

Bill No. CS for SB 2012

Barcode 210912

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Baker) recommended the following
amendment to amendment (974712):

Senate Amendment (with title amendment)

On page 83, line 13, through
page 108, line 17, delete those lines

and insert:

(5) NOTICE OF INJURY.--Deaths and serious injuries
that occur while an individual is restrained or in seclusion
or where it is reasonable to assume that the death or serious
injury of an individual is a result of restraint or seclusion
occurring in facilities, programs, or services that are
operated, licensed, or owned by the Agency for Health Care
Administration, the Agency for Persons with Disabilities, or
the Department of Children and Family Services shall be posted
on a website maintained by the Agency for Health Care
Administration. No later than the end of the first business
day following receipt of the notice of death or serious injury
from the Agency for Health Care Administration, the Agency for
Persons with Disabilities, or the Department of Children and

Bill No. CS for SB 2012

Barcode 210912

1 Family Services, the Agency for Health Care Administration
 2 shall post on the website that an incident occurred, the date
 3 of the incident, and the name of the agency to which the death
 4 or serious injury was reported. This posting shall be
 5 accessible to the public.

6 (6) LIABILITY FOR VIOLATIONS.--Any person who violates
 7 or abuses any rights or privileges of persons who are
 8 developmentally disabled provided by this chapter is ~~act shall~~
 9 ~~be~~ liable for damages as determined by law. Any person who
 10 acts in good faith compliance with the provisions of this
 11 chapter is ~~act shall be~~ immune from civil or criminal
 12 liability for actions in connection with evaluation,
 13 admission, habilitative programming, education, treatment, or
 14 discharge of a client. However, this section does ~~shall~~ not
 15 relieve any person from liability if the ~~such~~ person is guilty
 16 of negligence, misfeasance, nonfeasance, or malfeasance.

17 (7)(6) NOTICE OF RIGHTS.--Each person with
 18 developmental disabilities, if competent, or parent or legal
 19 guardian of such person if the person is incompetent, shall
 20 promptly receive from the agency or the Department of
 21 Education a written copy of this act. Each person with
 22 developmental disabilities able to comprehend shall be
 23 promptly informed, in the language or other mode of
 24 communication which such person understands, of the above
 25 legal rights of persons with developmental disabilities.

26 (8)(7) RESIDENT GOVERNMENT.--Each residential facility
 27 providing services to clients who are desirous and capable of
 28 participating shall initiate and develop a program of resident
 29 government to hear the views and represent the interests of
 30 all clients served by the facility. The resident government
 31 shall be composed of residents elected by other residents,

Bill No. CS for SB 2012

Barcode 210912

1 staff advisers skilled in the administration of community
 2 organizations, and, at the option of the residential
 3 government, representatives of advocacy groups for persons
 4 with developmental disabilities from the community ~~a~~
 5 ~~representative of the Florida local advocacy council. The~~
 6 ~~resident government shall work closely with the Florida local~~
 7 ~~advocacy council and the district administrator to promote the~~
 8 ~~interests and welfare of all residents in the facility.~~

9 Section 30. Subsections (1), (2), (3), (4), and (5) of
 10 section 393.135, Florida Statutes, are amended to read:

11 393.135 Sexual misconduct prohibited; reporting
 12 required; penalties.--

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

14 (a) "Covered person" ~~"Employee"~~ includes any employee,
 15 paid staff member, volunteer, or intern of the agency ~~or the~~
 16 ~~department;~~ any person under contract with the agency ~~or the~~
 17 ~~department;~~ and any person providing care or support to a
 18 client on behalf of the agency ~~department~~ or its providers.

19 (b) "Sexual activity" means:

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

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

25 3. Intentionally touching in a lewd or lascivious
 26 manner the breasts, genitals, the genital area, or buttocks,
 27 or the clothing covering them, of a person, or forcing or
 28 enticing a person to touch the perpetrator.

29 4. Intentionally masturbating in the presence of
 30 another person.

31 5. Intentionally exposing the genitals in a lewd or

Bill No. CS for SB 2012

Barcode 210912

1 lascivious manner in the presence of another person.

2 6. Intentionally committing any other sexual act that
3 does not involve actual physical or sexual contact with the
4 victim, including, but not limited to, sadomasochistic abuse,
5 sexual bestiality, or the simulation of any act involving
6 sexual activity in the presence of a victim.

7 (c) "Sexual misconduct" means any sexual activity
8 between a covered person ~~an employee~~ and a client to whom a
9 covered person renders services, care, or support on behalf of
10 the agency or its providers, or between a covered person and
11 another client who lives in the same home as the client to
12 whom a covered person is rendering the services, care, or
13 support, regardless of the consent of the client. The term
14 does not include an act done for a bona fide medical purpose
15 or an internal search conducted in the lawful performance of
16 duty by a covered person ~~an employee~~.

