~
6 pursuant to part XI of chapter 400.

7 ~~(25)~~ ~~"Job coach" means a person who provides~~
8 ~~employment related training at a work site to individuals with~~
9 ~~developmental disabilities.~~

10 ~~(22)(26)~~ "Medical/dental services" means medically
11 necessary ~~those~~ services that ~~which~~ are provided or ordered
12 for a client by a person licensed under ~~pursuant to the~~
13 ~~provisions of~~ chapter 458, chapter 459, or chapter 466. Such
14 services may include, but are not limited to, prescription
15 drugs, specialized therapies, nursing supervision,
16 hospitalization, dietary services, prosthetic devices,
17 surgery, specialized equipment and supplies, adaptive
18 equipment, and other services as required to prevent or
19 alleviate a medical or dental condition.

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

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

28 ~~(23)(29)~~ "Personal services" include, but are not
29 limited to, such services as: individual assistance with or
30 supervision of essential activities of daily living for
31 self-care, including ambulation, bathing, dressing, eating,

1 grooming, and toileting, and other similar services that the
2 agency may define by rule. "Personal services" shall not be
3 construed to mean the provision of medical, nursing, dental,
4 or mental health services by the staff of a facility, except
5 as provided in this chapter. In addition, an emergency
6 response device installed in the apartment or living area of a
7 resident shall not be classified as a personal service.

8 ~~(24)(30)~~ "Prader-Willi syndrome" means an inherited
9 condition typified by neonatal hypotonia with failure to
10 thrive, hyperphagia or an excessive drive to eat which leads
11 to obesity usually at 18 to 36 months of age, mild to moderate
12 retardation, hypogonadism, short stature, mild facial
13 dysmorphism, and a characteristic neurobehavior.

14 (25) "Principles of self-determination" means an
15 individual's freedom to exercise the same rights as all other
16 persons; authority to exercise control over funds needed for
17 one's own support, including the ability to arrange funds by
18 order of priority when necessary; responsibility for the wise
19 use of public funds; and freedom to speak as an advocate for
20 oneself and others who cannot do so in order to gain
21 independence and ensure that all individuals with a
22 developmental disability are treated equally.

23 ~~(26)(31)~~ "Reassessment" means a process which
24 periodically develops, through annual review and revision of a
25 client's family or individual support plan, a knowledgeable
26 statement of current needs and past development for each
27 client.

28 ~~(27)(32)~~ "Relative" means an individual who is
29 connected by affinity or consanguinity to the client and who
30 is 18 years of age or more.

31

1 ~~(28)~~(33) "Resident" means any person who is
2 developmentally disabled residing at a residential facility in
3 the state, whether or not such person is a client of the
4 agency.

5 ~~(29)~~(34) "Residential facility" means a facility
6 providing room and board and personal care for persons with
7 developmental disabilities.

8 ~~(30)~~(35) "Residential habilitation" means assistance
9 provided with acquisition, retention, or improvement in skills
10 related to activities of daily living, such as personal
11 grooming and cleanliness, bedmaking and household chores,
12 eating and the preparation of food, and the social and
13 adaptive skills necessary to enable the individual to reside
14 in a noninstitutional setting.

15 ~~(31)~~(36) "Residential habilitation center" means a
16 community residential facility that provides residential
17 habilitation. The capacity of such a facility shall not be
18 fewer than nine residents. After October 1, 1989, no new
19 residential habilitation centers shall be licensed and the
20 licensed capacity shall not be increased for any existing
21 residential habilitation center.

22 ~~(32)~~(37) "Respite service" means appropriate,
23 short-term, temporary care that is provided to a person with
24 developmental disabilities to meet the planned or emergency
25 needs of the person or the family or other direct service
26 provider.

27 ~~(33)~~(38) "Retardation" means significantly subaverage
28 general intellectual functioning existing concurrently with
29 deficits in adaptive behavior and manifested during the period
30 from conception to age 18. "Significantly subaverage general
31 intellectual functioning," for the purpose of this definition,

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

8 ~~(39) "Severe self injurious behavior" means any~~
9 ~~chronic behavior that results in injury to the person's own~~
10 ~~body, which includes, but is not limited to, self hitting,~~
11 ~~head banging, self biting, scratching, and the ingestion of~~
12 ~~harmful or potentially harmful nutritive or nonnutritive~~
13 ~~substances.~~

14 ~~(34)(40)~~ "Specialized therapies" means those
15 treatments or activities prescribed by and provided by an
16 appropriately trained, licensed, or certified professional or
17 staff person and may include, but are not limited to, physical
18 therapy, speech therapy, respiratory therapy, occupational
19 therapy, behavior therapy, physical management services, and
20 related specialized equipment and supplies.

21 ~~(35)(41)~~ "Spina bifida" means, for purposes of this
22 chapter, a person with a medical diagnosis of spina bifida
23 cystica or myelomeningocele.

24 ~~(36)(42)~~ "Support coordinator" means a person who is
25 designated by the agency to assist individuals and families in
26 identifying their capacities, needs, and resources, as well as
27 finding and gaining access to necessary supports and services;
28 coordinating the delivery of supports and services; ~~advocating~~
29 ~~on behalf of the individual and family;~~ maintaining relevant
30 records; and monitoring and evaluating the delivery of
31 supports and services to determine the extent to which they

1 meet the needs and expectations identified by the individual,
2 family, and others who participated in the development of the
3 support plan. The decision whether to use the services of a
4 support coordinator, as well as the frequency, scope, and
5 intensity of the support coordinator's activities, shall be
6 determined by the individual or the individual's legal
7 guardian.

8 ~~(37)(43)~~ "Supported employee" means a person who
9 requires and receives supported employment services in order
10 to maintain community-based employment.

11 ~~(38)(44)~~ "Supported employment" means employment
12 located or provided in a normal employment setting which
13 provides at least 20 hours employment per week in an
14 integrated work setting, with earnings paid on a commensurate
15 wage basis, and for which continued support is needed for job
16 maintenance.

17 ~~(39)(45)~~ "Supported living" means a category of
18 individually determined services designed and coordinated in
19 such a manner as to provide assistance to adult clients who
20 require ongoing supports to live as independently as possible
21 in their own homes, to be integrated into the community, and
22 to participate in community life to the fullest extent
23 possible.

24 ~~(40)(46)~~ "Training" means a planned approach to
25 assisting a client to attain or maintain his or her maximum
26 potential and includes services ranging from sensory
27 stimulation to instruction in skills for independent living
28 and employment.

29 ~~(41)(47)~~ "Treatment" means the prevention,
30 amelioration, or cure of a client's physical and mental
31 disabilities or illnesses.

1 Section 7. Subsections (1), (2), and (4) of section
2 393.064, Florida Statutes, are amended to read:

3 393.064 Prevention.--

4 (1) The agency shall give priority to the development,
5 planning, and implementation of programs which have the
6 potential to prevent, correct, cure, or reduce the severity of
7 developmental disabilities. The agency shall direct an
8 interagency and interprogram effort for the continued
9 development of a prevention plan and program. The agency shall
10 identify, through demonstration projects, through program
11 evaluation, and through monitoring of programs and projects
12 conducted outside of the agency, any medical, social,
13 economic, or educational methods, techniques, or procedures
14 that have the potential to effectively ameliorate, correct, or
15 cure developmental disabilities. The agency program shall
16 determine the costs and benefits that would be associated with
17 such prevention efforts and shall implement, or recommend the
18 implementation of, those methods, techniques, or procedures
19 which are found likely to be cost-beneficial.

20 (2) Prevention services provided by the agency shall
21 ~~developmental services program~~ include services to high-risk
22 ~~and developmentally disabled~~ children with developmental
23 disabilities from birth to 5 years of age, and their families,
24 to meet the intent of chapter 411. Except for services for
25 children from birth to 3 years of age which ~~Such services~~
26 ~~shall include individual evaluations or assessments necessary~~
27 ~~to diagnose a developmental disability or high risk condition~~
28 ~~and to determine appropriate individual family and support~~
29 ~~services, unless evaluations or assessments are the~~
30 responsibility of the Division of Children's Medical Services
31 in the Department of Health ~~Prevention and Intervention for~~

1 ~~children ages birth to 3 years eligible for services under~~
2 ~~this chapter~~ or part H of the Individuals with Disabilities
3 Education Act, such services ~~and~~ may include:

4 (a) Individual evaluations or assessments that are
5 necessary to diagnose a developmental disability or high-risk
6 condition and to determine appropriate individual family and
7 support services.

8 ~~(b)(a)~~ Early intervention services, including
9 developmental training and specialized therapies. ~~Early~~
10 ~~intervention services, which are the responsibility of the~~
11 ~~Division of Children's Medical Services Prevention and~~
12 ~~Intervention for children ages birth to 3 years who are~~
13 ~~eligible for services under this chapter or under part H of~~
14 ~~the Individuals with Disabilities Education Act, shall not be~~
15 ~~provided through the developmental services program unless~~
16 ~~funding is specifically appropriated to the developmental~~
17 ~~services program for this purpose.~~

18 ~~(c)(b)~~ Support services, such as respite care, parent
19 education and training, parent-to-parent counseling, homemaker
20 services, and other services which allow families to maintain
21 and provide quality care to children in their homes. ~~The~~
22 ~~Division of Children's Medical Services Prevention and~~
23 ~~Intervention is responsible for the provision of services to~~
24 ~~children from birth to 3 years who are eligible for services~~
25 ~~under this chapter.~~

26 (4) There is created at the Developmental Disabilities
27 ~~services~~ Institution in Gainesville a research and education
28 unit. Such unit shall be named the Raymond C. Philips Research
29 and Education Unit. The functions of such unit shall include:

30 (a) Research into the etiology of developmental
31 disabilities.

1 (b) Ensuring that new knowledge is rapidly
2 disseminated throughout ~~the developmental services program of~~
3 the agency.

4 (c) Diagnosis of unusual conditions and syndromes
5 associated with developmental disabilities in clients
6 identified throughout the developmental disabilities ~~services~~
7 programs.

8 (d) Evaluation of families of clients with
9 developmental disabilities of genetic origin in order to
10 provide them with genetic counseling aimed at preventing the
11 recurrence of the disorder in other family members.

12 (e) Ensuring that health professionals in the
13 Developmental Disabilities ~~services~~ Institution at Gainesville
14 have access to information systems that will allow them to
15 remain updated on newer knowledge and maintain their
16 postgraduate education standards.

17 (f) Enhancing staff training for professionals
18 throughout the agency in the areas of genetics and
19 developmental disabilities.

20 Section 8. Section 393.0641, Florida Statutes, is
21 amended to read:

22 393.0641 Program for the prevention and treatment of
23 severe self-injurious behavior.--

24 (1) Contingent upon specific appropriations, there is
25 created a diagnostic, treatment, training, and research
26 program for clients exhibiting severe self-injurious behavior.
27 As used in this section, the term "severe self-injurious
28 behavior" means any chronic behavior that results in injury to
29 the person's own body, including, but not limited to,
30 self-hitting, head banging, self-biting, scratching, and
31

1 ingesting harmful or potentially harmful nutritive or
2 nonnutritive substances.

3 (2) The ~~This~~ program shall:

4 (a) Serve as a resource center for information,
5 training, and program development.

6 (b) Research the diagnosis and treatment of severe
7 self-injurious behavior, and related disorders, and develop
8 methods of prevention and treatment of self-injurious
9 behavior.

10 (c) Identify individuals in critical need.

11 (d) Develop treatment programs which are meaningful to
12 individuals with developmental disabilities, in critical need,
13 while safeguarding and respecting the legal and human rights
14 of the individuals.

15 (e) Disseminate research findings on the prevention
16 and treatment of severe self-injurious behavior.

17 (f) Collect data on the type, severity, incidence, and
18 demographics of individuals with severe self-injurious
19 behavior, and disseminate the data.

20 ~~(3)(2)~~ The ~~This~~ program shall adhere to the provisions
21 of s. 393.13.

22 ~~(4)(3)~~ The agency may contract for the provision of
23 any portion or all of the services required by the program.

24 ~~(5)(4)~~ The agency may ~~has the authority to~~ license
25 this program and shall adopt rules to administer ~~implement~~ the
26 program.

27 Section 9. Subsections (1) and (4) of section 393.065,
28 Florida Statutes, are amended, and subsection (5) is added to
29 that section, to read:

30 393.065 Application and eligibility determination.--
31

1 (1) Application for services shall be made in writing
2 to the agency, ~~in the district in which the applicant resides.~~
3 For children younger than 6 years of age, Employees of the
4 ~~agency's developmental services program shall review each~~
5 applicant shall be reviewed for eligibility within 45 days
6 after the date the application is signed, and for all other
7 ~~applicants, for children under 6 years of age and~~ within 60
8 days after the date the application is signed ~~for all other~~
9 ~~applicants~~. When necessary to definitively identify individual
10 conditions or needs, the agency shall provide a comprehensive
11 assessment. Only individuals whose domicile is in Florida are
12 eligible for services. Domicile may be established as provided
13 in s. 222.17. A minor who does not have a parent or legal
14 guardian domiciled in this state or an alien who is not
15 classified as a resident alien may not establish domicile in
16 Florida. Information accumulated by other agencies, including
17 professional reports and collateral data, shall be considered
18 in this process when available.

19 (4) The agency shall assess the level of need and
20 medical necessity for prospective residents of
21 intermediate-care facilities for the developmentally disabled
22 ~~after October 1, 1999.~~ The agency may enter into an agreement
23 with the Department of Elderly Affairs for its Comprehensive
24 Assessment and Review for Long-Term-Care Services (CARES)
25 program to conduct assessments to determine the level of need
26 and medical necessity for long-term-care services under this
27 chapter. To the extent permissible under federal law, the
28 assessments must be funded under Title XIX of the Social
29 Security Act.

30
31

1 (5) The agency may adopt rules specifying application
2 procedures and eligibility criteria as needed to administer
3 this section.

4 Section 10. Section 393.0651, Florida Statutes, is
5 amended to read:

6 393.0651 Family or individual support plan.--The
7 agency shall provide directly or contract for the development
8 of a an appropriate family support plan for children ages
9 birth to 18 years of age and an individual support plan for
10 each client. The ~~parent or guardian of the client or~~, if
11 competent, the client's parent or guardian the client, or,
12 when appropriate, the client advocate, shall be consulted in
13 the development of the plan and shall receive a copy of the
14 plan. Each plan shall include the most appropriate, least
15 restrictive, and most cost-beneficial environment for
16 accomplishment of the objectives for client progress and a
17 specification of all services authorized. The plan shall
18 include provisions for the most appropriate level of care for
19 the client. Within the specification of needs and services for
20 each client, ~~if when~~ residential care is necessary, the agency
21 shall move toward placement of clients in residential
22 facilities based within the client's community. The ultimate
23 goal of each plan, whenever possible, shall be to enable the
24 client to live a dignified life in the least restrictive
25 setting, be that in the home or in the community. For children
26 under 6 years of age, the family support plan shall be
27 developed within the 45-day application period as specified in
28 s. 393.065(1); for all applicants 6 years of age or older, the
29 family or individual support plan shall be developed within
30 the 60-day period as specified in that subsection.

