

Bill No. CS for SB 2012

Barcode 974712

CHAMBER ACTION

Senate

House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 20.197, Florida Statutes, is amended to read:

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

(1) The director of the agency shall be the agency head for all purposes and shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the

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1 | pleasure of the Governor. The director shall administer the
 2 | affairs of the agency ~~and establish administrative units as~~
 3 | ~~needed~~ and may, within available resources, employ assistants,
 4 | professional staff, and other employees as necessary to
 5 | discharge the powers and duties of the agency.

6 | (2) The agency shall include a Division of Budget and
 7 | Planning and a Division of Operations. In addition, and in
 8 | accordance with s. 20.04, the director of the agency may
 9 | recommend establishing additional divisions, bureaus,
 10 | sections, and subsections of the agency in order to promote
 11 | efficient and effective operation of the agency.

12 | (3)(2) The agency is ~~shall be~~ responsible for
 13 | providing ~~the provision of~~ all services provided to persons
 14 | with developmental disabilities under ~~pursuant to~~ chapter 393,
 15 | including the operation of all state institutional programs
 16 | and the programmatic management of Medicaid waivers
 17 | established to provide services to persons with developmental
 18 | disabilities.

19 | (4)(3) The agency shall engage in such other
 20 | administrative activities as are deemed necessary to
 21 | effectively and efficiently address the needs of the agency's
 22 | clients.

23 | (5)(4) The agency shall enter into an interagency
 24 | agreement that delineates the responsibilities of the Agency
 25 | for Health Care Administration for the following:

26 | (a) The terms and execution of contracts with Medicaid
 27 | providers for the provision of services provided through
 28 | Medicaid, including federally approved waiver programs.

29 | (b) The billing, payment, and reconciliation of claims
 30 | for Medicaid services reimbursed by the agency.

31 | (c) The implementation of utilization management

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1 measures, including the prior authorization of services plans
 2 and the streamlining and consolidation of waivers services, to
 3 ensure the cost-effective provision of needed Medicaid
 4 services and to maximize the number of persons with access to
 5 such services.

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

10 Section 2. Paragraph (b) of subsection (7) of section
 11 39.001, Florida Statutes, is amended to read:

12 39.001 Purposes and intent; personnel standards and
 13 screening.--

14 (7) PLAN FOR COMPREHENSIVE APPROACH.--

15 (b) The development of the comprehensive state plan
 16 shall be accomplished in the following manner:

17 1. The department shall establish an interprogram task
 18 force comprised of the Program Director for Family Safety, or
 19 a designee, a representative from the Child Care Services
 20 Program Office, a representative from the Family Safety
 21 Program Office, a representative from the Mental Health
 22 Program Office, a representative from the Substance Abuse
 23 Program Office, a representative from the Agency for Persons
 24 with Disabilities ~~Developmental Disabilities Program Office~~,
 25 and a representative from the Division of Children's Medical
 26 Services Network ~~Prevention and Intervention~~ of the Department
 27 of Health. Representatives of the Department of Law
 28 Enforcement and of the Department of Education shall serve as
 29 ex officio members of the interprogram task force. The
 30 interprogram task force shall be responsible for:

31 a. Developing a plan of action for better coordination

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1 and integration of the goals, activities, and funding
2 pertaining to the prevention of child abuse, abandonment, and
3 neglect conducted by the department in order to maximize staff
4 and resources at the state level. The plan of action shall be
5 included in the state plan.

6 b. Providing a basic format to be utilized by the
7 districts in the preparation of local plans of action in order
8 to provide for uniformity in the district plans and to provide
9 for greater ease in compiling information for the state plan.

10 c. Providing the districts with technical assistance
11 in the development of local plans of action, if requested.

12 d. Examining the local plans to determine if all the
13 requirements of the local plans have been met and, if they
14 have not, informing the districts of the deficiencies and
15 requesting the additional information needed.

16 e. Preparing the state plan for submission to the
17 Legislature and the Governor. Such preparation shall include
18 the collapsing of information obtained from the local plans,
19 the cooperative plans with the Department of Education, and
20 the plan of action for coordination and integration of
21 departmental activities into one comprehensive plan. The
22 comprehensive plan shall include a section reflecting general
23 conditions and needs, an analysis of variations based on
24 population or geographic areas, identified problems, and
25 recommendations for change. In essence, the plan shall provide
26 an analysis and summary of each element of the local plans to
27 provide a statewide perspective. The plan shall also include
28 each separate local plan of action.

29 f. Working with the specified state agency in
30 fulfilling the requirements of subparagraphs 2., 3., 4., and
31 5.

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1 2. The department, the Department of Education, and
2 the Department of Health shall work together in developing
3 ways to inform and instruct parents of school children and
4 appropriate district school personnel in all school districts
5 in the detection of child abuse, abandonment, and neglect and
6 in the proper action that should be taken in a suspected case
7 of child abuse, abandonment, or neglect, and in caring for a
8 child's needs after a report is made. The plan for
9 accomplishing this end shall be included in the state plan.

10 3. The department, the Department of Law Enforcement,
11 and the Department of Health shall work together in developing
12 ways to inform and instruct appropriate local law enforcement
13 personnel in the detection of child abuse, abandonment, and
14 neglect and in the proper action that should be taken in a
15 suspected case of child abuse, abandonment, or neglect.

16 4. Within existing appropriations, the department
17 shall work with other appropriate public and private agencies
18 to emphasize efforts to educate the general public about the
19 problem of and ways to detect child abuse, abandonment, and
20 neglect and in the proper action that should be taken in a
21 suspected case of child abuse, abandonment, or neglect. The
22 plan for accomplishing this end shall be included in the state
23 plan.

24 5. The department, the Department of Education, and
25 the Department of Health shall work together on the
26 enhancement or adaptation of curriculum materials to assist
27 instructional personnel in providing instruction through a
28 multidisciplinary approach on the identification,
29 intervention, and prevention of child abuse, abandonment, and
30 neglect. The curriculum materials shall be geared toward a
31 sequential program of instruction at the four progressional

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1 levels, K-3, 4-6, 7-9, and 10-12. Strategies for encouraging
2 all school districts to utilize the curriculum are to be
3 included in the comprehensive state plan for the prevention of
4 child abuse, abandonment, and neglect.

5 6. Each district of the department shall develop a
6 plan for its specific geographical area. The plan developed at
7 the district level shall be submitted to the interprogram task
8 force for utilization in preparing the state plan. The
9 district local plan of action shall be prepared with the
10 involvement and assistance of the local agencies and
11 organizations listed in paragraph (a), as well as
12 representatives from those departmental district offices
13 participating in the treatment and prevention of child abuse,
14 abandonment, and neglect. In order to accomplish this, the
15 district administrator in each district shall establish a task
16 force on the prevention of child abuse, abandonment, and
17 neglect. The district administrator shall appoint the members
18 of the task force in accordance with the membership
19 requirements of this section. In addition, the district
20 administrator shall ensure that each subdistrict is
21 represented on the task force; and, if the district does not
22 have subdistricts, the district administrator shall ensure
23 that both urban and rural areas are represented on the task
24 force. The task force shall develop a written statement
25 clearly identifying its operating procedures, purpose, overall
26 responsibilities, and method of meeting responsibilities. The
27 district plan of action to be prepared by the task force shall
28 include, but shall not be limited to:

29 a. Documentation of the magnitude of the problems of
30 child abuse, including sexual abuse, physical abuse, and
31 emotional abuse, and child abandonment and neglect in its

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1 geographical area.

2 b. A description of programs currently serving abused,
3 abandoned, and neglected children and their families and a
4 description of programs for the prevention of child abuse,
5 abandonment, and neglect, including information on the impact,
6 cost-effectiveness, and sources of funding of such programs.

7 c. A continuum of programs and services necessary for
8 a comprehensive approach to the prevention of all types of
9 child abuse, abandonment, and neglect as well as a brief
10 description of such programs and services.

11 d. A description, documentation, and priority ranking
12 of local needs related to child abuse, abandonment, and
13 neglect prevention based upon the continuum of programs and
14 services.

15 e. A plan for steps to be taken in meeting identified
16 needs, including the coordination and integration of services
17 to avoid unnecessary duplication and cost, and for alternative
18 funding strategies for meeting needs through the reallocation
19 of existing resources, utilization of volunteers, contracting
20 with local universities for services, and local government or
21 private agency funding.

22 f. A description of barriers to the accomplishment of
23 a comprehensive approach to the prevention of child abuse,
24 abandonment, and neglect.

25 g. Recommendations for changes that can be
26 accomplished only at the state program level or by legislative
27 action.

28 Section 3. Paragraphs (a) and (h) of subsection (2) of
29 section 39.202, Florida Statutes, are amended to read:

30 39.202 Confidentiality of reports and records in cases
31 of child abuse or neglect.--

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

6 (a) Employees, authorized agents, or contract
 7 providers of the department, the Department of Health, the
 8 Agency for Persons with Disabilities, or county agencies
 9 responsible for carrying out:

- 10 1. Child or adult protective investigations;
- 11 2. Ongoing child or adult protective services;
- 12 3. Healthy Start services; or
- 13 4. Licensure or approval of adoptive homes, foster
 14 homes, ~~or~~ child care facilities, facilities licensed under
 15 chapter 393, or family day care homes or informal child care
 16 providers who receive subsidized child care funding, or other
 17 homes used to provide for the care and welfare of children.
- 18 5. Services for victims of domestic violence when
 19 provided by certified domestic violence centers working at the
 20 department's request as case consultants or with shared
 21 clients.