17 (2) A covered person ~~An employee~~ who engages in sexual
18 misconduct with an individual with a developmental disability
19 who:

20 ~~(a) Is in the custody of the department;~~

21 ~~(a)(b)~~ Resides in a residential facility, including
22 any comprehensive transitional education program,
23 developmental disabilities ~~services~~ institution, foster care
24 facility, group home facility, intermediate care facility for
25 the developmentally disabled, or residential habilitation
26 center; or

27 ~~(b)(c)~~ Is eligible to receive ~~Receives~~ services from
28 the agency under this chapter ~~a family care program,~~

29
30 commits a felony of the second degree, punishable as provided
31 in s. 775.082, s. 775.083, or s. 775.084. A covered person ~~An~~

Bill No. CS for SB 2012

Barcode 210912

1 ~~employee~~ may be found guilty of violating this subsection
2 without having committed the crime of sexual battery.

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

5 (4) This section does not apply to a covered person ~~an~~
6 ~~employee~~ who+

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

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

11 (5) A covered person ~~An employee~~ who witnesses sexual
12 misconduct, or who otherwise knows or has reasonable cause to
13 suspect that a person has engaged in sexual misconduct, shall
14 immediately report the incident to the ~~department's~~ central
15 abuse hotline of the Department of Children and Family
16 Services and to the appropriate local law enforcement agency.

17 The covered person ~~Such employee~~ shall also prepare, date, and
18 sign an independent report that specifically describes the
19 nature of the sexual misconduct, the location and time of the
20 incident, and the persons involved. The covered person
21 ~~employee~~ shall deliver the report to the supervisor or program
22 director, who is responsible for providing copies to the
23 agency's local office and the agency's ~~department's~~ inspector
24 general. ~~The inspector general shall immediately conduct an~~
25 ~~appropriate administrative investigation, and, if there is~~
26 ~~probable cause to believe that sexual misconduct has occurred,~~
27 ~~the inspector general shall notify the state attorney in the~~
28 ~~circuit in which the incident occurred.~~

29 Section 31. Section 393.15, Florida Statutes, is
30 amended to read:

31 393.15 Legislative intent; Community Resources

Bill No. CS for SB 2012

Barcode 210912

1 Development Loan Program ~~Trust Fund~~.--

2 (1) The Legislature finds and declares that the
3 development of community-based treatment facilities for
4 persons with developmental disabilities ~~who are~~
5 ~~developmentally disabled~~ is desirable and recommended and
6 should be encouraged and fostered by the state. The
7 Legislature further recognizes that the development of such
8 facilities is financially difficult for private individuals,
9 due to initial expenditures required to adapt existing
10 structures to the special needs of such persons ~~who are~~
11 ~~developmentally disabled~~ who may be served in community-based
12 foster care, group home, ~~developmental training~~, and supported
13 employment programs. Therefore, ~~it is the intent of the~~
14 Legislature intends that the agency ~~by this act to develop and~~
15 administer a loan program ~~trust fund~~ to provide support and
16 encouragement in the establishment of community-based foster
17 care, group home, ~~developmental training~~, and supported
18 employment programs for persons with developmental
19 disabilities ~~who are developmentally disabled~~.

20 ~~(2) As used in this section, a foster care, group~~
21 ~~home, developmental training, or supported employment program~~
22 ~~may not be a for-profit corporation, but may be a nonprofit~~
23 ~~corporation, partnership, or sole proprietorship.~~

24 ~~(2)(3)~~ There is created a Community Resources
25 Development Loan Program ~~in Trust Fund in the State Treasury~~
26 ~~to be used by~~ the agency for the purpose of granting loans to
27 eligible programs for the initial costs of development of the
28 programs. In order to be eligible for the program, a foster
29 home, group home, or supported employment program must:

30 (a) Serve persons with developmental disabilities;

31 (b) Be a nonprofit corporation, partnership, or sole

Bill No. CS for SB 2012

Barcode 210912

1 proprietorship; and

2 (c) Be ~~loans shall be made only to those facilities~~
3 ~~which are~~ in compliance with the zoning regulations of the
4 local community.

5 (3) Loans may be made to pay for the costs of
6 development and ~~may include~~ structural modification, the
7 purchase of equipment and fire and safety devices,
8 preoperational staff training, and the purchase of insurance.
9 Such costs may ~~shall~~ not include the actual construction of a
10 facility and may not be in lieu of payment for maintenance,
11 client services, or care provided.

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

21 (5) The agency shall adopt rules, ~~as provided in~~
22 ~~chapter 120,~~ to determine the criteria ~~standards~~ under which a
23 program shall be eligible to receive a loan ~~as provided in~~
24 ~~this section~~ and the methodology ~~criteria~~ for the equitable
25 allocation of loan ~~trust~~ funds when eligible applications
26 exceed the funds available.

27 (6)(5) Any loan granted by the agency under this
28 section shall be repaid by the program within 5 years and the
29 amount paid shall be deposited into the agency's
30 Administrative Trust Fund. Moneys repaid shall be used to fund
31 new loans. A program that operates as a nonprofit corporation

Bill No. CS for SB 2012

Barcode 210912

1 meeting the requirements of s. 501(c)(3) of the Internal
 2 Revenue Code, and that seeks forgiveness of its loan shall
 3 submit to the agency an annual ~~a~~ statement setting forth the
 4 service it has provided during the year together with such
 5 other information as the agency by rule shall require, and,
 6 upon approval of each such annual statement, the agency may
 7 ~~shall~~ forgive up to 20 percent of the principal of any such
 8 loan granted ~~after June 30, 1975.~~

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

Bill No. CS for SB 2012

Barcode 210912

1 used to fund new loans.