31

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

3 (2)~~(a)~~ The family or individual support plan shall be
4 integrated with the individual education plan (IEP) for all
5 clients who are public school students entitled to a free
6 appropriate public education under the Individuals with
7 Disabilities Education Act, I.D.E.A., as amended. The family
8 or individual support plan and IEP shall be implemented to
9 maximize the attainment of educational and habilitation goals.

10 (a) If the IEP for a student enrolled in a public
11 school program indicates placement in a public or private
12 residential program is necessary to provide special education
13 and related services to a client, the local education agency
14 shall provide for the costs of that service in accordance with
15 the requirements of the Individuals with Disabilities
16 Education Act, I.D.E.A., as amended. This shall not preclude
17 local education agencies and the agency from sharing the
18 residential service costs of students who are clients and
19 require residential placement. Under no circumstances shall
20 clients entitled to a public education or their parents be
21 assessed a fee by the agency under s. 393.071 ~~s. 402.33~~ for
22 placement in a residential program.

23 (b) For clients who are entering or exiting the school
24 system, an interdepartmental staffing team composed of
25 representatives of the agency and the local school system
26 shall develop a written transitional living and training plan
27 with the participation of the client or with the parent or
28 guardian of the client, or the client advocate, as
29 appropriate.

30
31

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

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

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

10 (b) The whereabouts of the parent or guardian cannot
11 be discovered; or

12 (c) The state is the only legal representative of the
13 client.

14
15 Such appointment shall not be construed to extend the powers
16 of the client advocate to include any of those powers
17 delegated by law to a legal guardian.

18 (5) The agency shall place a client in the most
19 appropriate and least-restrictive ~~least restrictive~~, and
20 cost-beneficial, residential setting ~~facility~~ according to his
21 or her individual habilitation plan. ~~The parent or guardian of~~
22 ~~The client or~~, if competent, the client's parent or guardian
23 ~~client~~, or, when appropriate, the client advocate, and the
24 administrator of the ~~residential~~ facility to which placement
25 is proposed shall be consulted in determining the appropriate
26 placement for the client. Considerations for placement shall
27 be made in the following order:

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

30 (b) Foster care facility.

31 (c) Group home facility.

1 (d) Intermediate care facility ~~for the developmentally~~
2 ~~disabled~~.

3 (e) Other facilities licensed by the agency which
4 offer special programs for people with developmental
5 disabilities.

6 (f) Developmental disabilities ~~services~~ institution.

7 (6) In developing a client's annual family or
8 individual support plan, the individual or family with the
9 assistance of the support planning team shall identify
10 measurable objectives for client progress and shall specify a
11 time period expected for achievement of each objective.

12 Services that are not having the planned effect or that have
13 produced the maximum benefit shall be reduced or discontinued.

14 (7) ~~The individual, family, and support coordinator~~
15 ~~shall review progress in achieving the objectives specified in~~
16 Each client's family or individual support plan, ~~and~~ shall be
17 reviewed and revised ~~revise the plan~~ annually, following
18 consultation with the client, if competent, or with the parent
19 or guardian of the client, or, when appropriate, the client
20 advocate. The agency shall annually report in writing to the
21 client, if competent, or to the parent or guardian of the
22 client, or to the client advocate, when appropriate, with
23 respect to the client's habilitative and medical progress.

24 (8) Any client, or any parent of a minor client, or
25 guardian, authorized guardian advocate, or client advocate for
26 a client, who is substantially affected by the client's
27 initial family or individual support plan, or the annual
28 review thereof, shall have the right to file a notice to
29 challenge the decision pursuant to ss. 120.569 and 120.57.
30 Notice of such right to appeal shall be included in all
31 support plans provided by the agency.

1 Section 11. Subsections (1) and (4) of section
2 393.0655, Florida Statutes, are amended, and subsection (5) is
3 added to that section, to read:

4 393.0655 Screening of direct service providers.--

5 (1) MINIMUM STANDARDS.--The agency shall require level
6 2 employment screening pursuant to chapter 435 for direct
7 service providers who are unrelated to their clients,
8 including support coordinators, and managers and supervisors
9 of residential facilities or comprehensive transitional
10 education programs licensed under s. 393.18 ~~s. 393.067~~ and any
11 other person, including volunteers, who provide care or
12 services, who have access to a client's living areas, or who
13 have access to a client's funds or personal property.

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

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

22 (b) Licensed physicians, nurses, or other
23 professionals licensed and regulated by the Department of
24 Health are not subject to background screening pursuant to
25 this section if they are providing a service that is within
26 their scope of licensed practice.

27 (c) A person selected by the family or the individual
28 with developmental disabilities and paid by the family or the
29 individual to provide supports or services is not required to
30 have a background screening under this section.

31

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

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

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

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

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

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

31

1 (5) RULES.--The agency shall adopt by rule procedures
2 and timeframes for conducting background screening under this
3 chapter.

4 Section 12. Section 393.0657, Florida Statutes, is
5 amended to read:

6 393.0657 Persons not required to be refingerprinted or
7 rescreened.--~~Any provision of law to the contrary~~
8 ~~notwithstanding~~, Human resource personnel who have been
9 fingerprinted or screened pursuant to chapters 393, 394, 397,
10 402, and 409, and teachers who have been fingerprinted
11 pursuant to chapter 1012, who have not been unemployed for
12 more than 90 days thereafter, and who under the penalty of
13 perjury attest to the completion of such fingerprinting or
14 screening and to compliance with the provisions of this
15 section are ~~and the standards for good moral character as~~
16 ~~contained in such provisions as ss. 110.1127(3), 393.0655(1),~~
17 ~~394.457(6), 397.451, 402.305(2), and 409.175(6), shall not be~~
18 required to be refingerprinted or rescreened in order to
19 comply with the ~~any direct service provider~~ screening or
20 fingerprinting requirements of this chapter.

21 Section 13. Subsections (1), (2), (3), and (8) of
22 section 393.066, Florida Statutes, are amended to read:

23 393.066 Community services and treatment for persons
24 who are developmentally disabled.--

25 (1) The agency shall plan, develop, organize, and
26 implement its programs of services and treatment for persons
27 who are developmentally disabled to allow clients to live as
28 independently as possible in their own homes or communities
29 and to achieve productive lives as close to normal as
30 possible. All elements of community-based services shall be
31 made available, and eligibility for these services shall be

1 consistent across the state. ~~In addition, all purchased~~
2 ~~services shall be approved by the agency.~~

3 (2) All services needed shall be purchased instead of
4 provided directly by the agency, when such arrangement is more
5 cost-efficient than having those services provided directly.

6 All purchased services must be approved by the agency.

7 (3) Community-based services that are medically
8 necessary to prevent institutionalization shall, to the extent
9 of available resources, include:

10 (a) Day habilitation services, including developmental
11 training services.

12 (b) Family care services.

13 (c) Guardian advocate referral services.

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

17 (e) Parent training.

18 (f) Recreation.

19 (g) Residential services.

20 (h) Respite services.

21 (i) Social services.

22 (j) Specialized therapies.

23 (k) Supported employment, ~~including enclave, job~~
24 ~~coach, mobile work crew, and follow along services.~~

25 (l) Supported living.

26 (m) Training, including behavioral programming.

27 (n) Transportation.

28 (o) Other habilitative and rehabilitative services as
29 needed.

30 (8) The agency may adopt rules governing the
31 availability and purchase of ~~to ensure compliance with federal~~

1 ~~laws or regulations that apply to services provided under~~
2 ~~pursuant to~~ this section.

3 Section 14. Subsections (1), (5), (6), (7), (8), (9),
4 (10), (11), (12), (13), (14), (15), (16), and (17) of section
5 393.067, Florida Statutes, are amended to read:

6 393.067 Licensure of residential facilities and
7 comprehensive transitional education programs.--

8 (1) The agency shall provide through its licensing
9 authority and by rule a system of application procedures,
10 provider qualifications, standards, training criteria for
11 meeting standards, and monitoring for residential facilities
12 and comprehensive transitional education programs. The
13 recipient of a license under this section does not have a
14 property right to that license. A license issued under this
15 section is a public trust and a privilege and is not an
16 entitlement. This privilege must guide the finder of fact or
17 trier of law at any administrative proceeding or court action
18 initiated by the agency.

19 ~~(5) The applicant shall submit evidence which~~
20 ~~establishes the good moral character of the manager or~~
21 ~~supervisor of the facility or program and the direct service~~
22 ~~providers in the facility or program and its component centers~~
23 ~~or units. A license may be issued if all the screening~~
24 ~~materials have been timely submitted; however, a license may~~
25 ~~not be issued or renewed if any of the direct service~~
26 ~~providers have failed the screening required by s. 393.0655.~~

27 ~~(a)1. A licensed residential facility or comprehensive~~
28 ~~transitional education program which applies for renewal of~~
29 ~~its license shall submit to the agency a list of direct~~
30 ~~service providers who have worked on a continuous basis at the~~
31 ~~applicant facility or program since submitting fingerprints to~~

1 ~~the agency or the Department of Children and Family Services,~~
2 ~~identifying those direct service providers for whom a written~~
3 ~~assurance of compliance was provided by the agency or~~
4 ~~department and identifying those direct service providers who~~
5 ~~have recently begun working at the facility or program and are~~
6 ~~awaiting the results of the required fingerprint check along~~
7 ~~with the date of the submission of those fingerprints for~~
8 ~~processing. The agency shall by rule determine the frequency~~
9 ~~of requests to the Department of Law Enforcement to run state~~
10 ~~criminal records checks for such direct service providers~~
11 ~~except for those direct service providers awaiting the results~~
12 ~~of initial fingerprint checks for employment at the applicant~~
13 ~~facility or program. The agency shall review the records of~~
14 ~~the direct service providers at the applicant facility or~~
15 ~~program with respect to the crimes specified in s. 393.0655~~
16 ~~and shall notify the facility or program of its findings. When~~
17 ~~disposition information is missing on a criminal record, it is~~
18 ~~the responsibility of the person being screened, upon request~~
19 ~~of the agency, to obtain and supply within 30 days the missing~~
20 ~~disposition information to the agency. Failure to supply the~~
21 ~~missing information within 30 days or to show reasonable~~
22 ~~efforts to obtain such information shall result in automatic~~
23 ~~disqualification.~~

24 ~~2. The applicant shall sign an affidavit under penalty~~
25 ~~of perjury stating that all new direct service providers have~~
26 ~~been fingerprinted and that the facility's or program's~~
27 ~~remaining direct service providers have worked at the~~
28 ~~applicant facility or program on a continuous basis since~~
29 ~~being initially screened at that facility or program or have a~~
30 ~~written assurance of compliance from the agency or department.~~

31

1 ~~(b)~~ As a prerequisite for issuance of the initial or
2 renewal license for ~~to~~ a residential facility or comprehensive
3 transitional education program, the applicant, manager,
4 supervisor, and all direct service providers must submit to
5 background screening as required under s. 393.0655. A license
6 may not be issued or renewed if the applicant and any of the
7 managers, supervisors, or direct service providers of the
8 facility or program have failed the screening required by s.
9 393.0655.

10 ~~1. The applicant shall submit to the agency a complete~~
11 ~~set of fingerprints, taken by an authorized law enforcement~~
12 ~~agency or an employee of the agency who is trained to take~~
13 ~~fingerprints, for the manager, supervisor, or direct service~~
14 ~~providers of the facility or program;~~

15 ~~2. The agency shall submit the fingerprints to the~~
16 ~~Department of Law Enforcement for state processing and for~~
17 ~~federal processing by the Federal Bureau of Investigation; and~~

18 ~~3. The agency shall review the record of the manager~~
19 ~~or supervisor with respect to the crimes specified in s.~~
20 ~~393.0655(1) and shall notify the applicant of its findings.~~
21 ~~When disposition information is missing on a criminal record,~~
22 ~~it is the responsibility of the manager or supervisor, upon~~
23 ~~request of the agency, to obtain and supply within 30 days the~~
24 ~~missing disposition information to the agency. Failure to~~
25 ~~supply the missing information within 30 days or to show~~
26 ~~reasonable efforts to obtain such information shall result in~~
27 ~~automatic disqualification.~~

28 ~~(c) The agency or a residential facility or~~
29 ~~comprehensive transitional education program may not use the~~
30 ~~criminal records or juvenile records of a person obtained~~
31 ~~under this subsection for any purpose other than determining~~

1 ~~if that person meets the minimum standards for good moral~~
2 ~~character for a manager or supervisor of, or direct service~~
3 ~~provider in, such a facility or program. The criminal records~~
4 ~~or juvenile records obtained by the agency or a residential~~
5 ~~facility or comprehensive transitional education program for~~
6 ~~determining the moral character of a manager, supervisor, or~~
7 ~~direct service provider are exempt from s. 119.07(1).~~

8 ~~(6) Each applicant for licensure as an intermediate~~
9 ~~care facility for the developmentally disabled must comply~~
10 ~~with the following requirements:~~

11 ~~(a) Upon receipt of a completed, signed, and dated~~
12 ~~application, the agency shall require background screening, in~~
13 ~~accordance with the level 2 standards for screening set forth~~
14 ~~in chapter 435, of the managing employee, or other similarly~~
15 ~~titled individual who is responsible for the daily operation~~
16 ~~of the facility, and of the financial officer, or other~~
17 ~~similarly titled individual who is responsible for the~~
18 ~~financial operation of the center, including billings for~~
19 ~~resident care and services. The applicant must comply with~~
20 ~~the procedures for level 2 background screening as set forth~~
21 ~~in chapter 435, as well as the requirements of s. 435.03(3).~~

22 ~~(b) The agency may require background screening of any~~
23 ~~other individual who is an applicant if the agency has~~
24 ~~probable cause to believe that he or she has been convicted of~~
25 ~~a crime or has committed any other offense prohibited under~~
26 ~~the level 2 standards for screening set forth in chapter 435.~~

27 ~~(c) Proof of compliance with the level 2 background~~
28 ~~screening requirements of chapter 435 which has been submitted~~
29 ~~within the previous 5 years in compliance with any other~~
30 ~~health care licensure requirements of this state is acceptable~~
31 ~~in fulfillment of the requirements of paragraph (a).~~

1 ~~(d) A provisional license may be granted to an~~
2 ~~applicant when each individual required by this section to~~
3 ~~undergo background screening has met the standards for the~~
4 ~~Department of Law Enforcement background check, but the agency~~
5 ~~has not yet received background screening results from the~~
6 ~~Federal Bureau of Investigation, or a request for a~~
7 ~~disqualification exemption has been submitted to the agency as~~
8 ~~set forth in chapter 435, but a response has not yet been~~
9 ~~issued. A standard license may be granted to the applicant~~
10 ~~upon the agency's receipt of a report of the results of the~~
11 ~~Federal Bureau of Investigation background screening for each~~
12 ~~individual required by this section to undergo background~~
13 ~~screening which confirms that all standards have been met, or~~
14 ~~upon the granting of a disqualification exemption by the~~
15 ~~agency as set forth in chapter 435. Any other person who is~~
16 ~~required to undergo level 2 background screening may serve in~~
17 ~~his or her capacity pending the agency's receipt of the report~~
18 ~~from the Federal Bureau of Investigation. However, the person~~
19 ~~may not continue to serve if the report indicates any~~
20 ~~violation of background screening standards and a~~
21 ~~disqualification exemption has not been requested of and~~
22 ~~granted by the agency as set forth in chapter 435.~~