22
 23 Also, employees or agents of the Department of Juvenile
 24 Justice responsible for the provision of services to children,
 25 pursuant to chapters 984 and 985.

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

- 28 1. Administration or supervision of the department's
 29 program for the prevention, investigation, or treatment of
 30 child abuse, abandonment, or neglect, or abuse, neglect, or
 31 exploitation of a vulnerable adult, when carrying out his or

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1 her official function;

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

6 3. Employing and continuing employment of personnel of
7 the department or the agency.

8 Section 4. Subsection (5) of section 39.407, Florida
9 Statutes, is amended to read:

10 39.407 Medical, psychiatric, and psychological
11 examination and treatment of child; physical or mental
12 examination of parent or person requesting custody of child.--

13 (5) A judge may order a child in an out-of-home
14 placement to be treated by a licensed health care professional
15 based on evidence that the child should receive treatment. The
16 judge may also order such child to receive mental health ~~or~~
17 ~~developmental disabilities~~ services from a psychiatrist,
18 psychologist, or other appropriate service provider. Except as
19 provided in subsection (6), if it is necessary to place the
20 child in a residential facility for such services, the
21 procedures and criteria established in s. 394.467 ~~or chapter~~
22 ~~393~~ shall be used, ~~whichever is applicable~~. A child may be
23 provided ~~developmental disabilities or~~ mental health services
24 in emergency situations, pursuant to the procedures and
25 criteria contained in s. 394.463(1) ~~or chapter 393, whichever~~
26 ~~is applicable~~.

27 Section 5. Section 287.155, Florida Statutes, is
28 amended to read:

29 287.155 Motor vehicles; purchase by Division of
30 Universities, Department of Children and Family Services,
31 Agency for Persons with Disabilities, Department of Health,

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1 Department of Juvenile Justice, and Department of
2 Corrections.--

3 (1) The Division of Universities of the Department of
4 Education, the Department of Children and Family Services, the
5 Agency for Persons with Disabilities, the Department of
6 Health, the Department of Juvenile Justice, and the Department
7 of Corrections may ~~are hereby authorized~~, subject to the
8 approval of the Department of Management Services, ~~to~~ purchase
9 automobiles, trucks, tractors, and other automotive equipment
10 for the use of institutions under the management of the
11 Division of Universities, the Department of Children and
12 Family Services, the Agency for Persons with Disabilities, the
13 Department of Health, and the Department of Corrections, and
14 for the use of residential facilities managed or contracted by
15 the Department of Juvenile Justice.

16 (2) The Department of Corrections shall, prior to
17 purchasing motor vehicles, seek to procure the motor vehicles
18 from those vehicles renovated pursuant to correctional work
19 programs of the Department of Corrections, and for the use of
20 residential facilities managed or contracted by the Department
21 of Juvenile Justice.

22 (3) The Department of Health is authorized, subject to
23 the approval of the Department of Management Services, to
24 purchase automobiles, trucks, and other automotive equipment
25 for use by county health departments.

26 Section 6. Paragraph (a) of subsection (3) of section
27 381.0072, Florida Statutes, is amended to read:

28 381.0072 Food service protection.--It shall be the
29 duty of the Department of Health to adopt and enforce
30 sanitation rules consistent with law to ensure the protection
31 of the public from food-borne illness. These rules shall

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1 provide the standards and requirements for the storage,
2 preparation, serving, or display of food in food service
3 establishments as defined in this section and which are not
4 permitted or licensed under chapter 500 or chapter 509.

5 (3) LICENSES REQUIRED.--

6 (a) Licenses; annual renewals.--Each food service
7 establishment regulated under this section shall obtain a
8 license from the department annually. Food service
9 establishment licenses shall expire annually and are ~~shall~~ not
10 ~~be~~ transferable from one place or individual to another.

11 However, those facilities licensed by the department's Office
12 of Licensure and Certification, the Child Care Services
13 Program Office, or the Agency for Persons with ~~Developmental~~
14 ~~Disabilities Program Office~~ are exempt from this subsection.

15 It shall be a misdemeanor of the second degree, punishable as
16 provided in s. 381.0061, s. 775.082, or s. 775.083, for such
17 an establishment to operate without this license. The
18 department may refuse a license, or a renewal thereof, to any
19 establishment that is not constructed or maintained in
20 accordance with law and with the rules of the department.
21 Annual application for renewal is ~~shall~~ not ~~be~~ required.

22 Section 7. Subsection (5) of section 383.14, Florida
23 Statutes, is amended to read:

24 383.14 Screening for metabolic disorders, other
25 hereditary and congenital disorders, and environmental risk
26 factors.--

27 (5) ADVISORY COUNCIL.--There is established a Genetics
28 and Newborn Screening Advisory Council made up of 15 members
29 appointed by the Secretary of Health. The council shall be
30 composed of two consumer members, three practicing
31 pediatricians, at least one of whom must be a pediatric

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1 hematologist, one representative from each of the four medical
 2 schools in the state, the Secretary of Health or his or her
 3 designee, one representative from the Department of Health
 4 representing Children's Medical Services, one representative
 5 from the Florida Hospital Association, one individual with
 6 experience in newborn screening programs, one individual
 7 representing audiologists, and one representative from the
 8 Agency for Persons with Disabilities ~~Developmental~~
 9 ~~Disabilities Program Office of the Department of Children and~~
 10 ~~Family Services~~. All appointments shall be for a term of 4
 11 years. The chairperson of the council shall be elected from
 12 the membership of the council and shall serve for a period of
 13 2 years. The council shall meet at least semiannually or upon
 14 the call of the chairperson. The council may establish ad hoc
 15 or temporary technical advisory groups to assist the council
 16 with specific topics which come before the council. Council
 17 members shall serve without pay. Pursuant to the provisions of
 18 s. 112.061, the council members are entitled to be reimbursed
 19 for per diem and travel expenses. It is the purpose of the
 20 council to advise the department about:

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

23 (b) Procedures for collection and transmission of
 24 specimens and recording of results.

25 (c) Methods whereby screening programs and genetics
 26 services for children now provided or proposed to be offered
 27 in the state may be more effectively evaluated, coordinated,
 28 and consolidated.

29 Section 8. Section 393.061, Florida Statutes, is
 30 repealed.

31 Section 9. Section 393.062, Florida Statutes, is

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1 amended to read:

2 393.062 Legislative findings and declaration of
 3 intent.--The Legislature finds and declares that existing
 4 state programs for the treatment of individuals with
 5 developmental disabilities ~~who are developmentally disabled,~~
 6 which often unnecessarily place clients in institutions, are
 7 unreasonably costly, are ineffective in bringing the
 8 individual client to his or her maximum potential, and are in
 9 fact debilitating to many ~~a great majority of~~ clients. A
 10 redirection in state treatment programs for individuals with
 11 developmental disabilities ~~who are developmentally disabled~~ is
 12 necessary if any significant amelioration of the problems
 13 faced by such individuals is ever to take place. Such
 14 redirection should place primary emphasis on programs that
 15 ~~have the potential to prevent or reduce the severity of~~
 16 developmental disabilities. Further, the ~~Legislature declares~~
 17 ~~that~~ greatest priority shall be given to the development and
 18 implementation of community-based ~~residential placements,~~
 19 services that, and treatment programs for individuals who are
 20 ~~developmentally disabled which will enable~~ such individuals
 21 with developmental disabilities to achieve their greatest
 22 potential for independent and productive living, ~~which will~~
 23 enable them to live in their own homes or in residences
 24 located in their own communities, and ~~which will~~ permit them
 25 to be diverted or removed from unnecessary institutional
 26 placements. This goal ~~The Legislature finds that the~~
 27 ~~eligibility criteria for intermediate-care facilities for the~~
 28 ~~developmentally disabled which are specified in the Medicaid~~
 29 ~~state plan in effect on the effective date of this act are~~
 30 ~~essential to the system of residential services. The~~
 31 ~~Legislature declares that the goal of this act, to improve the~~

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1 ~~quality of life of all developmentally disabled persons by the~~
2 ~~development and implementation of community-based residential~~
3 ~~placements, services, and treatment,~~ cannot be met without
4 ensuring the availability of community residential
5 opportunities ~~for developmentally disabled persons~~ in the
6 residential areas of this state. The Legislature, therefore,
7 declares that all persons with developmental disabilities who
8 live in licensed community homes shall have a family living
9 environment comparable to other Floridians ~~and. The~~
10 ~~Legislature intends~~ that such residences shall be considered
11 and treated as a functional equivalent of a family unit and
12 not as an institution, business, or boarding home. The
13 Legislature further declares that, in developing
14 community-based programs and services for individuals with
15 developmental disabilities ~~who are developmentally disabled,~~
16 private businesses, not-for-profit corporations, units of
17 local government, and other organizations capable of providing
18 needed services to clients in a cost-efficient manner shall be
19 given preference in lieu of operation of programs directly by
20 state agencies. Finally, it is the intent of the Legislature
21 that all caretakers unrelated to individuals with
22 developmental disabilities receiving care shall be of good
23 moral character.

24 Section 10. Section 393.063, Florida Statutes, is
25 amended to read:

26 393.063 Definitions.--For the purposes of this
27 chapter, the term:

28 (1) "Agency" means the Agency for Persons with
29 Disabilities.