2 Section 32. Section 393.17, Florida Statutes, is
3 amended to read:

4 393.17 Behavioral programs; certification of behavior
5 analysts.--

6 (1) The agency may establish a certification process
7 for behavioral analysts in order to ensure that only qualified
8 employees and service providers provide behavioral analysis
9 services to clients. The procedures must be established by
10 rule and must include criteria for scope of practice,
11 qualifications for certification, including training and
12 testing requirements, continuing education requirements for
13 ongoing certification, and standards of performance. The
14 procedures must also include decertification procedures that
15 may be used to determine whether an individual continues to
16 meet the qualifications for certification or the professional
17 performance standards and, if not, the procedures necessary to
18 decertify an employee or service provider.

19 (2) The agency may recognize the certification of
20 behavior analysts awarded by a nonprofit corporation that
21 adheres to the natural standards for professional
22 credentialing boards and whose mission is to meet professional
23 credentialing needs identified by behavior analysts, state
24 governments, and consumers of behavior analysis services and
25 whose work has the support of the Association for Behavior
26 Analysis International. The certification procedure recognized
27 by the agency must undergo regular psychometric review and
28 validation, pursuant to a job analysis survey of the
29 profession and standards established by content experts in the
30 field.

31 Section 33. Section 393.18, Florida Statutes, is

Bill No. CS for SB 2012

Barcode 210912

1 created to read:

2 393.18 Comprehensive transitional education
3 program.--A comprehensive transition education program is a
4 group of jointly operating centers or units, the collective
5 purpose of which is to provide a sequential series of
6 educational care, training, treatment, habilitation, and
7 rehabilitation services to persons who have developmental
8 disabilities and who have severe or moderate maladaptive
9 behaviors. However, this section does not require such
10 programs to provide services only to persons with
11 developmental disabilities. All such services shall be
12 temporary in nature and delivered in a structured residential
13 setting, having the primary goal of incorporating the
14 principle of self-determination in establishing permanent
15 residence for persons with maladaptive behaviors in facilities
16 that are not associated with the comprehensive transitional
17 education program. The staff shall include psychologists and
18 teachers who shall be available to provide services in each
19 component center or unit of the program. The psychologists
20 shall be individuals who are licensed in this state and
21 certified as behavior analysts in this state or individuals
22 who are certified as behavior analysts pursuant to s. 393.17.

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

29 (a) Intensive treatment and educational center.--This
30 component is a self-contained residential unit providing
31 intensive psychological and educational programming for

Bill No. CS for SB 2012

Barcode 210912

1 persons with severe maladaptive behaviors, whose behaviors
2 preclude placement in a less-restrictive environment due to
3 the threat of danger or injury to themselves or others.

4 (b) Transitional training and educational
5 center.--This component is a residential unit for persons with
6 moderate maladaptive behaviors, providing concentrated
7 psychological and educational programming that emphasizes a
8 transition toward a less-restrictive environment.

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

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

21 (e) Independent living education center.--This
22 component is a facility providing a family living environment
23 for persons with maladaptive behaviors in a largely
24 unrestricted setting and includes education and monitoring
25 that is appropriate to support the development of independent
26 living skills.

27 (2) Components of a comprehensive transitional
28 education program are subject to the license issued under s.
29 393.067 to a comprehensive transitional education program and
30 may be located on a single site or multiple sites.

31 (3) Comprehensive transitional education programs

Bill No. CS for SB 2012

Barcode 210912

1 shall develop individual education plans for each person with
 2 maladaptive behaviors who receives services from the program.
 3 Each individual education plan shall be developed in
 4 accordance with the criteria specified in 20 U.S.C. ss. 401 et
 5 seq., and 34 C.F.R. part 300.

6 (4) The total number of persons with maladaptive
 7 behaviors being provided services in a comprehensive
 8 transitional education program may not in any instance exceed
 9 120 residents.

10 Section 34. Section 393.23, Florida Statutes, is
 11 created to read:

12 393.23 Developmental disabilities institutions; trust
 13 accounts.--All receipts from the operation of canteens,
 14 vending machines, hobby shops, sheltered workshops, activity
 15 centers, farming projects, and other like activities operated
 16 in a developmental disabilities institution, and moneys
 17 donated to the institution, must be deposited in a trust
 18 account in any bank, credit union, or savings and loan
 19 association authorized by the State Treasury as a qualified
 20 depositor to do business in this state, if the moneys are
 21 available on demand.

22 (1) Moneys in the trust account must be expended for
 23 the benefit, education, and welfare of clients. However, if
 24 specified, moneys that are donated to the institution must be
 25 expended in accordance with the intentions of the donor. Trust
 26 account money may not be used for the benefit of employees of
 27 the agency, or to pay the wages of such employees. The welfare
 28 of the clients includes the expenditure of funds for the
 29 purchase of items for resale at canteens or vending machines,
 30 and for the establishment of, maintenance of, and operation of
 31 canteens, hobby shops, recreational or entertainment

Bill No. CS for SB 2012

Barcode 210912

1 facilities, sheltered workshops, activity centers, farming
2 projects, or other like facilities or programs established at
3 the institutions for the benefit of clients.