23 ~~(e) Each applicant must submit to the agency, with its~~
24 ~~application, a description and explanation of any exclusions,~~
25 ~~permanent suspensions, or terminations of the applicant from~~
26 ~~the Medicare or Medicaid programs. Proof of compliance with~~
27 ~~the requirements for disclosure of ownership and control~~
28 ~~interests under the Medicaid or Medicare programs shall be~~
29 ~~accepted in lieu of this submission.~~

30 ~~(f) Each applicant must submit to the agency a~~
31 ~~description and explanation of any conviction of an offense~~

1 ~~prohibited under the level 2 standards of chapter 435 by a~~
2 ~~member of the board of directors of the applicant, its~~
3 ~~officers, or any individual owning 5 percent or more of the~~
4 ~~applicant. This requirement does not apply to a director of a~~
5 ~~not for profit corporation or organization if the director~~
6 ~~serves solely in a voluntary capacity for the corporation or~~
7 ~~organization, does not regularly take part in the day to day~~
8 ~~operational decisions of the corporation or organization,~~
9 ~~receives no remuneration for his or her services on the~~
10 ~~corporation or organization's board of directors, and has no~~
11 ~~financial interest and has no family members with a financial~~
12 ~~interest in the corporation or organization, provided that the~~
13 ~~director and the not for profit corporation or organization~~
14 ~~include in the application a statement affirming that the~~
15 ~~director's relationship to the corporation satisfies the~~
16 ~~requirements of this paragraph.~~

17 ~~(g) A license may not be granted to an applicant if~~
18 ~~the applicant or managing employee has been found guilty of,~~
19 ~~regardless of adjudication, or has entered a plea of nolo~~
20 ~~contendere or guilty to, any offense prohibited under the~~
21 ~~level 2 standards for screening set forth in chapter 435,~~
22 ~~unless an exemption from disqualification has been granted by~~
23 ~~the agency as set forth in chapter 435.~~

24 ~~(h) The agency may deny or revoke licensure if the~~
25 ~~applicant:~~

26 ~~1. Has falsely represented a material fact in the~~
27 ~~application required by paragraph (c) or paragraph (f), or has~~
28 ~~omitted any material fact from the application required by~~
29 ~~paragraph (c) or paragraph (f); or~~

30
31

1 ~~2. Has had prior action taken against the applicant~~
2 ~~under the Medicaid or Medicare program as set forth in~~
3 ~~paragraph (c).~~

4 ~~(i) An application for license renewal must contain~~
5 ~~the information required under paragraphs (c) and (f).~~

6 ~~(6)(7)~~ The applicant shall furnish satisfactory proof
7 of financial ability to operate and conduct the facility or
8 program in accordance with the requirements of this chapter
9 and all adopted rules ~~promulgated hereunder.~~

10 ~~(7)(8)~~ The agency shall adopt rules establishing
11 minimum standards for licensure of residential facilities and
12 comprehensive transitional education programs, including rules
13 requiring facilities and programs to train staff to detect and
14 prevent sexual abuse of residents and clients, minimum
15 standards of quality and adequacy of care, and uniform
16 firesafety standards established by the State Fire Marshal
17 which are appropriate to the size of the facility or of the
18 component centers or units of the program.

19 ~~(8)(9)~~ The agency ~~and the Agency for Health Care~~
20 ~~Administration~~, after consultation with the Department of
21 Community Affairs, shall adopt rules for residential
22 facilities ~~under the respective regulatory jurisdiction of~~
23 ~~each~~ establishing minimum standards for the preparation and
24 annual update of a comprehensive emergency management plan. At
25 a minimum, the rules must provide for plan components that
26 address emergency evacuation transportation; adequate
27 sheltering arrangements; postdisaster activities, including
28 emergency power, food, and water; postdisaster transportation;
29 supplies; staffing; emergency equipment; individual
30 identification of residents and transfer of records; and
31 responding to family inquiries. The comprehensive emergency

1 management plan for all comprehensive transitional education
2 programs and for homes serving individuals who have complex
3 medical conditions is subject to review and approval by the
4 local emergency management agency. During its review, the
5 local emergency management agency shall ensure that the agency
6 and the Department of Community Affairs ~~following agencies~~, at
7 a minimum, are given the opportunity to review the plan: ~~the~~
8 ~~Agency for Health Care Administration, the Agency for Persons~~
9 ~~with Disabilities, and the Department of Community Affairs.~~
10 Also, appropriate volunteer organizations must be given the
11 opportunity to review the plan. The local emergency management
12 agency shall complete its review within 60 days and either
13 approve the plan or advise the facility of necessary
14 revisions.

15 ~~(9)(10)~~ The agency may conduct unannounced inspections
16 to determine compliance by residential facilities and
17 comprehensive transitional education programs with the
18 applicable provisions of this chapter and the rules adopted
19 pursuant hereto, including the rules adopted for training
20 staff of a facility or a program to detect and prevent sexual
21 abuse of residents and clients. The facility or program shall
22 make copies of inspection reports available to the public upon
23 request.

24 ~~(10)(11)~~ An alternative living center and an
25 independent living education center, as described ~~defined~~ in
26 s. 393.18 ~~s. 393.063~~, shall be subject to the provisions of s.
27 419.001, except that such centers shall be exempt from the
28 1,000-foot-radius requirement of s. 419.001(2) if:

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

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

3 ~~(11)~~~~(12)~~ Each residential facility or comprehensive
4 transitional education program licensed by the agency shall
5 forward annually to the agency a true and accurate sworn
6 statement of its costs of providing care to clients funded by
7 the agency.

8 ~~(12)~~~~(13)~~ The agency may audit the records of any
9 residential facility or comprehensive transitional education
10 program that it has reason to believe may not be in full
11 compliance with the provisions of this section; provided that,
12 any financial audit of such facility or program shall be
13 limited to the records of clients funded by the agency.

14 ~~(13)~~~~(14)~~ The agency shall establish, for the purpose
15 of control of licensure costs, a uniform management
16 information system and a uniform reporting system with uniform
17 definitions and reporting categories.

18 ~~(14)~~~~(15)~~ Facilities and programs licensed pursuant to
19 this section shall adhere to all rights specified in s.
20 393.13, including those enumerated in s. 393.13(4).

21 ~~(15)~~~~(16)~~ No unlicensed residential facility or
22 comprehensive transitional education program shall receive
23 state funds. A license for the operation of a facility or
24 program shall not be renewed if the licensee has any
25 outstanding fines assessed pursuant to this chapter wherein
26 final adjudication of such fines has been entered.

27 ~~(16)~~~~(17)~~ The agency shall not be required to contract
28 with new facilities licensed after October 1, 1989, pursuant
29 to this chapter. Pursuant to chapter 287, the agency shall
30 continue to contract within available resources for
31 residential services with facilities licensed prior to October

1 1, 1989, if such facilities comply with the provisions of this
2 chapter and all other applicable laws and regulations.

3 Section 15. Subsection (1) of section 393.0673,
4 Florida Statutes, is amended to read:

5 393.0673 Denial, suspension, revocation of license;
6 moratorium on admissions; administrative fines; procedures.--

7 (1) The agency may deny, revoke, or suspend a license
8 or impose an administrative fine, not to exceed \$1,000 per
9 violation per day, for a violation of any provision of s.
10 393.0655 or s. 393.067 or adopted rules ~~adopted pursuant~~
11 ~~thereto~~. All hearings shall be held within the county in which
12 the licensee or applicant operates or applies for a license to
13 operate a facility as defined herein.

14 Section 16. Subsection (1) of section 393.0674,
15 Florida Statutes, is amended to read:

16 393.0674 Penalties.--

17 (1) It is a misdemeanor of the first degree,
18 punishable as provided in s. 775.082 or s. 775.083, for any
19 person willfully, knowingly, or intentionally to:

20 (a) Fail, by false statement, misrepresentation,
21 impersonation, or other fraudulent means, to disclose in any
22 application for voluntary or paid employment a material fact
23 used in making a determination as to such person's
24 qualifications to be a direct service provider;

25 (b) Provide or attempt to provide supports or services
26 with direct service providers who are not in compliance
27 ~~noncompliance~~ with the background screening requirements set
28 forth ~~minimum standards for good moral character as contained~~
29 in this chapter; or

30 (c) Use information from the criminal records or
31 central abuse hotline obtained under s. 393.0655, s. 393.066,

1 or s. 393.067 for any purpose other than screening that person
2 for employment as specified in those sections or release such
3 information to any other person for any purpose other than
4 screening for employment as specified in those sections.

5 Section 17. Subsection (3) of section 393.0675,
6 Florida Statutes, is amended to read:

7 393.0675 Injunctive proceedings authorized.--

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

16 Section 18. Subsections (1) and (11) of section
17 393.0678, Florida Statutes, are amended to read:

18 393.0678 Receivership proceedings.--

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

25 (a) Any person is operating a facility without a
26 license and refuses to make application for a license as
27 required by s. 393.067 ~~or, in the case of an intermediate care~~
28 ~~facility for the developmentally disabled, as required by ss.~~
29 ~~393.067 and 400.062.~~

30 (b) The licensee is closing the facility or has
31 informed the department that it intends to close the facility;

1 and adequate arrangements have not been made for relocation of
2 the residents within 7 days, exclusive of weekends and
3 holidays, of the closing of the facility.

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

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

19 (11) Nothing in this section shall be deemed to
20 relieve any owner, operator, or employee of a facility placed
21 in receivership of any civil or criminal liability incurred,
22 or any duty imposed by law, by reason of acts or omissions of
23 the owner, operator, or employee before the appointment of a
24 receiver; nor shall anything contained in this section be
25 construed to suspend during the receivership any obligation of
26 the owner, operator, or employee for payment of taxes or other
27 operating and maintenance expenses of the facility or any
28 obligation of the owner, operator, or employee or any other
29 person for the payment of mortgages or liens. The owner shall
30 retain the right to sell or mortgage any facility under
31 receivership, subject to the approval of the court which

1 | ordered the receivership. ~~A receivership imposed under the~~
2 | ~~provisions of this chapter shall be subject to the Resident~~
3 | ~~Protection Trust Fund pursuant to s. 400.063. The owner of a~~
4 | ~~facility placed in receivership by the court shall be liable~~
5 | ~~for all expenses and costs incurred by the Resident Protection~~
6 | ~~Trust Fund which occur as a result of the receivership.~~

7 | Section 19. Subsections (1), (3), and (5) of section
8 | 393.068, Florida Statutes, are amended to read:

9 | 393.068 Family care program.--

10 | (1) The family care program is established for the
11 | purpose of providing services and support to families and
12 | individuals with developmental disabilities in order to
13 | maintain the individual in the home environment and avoid
14 | costly out-of-home residential placement. Services and support
15 | available to families and individuals with developmental
16 | disabilities shall emphasize community living and the
17 | principles of self-determination and enable individuals with
18 | developmental disabilities to enjoy typical lifestyles. One
19 | way to accomplish this is to recognize that families are the
20 | greatest resource available to individuals who have
21 | developmental disabilities and must be supported in their role
22 | as primary care givers.

23 | (3) When it is determined by the agency to be more
24 | cost-effective and in the best interest of the client to
25 | maintain such client in the home of a direct service provider,
26 | the parent or guardian of the client or, if competent, the
27 | client may enroll the client in the family care program. The
28 | direct service provider of a client enrolled in the family
29 | care program shall be reimbursed according to a rate schedule
30 | set by the agency. ~~In home subsidies cited in paragraph (1)(d)~~
31 | ~~shall be provided according to s. 393.0695 and are not subject~~

1 ~~to any other payment method or rate schedule provided for in~~
2 ~~this section.~~

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

10 Section 20. Subsection (3) of section 393.0695,
11 Florida Statutes, is amended to read:

12 393.0695 Provision of in-home subsidies.--

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

16 Section 21. Subsection (2) of section 393.075, Florida
17 Statutes, is amended to read:

18 393.075 General liability coverage.--

19 (2) The Division of Risk Management of the Department
20 of Financial Services shall provide coverage through the
21 agency to any person who owns or operates a foster care
22 facility or group home facility solely for the agency, who
23 cares for children placed by developmental disabilities
24 ~~services~~ staff of the agency, and who is licensed pursuant to
25 s. 393.067 to provide such supervision and care in his or her
26 place of residence. The coverage shall be provided from the
27 general liability account of the State Risk Management Trust
28 Fund. The coverage is limited to general liability claims
29 arising from the provision of supervision and care of children
30 in a foster care facility or group home facility pursuant to
31 an agreement with the agency and pursuant to guidelines

1 established through policy, rule, or statute. Coverage shall
2 be subject to the limits provided in ss. 284.38 and 284.385,
3 and the exclusions set forth therein, together with other
4 exclusions as may be set forth in the certificate of coverage
5 issued by the trust fund. A person covered under the general
6 liability account pursuant to this subsection shall
7 immediately notify the Division of Risk Management of the
8 Department of Financial Services of any potential or actual
9 claim.

10 Section 22. Subsection (1), paragraph (a) of
11 subsection (2), paragraph (b) of subsection (3), subsections
12 (4) and (5), paragraph (a) of subsection (6), paragraphs (a)
13 and (c) of subsection (7), paragraphs (d) and (e) of
14 subsection (8), paragraph (b) of subsection (10), paragraph
15 (b) of subsection (12), and subsection (13) of section 393.11,
16 Florida Statutes, are amended to read:

17 393.11 Involuntary admission to residential
18 services.--

19 (1) JURISDICTION.--When a person is mentally retarded
20 or autistic and requires involuntary admission to residential
21 services provided by the agency, the circuit court of the
22 county in which the person resides shall have jurisdiction to
23 conduct a hearing and enter an order involuntarily admitting
24 the person in order that the person may receive the care,
25 treatment, habilitation, and rehabilitation which the person
26 needs. For the purpose of identifying mental retardation or
27 autism, diagnostic capability shall be established by the
28 agency. The involuntary commitment of a person with
29 retardation or autism who is charged with a felony offense
30 shall be determined in accordance with s. 916.302. ~~Except as~~
31

1 ~~otherwise specified, the proceedings under this section shall~~
2 ~~be governed by the Florida Rules of Civil Procedure.~~

3 (2) PETITION.--

4 (a) A petition for involuntary admission to
5 residential services may be executed by a petitioning
6 commission. ~~For proposed involuntary admission to residential~~
7 ~~services arising out of chapter 916, the petition may be filed~~
8 ~~by a petitioning commission, the agency, the state attorney of~~
9 ~~the circuit from which the defendant was committed, or the~~
10 ~~defendant's attorney.~~

11 (3) NOTICE.--

12 (b) Whenever a motion or petition has been filed
13 pursuant to s. 916.303(2) ~~s. 916.303~~ to dismiss criminal
14 charges against a defendant with retardation or autism, and a
15 petition is filed to involuntarily admit the defendant to
16 residential services under this section, the notice of the
17 filing of the petition shall also be given to the defendant's
18 attorney and to the state attorney of the circuit from which
19 the defendant was committed.