30 (2) "Adult day training" means training services that
31 take place in a nonresidential setting, separate from the home

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1 or facility in which the client resides, are intended to
 2 support the participation of clients in daily, meaningful, and
 3 valued routines of the community, and may include work-like
 4 settings that do not meet the definition of supported
 5 employment.

6 ~~(3)(2)~~ "Autism" means a pervasive, neurologically
 7 based developmental disability of extended duration which
 8 causes severe learning, communication, and behavior disorders
 9 with age of onset during infancy or childhood. Individuals
 10 with autism exhibit impairment in reciprocal social
 11 interaction, impairment in verbal and nonverbal communication
 12 and imaginative ability, and a markedly restricted repertoire
 13 of activities and interests.

14 ~~(4)(3)~~ "Cerebral palsy" means a group of disabling
 15 symptoms of extended duration which results from damage to the
 16 developing brain that may occur before, during, or after birth
 17 and that results in the loss or impairment of control over
 18 voluntary muscles. For the purposes of this definition,
 19 cerebral palsy does not include those symptoms or impairments
 20 resulting solely from a stroke.

21 ~~(5)(4)~~ "Client" means any person determined eligible
 22 by the agency for services under this chapter.

23 ~~(6)(5)~~ "Client advocate" means a friend or relative of
 24 the client, or of the client's immediate family, who advocates
 25 for the best interests of the client in any proceedings under
 26 this chapter in which the client or his or her family has the
 27 right or duty to participate.

28 ~~(7)(6)~~ "Comprehensive assessment" means the process
 29 used to determine eligibility for services under this chapter.

30 ~~(8)(7)~~ "Comprehensive transitional education program"
 31 means the program established in s. 393.18. ~~a group of jointly~~

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

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

25 ~~1. 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 ~~2. Transitional training and educational center. This~~

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1 ~~component is a residential unit for persons with moderate~~
2 ~~maladaptive behaviors, providing concentrated psychological~~
3 ~~and educational programming emphasizing a transition toward a~~
4 ~~less restrictive environment.~~

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

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

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

22 ~~(b) Centers or units that are components of a~~
23 ~~comprehensive transitional education program are subject to~~
24 ~~the license issued to the comprehensive transitional education~~
25 ~~program and may be located on either single or multiple sites.~~

26 ~~(c) Comprehensive transitional education programs~~
27 ~~shall develop individual education plans for each person with~~
28 ~~maladaptive behaviors who receives services therein. Such~~
29 ~~individual education plans shall be developed in accordance~~
30 ~~with the criteria specified in 20 U.S.C. ss. 401 et seq., and~~
31 ~~34 C.F.R. part 300.~~

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

4 ~~(e) This subsection shall authorize licensure for~~
5 ~~comprehensive transitional education programs which by July 1,~~
6 ~~1989:~~

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

21 ~~(8) "Day habilitation facility" means any~~
22 ~~nonresidential facility which provides day habilitation~~
23 ~~services.~~

24 ~~(9) "Day habilitation service" means assistance with~~
25 ~~the acquisition, retention, or improvement in self-help,~~
26 ~~socialization, and adaptive skills which takes place in a~~
27 ~~nonresidential setting, separate from the home or facility in~~
28 ~~which the individual resides. Day habilitation services shall~~
29 ~~focus on enabling the individual to attain or maintain his or~~
30 ~~her maximum functional level and shall be coordinated with any~~
31 ~~physical, occupational, or speech therapies listed in the plan~~

1 ~~of care.~~

2 ~~(9)(10)~~ "Developmental disability" means a disorder or
3 syndrome that is attributable to retardation, cerebral palsy,
4 autism, spina bifida, or Prader-Willi syndrome; that manifests
5 before the age of 18; and that constitutes a substantial
6 handicap that can reasonably be expected to continue
7 indefinitely.

8 ~~(10)(11)~~ "Developmental disabilities institution"
9 means a state-owned and state-operated facility, formerly
10 known as a "Sunland Center," providing for the care,
11 habilitation, and rehabilitation of clients with developmental
12 disabilities.

13 ~~(11)(12)~~ "Direct service provider," ~~also known as~~
14 ~~"caregiver" in chapters 39 and 415 or "caretaker" in~~
15 ~~provisions relating to employment security checks,~~ means a
16 person 18 years of age or older who has direct face-to-face
17 contact with a client while providing services to the client
18 ~~individuals with developmental disabilities,~~ or has access to
19 a client's living areas or to a client's funds or personal
20 property, ~~and is not a relative of such individuals.~~

21 ~~(12)(13)~~ "Domicile" means the place where a client
22 legally resides, which place is his or her permanent home.
23 Domicile may be established as provided in s. 222.17. Domicile
24 may not be established in Florida by a minor who has no parent
25 domiciled in Florida, or by a minor who has no legal guardian
26 domiciled in Florida, or by any alien not classified as a
27 resident alien.

28 ~~(14)~~ ~~"Enclave" means a work station in public or~~
29 ~~private business or industry where a small group of persons~~
30 ~~with developmental disabilities is employed and receives~~
31 ~~training and support services or follow-along services among~~

1 ~~nonhandicapped workers.~~

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

9 ~~(13)(16)~~ "Express and informed consent" means consent
10 voluntarily given in writing with sufficient knowledge and
11 comprehension of the subject matter involved to enable the
12 person giving consent to make a knowing ~~an understanding and~~
13 ~~enlightened~~ decision without any element of force, fraud,
14 deceit, duress, or other form of constraint or coercion.

15 ~~(14)(17)~~ "Family care program" means the program
16 established in s. 393.068.

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

24 ~~(15)(19)~~ "Foster care facility" means a residential
25 facility licensed under this chapter which provides a family
26 living environment including supervision and care necessary to
27 meet the physical, emotional, and social needs of its
28 residents. The capacity of such a facility may ~~shall~~ not be
29 more than three residents.

30 ~~(16)(20)~~ "Group home facility" means a residential
31 facility licensed under this chapter which provides a family

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1 living environment including supervision and care necessary to
 2 meet the physical, emotional, and social needs of its
 3 residents. The capacity of such a facility shall be at least 4
 4 but not more than 15 residents. ~~For the purposes of this~~
 5 ~~chapter, group home facilities shall not be considered~~
 6 ~~commercial enterprises.~~

7 ~~(17)(21)~~ "Guardian advocate" means a person appointed
 8 by a written order of the court to represent a person with
 9 developmental disabilities under s. 393.12.

10 ~~(18)(22)~~ "Habilitation" means the process by which a
 11 client is assisted to acquire and maintain those life skills
 12 which enable the client to cope more effectively with the
 13 demands of his or her condition and environment and to raise
 14 the level of his or her physical, mental, and social
 15 efficiency. It includes, but is not limited to, programs of
 16 formal structured education and treatment.

17 ~~(19)(23)~~ "High-risk child" means, for the purposes of
 18 this chapter, a child from 3 ~~birth~~ to 5 years of age with one
 19 or more of the following characteristics:

20 (a) A developmental delay in cognition, language, or
 21 physical development.

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

25 (c) A child with a parent or guardian with
 26 developmental disabilities who requires assistance in meeting
 27 the child's developmental needs.

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

30 ~~(20)(24)~~ "Intermediate care facility for the
 31 developmentally disabled" or "ICF/DD" means a residential

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1 facility licensed and certified pursuant to part XI of chapter
2 400.

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

6 ~~(21)(26)~~ "Medical/dental services" means medically
7 necessary ~~those~~ services that ~~which~~ are provided or ordered
8 for a client by a person licensed under ~~pursuant to the~~
9 ~~provisions of~~ chapter 458, chapter 459, or chapter 466. Such
10 services may include, but are not limited to, prescription
11 drugs, specialized therapies, nursing supervision,
12 hospitalization, dietary services, prosthetic devices,
13 surgery, specialized equipment and supplies, adaptive
14 equipment, and other services as required to prevent or
15 alleviate a medical or dental condition.

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

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

24 ~~(22)(29)~~ "Personal care services" means ~~include, but~~
25 ~~are not limited to, such services as:~~ individual assistance
26 with or supervision of essential activities of daily living
27 for self-care, including ambulation, bathing, dressing,
28 eating, grooming, and toileting, and other similar services
29 that are incidental to the care furnished and essential to the
30 health, safety, and welfare of the client when there is no one
31 else available to perform those services ~~the agency may define~~

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

7 ~~(23)(30)~~ "Prader-Willi syndrome" means an inherited
 8 condition typified by neonatal hypotonia with failure to
 9 thrive, hyperphagia or an excessive drive to eat which leads
 10 to obesity usually at 18 to 36 months of age, mild to moderate
 11 mental retardation, hypogonadism, short stature, mild facial
 12 dysmorphism, and a characteristic neurobehavior.

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

17 ~~(24)(32)~~ "Relative" means an individual who is
 18 connected by affinity or consanguinity to the client and who
 19 is 18 years of age or older more.

20 ~~(25)(33)~~ "Resident" means any person with
 21 developmental disabilities ~~who is developmentally disabled~~
 22 residing at a residential facility ~~in the state~~, whether or
 23 not such person is a client of the agency.

24 ~~(26)(34)~~ "Residential facility" means a facility
 25 providing room and board and personal care for persons with
 26 developmental disabilities.