4 (2) The institution may invest, in the manner
5 authorized by law for fiduciaries, any money in a trust
6 account which is not necessary for immediate use. The interest
7 earned and other increments derived from the investments of
8 the money must be deposited into the trust account for the
9 benefit of clients.

10 (3) The accounting system of an institution must
11 account separately for revenues and expenses for each
12 activity. The institution shall reconcile the trust account to
13 the institution's accounting system and check registers and to
14 the accounting system of the Chief Financial Officer.

15 (4) All sales taxes collected by the institution as a
16 result of sales shall be deposited into the trust account and
17 remitted to the Department of Revenue.

18 (5) Funds shall be expended in accordance with
19 requirements and guidelines established by the Chief Financial
20 Officer.

21 Section 35. Section 393.501, Florida Statutes, is
22 amended to read:

23 393.501 Rulemaking.--

24 (1) The agency ~~may shall~~ adopt rules pursuant to s.
25 120.54 to carry out its statutory duties ~~the provisions of~~
26 ~~this chapter.~~

27 (2) Such rules shall address the number of facilities
28 on a single ~~lot parcel~~ or on adjacent lots ~~parcels of land,~~
29 ~~and in addition, for ICF/MR, the rate and location of facility~~
30 ~~development and level of care. In adopting rules, an~~
31 alternative living center and an independent living education

Bill No. CS for SB 2012

Barcode 210912

1 center, as described in s. 393.18, shall be subject to the
 2 provisions of s. 419.001, except that such centers shall be
 3 exempt from the 1,000-foot-radius requirement of s. 419.001(2)
 4 if:

5 (a) The centers are located on a site zoned in a
 6 manner that permits all the components of a comprehensive
 7 transition education center to be located on the site; or

8 (b) There are no more than three such centers within a
 9 radius of 1,000 feet.

10 Section 36. Section 394.453, Florida Statutes, is
 11 amended to read:

12 394.453 Legislative intent.--It is the intent of the
 13 Legislature to authorize and direct the Department of Children
 14 and Family Services to evaluate, research, plan, and recommend
 15 to the Governor and the Legislature programs designed to
 16 reduce the occurrence, severity, duration, and disabling
 17 aspects of mental, emotional, and behavioral disorders. It is
 18 the intent of the Legislature that treatment programs for such
 19 disorders shall include, but not be limited to, comprehensive
 20 health, social, educational, and rehabilitative services to
 21 persons requiring intensive short-term and continued treatment
 22 in order to encourage them to assume responsibility for their
 23 treatment and recovery. It is intended that such persons be
 24 provided with emergency service and temporary detention for
 25 evaluation when required; that they be admitted to treatment
 26 facilities on a voluntary basis when extended or continuing
 27 care is needed and unavailable in the community; that
 28 involuntary placement be provided only when expert evaluation
 29 determines that it is necessary; that any involuntary
 30 treatment or examination be accomplished in a setting which is
 31 clinically appropriate and most likely to facilitate the

Bill No. CS for SB 2012

Barcode 210912

1 person's return to the community as soon as possible; and that
2 individual dignity and human rights be guaranteed to all
3 persons who are admitted to mental health facilities or who
4 are being held under s. 394.463. It is the further intent of
5 the Legislature that the least restrictive means of
6 intervention be employed based on the individual needs of each
7 person, within the scope of available services. It is the
8 policy of this state that the use of restraint and seclusion
9 on clients is justified only as an emergency safety measure to
10 be used in response to imminent danger to the client or
11 others. It is, therefore, the intent of the Legislature to
12 achieve an ongoing reduction in the use of restraint and
13 seclusion in programs and facilities serving persons with
14 mental illness.

15 Section 37. Present subsections (28) through (33) of
16 section 394.455, Florida Statutes, are redesignated as
17 subsections (30) through (35), respectively, and new
18 subsections (28) and (29) are added to that section, to read:

19 394.455 Definitions.--As used in this part, unless the
20 context clearly requires otherwise, the term:

21 (28)(a) "Restraint" means a physical device, method,
22 or drug used to control behavior. A physical restraint is any
23 manual method or physical or mechanical device, material, or
24 equipment attached or adjacent to the individual's body so
25 that he or she cannot easily remove the restraint and which
26 restricts freedom of movement or normal access to one's body.

27 (b) A drug used as a restraint is a medication used to
28 control the person's behavior or to restrict his or her
29 freedom of movement. Physically holding a person during a
30 procedure to forcibly administer psychotropic medication is a
31 physical restraint.

Bill No. CS for SB 2012

Barcode 210912

1 (c) Restraint does not include physical devices, such
 2 as orthopedically prescribed appliances, surgical dressings
 3 and bandages, supportive body bands, or other physical holding
 4 when necessary for routine physical examinations and tests; or
 5 for purposes of orthopedic, surgical, or other similar medical
 6 treatment; when used to provide support for the achievement of
 7 functional body position or proper balance; or when used to
 8 protect a person from falling out of bed.

9 (29) "Seclusion" means the physical segregation of a
 10 person in any fashion or involuntary isolation of a person in
 11 a room or area from which the person is prevented from
 12 leaving. The prevention may be by physical barrier or by a
 13 staff member who is acting in a manner, or who is physically
 14 situated, so as to prevent the person from leaving the room or
 15 area. For purposes of this chapter, the term does not mean
 16 isolation due to a person's medical condition or symptoms.