20 (4) AGENCY DEVELOPMENTAL SERVICES PARTICIPATION.--

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

25 (b) Following an examination, the agency shall file
26 ~~After the developmental services program examines the person,~~
27 a written report ~~shall be filed~~ with the court not less than
28 10 working days before the date of the hearing. The report
29 shall be served on the petitioner, the person with mental
30 retardation or autism, and the person's attorney at the time
31 the report is filed with the court.

1 (c) The report shall contain the findings of the
2 ~~agency's developmental services program~~ evaluation and any
3 recommendations deemed appropriate.

4 (5) EXAMINING COMMITTEE.--

5 (a) Upon receiving the petition, the court shall
6 immediately appoint an examining committee to examine the
7 person being considered for involuntary admission to
8 residential services ~~of the developmental services program of~~
9 ~~the agency~~.

10 (b) The court shall appoint no fewer than three
11 disinterested experts who have demonstrated to the court an
12 expertise in the diagnosis, evaluation, and treatment of
13 persons with mental retardation or autism. The committee
14 shall include at least one licensed and qualified physician,
15 one licensed and qualified psychologist, and one qualified
16 professional with a minimum of a masters degree in social
17 work, special education, or vocational rehabilitation
18 counseling, to examine the person and to testify at the
19 hearing on the involuntary admission to residential services.

20 (c) Counsel for the person who is being considered for
21 involuntary admission to residential services and counsel for
22 the petition commission shall have the right to challenge the
23 qualifications of those appointed to the examining committee.

24 (d) Members of the committee shall not be employees of
25 the agency or be associated with each other in practice or in
26 employer-employee relationships. Members of the committee
27 shall not have served as members of the petitioning
28 commission. Members of the committee shall not be employees
29 of the members of the petitioning commission or be associated
30 in practice with members of the commission.

31

1 (e) The committee shall prepare a written report for
2 the court. The report shall explicitly document the extent
3 that the person meets the criteria for involuntary admission.
4 The report, and expert testimony, shall include, but not be
5 limited to:

6 1. The degree of the person's mental retardation or
7 autism;

8 2. Whether, because of the person's degree of mental
9 retardation or autism, the person:

10 a. Lacks sufficient capacity to give express and
11 informed consent to a voluntary application for services
12 pursuant to s. 393.065;

13 b. Lacks basic survival and self-care skills to such a
14 degree that close supervision and habilitation in a
15 residential setting is necessary and if not provided would
16 result in a real and present threat of substantial harm to the
17 person's well-being; or

18 c. Is likely to physically injure others if allowed to
19 remain at liberty.

20 3. The purpose to be served by residential care;

21 4. A recommendation on the type of residential
22 placement which would be the most appropriate and least
23 restrictive for the person; and

24 5. The appropriate care, habilitation, and treatment.

25 (f) The committee shall file the report with the court
26 not less than 10 working days before the date of the hearing.
27 The report shall be served on the petitioner, the person with
28 mental retardation or autism, and the person's attorney at the
29 time the report is filed with the court.

30 (g) Members of the examining committee shall receive a
31 reasonable fee to be determined by the court. The fees are to

1 | be paid from the general revenue fund of the county in which
2 | the person with mental retardation or autism resided when the
3 | petition was filed.

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

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

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

18 | (7) HEARING.--

19 | (a) The hearing for involuntary admission shall be
20 | conducted, and the order shall be entered, in the county in
21 | which the petition is filed ~~person is residing or be as~~
22 | ~~convenient to the person as may be consistent with orderly~~
23 | ~~procedure~~. The hearing shall be conducted in a physical
24 | setting not likely to be injurious to the person's condition.

25 | (c) The court may appoint a general or special
26 | magistrate to preside. Except as otherwise specified, the
27 | magistrate's proceeding shall be governed by the ~~rule 1.490,~~
28 | Florida Rules of Civil Procedure.

29 | (8) ORDER.--

30 | (d) If an order of involuntary admission to
31 | residential services provided by ~~the developmental services~~

1 ~~program~~ of the agency is entered by the court, a copy of the
2 written order shall be served upon the person, the person's
3 counsel, the agency, and the state attorney and the person's
4 defense counsel, if applicable. The order of involuntary
5 admission sent to the agency shall also be accompanied by a
6 copy of the examining committee's report and other reports
7 contained in the court file.

8 (e) Upon receiving the order, the agency shall, within
9 45 days, provide the court with a copy of the person's family
10 or individual support plan and copies of all examinations and
11 evaluations, outlining the treatment and rehabilitative
12 programs. The agency shall document that the person has been
13 placed in the most appropriate, least restrictive and
14 cost-beneficial residential setting ~~facility~~. A copy of the
15 family or individual support plan and other examinations and
16 evaluations shall be served upon the person and the person's
17 counsel at the same time the documents are filed with the
18 court.

19 (10) COMPETENCY.--

20 (b) The issue of the competency of a person with
21 mental retardation or autism for the purpose of assigning
22 guardianship shall be determined in a separate proceeding
23 according to the procedures and requirements of chapter 744
24 ~~and the Florida Probate Rules. The issue of the competency of~~
25 a person with mental retardation or autism for the purpose of
26 determining whether the person is competent to proceed in a
27 criminal trial shall be determined in accordance with chapter
28 916.

29 (12) APPEAL.--

30 (b) The filing of an appeal by the person with mental
31 retardation or autism shall stay admission of the person into

1 residential care. The stay shall remain in effect during the
2 pendency of all review proceedings in Florida courts until a
3 mandate issues.

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

14 Section 23. Section 393.122, Florida Statutes, is
15 amended to read:

16 393.122 Applications for continued residential
17 services.--

18 (1) If a client is discharged from residential
19 services under the provisions of s. 393.115 ~~this section~~,
20 application for needed services shall be encouraged.

21 (2) ~~A No~~ client receiving services from the state
22 ~~department~~ as of July 1, 1977, may not ~~shall~~ be denied
23 continued services due to any change in eligibility
24 requirements by chapter 77-335, Laws of Florida.

25 Section 24. Subsection (2) of section 393.125, Florida
26 Statutes, is amended to read:

27 393.125 Hearing rights.--

28 (2) REVIEW OF PROVIDER DECISIONS.--The agency shall
29 adopt rules to establish uniform guidelines for the ~~agency and~~
30 ~~service providers relevant to~~ termination, suspension, or
31 reduction of client services by the service provider. The

1 rules shall ensure the due process rights of service providers
2 and clients.

3 Section 25. Section 393.13, Florida Statutes, is
4 amended to read:

5 393.13 ~~Personal~~ Treatment of persons who are
6 developmentally disabled.--

7 (1) SHORT TITLE.--This act shall be known as "The Bill
8 of Rights of Persons Who are Developmentally Disabled."

9 (2) LEGISLATIVE INTENT.--

10 (a) The Legislature finds and declares that the system
11 of care provided to individuals who are developmentally
12 disabled must be designed to meet the needs of the clients as
13 well as protect the integrity of their legal and human rights.

14 (b) The Legislature further finds and declares that
15 the design and delivery of treatment and services to persons
16 who are developmentally disabled should be directed by the
17 principles of self-determination ~~normalization~~ and therefore
18 should:

19 1. Abate the use of large institutions.

20 2. Continue the development of community-based
21 services which provide reasonable alternatives to
22 institutionalization in settings that are least restrictive to
23 the client.

24 3. Provide training and education to individuals who
25 are developmentally disabled which will maximize their
26 potential to lead independent and productive lives and which
27 will afford opportunities for outward mobility from
28 institutions.

29 4. Reduce the use of sheltered workshops and other
30 noncompetitive employment day activities and promote
31

1 opportunities for gainful employment for persons with
2 developmental disabilities who choose to seek such employment.

3 (c) It is the intent of the Legislature that
4 duplicative and unnecessary administrative procedures and
5 practices shall be eliminated, and areas of responsibility
6 shall be clearly defined and consolidated in order to
7 economically utilize present resources. Furthermore,
8 personnel providing services should be sufficiently qualified
9 and experienced to meet the needs of the clients, and they
10 must be sufficient in number to provide treatment in a manner
11 which is beneficial to the clients.

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

13 1. To articulate the existing legal and human rights
14 of persons who are developmentally disabled so that they may
15 be exercised and protected. Persons with developmental
16 disabilities shall have all the rights enjoyed by citizens of
17 the state and the United States.

18 2. To provide a mechanism for the identification,
19 evaluation, and treatment of persons with developmental
20 disabilities.

21 3. To divert those individuals from institutional
22 commitment who, by virtue of comprehensive assessment, can be
23 placed in less costly, more effective community environments
24 and programs.

25 4. To fund improvements in the program in accordance
26 with the availability of state resources and yearly priorities
27 determined by the Legislature.

28 5. To ensure that persons with developmental
29 disabilities receive treatment and habilitation which fosters
30 the developmental potential of the individual.

31

1 6. To provide programs for the proper habilitation and
2 treatment of persons with developmental disabilities which
3 shall include, but not be limited to, comprehensive
4 medical/dental care, education, recreation, specialized
5 therapies, training, social services, transportation,
6 guardianship, family care programs, day habilitation services,
7 and habilitative and rehabilitative services suited to the
8 needs of the individual regardless of age, degree of
9 disability, or handicapping condition. ~~No person with~~
10 ~~developmental disabilities shall be deprived of these~~
11 ~~enumerated services by reason of inability to pay.~~

12 7. To fully effectuate the principles of
13 self-determination ~~normalization principle~~ through the
14 establishment of community services for persons with
15 developmental disabilities as a viable and practical
16 alternative to institutional care at each stage of individual
17 life development. If care in a residential facility or
18 intermediate care facility becomes necessary, it shall be in
19 the least restrictive setting.

20 (e) It is the clear, unequivocal intent of this act to
21 guarantee individual dignity, liberty, pursuit of happiness,
22 and protection of the civil and legal rights of persons with
23 developmental disabilities.

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

28 (a) Persons with developmental disabilities shall have
29 a right to dignity, privacy, and humane care, including the
30 right to be free from sexual abuse in residential facilities
31 and intermediate care facilities.

1 (b) Persons with developmental disabilities shall have
2 the right to religious freedom and practice. Nothing shall
3 restrict or infringe on a person's right to religious
4 preference and practice.

5 (c) Persons with developmental disabilities shall
6 receive services, within available sources, which protect the
7 personal liberty of the individual and which are provided in
8 the least restrictive conditions necessary to achieve the
9 purpose of treatment.

10 (d) Persons who are developmentally disabled shall
11 have a right to participate in an appropriate program of
12 quality education and training services, within available
13 resources, regardless of chronological age or degree of
14 disability. Such persons may be provided with instruction in
15 sex education, marriage, and family planning.

16 (e) Persons who are developmentally disabled shall
17 have a right to social interaction and to participate in
18 community activities.

19 (f) Persons who are developmentally disabled shall
20 have a right to physical exercise and recreational
21 opportunities.

22 (g) Persons who are developmentally disabled shall
23 have a right to be free from harm, including unnecessary
24 physical, chemical, or mechanical restraint, isolation,
25 excessive medication, abuse, or neglect.

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

29 (i) No otherwise qualified person shall, by reason of
30 having a developmental disability, be excluded from
31 participation in, or be denied the benefits of, or be subject

1 | to discrimination under, any program or activity which
2 | receives public funds, and all prohibitions set forth under
3 | any other statute shall be actionable under this statute.

4 | (j) No otherwise qualified person shall, by reason of
5 | having a developmental disability, be denied the right to vote
6 | in public elections.

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

11 | (a) Clients shall have an unrestricted right to
12 | communication:

13 | 1. Each client shall be allowed to receive, send, and
14 | mail sealed, unopened correspondence. No client's incoming or
15 | outgoing correspondence shall be opened, delayed, held, or
16 | censored by the facility unless there is reason to believe
17 | that it contains items or substances which may be harmful to
18 | the client or others, in which case the chief administrator of
19 | the facility may direct reasonable examination of such mail
20 | and regulate the disposition of such items or substances.

21 | 2. Clients in residential facilities and intermediate
22 | care facilities shall be afforded reasonable opportunities for
23 | telephone communication, to make and receive confidential
24 | calls, unless there is reason to believe that the content of
25 | the telephone communication may be harmful to the client or
26 | others, in which case the chief administrator of the facility
27 | may direct reasonable observation and monitoring to the
28 | telephone communication.

29 | 3. Clients shall have an unrestricted right to
30 | visitation subject to reasonable rules of the facility.
31 |

1 | However, nothing in this provision shall be construed to
2 | permit infringement upon other clients' rights to privacy.

3 | (b) Each client has the right to the possession and
4 | use of his or her own clothing and personal effects, except in
5 | those specific instances where the use of some of these items
6 | as reinforcers is essential for training the client as part of
7 | an appropriately approved behavioral program. The chief
8 | administrator of the facility may take temporary custody of
9 | such effects when it is essential to do so for medical or
10 | safety reasons. Custody of such personal effects shall be
11 | promptly recorded in the client's record, and a receipt for
12 | such effects shall be immediately given to the client, if
13 | competent, or the client's parent or legal guardian.

14 | 1. All money belonging to a client shall be held by
15 | the agency as a trustee ~~shall be held in compliance with s.~~
16 | ~~402.17(2).~~

17 | 2. All interest on money received and held for the
18 | personal use and benefit of a client shall be the property of
19 | that client and shall not accrue to the general welfare of all
20 | clients or be used to defray the cost of residential care.
21 | Interest so accrued shall be used or conserved for the
22 | personal use or benefit of the individual client as provided
23 | in s. 402.17(2).

24 | 3. Upon the discharge or death of a client, a final
25 | accounting shall be made of all personal effects and money
26 | belonging to the client held by the agency. All such personal
27 | effects and money, including interest, shall be promptly
28 | turned over to the client or his or her heirs.

29 | (c) Each client shall receive prompt and appropriate
30 | medical treatment and care for physical and mental ailments
31 | and for the prevention of any illness or disability. Medical

1 treatment shall be consistent with the accepted standards of
2 medical practice in the community.

3 1. Medication shall be administered only at the
4 written order of a physician. Medication shall not be used as
5 punishment, for the convenience of staff, as a substitute for
6 implementation of an individual or family support plan or
7 behavior modification programming, or in unnecessary or
8 excessive quantities.

9 2. Daily notation of medication received by each
10 client in a residential facility or intermediate care facility
11 shall be kept in the client's record.

12 3. Periodically, but no less frequently than every 6
13 months, the drug regimen of each client in a residential
14 facility or intermediate care facility shall be reviewed by
15 the attending physician or other appropriate monitoring body,
16 consistent with appropriate standards of medical practice. All
17 prescriptions shall have a termination date.