27 ~~(27)(35)~~ "Residential habilitation" means supervision
 28 and training ~~assistance provided with the~~ acquisition,
 29 retention, or improvement in skills related to activities of
 30 daily living, such as personal hygiene skills ~~grooming and~~
 31 cleanliness, homemaking skills ~~bedmaking and household chores,~~

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1 ~~eating and the preparation of food, and the social and~~
2 adaptive skills necessary to enable the individual to reside
3 in the community ~~a noninstitutional setting.~~

4 ~~(28)(36)~~ "Residential habilitation center" means a
5 community residential facility licensed under this chapter
6 which that provides ~~residential~~ habilitation services. The
7 capacity of such a facility shall not be fewer than nine
8 residents. After October 1, 1989, ~~no~~ new residential
9 habilitation centers may not ~~shall~~ be licensed and the
10 licensed capacity ~~shall not be increased~~ for any existing
11 residential habilitation center may not be increased.

12 ~~(29)(37)~~ "Respite service" means appropriate,
13 short-term, temporary care that is provided to a person with
14 developmental disabilities to meet the planned or emergency
15 needs of the person or the family or other direct service
16 provider.

17 (30) "Restraint" means a physical device, method, or
18 drug used to control dangerous behavior.

19 (a) A physical restraint is any manual method or
20 physical or mechanical device, material, or equipment attached
21 or adjacent to the individual's body so that he or she cannot
22 easily remove the restraint and which restricts freedom of
23 movement or normal access to one's body.

24 (b) A drug used as a restraint is a medication used to
25 control the person's behavior or to restrict his or her
26 freedom of movement and is not a standard treatment for the
27 person's medical or psychiatric condition. Physically holding
28 a person during a procedure to forcibly administer
29 psychotropic medication is a physical restraint.

30 (c) Restraint does not include physical devices, such
31 as orthopedically prescribed appliances, surgical dressings

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1 and bandages, supportive body bands, or other physical holding
 2 when necessary for routine physical examinations and tests;
 3 for purposes of orthopedic, surgical, or other similar medical
 4 treatment; when used to provide support for the achievement of
 5 functional body position or proper balance; or when used to
 6 protect a person from falling out of bed.

7 (31)(38) "Retardation" means significantly subaverage
 8 general intellectual functioning existing concurrently with
 9 deficits in adaptive behavior ~~and manifested during the period~~
 10 from conception to age 18. "Significantly subaverage general
 11 intellectual functioning," for the purpose of this definition,
 12 means performance which is two or more standard deviations
 13 from the mean score on a standardized intelligence test
 14 specified in the rules of the agency. "Adaptive behavior," for
 15 the purpose of this definition, means the effectiveness or
 16 degree with which an individual meets the standards of
 17 personal independence and social responsibility expected of
 18 his or her age, cultural group, and community.

19 (32) "Seclusion" means the involuntary isolation of a
 20 person in a room or area from which the person is prevented
 21 from leaving. The prevention may be by physical barrier or by
 22 a staff member who is acting in a manner, or who is physically
 23 situated, so as to prevent the person from leaving the room or
 24 area. For the purposes of this chapter, the term does not mean
 25 isolation due to the medical condition or symptoms of the
 26 person.

27 (33) "Self-determination" means an individual's
 28 freedom to exercise the same rights as all other citizens,
 29 authority to exercise control over funds needed for one's own
 30 support, including prioritizing these funds when necessary,
 31 responsibility for the wise use of public funds, and

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1 self-advocacy to speak and advocate for oneself in order to
2 gain independence and ensure that individuals with a
3 developmental disability are treated equally.

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

10 ~~(34)(40)~~ "Specialized therapies" means those
11 treatments or activities prescribed by and provided by an
12 appropriately trained, licensed, or certified professional or
13 staff person and may include, but are not limited to, physical
14 therapy, speech therapy, respiratory therapy, occupational
15 therapy, behavior therapy, physical management services, and
16 related specialized equipment and supplies.

17 ~~(35)(41)~~ "Spina bifida" means, for purposes of this
18 chapter, a person with a medical diagnosis of spina bifida
19 cystica or myelomeningocele.

20 ~~(36)(42)~~ "Support coordinator" means a person who is
21 designated by the agency to assist individuals and families in
22 identifying their capacities, needs, and resources, as well as
23 finding and gaining access to necessary supports and services;
24 coordinating the delivery of supports and services; advocating
25 on behalf of the individual and family; maintaining relevant
26 records; and monitoring and evaluating the delivery of
27 supports and services to determine the extent to which they
28 meet the needs and expectations identified by the individual,
29 family, and others who participated in the development of the
30 support plan.

31 ~~(43) "Supported employee" means a person who requires~~

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1 ~~and receives supported employment services in order to~~
2 ~~maintain community-based employment.~~

3 ~~(37)(44)~~ "Supported employment" means employment
4 located or provided in ~~a normal employment setting which~~
5 ~~provides at least 20 hours employment per week in an~~
6 integrated work setting, with earnings paid on a commensurate
7 wage basis, and for which continued support is needed for job
8 maintenance.

9 ~~(38)(45)~~ "Supported living" means a category of
10 individually determined services designed and coordinated in
11 such a manner as to provide assistance to adult clients who
12 require ongoing supports to live as independently as possible
13 in their own homes, to be integrated into the community, and
14 to participate in community life to the fullest extent
15 possible.

16 ~~(39)(46)~~ "Training" means a planned approach to
17 assisting a client to attain or maintain his or her maximum
18 potential and includes services ranging from sensory
19 stimulation to instruction in skills for independent living
20 and employment.

21 ~~(40)(47)~~ "Treatment" means the prevention,
22 amelioration, or cure of a client's physical and mental
23 disabilities or illnesses.

24 Section 11. Subsections (1), (2), and (4) of section
25 393.064, Florida Statutes, are amended to read:

26 393.064 Prevention.--

27 (1) The agency shall give priority to the development,
28 planning, and implementation of programs which have the
29 potential to prevent, correct, cure, or reduce the severity of
30 developmental disabilities. The agency shall direct an
31 interagency and interprogram effort for the continued

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

12 (2) Prevention services provided by the agency shall
 13 ~~developmental services program~~ include services to high-risk
 14 ~~and developmentally disabled~~ children from 3 birth to 5 years
 15 of age, and their families, to meet the intent of chapter 411.
 16 Except for services for children from birth to age 3 years
 17 which ~~Such services shall include individual evaluations or~~
 18 ~~assessments necessary to diagnose a developmental disability~~
 19 ~~or high-risk condition and to determine appropriate individual~~
 20 ~~family and support services, unless evaluations or assessments~~
 21 are the responsibility of the Division of Children's Medical
 22 Services in the Department of Health ~~Prevention and~~
 23 ~~Intervention for children ages birth to 3 years eligible for~~
 24 ~~services under this chapter~~ or part H of the Individuals with
 25 Disabilities Education Act, such services ~~and~~ may include:

26 (a) Individual evaluations or assessments necessary to
 27 diagnose a developmental disability or high-risk condition and
 28 to determine appropriate, individual family and support
 29 services.

30 (b)~~(a)~~ Early intervention services, including
 31 developmental training and specialized therapies. ~~Early~~

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1 ~~intervention services, which are the responsibility of the~~
2 ~~Division of Children's Medical Services Prevention and~~
3 ~~Intervention for children ages birth to 3 years who are~~
4 ~~eligible for services under this chapter or under part II of~~
5 ~~the Individuals with Disabilities Education Act, shall not be~~
6 ~~provided through the developmental services program unless~~
7 ~~funding is specifically appropriated to the developmental~~
8 ~~services program for this purpose.~~

9 (c)(b) Support services, such as respite care, parent
10 education and training, parent-to-parent counseling, homemaker
11 services, and other services which allow families to maintain
12 and provide quality care to children in their homes. ~~The~~
13 ~~Division of Children's Medical Services Prevention and~~
14 ~~Intervention is responsible for the provision of services to~~
15 ~~children from birth to 3 years who are eligible for services~~
16 ~~under this chapter.~~

17 (4) There is created at the developmental disabilities
18 ~~services~~ institution in Gainesville a research and education
19 unit. Such unit shall be named the Raymond C. Philips Research
20 and Education Unit. The functions of such unit shall include:

21 (a) Research into the etiology of developmental
22 disabilities.

23 (b) Ensuring that new knowledge is rapidly
24 disseminated throughout ~~the developmental services program of~~
25 the agency.

26 (c) Diagnosis of unusual conditions and syndromes
27 associated with developmental disabilities in clients
28 identified throughout ~~the developmental~~ disabilities ~~services~~
29 programs.

30 (d) Evaluation of families of clients with
31 developmental disabilities of genetic origin in order to

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1 provide them with genetic counseling aimed at preventing the
2 recurrence of the disorder in other family members.

3 (e) Ensuring that health professionals in the
4 developmental disabilities ~~services~~ institution at Gainesville
5 have access to information systems that will allow them to
6 remain updated on newer knowledge and maintain their
7 postgraduate education standards.

8 (f) Enhancing staff training for professionals
9 throughout the agency in the areas of genetics and
10 developmental disabilities.