17 Section 38. Paragraph (b) of subsection (5) of section
 18 394.457, Florida Statutes, is amended to read:

19 394.457 Operation and administration.--

20 (5) RULES.--

21 (b) The department shall adopt rules necessary for the
 22 implementation and administration of the provisions of this
 23 part, and a program subject to the provisions of this part
 24 shall not be permitted to operate unless rules designed to
 25 ensure the protection of the health, safety, and welfare of
 26 the patients treated through such program have been adopted.
 27 Rules adopted under this subsection must include provisions
 28 governing the use of restraint and seclusion which are
 29 consistent with recognized best practices and professional
 30 judgment; prohibit inherently dangerous restraint or seclusion
 31 procedures; establish limitations on the use and duration of

Bill No. CS for SB 2012

Barcode 210912

1 restraint and seclusion; establish measures to ensure the
 2 safety of program participants and staff during an incident of
 3 restraint or seclusion; establish procedures for staff to
 4 follow before, during, and after incidents of restraint or
 5 seclusion; establish professional qualifications of and
 6 training for staff who may order or be engaged in the use of
 7 restraint or seclusion; and establish mandatory reporting,
 8 data-collection, and data-dissemination procedures and
 9 requirements. Rules adopted under this subsection must require
 10 that each instance of the use of restraint or seclusion be
 11 documented in the record of the patient.

12 Section 39. Present paragraph (f) of subsection (5) of
 13 section 394.459, Florida Statutes, is redesignated as
 14 paragraph (g), and a new paragraph (f) is added to that
 15 subsection, to read:

16 394.459 Rights of patients.--

17 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

18 (f) Deaths and serious injuries that occur while an
 19 individual is restrained or in seclusion or where it is
 20 reasonable to assume that the death or serious injury of an
 21 individual is a result of restraint or seclusion occurring in
 22 facilities, programs, or services that are operated, licensed,
 23 or owned by the Agency for Health Care Administration, the
 24 Agency for Persons with Disabilities, or the Department of
 25 Children and Family Services shall be posted on a website
 26 maintained by the Agency for Health Care Administration. No
 27 later than the end of the first business day following receipt
 28 of the notice of death or serious injury from the Agency for
 29 Health Care Administration, the Agency for Persons with
 30 Disabilities, or the Department of Children and Family
 31 Services, the Agency for Health Care Administration shall post

Bill No. CS for SB 2012

Barcode 210912

1 on the website that an incident occurred, the date of the
2 incident, and the name of the agency to which the death or
3 serious injury was reported. This posting shall be accessible
4 to the public.

5 Section 40. Paragraph (g) is added to subsection (1)
6 of section 394.879, Florida Statutes, to read:

7 394.879 Rules; enforcement.--

8 (1) The department, in consultation with the agency,
9 shall adopt rules pursuant to ss. 120.536(1) and 120.54 to
10 implement the provisions of this chapter, including, at a
11 minimum, rules providing standards to ensure that:

12 (g) The use of restraint and seclusion is consistent
13 with recognized best practices and professional judgment; that
14 inherently dangerous restraint or seclusion procedures are
15 prohibited; that limitations are established on the use and
16 duration of restraint and seclusion; that measures are
17 established to ensure the safety of program participants and
18 staff during an incident of restraint or seclusion; that
19 procedures are created for staff to follow before, during, and
20 after incidents of restraint or seclusion; that professional
21 qualifications and training are established for staff who may
22 order or be engaged in the use of restraint or seclusion; and
23 that mandatory reporting, data-collection, and
24 data-dissemination procedures and requirements are instituted.
25 Rules adopted under this section must require that any
26 instance of the use of restraint or seclusion shall be
27 documented in the record of the client.

28 Section 41. Subsection (9) of section 397.405, Florida
29 Statutes, is amended to read:

30 397.405 Exemptions from licensure.--The following are
31 exempt from the licensing provisions of this chapter:

Bill No. CS for SB 2012

Barcode 210912

1 (9) Facilities licensed under chapter 393 which s-
2 ~~393.063~~ that, in addition to providing services to persons
3 with developmental disabilities ~~who are developmentally~~
4 ~~disabled as defined therein~~, also provide services to persons
5 developmentally at risk as a consequence of exposure to
6 alcohol or other legal or illegal drugs while in utero.

7
8 The exemptions from licensure in this section do not apply to
9 any service provider that receives an appropriation, grant, or
10 contract from the state to operate as a service provider as
11 defined in this chapter or to any substance abuse program
12 regulated pursuant to s. 397.406. Furthermore, this chapter
13 may not be construed to limit the practice of a physician
14 licensed under chapter 458 or chapter 459, a psychologist
15 licensed under chapter 490, or a psychotherapist licensed
16 under chapter 491 who provides substance abuse treatment, so
17 long as the physician, psychologist, or psychotherapist does
18 not represent to the public that he or she is a licensed
19 service provider and does not provide services to clients
20 pursuant to part V of this chapter. Failure to comply with any
21 requirement necessary to maintain an exempt status under this
22 section is a misdemeanor of the first degree, punishable as
23 provided in s. 775.082 or s. 775.083.