18 4. When pharmacy services are provided at any
19 residential facility or intermediate care facility, such
20 services shall be directed or supervised by a professionally
21 competent pharmacist licensed according to the provisions of
22 chapter 465.

23 5. Pharmacy services shall be delivered in accordance
24 with the provisions of chapter 465.

25 6. Prior to instituting a plan of experimental medical
26 treatment or carrying out any necessary surgical procedure,
27 express and informed consent shall be obtained from the
28 client, if competent, or the client's parent or legal
29 guardian. Information upon which the client shall make
30 necessary treatment and surgery decisions shall include, but
31 not be limited to:

1 a. The nature and consequences of such procedures.
2 b. The risks, benefits, and purposes of such
3 procedures.
4 c. Alternate procedures available.
5 7. When the parent or legal guardian of the client is
6 unknown or unlocatable and the physician is unwilling to
7 perform surgery based solely on the client's consent, a court
8 of competent jurisdiction shall hold a hearing to determine
9 the appropriateness of the surgical procedure. The client
10 shall be physically present, unless the client's medical
11 condition precludes such presence, represented by counsel, and
12 provided the right and opportunity to be confronted with, and
13 to cross-examine, all witnesses alleging the appropriateness
14 of such procedure. In such proceedings, the burden of proof by
15 clear and convincing evidence shall be on the party alleging
16 the appropriateness of such procedures. The express and
17 informed consent of a person described in subparagraph 6. may
18 be withdrawn at any time, with or without cause, prior to
19 treatment or surgery.
20 8. The absence of express and informed consent
21 notwithstanding, a licensed and qualified physician may render
22 emergency medical care or treatment to any client who has been
23 injured or who is suffering from an acute illness, disease, or
24 condition if, within a reasonable degree of medical certainty,
25 delay in initiation of emergency medical care or treatment
26 would endanger the health of the client.
27 (d) Each client shall have access to individual
28 storage space for his or her private use.
29 (e) Each client shall be provided with appropriate
30 physical exercise as prescribed in the client's individual or
31

1 family support plan. Indoor and outdoor facilities and
2 equipment for such physical exercise shall be provided.

3 (f) Each client shall receive humane discipline.

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

9 1. Treatment programs involving the use of noxious or
10 painful stimuli shall be prohibited.

11 2. All alleged violations of this paragraph shall be
12 reported immediately to the chief administrative officer of
13 the facility and ~~or the district administrator,~~ the agency
14 ~~head, and the Florida local advocacy council.~~ A thorough
15 investigation of each incident shall be conducted and a
16 written report of the finding and results of such
17 investigation shall be submitted to the chief administrative
18 officer of the facility ~~or the district administrator~~ and ~~to~~
19 the agency ~~head~~ within 24 hours after ~~of~~ the occurrence or
20 discovery of the incident.

21 3. The agency shall adopt by rule a system for the
22 oversight of behavioral programs. Such system shall establish
23 guidelines and procedures governing the design, approval,
24 implementation, and monitoring of all behavioral programs
25 involving clients. The system shall ensure statewide and
26 local review by committees of professionals certified as
27 behavior analysts pursuant to s. 393.17. No behavioral
28 program shall be implemented unless reviewed according to the
29 rules established by the agency under this section. ~~Nothing~~
30 ~~stated in this section shall prohibit the review of programs~~
31 ~~by the Florida statewide or local advocacy councils.~~

1 (h) Each client engaged in work programs which require
2 compliance with federal wage and hour laws shall be provided
3 with minimum wage protection and fair compensation for labor
4 in accordance with the federal wage-per-hour regulations.

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

16 1. Mechanical supports used in normative situations to
17 achieve proper body position and balance shall not be
18 considered restraints, but shall be prescriptively designed
19 and applied under the supervision of a qualified professional
20 with concern for principles of good body alignment,
21 circulation, and allowance for change of position.

22 2. Totally enclosed cribs and barred enclosures shall
23 be considered restraints.

24 3. Daily reports on the employment of physical,
25 chemical, or mechanical restraints by those specialists
26 authorized in the use of such restraints shall be made to the
27 appropriate chief administrator of the facility, and a monthly
28 summary of such reports shall be relayed to the agency
29 ~~district administrator and the Florida local advocacy council.~~
30 The reports shall summarize all such cases of restraints, the
31 type used, the duration of usage, and the reasons therefor.

1 ~~Districts shall submit districtwide quarterly reports of these~~
2 ~~summaries to the state Developmental Disabilities Program~~
3 ~~Office.~~

4 4. The agency shall post a copy of the rules adopted
5 under this section in each living unit of residential
6 facilities. A copy of the rules adopted under this section
7 shall be given to all staff members of licensed facilities and
8 made a part of all preservice and inservice training programs.

9 (j)1. Each client shall have a central record. The
10 record shall include data pertaining to admission and such
11 other information as may be required under rules of the
12 agency.

13 2. Unless waived by the client, if competent, or the
14 client's parent or legal guardian if the client is
15 incompetent, the client's central record shall be confidential
16 and exempt from the provisions of s. 119.07(1), and no part of
17 it shall be released except:

18 a. The record may be released to physicians,
19 attorneys, and government agencies having need of the record
20 to aid the client, as designated by the client, if competent,
21 or the client's parent or legal guardian, if the client is
22 incompetent.

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

26 c. The record or any part thereof may be disclosed to
27 a qualified researcher, a staff member of the facility, or an
28 employee of the agency when the administrator of the facility
29 or the director of the agency deems it necessary for the
30 treatment of the client, maintenance of adequate records,
31 compilation of treatment data, or evaluation of programs.

1 d. Information from the records may be used for
2 statistical and research purposes if the information is
3 abstracted in such a way to protect the identity of
4 individuals.

5 3. All central records for each client in residential
6 facilities or intermediate care facilities shall be kept on
7 uniform forms distributed by the agency. The central record
8 shall accurately summarize each client's history and present
9 condition.

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

13 (k) Each client residing in a residential facility or
14 intermediate care facility who is eligible to vote in public
15 elections according to the laws of the state shall have the
16 right to vote. Facilities operators shall arrange the means
17 to exercise the client's right to vote.

18 (5) LIABILITY FOR VIOLATIONS.--Any person who violates
19 or abuses any rights or privileges of persons who are
20 developmentally disabled provided by this act shall be liable
21 for damages as determined by law. Any person who acts in good
22 faith compliance with the provisions of this act shall be
23 immune from civil or criminal liability for actions in
24 connection with evaluation, admission, habilitative
25 programming, education, treatment, or discharge of a client.
26 However, this section shall not relieve any person from
27 liability if such person is guilty of negligence, misfeasance,
28 nonfeasance, or malfeasance.

29 (6) NOTICE OF RIGHTS.--Each person with developmental
30 disabilities, if competent, or parent or legal guardian of
31 such person if the person is incompetent, shall promptly

1 receive from the agency or the Department of Education a
2 written copy of this act. Each person with developmental
3 disabilities able to comprehend shall be promptly informed, in
4 the language or other mode of communication which such person
5 understands, of the above legal rights of persons with
6 developmental disabilities.

7 (7) RESIDENT GOVERNMENT.--Each residential facility or
8 intermediate care facility providing services to clients who
9 are desirous and capable of participating shall initiate and
10 develop a program of resident government to hear the views and
11 represent the interests of all clients served by the facility.
12 The resident government shall be composed of residents elected
13 by other residents and, staff advisers skilled in the
14 administration of community organizations, ~~and a~~
15 ~~representative of the Florida local advocacy council.~~ The
16 ~~resident government shall work closely with the Florida local~~
17 ~~advocacy council and the district administrator to promote the~~
18 ~~interests and welfare of all residents in the facility.~~

19 Section 26. Section 393.135, Florida Statutes, is
20 amended to read:

21 393.135 Sexual misconduct prohibited; reporting
22 required; penalties.--

23 (1) As used in this section, the term:

24 (a) "Employee" includes any paid staff member,
25 volunteer, or intern of the agency ~~or the department~~; any
26 person under contract with the agency ~~or the department~~; and
27 any person providing care or support to a client on behalf of
28 the agency ~~department~~ or its providers.

29 (b) "Sexual activity" means:

30 1. Fondling the genital area, groin, inner thighs,
31 buttocks, or breasts of a person.

1 2. The oral, anal, or vaginal penetration by or union
2 with the sexual organ of another or the anal or vaginal
3 penetration of another by any other object.

4 3. Intentionally touching in a lewd or lascivious
5 manner the breasts, genitals, the genital area, or buttocks,
6 or the clothing covering them, of a person, or forcing or
7 enticing a person to touch the perpetrator.

8 4. Intentionally masturbating in the presence of
9 another person.

10 5. Intentionally exposing the genitals in a lewd or
11 lascivious manner in the presence of another person.

12 6. Intentionally committing any other sexual act that
13 does not involve actual physical or sexual contact with the
14 victim, including, but not limited to, sadomasochistic abuse,
15 sexual bestiality, or the simulation of any act involving
16 sexual activity in the presence of a victim.

17 (c) "Sexual misconduct" means any sexual activity
18 between an employee and a client to whom the employee renders
19 services, care, or support on behalf of the agency or its
20 providers, or between the employee and another client who
21 lives in the same home as the client to whom the employee is
22 rendering the services, care, or support, regardless of the
23 consent of the client. The term does not include an act done
24 for a bona fide medical purpose or an internal search
25 conducted in the lawful performance of duty by an employee.

26 (2) An employee who engages in sexual misconduct with
27 an individual with a developmental disability who:

28 (a) Is in the custody of the department;

29 (b) Resides in a residential facility, including any
30 comprehensive transitional education program, developmental
31 disabilities ~~services~~ institution, foster care facility, group

1 | home facility, intermediate care facility for the
2 | developmentally disabled, or residential habilitation center;
3 | or

4 | (c) Is eligible to receive ~~Receives~~ services from the
5 | agency under this chapter ~~a family care program,~~

6 |
7 | commits a felony of the second degree, punishable as provided
8 | in s. 775.082, s. 775.083, or s. 775.084. An employee may be
9 | found guilty of violating this subsection without having
10 | committed the crime of sexual battery.

11 | (3) The consent of the client to sexual activity is
12 | not a defense to prosecution under this section.

13 | (4) This section does not apply to an employee who+

14 | ~~(a)~~ is legally married to the client; ~~or~~

15 | ~~(b) Has no reason to believe that the person with whom~~
16 | ~~the employee engaged in sexual misconduct is a client~~
17 | ~~receiving services as described in subsection (2).~~

18 | (5) An employee who witnesses sexual misconduct, or
19 | who otherwise knows or has reasonable cause to suspect that a
20 | person has engaged in sexual misconduct, shall immediately
21 | report the incident to the department's central abuse hotline
22 | and to the appropriate local law enforcement agency. Such
23 | employee shall also prepare, date, and sign an independent
24 | report that specifically describes the nature of the sexual
25 | misconduct, the location and time of the incident, and the
26 | persons involved. The employee shall deliver the report to the
27 | supervisor or program director, who is responsible for
28 | providing copies to the agency's local program office and the
29 | agency's department's inspector general. ~~The inspector general~~
30 | ~~shall immediately conduct an appropriate administrative~~
31 | ~~investigation, and, if there is probable cause to believe that~~

1 ~~sexual misconduct has occurred, the inspector general shall~~
2 ~~notify the state attorney in the circuit in which the incident~~
3 ~~occurred.~~

4 (6)(a) Any person who is required to make a report
5 under this section and who knowingly or willfully fails to do
6 so, or who knowingly or willfully prevents another person from
7 doing so, commits a misdemeanor of the first degree,
8 punishable as provided in s. 775.082 or s. 775.083.

9 (b) Any person who knowingly or willfully submits
10 inaccurate, incomplete, or untruthful information with respect
11 to a report required under this section commits a misdemeanor
12 of the first degree, punishable as provided in s. 775.082 or
13 s. 775.083.

14 (c) Any person who knowingly or willfully coerces or
15 threatens any other person with the intent to alter testimony
16 or a written report regarding an incident of sexual misconduct
17 commits a felony of the third degree, punishable as provided
18 in s. 775.082, s. 775.083, or s. 775.084.

19 (7) The provisions and penalties set forth in this
20 section are in addition to any other civil, administrative, or
21 criminal action provided by law which may be applied against
22 an employee.

23 Section 27. Section 393.15, Florida Statutes, is
24 amended to read:

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

27 (1) The Legislature finds and declares that the
28 development of community-based treatment facilities for
29 persons who are developmentally disabled is desirable and
30 recommended and should be encouraged and fostered by the
31 state. The Legislature further recognizes that the

1 development of such facilities is financially difficult for
2 private individuals, due to initial expenditures required to
3 adapt existing structures to the special needs of persons who
4 are developmentally disabled who may be served in
5 community-based foster care, group home, developmental
6 training, and supported employment programs. Therefore, ~~it is~~
7 ~~the intent of~~ the Legislature intends that the agency by this
8 ~~act to develop and administer~~ a loan program ~~trust fund~~ to
9 provide support and encouragement in the establishment of
10 community-based foster care, group home, developmental
11 training, and supported employment programs for persons who
12 are developmentally disabled.

13 ~~(2) As used in this section, a foster care, group~~
14 ~~home, developmental training, or supported employment program~~
15 ~~may not be a for profit corporation, but may be a nonprofit~~
16 ~~corporation, partnership, or sole proprietorship.~~

17 ~~(2)(3)~~ There is created a Community Resources
18 Development Loan Program in Trust Fund in the State Treasury
19 ~~to be used by~~ the agency for the purpose of granting loans to
20 eligible programs for the initial costs of development of the
21 programs. To be eligible for a loan, a foster home, group
22 home, developmental training program, or supported employment
23 program must:

24 (a) Serve persons who are developmentally disabled;

25 (b) Be a nonprofit corporation, partnership, or sole
26 proprietorship; and

27 (c) Be ~~Loans shall be made only to those facilities~~
28 ~~which are~~ in compliance with the zoning regulations of the
29 local community.

30 (3) Loans may be made for the purpose of paying the
31 costs of development or ~~may include~~ structural modification,

1 the purchase of equipment and fire and safety devices,
2 preoperational staff training, and the purchase of insurance.
3 Such costs ~~may shall~~ not include the actual construction of a
4 facility and may not be in lieu of payment for the costs of
5 maintenance, client services, or care that is provided.

6 (4) The agency may grant to an eligible program a
7 lump-sum loan in one payment not to exceed the cost ~~to the~~
8 ~~program~~ of providing 2 months' services, care, or maintenance
9 to each person who is developmentally disabled to be placed in
10 the program by the agency, or the actual cost of firesafety
11 renovations to a facility required by the state, whichever is
12 greater. ~~Loans granted to programs shall not be in lieu of~~
13 ~~payment for maintenance, services, or care provided, but shall~~
14 ~~stand separate and distinct.~~

15 (5) The agency shall adopt rules, ~~as provided in~~
16 ~~chapter 120,~~ to determine the criteria standards under which a
17 program ~~is shall be~~ eligible to receive a loan ~~as provided in~~
18 ~~this section~~ and a methodology criteria for the equitable
19 allocation of loan trust funds when eligible applications
20 exceed the funds available.