11 Section 12. Section 393.0641, Florida Statutes, is
12 amended to read:

13 393.0641 Program for the prevention and treatment of
14 severe self-injurious behavior.--

15 (1) Contingent upon specific appropriations, there is
16 created a diagnostic, treatment, training, and research
17 program for clients exhibiting severe self-injurious behavior.
18 As used in this section, the term "severe self-injurious
19 behavior" means any chronic behavior that results in injury to
20 the person's own body, including, but not limited to,
21 self-hitting, head banging, self-biting, scratching, and the
22 ingestion of harmful or potentially harmful nutritive or
23 nonnutritive substances.

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

25 (a) Serve as a resource center for information,
26 training, and program development.

27 (b) Research the diagnosis and treatment of severe
28 self-injurious behavior, and related disorders, and develop
29 methods of prevention and treatment of self-injurious
30 behavior.

31 (c) Identify individuals in critical need.

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1 (d) Develop treatment programs which are meaningful to
 2 individuals with developmental disabilities, in critical need,
 3 while safeguarding and respecting the legal and human rights
 4 of the individuals.

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

7 (f) Collect data on the type, severity, incidence, and
 8 demographics of individuals with severe self-injurious
 9 behavior, and disseminate the data.

10 ~~(3)(2)~~ The ~~This~~ program shall adhere to the provisions
 11 of s. 393.13.

12 ~~(4)(3)~~ The agency may contract for the provision of
 13 any portion or all of the services required by the program.

14 ~~(5)(4)~~ The agency may ~~has the authority to~~ license
 15 this program and ~~shall~~ adopt rules to administer ~~implement~~ the
 16 program.

17 Section 13. Subsections (1) and (4) of section
 18 393.065, Florida Statutes, are amended, and subsections (5)
 19 and (6) are added to that section, to read:

20 393.065 Application and eligibility determination.--

21 (1) Application for services shall be made in writing
 22 to the agency, in the service area ~~district~~ in which the
 23 applicant resides. The agency ~~Employees of the agency's~~
 24 ~~developmental services program~~ shall review each applicant for
 25 eligibility within 45 days after the date the application is
 26 signed for children under 6 years of age and within 60 days
 27 after the date the application is signed for all other
 28 applicants. When necessary to definitively identify individual
 29 conditions or needs, the agency shall provide a comprehensive
 30 assessment. Only applicants ~~individuals~~ whose domicile is in
 31 Florida are eligible for services. Information accumulated by

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1 other agencies, including professional reports and collateral
2 data, shall be considered in this process when available.

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

14 (5) With the exception of clients deemed to be in
15 crisis whom the agency shall serve as described in rule, the
16 agency shall place at the top of its wait list for waiver
17 services those children on the wait list who are from the
18 child welfare system with an open case in the Department of
19 Children and Family Services' statewide automated child
20 welfare information system.

21 (6) The agency may adopt rules specifying application
22 procedures and eligibility criteria as needed to administer
23 this section.

24 Section 14. Section 393.0651, Florida Statutes, is
25 amended to read:

26 393.0651 Family or individual support plan.--The
27 agency shall provide directly or contract for the development
28 of a ~~an appropriate~~ family support plan for children ages 3
29 ~~birth~~ to 18 years of age and an individual support plan for
30 each client. ~~The parent or guardian of The client or,~~ if
31 competent, the client's parent or guardian ~~client,~~ or, when

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

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

22 (2)~~(a)~~ The family or individual support plan shall be
 23 integrated with the individual education plan (IEP) for all
 24 clients who are public school students entitled to a free
 25 appropriate public education under the Individuals with
 26 Disabilities Education Act, I.D.E.A., as amended. The family
 27 or individual support plan and IEP shall be implemented to
 28 maximize the attainment of educational and habilitation goals.

29 (a) If the IEP for a student enrolled in a public
 30 school program indicates placement in a public or private
 31 residential program is necessary to provide special education

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1 and related services to a client, the local education agency
 2 shall provide for the costs of that service in accordance with
 3 the requirements of the Individuals with Disabilities
 4 Education Act, I.D.E.A., as amended. This shall not preclude
 5 local education agencies and the agency from sharing the
 6 residential service costs of students who are clients and
 7 require residential placement. ~~Under no circumstances shall~~
 8 ~~clients entitled to a public education or their parents be~~
 9 ~~assessed a fee by the agency under s. 402.33 for placement in~~
 10 ~~a residential program.~~

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

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

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

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

27 (b) The whereabouts of the parent or guardian cannot
 28 be discovered; or

29 (c) The state is the only legal representative of the
 30 client.

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1 Such appointment shall not be construed to extend the powers
2 of the client advocate to include any of those powers
3 delegated by law to a legal guardian.

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

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

16 (b) Foster care facility.

17 (c) Group home facility.

18 (d) Intermediate care facility for the developmentally
19 disabled.

20 (e) Other facilities licensed by the agency which
21 offer special programs for people with developmental
22 disabilities.

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

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

29 (7) The individual, family, and support coordinator
30 shall review progress in achieving the objectives specified in
31 each client's family or individual support plan, and shall

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1 revise the plan annually, following consultation with the
 2 client, if competent, or with the parent or guardian of the
 3 client, or, when appropriate, the client advocate. The agency
 4 or designated contractor shall annually report in writing to
 5 the client, if competent, or to the parent or guardian of the
 6 client, or to the client advocate, when appropriate, with
 7 respect to the client's habilitative and medical progress.

8 (8) Any client, or any parent of a minor client, or
 9 guardian, authorized guardian advocate, or client advocate for
 10 a client, who is substantially affected by the client's
 11 initial family or individual support plan, or the annual
 12 review thereof, shall have the right to file a notice to
 13 challenge the decision pursuant to ss. 120.569 and 120.57.
 14 Notice of such right to appeal shall be included in all
 15 support plans provided by the agency.

16 Section 15. Section 393.0654, Florida Statutes, is
 17 created to read.

18 393.0654 Direct service providers; private sector
 19 services.--It is not a violation of s. 112.313(7) for a direct
 20 service provider who is employed by the agency to own,
 21 operate, or work in a private facility that is a service
 22 provider under contract with the agency if:

23 (1) The employee does not have any role in the
 24 agency's placement recommendations or the client's
 25 decisionmaking process regarding placement;

26 (2) The direct service provider's employment with the
 27 agency does not compromise the ability of the client to make a
 28 voluntary choice among private providers for services;

29 (3) The employee's employment outside the agency does
 30 not create a conflict with the employee's public duties and
 31 does not impede the full and faithful discharge of the

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1 employee's duties as assigned by the agency; and

2 (4) The service provider discloses the dual employment
3 or ownership status to the agency and all clients within the
4 provider's care. The disclosure must be given to the agency,
5 the client, and the client's guardian or guardian advocate, if
6 appropriate.

7 Section 16. Section 393.0655, Florida Statutes, is
8 amended to read:

9 393.0655 Screening of direct service providers.--

10 (1) MINIMUM STANDARDS.--The agency shall require level
11 2 employment screening pursuant to chapter 435 for direct
12 service providers who are unrelated to their clients,
13 including support coordinators, and managers and supervisors
14 of residential facilities or comprehensive transitional
15 education programs licensed under this chapter ~~s. 393.067~~ and
16 any other person, including volunteers, who provide care or
17 services, who have access to a client's living areas, or who
18 have access to a client's funds or personal property.
19 Background screening shall include employment history checks
20 as provided in s. 435.03(1) and local criminal records checks
21 through local law enforcement agencies.

22 (a) A volunteer who assists on an intermittent basis
23 for less than 40 hours per month does not have to be screened
24 if the volunteer is under the direct and constant visual
25 supervision of persons who meet the screening requirements of
26 this section.

27 (b) Licensed physicians, nurses, or other
28 professionals licensed and regulated by the Department of
29 Health are not subject to background screening pursuant to
30 this section if they are providing a service that is within
31 their scope of licensed practice.

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1 (c) A person selected by the family or the individual
2 with developmental disabilities and paid by the family or the
3 individual to provide supports or services is not required to
4 have a background screening under this section.

5 (d) Persons 12 years of age or older, including family
6 members, residing with a the direct services provider who
7 provides services to clients in his or her own place of
8 residence, including family members, are subject to background
9 screening; however, such persons who are 12 to 18 years of age
10 shall be screened for delinquency records only.

11 (e) A direct service provider who is awaiting the
12 completion of background screening is temporarily exempt from
13 the screening requirements under this section if the provider
14 is under the direct and constant visual supervision of persons
15 who meet the screening requirements of this section. Such
16 exemption expires 90 days after the direct service provider
17 first provides care or services to clients, has access to a
18 client's living areas, or has access to a client's funds or
19 personal property.

20 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency may
21 grant exemptions from disqualification from working with
22 children or adults with developmental disabilities only as
23 provided in s. 435.07.

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

29 (4) TERMINATION EXCLUSION FROM OWNING, OPERATING, OR
30 BEING EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL
31 FACILITY; HEARINGS PROVIDED.--

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1 (a) The agency shall deny, suspend, terminate, or
 2 revoke a license, certification, rate agreement, purchase
 3 order, or contract, or pursue other remedies provided in s.
 4 393.0673, s. 393.0675, or s. 393.0678 in addition to or in
 5 lieu of denial, suspension, termination, or revocation for
 6 failure to comply with this section.