24 Section 42. Subsection (13) of section 400.419,
25 Florida Statutes, is amended to read:

26 400.419 Violations; imposition of administrative
27 fines; grounds.--

28 (13) The agency shall develop and disseminate an
29 annual list of all facilities sanctioned or fined \$5,000 or
30 more for violations of state standards, the number and class
31 of violations involved, the penalties imposed, and the current

Bill No. CS for SB 2012

Barcode 210912

1 status of cases. The list shall be disseminated, at no charge,
 2 to the Department of Elderly Affairs, the Department of
 3 Health, the Department of Children and Family Services, the
 4 Agency for Persons with Disabilities, the area agencies on
 5 aging, the Florida Statewide Advocacy Council, and the state
 6 and local ombudsman councils. The Department of Children and
 7 Family Services shall disseminate the list to service
 8 providers under contract to the department who are responsible
 9 for referring persons to a facility for residency. The agency
 10 may charge a fee commensurate with the cost of printing and
 11 postage to other interested parties requesting a copy of this
 12 list.

13 Section 43. Section 400.960, Florida Statutes, is
 14 amended to read:

15 400.960 Definitions.--As used in this part, the term:

16 (1) "Active treatment" means the provision of services
 17 by an interdisciplinary team which are necessary to maximize a
 18 client's individual independence or prevent regression or loss
 19 of functional status.

20 (2) "Agency" means the Agency for Health Care
 21 Administration.

22 (3) "Autism" or "autistic disorder" has the same
 23 meaning as in s. 393.063. ~~means a pervasive, neurologically~~
 24 ~~based developmental disability of extended duration which~~
 25 ~~causes severe learning, communication, and behavior disorders~~
 26 ~~with age of onset during infancy or childhood. Individuals~~
 27 ~~with autism exhibit impairment in reciprocal social~~
 28 ~~interaction, impairment in verbal and nonverbal communication~~
 29 ~~and imaginative ability, and a markedly restricted repertoire~~
 30 ~~of activities and interests.~~

31 (4) "Cerebral palsy" has the same meaning as in s.

Bill No. CS for SB 2012

Barcode 210912

1 ~~393.063. means a group of disabling symptoms of extended~~
 2 ~~duration which results from damage to the developing brain~~
 3 ~~occurring before, during, or after birth and resulting in the~~
 4 ~~loss or impairment of control over voluntary muscles. The term~~
 5 ~~does not include those symptoms or impairments resulting~~
 6 ~~solely from a stroke.~~

7 (5) "Client" means any person determined by the Agency
 8 for Persons with Disabilities department to be eligible for
 9 developmental services.

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

15 ~~(7) "Department" means the Department of Children and~~
 16 ~~Family Services.~~

17 ~~(6)(8) "Developmental disability" has the same meaning~~
 18 ~~as in s. 393.063 means a disorder or syndrome that is~~
 19 ~~attributable to retardation, cerebral palsy, autism, spina~~
 20 ~~bifida, or Prader-Willi syndrome and that constitutes a~~
 21 ~~substantial handicap that can reasonably be expected to~~
 22 ~~continue indefinitely.~~

23 ~~(7)(9) "Direct service provider" means a person 18~~
 24 ~~years of age or older who has direct contact with individuals~~
 25 ~~with developmental disabilities and who is unrelated to the~~
 26 ~~individuals with developmental disabilities.~~

27 ~~(10) "Epilepsy" means a chronic brain disorder of~~
 28 ~~various causes which is characterized by recurrent seizures~~
 29 ~~due to excessive discharge of cerebral neurons. When found~~
 30 ~~concurrently with retardation, autism, or cerebral palsy,~~
 31 ~~epilepsy is considered a secondary disability for which the~~

Bill No. CS for SB 2012

Barcode 210912

1 ~~client is eligible to receive services to ameliorate this~~
2 ~~condition according to the provisions of this part.~~

3 ~~(11) "Guardian advocate" means a person appointed by~~
4 ~~the circuit court to represent a person with developmental~~
5 ~~disabilities in any proceedings brought pursuant to s. 393.12,~~
6 ~~and is distinct from a guardian advocate for mentally ill~~
7 ~~persons under chapter 394.~~

8 ~~(8)(12)~~ "Intermediate care facility for the
9 developmentally disabled" means a residential facility
10 licensed and certified in accordance with state law, and
11 certified by the Federal Government, pursuant to the Social
12 Security Act, as a provider of Medicaid services to persons
13 with developmental disabilities ~~who are developmentally~~
14 ~~disabled.~~

15 ~~(9)(13)~~ "Prader-Willi syndrome" has the same meaning
16 as in s. 393.063. ~~means an inherited condition typified by~~
17 ~~neonatal hypotonia with failure to thrive, hyperphagia, or an~~
18 ~~excessive drive to eat which leads to obesity, usually at 18~~
19 ~~to 36 months of age, mild to moderate retardation,~~
20 ~~hypogonadism, short stature, mild facial dysmorphism, and a~~
21 ~~characteristic neurobehavior.~~

22 ~~(10)(a)~~ "Restraint" means a physical device, method,
23 or drug used to control behavior. A physical restraint is any
24 manual method or physical or mechanical device, material, or
25 equipment attached or adjacent to the individual's body so
26 that he or she cannot easily remove the restraint and which
27 restricts freedom of movement or normal access to one's body.