21 ~~(6)(5)~~ Any loan granted by the agency under this
22 section shall be repaid by the program within 5 years, and the
23 amount paid shall be deposited in the agency's Administrative
24 Trust Fund. Money repaid shall be used to fund new loans. A
25 program that operates as a nonprofit corporation meeting the
26 requirements of s. 501(c)(3) of the Internal Revenue Code, and
27 that seeks forgiveness of its loan shall submit to the agency
28 an annual ~~a~~ statement setting forth the service it has
29 provided during the year together with such other information
30 as the agency by rule shall require, and, upon approval of
31 each such annual statement, the agency ~~may shall~~ forgive up to

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

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

27 Section 28. Section 393.18, Florida Statutes, is
28 created to read:

29 393.18 Comprehensive transitional education
30 program.--A comprehensive transition education program is a
31 group of jointly operating centers or units, the collective

1 purpose of which is to provide a sequential series of
2 educational care, training, treatment, habilitation, and
3 rehabilitation services to persons who have developmental
4 disabilities and who have severe or moderate maladaptive
5 behaviors. However, this section does not require such
6 programs to provide services only to persons with
7 developmental disabilities. All such services shall be
8 temporary in nature and delivered in a structured residential
9 setting, with the primary goal of incorporating the principle
10 of self-determination in establishing a permanent residence
11 for persons with maladaptive behaviors in facilities that are
12 not associated with the comprehensive transitional education
13 program. The staff shall include psychologists and teachers
14 and shall be available to provide services in each component
15 center or unit of the program. The psychologists must be
16 individuals who are licensed in this state and certified as
17 behavior analysts in this state, or must be individuals who
18 are certified as behavior analysts pursuant to s. 393.17.

19 (1) Comprehensive transitional education programs
20 shall include a minimum of two component centers or units, one
21 of which must be an intensive treatment and educational center
22 or a transitional training and educational center that
23 provides services to persons with maladaptive behaviors in the
24 following sequential order:

25 (a) Intensive treatment and educational center. This
26 component is a self-contained residential unit providing
27 intensive psychological and educational programming for
28 persons with severe maladaptive behaviors whose behaviors
29 preclude placement in a less-restrictive environment due to
30 the threat of danger or injury to themselves or others.

31

1 (b) Transitional training and educational center. This
2 component is a residential unit for persons with moderate
3 maladaptive behaviors which provides concentrated
4 psychological and educational programming emphasizing a
5 transition toward a less-restrictive environment.

6 (c) Community transition residence. This component is
7 a residential center providing educational programs and the
8 support services, training, and care that are needed to assist
9 persons with maladaptive behaviors avoid regression to
10 more-restrictive environments while preparing them for more
11 independent living. Continuous-shift staff is required for
12 this component.

13 (d) Alternative living center. This component is a
14 residential unit providing an educational and family living
15 environment for persons with maladaptive behaviors in a
16 moderately unrestricted setting. Residential staff is required
17 for this component.

18 (e) Independent living education center. This
19 component is a facility providing a family living environment
20 for persons with maladaptive behaviors, in a largely
21 unrestricted setting, which includes education and monitoring
22 appropriate to support the development of independent living
23 skills.

24 (2) Components of a comprehensive transitional
25 education program are subject to the license issued to a
26 comprehensive transitional education program under s. 393.067
27 and may be located on either single or multiple sites.

28 (3) A comprehensive transitional education program
29 shall develop an individual education plan for each person
30 with maladaptive behaviors who receives services in the
31 program. The individual education plans must be developed in

1 accordance with the criteria specified in 20 U.S.C. ss. 401 et
2 seq., and 34 C.F.R. part 300.

3 (4) The total number of persons with maladaptive
4 behaviors being provided services in a comprehensive
5 transitional education program may not at any time exceed 120
6 residents.

7 Section 29. Subsection (2) of section 393.501, Florida
8 Statutes, is amended to read:

9 393.501 Rulemaking.--

10 (2) Such rules shall address the number of facilities
11 on a single parcel or adjacent parcels of land, ~~and in~~
12 ~~addition, for ICF/MR, the rate and location of facility~~
13 ~~development and level of care.~~

14 Section 30. Subsections (1) and (3) of section
15 393.506, Florida Statutes, are amended to read:

16 393.506 Administration of medication.--

17 (1) Notwithstanding the provisions of part I of
18 chapter 464, the Nurse Practice Act, unlicensed direct care
19 services staff providing services to persons with
20 developmental disabilities may administer oral, transdermal,
21 inhaled, or topical prescription medications as provided in
22 this section.

23 (a) For day habilitation facilities programs, ~~as~~
24 ~~defined in s. 393.063,~~ the director of the facility or program
25 shall designate in writing unlicensed direct care services
26 staff who are eligible to be trained to assist in the
27 administration of or to administer medication.

28 (b) For intermediate care facilities for the
29 developmentally disabled ~~licensed pursuant to part XI of~~
30 ~~chapter 400,~~ unlicensed staff designated by the director may
31

1 provide medication assistance under the general supervision of
2 a registered nurse licensed pursuant to chapter 464.

3 (3) The policies and procedures must include, at a
4 minimum, a requirement for ~~the following provisions:~~

5 (a) Obtaining the An expressed and informed consent of
6 ~~for~~ each client.

7 (b) The director of the facility, program, or provider
8 to must maintain a copy of the written prescription which
9 includes, ~~and that prescription must include~~ the name of the
10 medication, the dosage and administration schedule, the reason
11 for the prescription, and the termination date.

12 (c) Keeping each prescribed medication ~~shall be kept~~
13 in its original container and in a secure location.

14 Section 31. Subsection (9) of section 397.405, Florida
15 Statutes, is amended to read:

16 397.405 Exemptions from licensure.--The following are
17 exempt from the licensing provisions of this chapter:

18 (9) Facilities licensed under chapter 393 which s-
19 ~~393.063 that~~, in addition to providing services to persons who
20 are developmentally disabled as defined therein, also provide
21 services to persons developmentally at risk as a consequence
22 of exposure to alcohol or other legal or illegal drugs while
23 in utero.

24
25 The exemptions from licensure in this section do not apply to
26 any service provider that receives an appropriation, grant, or
27 contract from the state to operate as a service provider as
28 defined in this chapter or to any substance abuse program
29 regulated pursuant to s. 397.406. Furthermore, this chapter
30 may not be construed to limit the practice of a physician
31 licensed under chapter 458 or chapter 459, a psychologist

1 licensed under chapter 490, or a psychotherapist licensed
2 under chapter 491 who provides substance abuse treatment, so
3 long as the physician, psychologist, or psychotherapist does
4 not represent to the public that he or she is a licensed
5 service provider and does not provide services to clients
6 pursuant to part V of this chapter. Failure to comply with any
7 requirement necessary to maintain an exempt status under this
8 section is a misdemeanor of the first degree, punishable as
9 provided in s. 775.082 or s. 775.083.

10 Section 32. Subsection (13) of section 400.419,
11 Florida Statutes, is amended to read:

12 400.419 Violations; imposition of administrative
13 fines; grounds.--

14 (13) The agency shall develop and disseminate an
15 annual list of all facilities sanctioned or fined \$5,000 or
16 more for violations of state standards, the number and class
17 of violations involved, the penalties imposed, and the current
18 status of cases. The list shall be disseminated, at no charge,
19 to the Department of Elderly Affairs, the Department of
20 Health, the Department of Children and Family Services, the
21 Agency for Persons with Disabilities, the area agencies on
22 aging, the Florida Statewide Advocacy Council, and the state
23 and local ombudsman councils. The Department of Children and
24 Family Services shall disseminate the list to service
25 providers under contract to the department who are responsible
26 for referring persons to a facility for residency. The agency
27 may charge a fee commensurate with the cost of printing and
28 postage to other interested parties requesting a copy of this
29 list.

30 Section 33. Subsections (1), (6), (7), and (11) of
31 section 400.960, Florida Statutes, are repealed.

1 Section 34. Paragraph (b) of subsection (5) of section
2 400.464, Florida Statutes, is amended to read:

3 400.464 Home health agencies to be licensed;
4 expiration of license; exemptions; unlawful acts; penalties.--

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

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

9 1. The Department of Elderly Affairs.

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

16 3. Services provided to persons who have developmental
17 disabilities, as defined in s. 393.063.

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

26 5. The Department of Children and Family Services.

27 Section 35. Subsection (2) of section 400.967, Florida
28 Statutes, is amended to read:

29 400.967 Rules and classification of deficiencies.--

30 (2) Pursuant to the intention of the Legislature, the
31 agency, in consultation with the Agency for Persons with

1 Disabilities ~~Department of Children and Family Services~~ and
2 the Department of Elderly Affairs, shall adopt and enforce
3 rules to administer this part, which shall include reasonable
4 and fair criteria governing:

5 (a) The location and construction of the facility;
6 including fire and life safety, plumbing, heating, cooling,
7 lighting, ventilation, and other housing conditions that will
8 ensure the health, safety, and comfort of residents. The
9 agency shall establish standards for facilities and equipment
10 to increase the extent to which new facilities and a new wing
11 or floor added to an existing facility after July 1, 2000, are
12 structurally capable of serving as shelters only for
13 residents, staff, and families of residents and staff, and
14 equipped to be self-supporting during and immediately
15 following disasters. ~~The Agency for Health Care Administration~~
16 ~~shall work with facilities licensed under this part and report~~
17 ~~to the Governor and the Legislature by April 1, 2000, its~~
18 ~~recommendations for cost effective renovation standards to be~~
19 ~~applied to existing facilities. In making such rules, the~~
20 ~~agency shall be guided by criteria recommended by nationally~~
21 ~~recognized, reputable professional groups and associations~~
22 ~~having knowledge concerning such subject matters.~~ The agency
23 shall update or revise such criteria as the need arises. All
24 facilities must comply with those lifesafety code requirements
25 and building code standards applicable at the time of approval
26 of their construction plans. The agency may require
27 alterations to a building if it determines that an existing
28 condition constitutes a distinct hazard to life, health, or
29 safety. The agency shall adopt fair and reasonable rules
30 setting forth conditions under which existing facilities
31 undergoing additions, alterations, conversions, renovations,

1 or repairs are required to comply with the most recent updated
2 or revised standards.

3 (b) The number and qualifications of all personnel,
4 including management, ~~medical~~ nursing, and other personnel,
5 having responsibility for any part of the care given to
6 residents.

7 (c) All sanitary conditions within the facility and
8 its surroundings, including water supply, sewage disposal,
9 food handling, and general hygiene, which will ensure the
10 health and comfort of residents.

11 (d) The equipment essential to the health and welfare
12 of the residents.

13 (e) A uniform accounting system.

14 (f) The care, treatment, and maintenance of residents
15 and measurement of the quality and adequacy thereof.

16 (g) The preparation and annual update of a
17 comprehensive emergency management plan. The agency shall
18 adopt rules establishing minimum criteria for the plan after
19 consultation with the Department of Community Affairs. At a
20 minimum, the rules must provide for plan components that
21 address emergency evacuation transportation; adequate
22 sheltering arrangements; postdisaster activities, including
23 emergency power, food, and water; postdisaster transportation;
24 supplies; staffing; emergency equipment; individual
25 identification of residents and transfer of records; and
26 responding to family inquiries. The comprehensive emergency
27 management plan is subject to review and approval by the local
28 emergency management agency. During its review, the local
29 emergency management agency shall ensure that the following
30 agencies, at a minimum, are given the opportunity to review
31 the plan: the Department of Elderly Affairs, the Agency for

1 ~~Persons with Disabilities Department of Children and Family~~
2 ~~Services~~, the Agency for Health Care Administration, and the
3 Department of Community Affairs. Also, appropriate volunteer
4 organizations must be given the opportunity to review the
5 plan. The local emergency management agency shall complete its
6 review within 60 days and either approve the plan or advise
7 the facility of necessary revisions.

8 (h) Each licensee shall post its license in a
9 prominent place that is in clear and unobstructed public view
10 at or near the place where residents are being admitted to the
11 facility.

12 Section 36. Section 402.20, Florida Statutes, is
13 amended to read:

14 402.20 County contracts authorized for services and
15 facilities for in mental health and developmental disabilities
16 ~~retardation areas~~.--The boards of county commissioners are
17 authorized to provide monetary grants and facilities, and to
18 enter into renewable contracts, for services and facilities,
19 for a period not to exceed 2 years, with public and private
20 hospitals, clinics, and laboratories; other state agencies,
21 departments, or divisions; the state colleges and
22 universities; the community colleges; private colleges and
23 universities; counties; municipalities; towns; townships; and
24 any other governmental unit or nonprofit organization which
25 provides needed facilities for persons with mental illness or
26 developmental disabilities ~~the mentally ill or retarded~~.

27 These services are hereby declared to be for a public and
28 county purpose. The county commissioners may make periodic
29 inspections to assure that the services or facilities provided
30 under this chapter meet the standards of the Department of
31

1 Children and Family Services and the Agency for Persons with
2 Disabilities.

3 Section 37. Section 402.22, Florida Statutes, is
4 amended to read:

5 402.22 Education program for students who reside in
6 residential care facilities ~~operated by the Department of~~
7 ~~Children and Family Services.--~~

8 (1)(a) The Legislature recognizes that the Department
9 of Children and Family Services and the Agency for Persons
10 with Disabilities have under their ~~has under its~~ residential
11 care students with critical problems of physical impairment,
12 emotional disturbance, mental impairment, and learning
13 impairment.

14 (b) The Legislature recognizes the vital role of
15 education in the rehabilitation of such students. It is the
16 intent of the Legislature that all such students benefit from
17 educational services and receive such services.

18 (c) It is the intent of the Legislature that
19 educational services be coordinated with appropriate and
20 existing diagnostic and evaluative, social, followup, and
21 other therapeutic services of the department and agency of
22 ~~Children and Family Services~~ so that the effect of the total
23 rehabilitation process is maximized.

24 (d) It is the intent of the Legislature that, as
25 educational programs for students in residential care
26 facilities are implemented by the district school board,
27 educational personnel in ~~the Department of Children and Family~~
28 ~~Services~~ residential care facilities who meet the
29 qualifications for employees of the district school board be
30 employed by the district school board.

31

1 (2) District school boards shall establish educational
2 programs for all students ages 5 through 18 who are under the
3 residential care of the Department of Children and Family
4 Services or the Agency for Persons with Disabilities and may
5 provide programs for students below age 3 as provided for in
6 s. 1003.21(1)(e). Funding of such programs shall be pursuant
7 to s. 1011.62.

8 (3) Notwithstanding any provisions of chapters 39,
9 393, 394, and 397 to the contrary, the services of the
10 Department of Children and Family Services, the Agency for
11 Persons with Disabilities, ~~and those of~~ the Department of
12 Education, and district school boards shall be mutually
13 supportive and complementary of each other. The education
14 programs provided by the district school board shall meet the
15 standards prescribed by the State Board of Education and the
16 district school board. Decisions regarding the design and
17 delivery of ~~Department of Children and Family Services~~
18 treatment or habilitative services provided by the department
19 or agency shall be made by interdisciplinary teams of
20 professional and paraprofessional staff of which appropriate
21 district school system administrative and instructional
22 personnel shall be invited to be participating members. The
23 requirements for maintenance of confidentiality as prescribed
24 in chapters 39, 393, 394, and 397 shall be applied to
25 information used by such interdisciplinary teams, and such
26 information shall be exempt from the provisions of ss.
27 119.07(1) and 286.011.