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

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

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

25 Section 17. Section 393.0657, Florida Statutes, is
 26 amended to read:

27 393.0657 Persons not required to be refingerprinted or
 28 rescreened.--Persons who have undergone any portion of the
 29 background screening required under s. 393.0655 within the
 30 last 12 months are ~~Any provision of law to the contrary~~
 31 ~~notwithstanding, human resource personnel who have been~~

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1 ~~fingerprinted or screened pursuant to chapters 393, 394, 397,~~
2 ~~402, and 409, and teachers who have been fingerprinted~~
3 ~~pursuant to chapter 1012, who have not been unemployed for~~
4 ~~more than 90 days thereafter, and who under the penalty of~~
5 ~~perjury attest to the completion of such fingerprinting or~~
6 ~~screening and to compliance with the provisions of this~~
7 ~~section and the standards for good moral character as~~
8 ~~contained in such provisions as ss. 110.1127(3), 393.0655(1),~~
9 ~~394.457(6), 397.451, 402.305(2), and 409.175(6), shall not be~~
10 ~~required to repeat such screening be refingerprinted or~~
11 ~~rescreened in order to comply with the any direct service~~
12 ~~provider screening or fingerprinting requirements. Such~~
13 ~~persons are responsible for providing documentation of the~~
14 ~~screening and shall undergo screening for any remaining~~
15 ~~background screening requirements that have never been~~
16 ~~conducted or have not been completed within the last 12~~
17 ~~months.~~

18 Section 18. Section 393.066, Florida Statutes, is
19 amended to read:

20 393.066 Community services and treatment ~~for persons~~
21 ~~who are developmentally disabled.--~~

22 (1) The agency shall plan, develop, organize, and
23 implement its programs of services and treatment for persons
24 with developmental disabilities ~~who are developmentally~~
25 ~~disabled~~ to allow clients to live as independently as possible
26 in their own homes or communities and to achieve productive
27 lives as close to normal as possible. All elements of
28 community-based services shall be made available, and
29 eligibility for these services shall be consistent across the
30 state. ~~In addition, all purchased services shall be approved~~
31 ~~by the agency.~~

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

4 All purchased services must be approved by the agency.

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

8 (a) Adult day training ~~habilitation~~ services,
9 ~~including developmental training services.~~

10 (b) Family care services.

11 (c) Guardian advocate referral services.

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

15 (e) Parent training.

16 (f) Personal care services.

17 (g)~~(f)~~ Recreation.

18 (h)~~(g)~~ Residential facility services.

19 (i)~~(h)~~ Respite services.

20 (j)~~(i)~~ Social services.

21 (k)~~(j)~~ Specialized therapies.

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

24 (m)~~(l)~~ Supported living.

25 (n)~~(m)~~ Training, including behavioral-analysis
26 services ~~behavioral programming.~~

27 (o)~~(n)~~ Transportation.

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

30 (4) The agency shall utilize the services of private
31 businesses, not-for-profit organizations, and units of local

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

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

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

26 (7) For the purpose of making needed community-based
27 residential facilities available at the least possible cost to
28 the state, the agency is authorized to lease privately owned
29 residential facilities under long-term rental agreements, if
30 such rental agreements are projected to be less costly to the
31 state over the useful life of the facility than state purchase

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1 or state construction of such a facility.

2 (8) The agency may adopt rules providing definitions,
3 eligibility criteria, and procedures for the purchase of
4 services ~~to ensure compliance with federal laws or regulations~~
5 ~~that apply to services~~ provided pursuant to this section.

6 Section 19. Section 393.067, Florida Statutes, is
7 amended to read:

8 393.067 Facility licensure ~~of residential facilities~~
9 ~~and comprehensive transitional education programs.--~~

10 (1) The agency shall provide through its licensing
11 authority and by rule license application procedures, ~~a system~~
12 ~~of provider qualifications,~~ facility and client care
13 standards, requirements for client records, requirements for
14 staff qualifications and training ~~criteria for meeting~~
15 ~~standards,~~ and requirements for monitoring foster care ~~for~~
16 ~~residential~~ facilities, group home facilities, residential
17 habilitation centers, and comprehensive transitional education
18 programs that serve agency clients.

19 (2) The agency shall conduct annual inspections and
20 reviews of ~~residential~~ facilities and ~~comprehensive~~
21 ~~transitional education programs~~ licensed under this section
22 annually.

23 (3) An application for a license under this section
24 must ~~for a residential facility or a comprehensive~~
25 ~~transitional education program~~ shall be made to the agency on
26 a form furnished by it and shall be accompanied by the
27 appropriate license fee.

28 (4) The application shall be under oath and shall
29 contain the following:

30 (a) The name and address of the applicant, if an
31 applicant is an individual; if the applicant is a firm,

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1 partnership, or association, the name and address of each
2 member thereof; if the applicant is a corporation, its name
3 and address and the name and address of each director and each
4 officer thereof; and the name by which the facility or program
5 is to be known.

6 (b) The location of the facility or program for which
7 a license is sought.

8 (c) The name of the person or persons under whose
9 management or supervision the facility or program will be
10 conducted.

11 (d) The number and type of residents or clients for
12 which maintenance, care, education, or treatment is to be
13 provided by the facility or program.

14 (e) The number and location of the component centers
15 or units which will compose the comprehensive transitional
16 education program.

17 (f) A description of the types of services and
18 treatment to be provided by the facility or program.

19 (g) Information relating to the number, experience,
20 and training of the employees of the facility or program.

21 (h) Certification that the staff of the facility or
22 program will receive training to detect and prevent sexual
23 abuse of residents and clients.

24 (i) Such other information as the agency determines is
25 necessary to carry out the provisions of this chapter.

26 ~~(5) The applicant shall submit evidence which~~
27 ~~establishes the good moral character of the manager or~~
28 ~~supervisor of the facility or program and the direct service~~
29 ~~providers in the facility or program and its component centers~~
30 ~~or units. A license may be issued if all the screening~~
31 ~~materials have been timely submitted; however, a license may~~

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1 ~~not be issued or renewed if any of the direct service~~
2 ~~providers have failed the screening required by s. 393.0655.~~

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

31 ~~2. The applicant shall sign an affidavit under penalty~~

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1 ~~of perjury stating that all new direct service providers have~~
 2 ~~been fingerprinted and that the facility's or program's~~
 3 ~~remaining direct service providers have worked at the~~
 4 ~~applicant facility or program on a continuous basis since~~
 5 ~~being initially screened at that facility or program or have a~~
 6 ~~written assurance of compliance from the agency or department.~~

7 (5)(b) As a prerequisite for issuance of an the
 8 initial or renewal license, the applicant, and any manager,
 9 supervisor, and staff member of the direct service provider of
 10 a facility or program licensed under this section, must have
 11 submitted to background screening as required under s.
 12 393.0655. A license may not be issued or renewed if the
 13 applicant or any manager, supervisor, or staff member of the
 14 direct service provider has failed background screenings as
 15 required under s. 393.0655. The agency shall determine by rule
 16 the frequency of background screening. The applicant shall
 17 submit with each initial or renewal application a signed
 18 affidavit under penalty of perjury stating that the applicant
 19 and any manager, supervisor, or staff member of the direct
 20 service provider is in compliance with all requirements for
 21 background screening. ~~to a residential facility or~~

22 ~~comprehensive transitional education program:~~

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

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

31 3. ~~The agency shall review the record of the manager~~

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1 ~~or supervisor with respect to the crimes specified in s.~~
 2 ~~393.0655(1) and shall notify the applicant of its findings.~~
 3 ~~When disposition information is missing on a criminal record,~~
 4 ~~it is the responsibility of the manager or supervisor, upon~~
 5 ~~request of the agency, to obtain and supply within 30 days the~~
 6 ~~missing disposition information to the agency. Failure to~~
 7 ~~supply the missing information within 30 days or to show~~
 8 ~~reasonable efforts to obtain such information shall result in~~
 9 ~~automatic disqualification.~~

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

21 ~~(6) Each applicant for licensure as an intermediate~~
 22 ~~care facility for the developmentally disabled must comply~~
 23 ~~with the following requirements:~~

24 ~~(a) Upon receipt of a completed, signed, and dated~~
 25 ~~application, the agency shall require background screening, in~~
 26 ~~accordance with the level 2 standards for screening set forth~~
 27 ~~in chapter 435, of the managing employee, or other similarly~~
 28 ~~titled individual who is responsible for the daily operation~~
 29 ~~of the facility, and of the financial officer, or other~~
 30 ~~similarly titled individual who is responsible for the~~
 31 ~~financial operation of the center, including billings for~~

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1 ~~resident care and services. The applicant must comply with the~~
2 ~~procedures for level 2 background screening as set forth in~~
3 ~~chapter 435, as well as the requirements of s. 435.03(3).~~

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

9 ~~(c) Proof of compliance with the level 2 background~~
10 ~~screening requirements of chapter 435 which has been submitted~~
11 ~~within the previous 5 years in compliance with any other~~
12 ~~health care licensure requirements of this state is acceptable~~
13 ~~in fulfillment of the requirements of paragraph (a).~~

14 ~~(d) A provisional license may be granted to an~~
15 ~~applicant when each individual required by this section to~~
16 ~~undergo background screening has met the standards for the~~
17 ~~Department of Law Enforcement background check, but the agency~~
18 ~~has not yet received background screening results from the~~
19 ~~Federal Bureau of Investigation, or a request for a~~
20 ~~disqualification exemption has been submitted to the agency as~~
21 ~~set forth in chapter 435, but a response has not yet been~~
22 ~~issued. A standard license may be granted to the applicant~~
23 ~~upon the agency's receipt of a report of the results of the~~
24 ~~Federal Bureau of Investigation background screening for each~~
25 ~~individual required by this section to undergo background~~
26 ~~screening which confirms that all standards have been met, or~~
27 ~~upon the granting of a disqualification exemption by the~~
28 ~~agency as set forth in chapter 435. Any other person who is~~
29 ~~required to undergo level 2 background screening may serve in~~
30 ~~his or her capacity pending the agency's receipt of the report~~
31 ~~from the Federal Bureau of Investigation. However, the person~~