28 ~~(b)~~ A drug used as a restraint is a medication used to
29 control the person's behavior or to restrict his or her
30 freedom of movement. Physically holding a person during a
31 procedure to forcibly administer psychotropic medication is a

Bill No. CS for SB 2012

Barcode 210912

1 physical restraint.

2 (c) Restraint does not include physical devices, such
3 as orthopedically prescribed appliances, surgical dressings
4 and bandages, supportive body bands, or other physical holding
5 when necessary for routine physical examinations and tests;
6 for purposes of orthopedic, surgical, or other similar medical
7 treatment; when used to provide support for the achievement of
8 functional body position or proper balance; or when used to
9 protect a person from falling out of bed.

10 (11)(14) "Retardation" has the same meaning as in s.
11 393.063. means significantly subaverage general intellectual
12 functioning existing concurrently with deficits in adaptive
13 behavior and manifested during the period from conception to
14 age 18. "Significantly subaverage general intellectual
15 functioning," for the purpose of this definition, means
16 performance that is two or more standard deviations from the
17 mean score on a standardized intelligence test specified in
18 rules of the department. "Deficits in adaptive behavior," for
19 the purpose of this definition, means deficits in the
20 effectiveness or degree with which an individual meets the
21 standards of personal independence and social responsibility
22 expected of his or her age, cultural group, and community.

23 (12) "Seclusion" means the physical segregation of a
24 person in any fashion or the involuntary isolation of a person
25 in a room or area from which the person is prevented from
26 leaving. The prevention may be by physical barrier or by a
27 staff member who is acting in a manner, or who is physically
28 situated, so as to prevent the person from leaving the room or
29 area. For purposes of this part, the term does not mean
30 isolation due to a person's medical condition or symptoms.

31 (13)(15) "Spina bifida" has the same meaning as in s.

Bill No. CS for SB 2012

Barcode 210912

1 393.063 ~~means a medical diagnosis of spina bifida cystica or~~
2 ~~myelomeningocele.~~

3 Section 44. Subsection (2) of section 400.967, Florida
4 Statutes, is amended to read:

5 400.967 Rules and classification of deficiencies.--

6 (2) Pursuant to the intention of the Legislature, the
7 agency, in consultation with the Agency for Persons with
8 Disabilities ~~Department of Children and Family Services~~ and
9 the Department of Elderly Affairs, shall adopt and enforce
10 rules to administer this part, which shall include reasonable
11 and fair criteria governing:

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

Bill No. CS for SB 2012

Barcode 210912

1 and building code standards applicable at the time of approval
 2 of their construction plans. The agency may require
 3 alterations to a building if it determines that an existing
 4 condition constitutes a distinct hazard to life, health, or
 5 safety. The agency shall adopt fair and reasonable rules
 6 setting forth conditions under which existing facilities
 7 undergoing additions, alterations, conversions, renovations,
 8 or repairs are required to comply with the most recent updated
 9 or revised standards.

10 (b) The number and qualifications of all personnel,
 11 including management, medical nursing, and other personnel,
 12 having responsibility for any part of the care given to
 13 residents.

14 (c) All sanitary conditions within the facility and
 15 its surroundings, including water supply, sewage disposal,
 16 food handling, and general hygiene, which will ensure the
 17 health and comfort of residents.

18 (d) The equipment essential to the health and welfare
 19 of the residents.

20 (e) A uniform accounting system.

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

23 (g) The preparation and annual update of a
 24 comprehensive emergency management plan. The agency shall
 25 adopt rules establishing minimum criteria for the plan after
 26 consultation with the Department of Community Affairs. At a
 27 minimum, the rules must provide for plan components that
 28 address emergency evacuation transportation; adequate
 29 sheltering arrangements; postdisaster activities, including
 30 emergency power, food, and water; postdisaster transportation;
 31 supplies; staffing; emergency equipment; individual

Bill No. CS for SB 2012

Barcode 210912

1 identification of residents and transfer of records; and
 2 responding to family inquiries. The comprehensive emergency
 3 management plan is subject to review and approval by the local
 4 emergency management agency. During its review, the local
 5 emergency management agency shall ensure that the following
 6 agencies, at a minimum, are given the opportunity to review
 7 the plan: the Department of Elderly Affairs, the Agency for
 8 Persons with Disabilities ~~Department of Children and Family~~
 9 ~~Services~~, the Agency for Health Care Administration, and the
 10 Department of Community Affairs. Also, appropriate volunteer
 11 organizations must be given the opportunity to review the
 12 plan. The local emergency management agency shall complete its
 13 review within 60 days and either approve the plan or advise
 14 the facility of necessary revisions.

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

19 (i) The use of restraint and seclusion. Such rules
 20 must be consistent with recognized best practices and
 21 professional judgment; prohibit inherently dangerous restraint
 22 or seclusion procedures; establish limitations on the use and
 23 duration of restraint and seclusion; establish measures to
 24 ensure the safety of program participants and staff during an
 25 incident of restraint or seclusion; create procedures for
 26 staff to follow before, during, and after incidents of
 27 restraint or seclusion; establish professional qualifications
 28 of and training for staff who may order or be engaged in the
 29 use of restraint or seclusion; and provide for mandatory
 30 reporting, data-collection, and data-dissemination procedures
 31 and requirements. Rules adopted under this section must

Bill No. CS for SB 2012

Barcode 210912

1 require that any instance of the use of restraint or seclusion
2 shall be documented in the facility's record of the client.