28 (4) Students age 18 and under who are under the
29 residential care of the Department of Children and Family
30 Services or the Agency for Persons with Disabilities and who
31 receive an education program shall be calculated as full-time

1 equivalent student membership in the appropriate cost factor
2 as provided for in s. 1011.62(1)(c). Residential care
3 facilities ~~of the Department of Children and Family Services~~
4 shall include, but not be limited to, developmental
5 disabilities services institutions and state mental health
6 facilities. All students shall receive their education
7 program from the district school system, and funding shall be
8 allocated through the Florida Education Finance Program for
9 the district school system.

10 (5) Instructional and special educational services
11 that which are provided to ~~mental health and retardation~~
12 clients with mental illness or developmental disabilities of
13 ~~in the Department of Children and Family Services~~ residential
14 care facilities of the department or the agency by local
15 school districts may shall not be less than 180 days or 900
16 hours; however, the 900 hours may be distributed over a
17 12-month period, unless otherwise stated in rules developed by
18 the State Board of Education, with the concurrence of the
19 department or agency, and adopted of Children and Family
20 ~~Services promulgated~~ pursuant to subsection (6).

21 (6) The State Board of Education, and the Department
22 of Children and Family Services, and the Agency for Persons
23 with Disabilities may adopt shall have the authority to
24 ~~promulgate~~ rules to which shall assist in the orderly transfer
25 of the instruction of students from ~~Department of Children and~~
26 ~~Family Services~~ residential care facilities of the department
27 or agency to the district school system or to the public
28 education agency and to which shall assist in implementing the
29 specific intent as stated in this act.

30 (7) Notwithstanding the provisions of s.
31 1001.42(4)(n), the educational program at the Marianna Sunland

1 Center in Jackson County shall be operated by the Department
2 of Education, either directly or through grants or contractual
3 agreements with other public educational agencies. The annual
4 state allocation to any such agency shall be computed pursuant
5 to s. 1011.62(1), (2), and (5) and allocated in the amount
6 that would have been provided the local school district in
7 which the residential facility is located.

8 Section 38. Paragraph (s) of subsection (3) of section
9 408.036, Florida Statutes, is amended to read:

10 408.036 Projects subject to review; exemptions.--

11 (3) EXEMPTIONS.--Upon request, the following projects
12 are subject to exemption from the provisions of subsection
13 (1):

14 (s) For beds in state developmental disabilities
15 ~~services~~ institutions as defined in s. 393.063.

16 Section 39. Paragraph (a) of subsection (2) and
17 subsection (8) of section 409.908, are amended to read:

18 409.908 Reimbursement of Medicaid providers.--Subject
19 to specific appropriations, the agency shall reimburse
20 Medicaid providers, in accordance with state and federal law,
21 according to methodologies set forth in the rules of the
22 agency and in policy manuals and handbooks incorporated by
23 reference therein. These methodologies may include fee
24 schedules, reimbursement methods based on cost reporting,
25 negotiated fees, competitive bidding pursuant to s. 287.057,
26 and other mechanisms the agency considers efficient and
27 effective for purchasing services or goods on behalf of
28 recipients. If a provider is reimbursed based on cost
29 reporting and submits a cost report late and that cost report
30 would have been used to set a lower reimbursement rate for a
31 rate semester, then the provider's rate for that semester

1 shall be retroactively calculated using the new cost report,
2 and full payment at the recalculated rate shall be effected
3 retroactively. Medicare-granted extensions for filing cost
4 reports, if applicable, shall also apply to Medicaid cost
5 reports. Payment for Medicaid compensable services made on
6 behalf of Medicaid eligible persons is subject to the
7 availability of moneys and any limitations or directions
8 provided for in the General Appropriations Act or chapter 216.
9 Further, nothing in this section shall be construed to prevent
10 or limit the agency from adjusting fees, reimbursement rates,
11 lengths of stay, number of visits, or number of services, or
12 making any other adjustments necessary to comply with the
13 availability of moneys and any limitations or directions
14 provided for in the General Appropriations Act, provided the
15 adjustment is consistent with legislative intent.

16 (2)(a)1. Reimbursement to nursing homes licensed under
17 part II of chapter 400 and state-owned-and-operated
18 intermediate care facilities for the developmentally disabled
19 licensed under part XI of chapter 400 ~~chapter 393~~ must be made
20 prospectively.

21 2. Unless otherwise limited or directed in the General
22 Appropriations Act, reimbursement to hospitals licensed under
23 part I of chapter 395 for the provision of swing-bed nursing
24 home services must be made on the basis of the average
25 statewide nursing home payment, and reimbursement to a
26 hospital licensed under part I of chapter 395 for the
27 provision of skilled nursing services must be made on the
28 basis of the average nursing home payment for those services
29 in the county in which the hospital is located. When a
30 hospital is located in a county that does not have any
31 community nursing homes, reimbursement shall ~~must~~ be

1 | determined by averaging the nursing home payments~~7~~ in counties
2 | that surround the county in which the hospital is located.
3 | Reimbursement to hospitals, including Medicaid payment of
4 | Medicare copayments, for skilled nursing services shall be
5 | limited to 30 days, unless a prior authorization has been
6 | obtained from the agency. Medicaid reimbursement may be
7 | extended by the agency beyond 30 days, and approval must be
8 | based upon verification by the patient's physician that the
9 | patient requires short-term rehabilitative and recuperative
10 | services only, in which case an extension of no more than 15
11 | days may be approved. Reimbursement to a hospital licensed
12 | under part I of chapter 395 for the temporary provision of
13 | skilled nursing services to nursing home residents who have
14 | been displaced as the result of a natural disaster or other
15 | emergency may not exceed the average county nursing home
16 | payment for those services in the county in which the hospital
17 | is located and is limited to the period of time which the
18 | agency considers necessary for continued placement of the
19 | nursing home residents in the hospital.

20 | (8) A provider of home-based or community-based
21 | services rendered pursuant to a federally approved waiver
22 | shall be reimbursed based on an established or negotiated rate
23 | for each service. These rates shall be established according
24 | to an analysis of the expenditure history and prospective
25 | budget developed by each contract provider participating in
26 | the waiver program, or under any other methodology adopted by
27 | the agency and approved by the Federal Government in
28 | accordance with the waiver. ~~Effective July 1, 1996,~~ Privately
29 | owned and operated community-based residential facilities
30 | which meet agency requirements and which formerly received
31 | Medicaid reimbursement for the optional intermediate care

1 facility for the mentally retarded service may participate in
2 the developmental services waiver as part of a
3 home-and-community-based continuum of care for Medicaid
4 recipients who receive waiver services.

5 Section 40. Subsection (3) of section 409.9127,
6 Florida Statutes, is amended to read:

7 409.9127 Preauthorization and concurrent utilization
8 review; conflict-of-interest standards.--

9 (3) The agency shall help the Agency for Persons with
10 Disabilities ~~Department of Children and Family Services~~ meet
11 the requirements of s. 393.065(4). Only admissions approved
12 pursuant to such assessments are eligible for reimbursement
13 under this chapter.

14 Section 41. Paragraph (c) of subsection (2) and
15 subsection (5) of section 411.224, Florida Statutes, are
16 amended to read:

17 411.224 Family support planning process.--The
18 Legislature establishes a family support planning process to
19 be used by the Department of Children and Family Services as
20 the service planning process for targeted individuals,
21 children, and families under its purview.

22 (2) To the extent possible within existing resources,
23 the following populations must be included in the family
24 support planning process:

25 (c) Children from birth through age 5 who are served
26 by the Agency for Persons with Disabilities ~~Developmental~~
27 ~~Disabilities Program Office of the Department of Children and~~
28 ~~Family Services~~.

29 (5) There must be only a single-family support plan to
30 address the problems of the various family members unless the
31 family requests that an individual family support plan be

1 developed for different members of that family. The family
2 support plan must replace individual habilitation plans for
3 children from birth through 5 years old who are served by the
4 Agency for Persons with Disabilities ~~Developmental~~
5 ~~Disabilities Program Office of the Department of Children and~~
6 ~~Family Services~~. To the extent possible, the family support
7 plan must replace other case-planning forms used by the
8 Department of Children and Family Services.

9 Section 42. Subsection (4) of section 411.232, Florida
10 Statutes, is amended to read:

11 411.232 Children's Early Investment Program.--

12 (4) RULES FOR IMPLEMENTATION.--The Department of
13 ~~Health and Rehabilitative Services~~ shall adopt rules necessary
14 to administer ~~implement~~ this section.

15 Section 43. Subsection (15) of section 415.102,
16 Florida Statutes, is amended to read:

17 415.102 Definitions of terms used in ss.

18 415.101-415.113.--As used in ss. 415.101-415.113, the term:

19 (15) "Neglect" means the failure or omission on the
20 part of the caregiver or vulnerable adult to provide the care,
21 supervision, and services necessary to maintain the physical
22 and mental health of the vulnerable adult, including, but not
23 limited to, food, clothing, medicine, shelter, supervision,
24 and medical services, that a prudent person would consider
25 essential for the well-being of a vulnerable adult. The term
26 "neglect" also means the failure of a caregiver or vulnerable
27 adult to make a reasonable effort to protect a vulnerable
28 adult from abuse, neglect, or exploitation by others.

29 "Neglect" is repeated conduct or a single incident of
30 carelessness which produces or could reasonably be expected to
31

1 result in serious physical or psychological injury or a
2 substantial risk of death.

3 Section 44. Section 415.1035, Florida Statutes, is
4 amended to read:

5 415.1035 Facility's duty to inform residents of their
6 right to report abusive, neglectful, or exploitive
7 practices.--The department shall work cooperatively with the
8 Agency for Health Care Administration, the Agency for Persons
9 with Disabilities, and the Department of Elderly Affairs to
10 ensure that every facility that serves vulnerable adults
11 informs residents of their right to report abusive,
12 neglectful, or exploitive practices. Each facility must
13 establish appropriate policies and procedures to facilitate
14 such reporting.

15 Section 45. Subsection (1) of section 415.1051,
16 Florida Statutes, is amended to read:

17 415.1051 Protective services interventions when
18 capacity to consent is lacking; nonemergencies; emergencies;
19 orders; limitations.--

20 (1) NONEMERGENCY PROTECTIVE SERVICES
21 INTERVENTIONS.--If the department has reasonable cause to
22 believe that a vulnerable adult or a vulnerable adult in need
23 of services is being abused, neglected, or exploited and is in
24 need of protective services but lacks the capacity to consent
25 to protective services, the department shall petition the
26 court for an order authorizing the provision of protective
27 services.

28 (a) Nonemergency protective services petition.--The
29 petition must state the name, age, and address of the
30 vulnerable adult, allege specific facts sufficient to show
31 that the vulnerable adult is in need of protective services

1 and lacks the capacity to consent to them, and indicate the
2 services needed.

3 (b) Notice.--Notice of the filing of the petition and
4 a copy of the petition must be given to the vulnerable adult,
5 to that person's spouse, guardian, and legal counsel, and,
6 when known, to the adult children or next of kin of the
7 vulnerable adult. Such notice must be given at least 5 days
8 before the hearing.

9 (c) Hearing.--

10 1. The court shall set the case for hearing within 14
11 days after the filing of the petition. The vulnerable adult
12 and any person given notice of the filing of the petition have
13 the right to be present at the hearing. The department must
14 make reasonable efforts to ensure the presence of the
15 vulnerable adult at the hearing.

16 2. The vulnerable adult has the right to be
17 represented by legal counsel at the hearing. The court shall
18 appoint legal counsel to represent a vulnerable adult who is
19 without legal representation.

20 3. The court shall determine whether:

21 a. Protective services, including in-home services,
22 are necessary.

23 b. The vulnerable adult lacks the capacity to consent
24 to the provision of such services.

25 (d) Hearing findings.--If ~~at the hearing~~ the court
26 finds by clear and convincing evidence that the vulnerable
27 adult is in need of protective services and lacks the capacity
28 to consent, the court may issue an order authorizing the
29 provision of protective services. If an order for protective
30 services is issued, it must include a statement of the
31 services to be provided and designate an individual or agency

1 to be responsible for performing or obtaining the essential
2 services on behalf of the vulnerable adult or otherwise
3 consenting to protective services on behalf of the vulnerable
4 adult.

5 (e) Continued protective services.--

6 1. No more than 60 days after the date of the order
7 authorizing the provision of protective services, the
8 department shall petition the court to determine whether:

9 a. Protective services will be continued with the
10 consent of the vulnerable adult pursuant to subsection (1);

11 b. Protective services will be continued for the
12 vulnerable adult who lacks capacity;

13 c. Protective services will be discontinued; or

14 d. A petition for guardianship should be filed
15 pursuant to chapter 744.

16 2. If the court determines that a petition for
17 guardianship should be filed pursuant to chapter 744, the
18 court, for good cause shown, may order continued protective
19 services until ~~it makes~~ a determination regarding capacity is
20 made.

21 (f) Costs.--The costs of services ordered under this
22 section must be paid by the perpetrator if the perpetrator is
23 financially able to do so; or by third-party reimbursement, if
24 available. If the vulnerable adult is unable to pay for
25 guardianship, application may be made to the public guardian
26 for public guardianship services, if available.

27 Section 46. Subsections (1) and (10) of section
28 415.1055, Florida Statutes, are amended to read:

29 415.1055 Notification to administrative entities.--

30 (1) Upon receipt of a report that alleges that an
31 employee or agent of the department, the Agency for Persons

1 with Disabilities, or the Department of Elderly Affairs,
2 acting in an official capacity, has committed an act of abuse,
3 neglect, or exploitation, the department shall notify the
4 state attorney in whose circuit the abuse, neglect, or
5 exploitation occurred. This notification may be oral or
6 written.

7 (10) When a report has been received and the
8 department has reason to believe that a vulnerable adult
9 resident of a facility licensed by the Agency for Health Care
10 Administration or the Agency for Persons with Disabilities has
11 been the victim of abuse, neglect, or exploitation, the
12 department shall provide a copy of its investigation to the
13 appropriate agency. If the investigation determines that a
14 health professional licensed or certified under the Department
15 of Health may have abused, neglected, or exploited a
16 vulnerable adult, the department shall also provide a copy to
17 the Department of Health.

18 Section 47. Paragraphs (a) and (h) of subsection (3)
19 of section 415.107, Florida Statutes, are amended to read:

20 415.107 Confidentiality of reports and records.--

21 (3) Access to all records, excluding the name of the
22 reporter which shall be released only as provided in
23 subsection (6), shall be granted only to the following
24 persons, officials, and agencies:

25 (a) Employees or agents of the department, ~~of~~ the
26 Agency for Health Care Administration, the Agency for Persons
27 with Disabilities, or ~~of~~ the Department of Elderly Affairs who
28 are responsible for carrying out protective investigations,
29 ongoing protective services, or licensure or approval of
30 nursing homes, assisted living facilities, adult day care
31 centers, adult family-care homes, home care for the elderly,

1 hospices, or other facilities used for the placement of
2 vulnerable adults.