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1 ~~may not continue to serve if the report indicates any~~
2 ~~violation of background screening standards and a~~
3 ~~disqualification exemption has not been requested of and~~
4 ~~granted by the agency as set forth in chapter 435.~~

5 ~~(e) Each applicant must submit to the agency, with its~~
6 ~~application, a description and explanation of any exclusions,~~
7 ~~permanent suspensions, or terminations of the applicant from~~
8 ~~the Medicare or Medicaid programs. Proof of compliance with~~
9 ~~the requirements for disclosure of ownership and control~~
10 ~~interests under the Medicaid or Medicare programs shall be~~
11 ~~accepted in lieu of this submission.~~

12 ~~(f) Each applicant must submit to the agency a~~
13 ~~description and explanation of any conviction of an offense~~
14 ~~prohibited under the level 2 standards of chapter 435 by a~~
15 ~~member of the board of directors of the applicant, its~~
16 ~~officers, or any individual owning 5 percent or more of the~~
17 ~~applicant. This requirement does not apply to a director of a~~
18 ~~not-for-profit corporation or organization if the director~~
19 ~~serves solely in a voluntary capacity for the corporation or~~
20 ~~organization, does not regularly take part in the day-to-day~~
21 ~~operational decisions of the corporation or organization,~~
22 ~~receives no remuneration for his or her services on the~~
23 ~~corporation or organization's board of directors, and has no~~
24 ~~financial interest and has no family members with a financial~~
25 ~~interest in the corporation or organization, provided that the~~
26 ~~director and the not-for-profit corporation or organization~~
27 ~~include in the application a statement affirming that the~~
28 ~~director's relationship to the corporation satisfies the~~
29 ~~requirements of this paragraph.~~

30 ~~(g) A license may not be granted to an applicant if~~
31 ~~the applicant or managing employee has been found guilty of,~~

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1 ~~regardless of adjudication, or has entered a plea of nolo~~
 2 ~~contendere or guilty to, any offense prohibited under the~~
 3 ~~level 2 standards for screening set forth in chapter 435,~~
 4 ~~unless an exemption from disqualification has been granted by~~
 5 ~~the agency as set forth in chapter 435.~~

6 ~~(h) The agency may deny or revoke licensure if the~~
 7 ~~applicant:~~

8 ~~1. Has falsely represented a material fact in the~~
 9 ~~application required by paragraph (e) or paragraph (f), or has~~
 10 ~~omitted any material fact from the application required by~~
 11 ~~paragraph (e) or paragraph (f); or~~

12 ~~2. Has had prior action taken against the applicant~~
 13 ~~under the Medicaid or Medicare program as set forth in~~
 14 ~~paragraph (e).~~

15 ~~(i) An application for license renewal must contain~~
 16 ~~the information required under paragraphs (e) and (f).~~

17 ~~(6)(7)~~ The applicant shall furnish satisfactory proof
 18 of financial ability to operate and conduct the facility or
 19 program in accordance with the requirements of this chapter
 20 and adopted all rules ~~promulgated hereunder.~~

21 ~~(7)(8)~~ The agency shall adopt rules establishing
 22 minimum standards for ~~licensure of residential facilities and~~
 23 ~~comprehensive transitional education programs~~ licensed under
 24 this section, including rules requiring facilities and
 25 programs to train staff to detect and prevent sexual abuse of
 26 residents and clients, minimum standards of quality and
 27 adequacy of client care, incident-reporting requirements, and
 28 uniform firesafety standards established by the State Fire
 29 Marshal which are appropriate to the size of the facility or
 30 of the component centers or units of the program.

31 ~~(8)(9)~~ The agency ~~and the Agency for Health Care~~

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

28 ~~(9)(10)~~ The agency may conduct unannounced inspections
 29 to determine compliance by foster care ~~residential~~ facilities,
 30 group home facilities, residential habilitation centers, and
 31 comprehensive transitional education programs with the

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1 applicable provisions of this chapter and the rules adopted
 2 pursuant hereto, including the rules adopted for training
 3 staff of a facility or a program to detect and prevent sexual
 4 abuse of residents and clients. The facility or program shall
 5 make copies of inspection reports available to the public upon
 6 request.

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

12 ~~(a) Such centers are located on a site zoned in a~~
 13 ~~manner so that all the component centers of a comprehensive~~
 14 ~~transition education center may be located thereon; or~~

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

17 ~~(10)(12) Each residential facility or comprehensive~~
 18 ~~transitional education program licensed under this section by~~
 19 ~~the agency shall forward annually to the agency a true and~~
 20 ~~accurate sworn statement of its costs of providing care to~~
 21 ~~clients funded by the agency.~~

22 ~~(11)(13) The agency may audit the records of any~~
 23 ~~residential facility or comprehensive transitional education~~
 24 ~~program that it has reason to believe may not be in full~~
 25 ~~compliance with the provisions of this section; provided that,~~
 26 ~~any financial audit of such facility or program shall be~~
 27 ~~limited to the records of clients funded by the agency.~~

28 ~~(12)(14) The agency shall establish, for the purpose~~
 29 ~~of control of licensure costs, a uniform management~~
 30 ~~information system and a uniform reporting system with uniform~~
 31 ~~definitions and reporting categories.~~

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1 ~~(13)(15)~~ Facilities and programs licensed pursuant to
2 this section shall adhere to all rights specified in s.
3 393.13, including those enumerated in s. 393.13(4).

4 ~~(14)(16)~~ An ~~No~~ unlicensed ~~residential~~ facility or
5 ~~comprehensive transitional education~~ program may not ~~shall~~
6 receive state funds. A license for the operation of a facility
7 or program shall not be renewed if the licensee has any
8 outstanding fines assessed pursuant to this chapter wherein
9 final adjudication of such fines has been entered.

10 ~~(15)(17)~~ The agency is ~~shall~~ not ~~be~~ required to
11 contract with new facilities licensed after October 1, 1989,
12 pursuant to this chapter. Pursuant to chapter 287, the agency
13 shall continue to contract within available resources for
14 residential services with facilities licensed prior to October
15 1, 1989, if such facilities comply with the provisions of this
16 chapter and all other applicable laws and regulations.

17 Section 20. Section 393.0673, Florida Statutes, is
18 amended to read:

19 393.0673 Denial, suspension, revocation of license;
20 moratorium on admissions; administrative fines; procedures.--

21 (1) The agency may deny, revoke, or suspend a license
22 or impose an administrative fine, not to exceed \$1,000 per
23 violation per day, if the applicant or licensee:

24 (a) Has falsely represented, or omitted a material
25 fact in its license application submitted under s. 393.067.

26 (b) Has had prior action taken against it under the
27 Medicaid or Medicare program.

28 (c) Has failed to comply with the applicable
29 requirements of this chapter or rules applicable to the
30 applicant or licensee ~~for a violation of any provision of s.~~
31 ~~393.0655 or s. 393.067 or rules adopted pursuant thereto.~~

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1 (2) All hearings shall be held within the county in
2 which the licensee or applicant operates or applies for a
3 license to operate a facility as defined herein.

4 ~~(3)(2)~~ The agency, as a part of any final order issued
5 by it under ~~the provisions of~~ this chapter, may impose such
6 fine as it deems proper, except that such fine may not exceed
7 \$1,000 for each violation. Each day a violation of this
8 chapter occurs constitutes a separate violation and is subject
9 to a separate fine, but in no event may the aggregate amount
10 of any fine exceed \$10,000. Fines paid by any facility
11 licensee under the provisions of this subsection shall be
12 deposited in the Resident Protection Trust Fund and expended
13 as provided in s. 400.063.

14 ~~(4)(3)~~ The agency may issue an order immediately
15 suspending or revoking a license when it determines that any
16 condition in the facility presents a danger to the health,
17 safety, or welfare of the residents in the facility.

18 ~~(5)(4)~~ The agency may impose an immediate moratorium
19 on admissions to any facility when the department determines
20 that any condition in the facility presents a threat to the
21 health, safety, or welfare of the residents in the facility.

22 (6) The agency shall establish by rule criteria for
23 evaluating the severity of violations and for determining the
24 amount of fines imposed.

25 Section 21. Subsection (1) of section 393.0674,
26 Florida Statutes, is amended to read:

27 393.0674 Penalties.--

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

31 (a) Fail, by false statement, misrepresentation,

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1 impersonation, or other fraudulent means, to disclose in any
2 application for voluntary or paid employment a material fact
3 used in making a determination as to such person's
4 qualifications to be a direct service provider;

5 (b) Provide or attempt to provide supports or services
6 with direct service providers who are not in compliance
7 ~~noncompliance~~ with the background screening requirements
8 ~~minimum standards for good moral character as contained in~~
9 this chapter; or

10 (c) Use information from the criminal records or
11 central abuse hotline obtained under s. 393.0655, s. 393.066,
12 or s. 393.067 for any purpose other than screening that person
13 for employment as specified in those sections or release such
14 information to any other person for any purpose other than
15 screening for employment as specified in those sections.