3 Section 45. Section 400.9675, Florida Statutes, is
4 created to read:

5 400.9675 Reporting restraint or seclusion related
6 deaths and serious injuries.--Deaths and serious injuries that
7 occur while an individual is restrained or in seclusion or
8 where it is reasonable to assume that the death or serious
9 injury of an individual is a result of restraint or seclusion
10 occurring in facilities, programs, or services that are
11 operated, licensed, or owned by the Agency for Health Care
12 Administration, the Agency for Persons with Disabilities, or
13 the Department of Children and Family Services shall be posted
14 on a website maintained by the Agency for Health Care
15 Administration. No later than the end of the first business
16 day following receipt of the notice of death or serious injury
17 from the Agency for Health Care Administration, the Agency for
18 Persons with Disabilities, or the Department of Children and
19 Family Services, the Agency for Health Care Administration
20 shall post on the website that an incident occurred, the date
21 of the incident, and the name of the agency to which the death
22 or serious injury was reported. This posting shall be
23 accessible to the public.

24
25 (Redesignate subsequent sections.)

26
27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 On page 13, line 22, through
31 page 146, line 10, delete those lines

Bill No. CS for SB 2012

Barcode 210912

1 and insert:

2 governing local advocacy councils; requiring
3 the Agency for Health Care Administration to
4 post information about certain deaths and
5 serious injuries on a website that is
6 accessible to the public; allowing the resident
7 government to include disability advocates from
8 the community; amending s. 393.135, F.S.;
9 redefining the terms "covered person" and
10 "sexual misconduct"; clarifying provisions
11 making such misconduct a second-degree felony;
12 amending s. 393.15, F.S.; establishing the
13 Community Resources Development Loan Program to
14 provide loans to foster homes, group homes, and
15 supported employment programs; providing
16 legislative intent; providing eligibility
17 requirements; providing authorized uses of loan
18 funds; requiring that the agency adopt rules
19 governing the loan program; providing
20 requirements for repaying loans; amending s.
21 393.17, F.S.; authorizing the agency to
22 establish certification programs for persons
23 providing services to clients; requiring that
24 the agency establish a certification program
25 for behavior analysts; requiring that the
26 program be reviewed and validated; creating s.
27 393.18, F.S.; providing for a comprehensive
28 transition education program for persons who
29 have severe or moderate maladaptive behaviors;
30 specifying the types of treatment and education
31 centers providing services under the program;

Bill No. CS for SB 2012

Barcode 210912

1 providing requirements for licensure; requiring
2 individual education plans for persons
3 receiving services; limiting the number of
4 persons who may receive services in such a
5 program; creating s. 393.23, F.S.; requiring
6 that receipts from operating canteens, vending
7 machines, and other like activities in a
8 developmental disabilities institution be
9 deposited in a trust account in a bank, credit
10 union, or savings and loan association;
11 describing how the moneys earned may be
12 expended; allowing for the investment of the
13 funds; requiring that the accounting system at
14 the institution account for the revenues and
15 expenses of the activities; requiring that
16 sales tax moneys be remitted to the Department
17 of Revenue; amending s. 393.501, F.S.; revising
18 the agency's rulemaking authority; providing
19 requirements for rules governing alternative
20 living centers and independent living education
21 centers; amending s. 394.453, F.S.; declaring
22 that the policy of the state is to achieve an
23 ongoing reduction of the use of restraint and
24 seclusion on persons with mental illness who
25 are served by programs and facilities operated,
26 licensed, or monitored by the agency; amending
27 s. 394.455, F.S.; defining the terms
28 "restraint" and "seclusion" for purposes of the
29 Baker Act; amending s. 394.457, F.S.; requiring
30 the Department of Children and Family Services
31 to adopt rules for the use of restraint and

Bill No. CS for SB 2012

Barcode 210912

1 seclusion for cases handled under the Baker
2 Act; amending s. 394.459, F.S.; requiring the
3 Agency for Health Care Administration to post
4 information about certain deaths and serious
5 injuries on a website that is accessible to the
6 public; amending s. 394.879, F.S.; requiring
7 that rules be adopted for the use of restraint
8 and seclusion; amending s. 397.405, F.S.;
9 clarifying an exemption from licensure provided
10 to certain facilities licensed under ch. 393,
11 F.S.; amending s. 400.419, F.S.; requiring that
12 a list of facilities subject to sanctions or
13 fines be disseminated to the Agency for Persons
14 with Disabilities; amending s. 400.960, F.S.;
15 revising definitions for purposes of part XI of
16 ch. 400, F.S., relating to nursing homes and
17 related facilities; amending s. 400.967, F.S.,
18 relating to rules and classification
19 deficiencies; conforming provisions to the
20 transfer of duties from the Department of
21 Children and Family Services to the Agency for
22 Persons with Disabilities; requiring that rules
23 be adopted for the use of restraint and
24 seclusion; creating s. 400.9675, F.S.;
25 requiring the Agency for Health Care
26 Administration to post information about
27 certain deaths and serious injuries on a
28 website that is accessible to the public;
29 amending ss. 402.115,

30
31