3 (h) Any appropriate official of the department, the
4 Agency for Persons with Disabilities, ~~of~~ the Agency for Health
5 Care Administration, or ~~of~~ the Department of Elderly Affairs
6 who is responsible for:

7 1. Administration or supervision of the programs for
8 the prevention, investigation, or treatment of abuse, neglect,
9 or exploitation of vulnerable adults when carrying out an
10 official function; or

11 2. Taking appropriate administrative action concerning
12 an employee alleged to have perpetrated abuse, neglect, or
13 exploitation of a vulnerable adult in an institution.

14 Section 48. Subsections (1), (2), (3), and (6) of
15 section 419.001, Florida Statutes, are amended to read:

16 419.001 Site selection of community residential
17 homes.--

18 (1) For the purposes of this section, the term
19 ~~following definitions shall apply:~~

20 (a) "Agency" means the Agency for Persons with
21 Disabilities.

22 (b)(a) "Community residential home" means a dwelling
23 unit licensed to serve clients of the Department of Children
24 and Family Services or the Agency for Persons with
25 Disabilities, which provides a living environment for 7 to 14
26 unrelated residents who operate as the functional equivalent
27 of a family, including such supervision and care by supportive
28 staff as may be necessary to meet the physical, emotional, and
29 social needs of the residents.

30 (c)(b) "Department" means the Department of Children
31 and Family Services.

1 ~~(d)(e)~~ "Local government" means a county as set forth
2 in chapter 7 or a municipality incorporated under the
3 provisions of chapter 165.

4 ~~(e)(d)~~ "Resident" means any of the following: a frail
5 elder as defined in s. 400.618; a physically disabled or
6 handicapped person as defined in s. 760.22(7)(a); a
7 ~~developmentally disabled person with a developmental~~
8 disability as defined in s. 393.063; a nondangerous ~~mentally~~
9 ~~ill person with mental illness~~ as defined in ~~s. 394.455 s.~~
10 ~~394.455(18)~~; or a child as defined in s. 39.01(14), s.
11 984.03(9) or (12), or s. 985.03(8).

12 ~~(f)(e)~~ "Sponsoring agency" means an agency or unit of
13 government, a profit or nonprofit agency, or any other person
14 or organization which intends to establish or operate a
15 community residential home.

16 (2) Homes of six or fewer residents which otherwise
17 meet the definition of a community residential home shall be
18 deemed a single-family unit and a noncommercial, residential
19 use for the purpose of local laws and ordinances. Homes of
20 six or fewer residents which otherwise meet the definition of
21 a community residential home shall be allowed in single-family
22 or multifamily zoning without approval by the local
23 government, provided that such homes shall not be located
24 within a radius of 1,000 feet of another existing such home
25 with six or fewer residents. Such homes with six or fewer
26 residents shall not be required to comply with the
27 notification provisions of this section; provided, however,
28 that the sponsoring agency ~~or the department~~ notifies the
29 local government at the time of home occupancy that the home
30 is licensed by the department or agency.

1 (3)(a) When a site for a community residential home
2 has been selected by a sponsoring agency in an area zoned for
3 multifamily, the sponsoring agency shall notify the chief
4 executive officer of the local government in writing and
5 include in such notice the specific address of the site, the
6 residential licensing category, the number of residents, and
7 the community support requirements of the program. Such
8 notice shall also contain a statement from the district
9 administrator of the department indicating the need for and
10 the licensing status of the proposed community residential
11 home and specifying how the home meets applicable licensing
12 criteria for the safe care and supervision of the clients in
13 the home. The department and agency ~~district administrator~~
14 shall also provide to the local government the most recently
15 published data compiled that identifies all community
16 residential homes in the department's district in which the
17 proposed site is to be located. The local government shall
18 review the notification of the sponsoring agency in accordance
19 with the zoning ordinance of the jurisdiction.

20 (b) Pursuant to such review, the local government may:

21 1. Determine that the siting of the community
22 residential home is in accordance with local zoning and
23 approve the siting. If the siting is approved, the sponsoring
24 agency may establish the home at the site selected.

25 2. Fail to respond within 60 days. If the local
26 government fails to respond within such time, the sponsoring
27 agency may establish the home at the site selected.

28 3. Deny the siting of the home.

29 (c) The local government shall not deny the siting of
30 a community residential home unless the local government
31 establishes that the siting of the home at the site selected:

1 1. Does not otherwise conform to existing zoning
2 regulations applicable to other multifamily uses in the area.

3 2. Does not meet applicable licensing criteria
4 established and determined by the department or agency,
5 including requirements that the home be located to assure the
6 safe care and supervision of all clients in the home.

7 3. Would result in such a concentration of community
8 residential homes in the area in proximity to the site
9 selected, or would result in a combination of such homes with
10 other residences in the community, such that the nature and
11 character of the area would be substantially altered. A home
12 that is located within a radius of 1,200 feet of another
13 existing community residential home in a multifamily zone
14 shall be an overconcentration of such homes that substantially
15 alters the nature and character of the area. A home that is
16 located within a radius of 500 feet of an area of
17 single-family zoning substantially alters the nature and
18 character of the area.

19 (6) The department or agency may ~~shall~~ not issue a
20 license to a sponsoring agency for operation of a community
21 residential home if the sponsoring agency does not notify the
22 local government of its intention to establish a program, as
23 required by subsection (3). A license issued without
24 compliance with the provisions of this section shall be
25 considered null and void, and continued operation of the home
26 may be enjoined.

27 Section 49. Paragraph (a) of subsection (3) of section
28 435.03, Florida Statutes, is amended to read:

29 435.03 Level 1 screening standards.--

30 (3) Standards must also ensure that the person:
31

1 (a) For employees and employers licensed or registered
2 pursuant to chapter 400, and for employees and employers of
3 developmental disabilities services institutions as defined in
4 s. 393.063, intermediate care facilities for the
5 developmentally disabled as defined in s. 393.063, and mental
6 health treatment facilities as defined in s. 394.455, meets
7 the requirements of this chapter.

8 Section 50. Section 944.602, Florida Statutes, is
9 amended to read:

10 944.602 Agency notification ~~of Department of Children~~
11 ~~and Family Services~~ before release of mentally retarded
12 inmates.--Before the release by parole, release by reason of
13 gain-time allowances provided for in s. 944.291, or expiration
14 of sentence of any inmate who has been diagnosed as mentally
15 retarded as defined in s. 393.063, the Department of
16 Corrections shall notify the Agency for Persons with
17 Disabilities ~~Department of Children and Family Services~~ in
18 order that sufficient time be allowed to notify the inmate or
19 the inmate's representative, in writing, at least 7 days prior
20 to the inmate's release, of available community services.

21 Section 51. Subsections (2) and (3) of section
22 945.025, Florida Statutes, are amended to read:

23 945.025 Jurisdiction of department.--

24 (2) In establishing, operating, and using ~~utilizing~~
25 these facilities, the department shall attempt, whenever
26 possible, to avoid the placement of nondangerous offenders who
27 have potential for rehabilitation with repeat offenders or
28 dangerous offenders. Medical, mental, and psychological
29 problems shall be diagnosed and treated whenever possible. The
30 Department of Children and Family Services and the Agency for
31 Persons with Disabilities shall cooperate to ensure the

1 delivery of services to persons under the custody or
2 supervision of the department. When it is the intent of the
3 department to transfer a mentally ill or retarded prisoner to
4 the Department of Children and Family Services or the Agency
5 for Persons with Disabilities, an involuntary commitment
6 hearing shall be held according to the provisions of chapter
7 393 or chapter 394.

8 (3) There shall be other correctional facilities,
9 including detention facilities of varying levels of security,
10 work-release facilities, and community correctional
11 facilities, halfway houses, and other approved community
12 residential and nonresidential facilities and programs;
13 however, no adult correctional facility may be established by
14 changing the use and purpose of any mental health facility or
15 mental health institution under the jurisdiction of any state
16 agency or department without authorization in the General
17 Appropriation Act or other approval by the Legislature. ~~Any~~
18 ~~facility the purpose and use of which was changed subsequent~~
19 ~~to January 1, 1975, shall be returned to its original use and~~
20 ~~purpose by July 1, 1977. However, the G. Pierce Wood Memorial~~
21 ~~Hospital located at Arcadia, DeSoto County, may not be~~
22 ~~converted into a correctional facility as long as such~~
23 ~~hospital is in use as a state mental health hospital. Any~~
24 community residential facility may be deemed a part of the
25 state correctional system for purposes of maintaining custody
26 of offenders, and for this purpose the department may contract
27 for and purchase the services of such facilities.

28 Section 52. Section 947.185, Florida Statutes, is
29 amended to read:

30 947.185 Application for mental retardation services as
31 condition of parole.--The Parole Commission may require as a

1 condition of parole that any inmate who has been diagnosed as
2 mentally retarded as defined in s. 393.063 shall, upon
3 release, apply for retardation services from the Agency for
4 Persons with Disabilities ~~Department of Children and Family~~
5 ~~Services~~.

6 Section 53. Subsection (3) of section 984.19, Florida
7 Statutes, is amended to read:

8 984.19 Medical screening and treatment of child;
9 examination of parent, guardian, or person requesting
10 custody.--

11 (3) A judge may order that a child alleged to be or
12 adjudicated a child in need of services be examined by a
13 licensed health care professional. The judge may also order
14 such child to be evaluated by a psychiatrist or a
15 psychologist, by a district school board educational needs
16 assessment team, or, if a developmental disability is
17 suspected or alleged, by a ~~the~~ developmental disability
18 diagnostic and evaluation team with ~~of~~ the Agency for Persons
19 with Disabilities ~~Department of Children and Family Services~~.
20 The judge may order a family assessment if that assessment was
21 not completed at an earlier time. If it is necessary to place
22 a child in a residential facility for such evaluation, then
23 the criteria and procedure established in s. 394.463(2) or
24 chapter 393 shall be used, whichever is applicable. The
25 educational needs assessment provided by the district school
26 board educational needs assessment team shall include, but not
27 be limited to, reports of intelligence and achievement tests,
28 screening for learning disabilities and other handicaps, and
29 screening for the need for alternative education pursuant to
30 s. 1003.53.

1 Section 54. Subsection (8) of section 984.225, Florida
2 Statutes, is amended to read:

3 984.225 Powers of disposition; placement in a
4 staff-secure shelter.--

5 (8) If the child requires residential mental health
6 treatment or residential care for a developmental disability,
7 the court shall refer the child to the Department of Children
8 and Family Services or the Agency for Persons with
9 Disabilities, as appropriate, for the provision of necessary
10 services.

11 Section 55. Paragraph (e) of subsection (5) of section
12 984.226, Florida Statutes, is amended to read:

13 984.226 Physically secure setting.--

14 (5)

15 (e) If the child requires residential mental health
16 treatment or residential care for a developmental disability,
17 the court shall refer the child to the Department of Children
18 and Family Services or the Agency for Persons with
19 Disabilities, as appropriate, for the provision of necessary
20 services.

21 Section 56. Subsection (1) of section 985.224, Florida
22 Statutes, is amended to read:

23 985.224 Medical, psychiatric, psychological, substance
24 abuse, and educational examination and treatment.--

25 (1) After a detention petition or a petition for
26 delinquency has been filed, the court may order the child
27 named in the petition to be examined by a physician. The court
28 may also order the child to be evaluated by a psychiatrist or
29 a psychologist, by a district school board educational needs
30 assessment team, or, if a developmental disability is
31 suspected or alleged, by ~~a~~ the developmental disabilities

1 diagnostic and evaluation team ~~with~~ of the Agency for Persons
2 with Disabilities ~~Department of Children and Family Services.~~

3 If it is necessary to place a child in a residential facility
4 for such evaluation, the criteria and procedures established
5 in chapter 393, chapter 394, or chapter 397, whichever is
6 applicable, shall be used.

7 Section 57. Section 1003.58, Florida Statutes, is
8 amended to read:

9 1003.58 Students in residential care facilities.--Each
10 district school board shall provide educational programs
11 according to rules of the State Board of Education to students
12 who reside in residential care facilities operated by the
13 Department of Children and Family Services or the Agency for
14 Persons with Disabilities.

15 (1) The district school board shall not be charged any
16 rent, maintenance, utilities, or overhead on such facilities.
17 Maintenance, repairs, and remodeling of existing facilities
18 shall be provided by the Department of Children and Family
19 Services or the Agency for Persons with Disabilities, as
20 appropriate.

21 (2) If additional facilities are required, the
22 district school board and the Department of Children and
23 Family Services or the Agency for Persons Disabilities, as
24 appropriate, shall agree on the appropriate site based on the
25 instructional needs of the students. When the most appropriate
26 site for instruction is on district school board property, a
27 special capital outlay request shall be made by the
28 commissioner in accordance with s. 1013.60. When the most
29 appropriate site is on state property, state capital outlay
30 funds shall be requested by the department or agency in
31 accordance with chapter 216 of Children and Family Services as

1 ~~provided by s. 216.043 and shall be submitted as specified by~~
2 ~~s. 216.023.~~ Any instructional facility to be built on state
3 property shall have educational specifications jointly
4 developed by the school district and the department or agency
5 ~~of Children and Family Services~~ and approved by the Department
6 of Education. The size of space and occupant design capacity
7 criteria as provided by state board rules shall be used for
8 remodeling or new construction whether facilities are provided
9 on state property or district school board property. The
10 planning of such additional facilities shall incorporate
11 current ~~Department of Children and Family Services~~
12 deinstitutionalization goals and plans of the state.

13 (3) The district school board shall have full and
14 complete authority in the matter of the assignment and
15 placement of such students in educational programs. The parent
16 of an exceptional student shall have the same due process
17 rights as are provided under s. 1003.57(5).

18 (4) The district school board shall have a written
19 agreement with the Department of Children and Family Services
20 and the Agency for Persons with Disabilities outlining the
21 respective duties and responsibilities of each party.

22
23 Notwithstanding the provisions herein, the educational program
24 at the Marianna Sunland Center in Jackson County shall be
25 operated by the Department of Education, either directly or
26 through grants or contractual agreements with other public or
27 duly accredited educational agencies approved by the
28 Department of Education.

29 Section 58. Section 114 of chapter 2004-267, Laws of
30 Florida, is repealed.

31 Section 59. This act shall take effect July 1, 2005.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Revises various provisions governing services provided by the Agency for Persons with Disabilities. Conforms provisions of law to the transfer of duties from the Developmental Disabilities Program Office of the Department of Children and Family Services to the agency. Revises certain requirements governing the screening of agency personnel and providers. Clarifies the agency's rulemaking authority. Establishes a comprehensive transitional education program to provide services for persons exhibiting maladaptive behaviors. Establishes the Community Resources Development Loan Program. (See bill for details.)