16 Section 22. Subsection (3) of section 393.0675,
17 Florida Statutes, is amended to read:

18 393.0675 Injunctive proceedings authorized.--

19 (3) The agency may institute proceedings for an
20 injunction in a court of competent jurisdiction to terminate
21 the operation of a provider of supports or services if such
22 provider has willfully and knowingly refused to comply with
23 the screening requirement for direct service providers or has
24 refused to terminate direct service providers found not to be
25 in compliance with such ~~the~~ requirements ~~for good moral~~
26 ~~character~~.

27 Section 23. Subsection (1) of section 393.0678,
28 Florida Statutes, is amended to read:

29 393.0678 Receivership proceedings.--

30 (1) The agency may petition a court of competent
31 jurisdiction for the appointment of a receiver for ~~an~~

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1 ~~intermediate care facility for the developmentally disabled, a~~
 2 residential habilitation center, or a group home facility
 3 owned and operated by a corporation or partnership when any of
 4 the following conditions exist:

5 (a) Any person is operating a facility without a
 6 license and refuses to make application for a license as
 7 required by s. 393.067 ~~or, in the case of an intermediate care~~
 8 ~~facility for the developmentally disabled, as required by ss.~~
 9 ~~393.067 and 400.062.~~

10 (b) The licensee is closing the facility or has
 11 informed the department that it intends to close the facility;
 12 and adequate arrangements have not been made for relocation of
 13 the residents within 7 days, exclusive of weekends and
 14 holidays, of the closing of the facility.

15 (c) The agency determines that conditions exist in the
 16 facility which present an imminent danger to the health,
 17 safety, or welfare of the residents of the facility or which
 18 present a substantial probability that death or serious
 19 physical harm would result therefrom. Whenever possible, the
 20 agency shall facilitate the continued operation of the
 21 program.

22 (d) The licensee cannot meet its financial obligations
 23 to provide food, shelter, care, and utilities. Evidence such
 24 as the issuance of bad checks or the accumulation of
 25 delinquent bills for such items as personnel salaries, food,
 26 drugs, or utilities constitutes prima facie evidence that the
 27 ownership of the facility lacks the financial ability to
 28 operate the home in accordance with the requirements of this
 29 chapter and all rules promulgated thereunder.

30 Section 24. Subsections (1), (2), (3), (5), and (7) of
 31 section 393.068, Florida Statutes, are amended to read:

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1 393.068 Family care program.--

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

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

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

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1 (m) Emergency services.

2 (n) Support coordination.

3 ~~(o) Supported employment.~~

4 ~~(o)(p)~~ Other support services as identified by the
5 family or individual.

6 (3) When it is determined by the agency to be more
7 cost-effective and in the best interest of the client to
8 maintain such client in the home of a direct service provider,
9 the parent or guardian of the client or, if competent, the
10 client may enroll the client in the family care program. The
11 direct service provider of a client enrolled in the family
12 care program shall be reimbursed according to a rate schedule
13 set by the agency, except that in-home subsidies ~~cited in~~
14 ~~paragraph (2)(d)~~ shall be provided in accordance with
15 ~~according to s. 393.0695 and are not subject to any other~~
16 ~~payment method or rate schedule provided for in this section.~~

17 (5) The agency may contract for the provision of any
18 portion of the services required by the program, except for
19 in-home subsidies ~~cited in paragraph (2)(d)~~, which shall be
20 provided pursuant to s. 393.0695. ~~Otherwise, purchase of~~
21 ~~service contracts shall be used~~ whenever the services so
22 provided are more cost-efficient than those provided by the
23 agency.

24 (7) To provide a range of personal care services for
25 the client, the use of volunteers shall be maximized. The
26 agency shall assure appropriate insurance coverage to protect
27 volunteers from personal liability while acting within the
28 scope of their volunteer assignments under the program.

29 Section 25. Subsection (3) of section 393.0695,
30 Florida Statutes, is amended, and subsection (5) is added to
31 that section, to read:

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1 393.0695 Provision of in-home subsidies.--

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

5 (5) The agency shall adopt rules to administer this
6 section, including standards and procedures governing
7 eligibility for services, selection of housing, selection of
8 providers, and planning for services, and requirements for
9 ongoing monitoring.

10 Section 26. Subsection (2) of section 393.075, Florida
11 Statutes, is amended to read:

12 393.075 General liability coverage.--

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

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1 Division of Risk Management of the Department of Financial
2 Services of any potential or actual claim.

3 Section 27. Section 393.11, Florida Statutes, is
4 amended to read:

5 393.11 Involuntary admission to residential
6 services.--

7 (1) JURISDICTION.--When a person who has been
8 determined eligible for services for mental retardation under
9 this chapter ~~is mentally retarded~~ and requires involuntary
10 admission to residential services provided by the agency, the
11 circuit court of the county in which the person resides shall
12 have jurisdiction to conduct a hearing and enter an order
13 involuntarily admitting the person in order that the person
14 may receive the care, treatment, habilitation, and
15 rehabilitation which the person needs. For the purpose of
16 identifying mental retardation, diagnostic capability shall be
17 established by the agency. The involuntary commitment of a
18 person with mental retardation or autism who is charged with a
19 felony offense shall be determined in accordance with s.
20 916.302. ~~Except as otherwise specified, the proceedings under~~
21 ~~this section shall be governed by the Florida Rules of Civil~~
22 ~~Procedure.~~

23 (2) PETITION.--

24 (a) A petition for involuntary admission to
25 residential services may be executed by a petitioning
26 commission. ~~For proposed involuntary admission to residential~~
27 ~~services arising out of chapter 916, the petition may be filed~~
28 ~~by a petitioning commission, the agency, the state attorney of~~
29 ~~the circuit from which the defendant was committed, or the~~
30 ~~defendant's attorney.~~

31 (b) The petitioning commission shall consist of three

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1 persons. One of these persons shall be a physician licensed
2 and practicing under chapter 458 or chapter 459.

3 (c) The petition shall be verified and shall:

4 1. State the name, age, and present address of the
5 commissioners and their relationship to the person with mental
6 retardation or autism;

7 2. State the name, age, county of residence, and
8 present address of the person with mental retardation or
9 autism;

10 3. Allege that the commission believes that the person
11 needs involuntary residential services and specify the factual
12 information on which the ~~such~~ belief is based;

13 4. Allege that the person lacks sufficient capacity to
14 give express and informed consent to a voluntary application
15 for services and lacks the basic survival and self-care skills
16 to provide for the person's well-being or is likely to
17 physically injure others if allowed to remain at liberty; and

18 5. State which residential setting is the least
19 restrictive and most appropriate alternative and specify the
20 factual information on which the ~~such~~ belief is based.

21 (d) The petition shall be filed in the circuit court
22 of the county in which the person with mental retardation or
23 autism resides.

24 (3) NOTICE.--

25 (a) Notice of the filing of the petition shall be
26 given to the individual and his or her legal guardian. The
27 notice shall be given both verbally and in writing in the
28 language of the client, or in other modes of communication of
29 the client, and in English. Notice shall also be given to such
30 other persons as the court may direct. The petition for
31 involuntary admission to residential services shall be served

1 with the notice.

2 (b) Whenever a motion or petition has been filed
3 pursuant to s. 916.303 to dismiss criminal charges against a
4 defendant with retardation or autism, and a petition is filed
5 to involuntarily admit the defendant to residential services
6 under this section, the notice of the filing of the petition
7 shall also be given to the defendant's attorney, ~~and to the~~
8 state attorney of the circuit from which the defendant was
9 committed, and the agency.

10 (c) The notice shall state that a hearing shall be set
11 to inquire into the need of the person with mental retardation
12 or autism for involuntary residential services. The notice
13 shall also state the date of the hearing on the petition.

14 (d) The notice shall state that the individual with
15 mental retardation or autism has the right to be represented
16 by counsel of his or her own choice and that, if the person
17 cannot afford an attorney, the court shall appoint one.

18 (4) AGENCY DEVELOPMENTAL SERVICES PARTICIPATION.--

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

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

30 (c) The report must ~~shall~~ contain the findings of the
31 agency's ~~developmental services program~~ evaluation, ~~and any~~

1 recommendations deemed appropriate, and a determination of
2 whether the person is eligible for services under this
3 chapter.

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 provided by ~~of the developmental services~~
9 ~~program of~~ 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. The committee must ~~shall~~
14 include at least one licensed and qualified physician, one
15 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 has ~~shall have~~ the right to challenge
23 the qualifications of those appointed to the examining
24 committee.

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

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

6 1. The degree of the person's mental retardation and
 7 whether, using diagnostic capabilities established by the
 8 agency, the person is eligible for agency services;

9 2. Whether, because of the person's degree of mental
 10 retardation, the person:

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

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

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

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

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

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

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

31 (g) Members of the examining committee shall receive a

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1 reasonable fee to be determined by the court. The fees are to
2 be paid from the general revenue fund of the county in which
3 the person with mental retardation resided when the petition
4 was filed.

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

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

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

19 (b) If the attorney, during the course of his or her
20 representation, reasonably believes that the person with
21 mental retardation cannot adequately act in his or her own
22 interest, the attorney may seek the appointment of a guardian
23 ad litem. A prior finding of incompetency is not required
24 before a guardian ad litem is appointed pursuant to this
25 section.

26 (7) HEARING.--

27 (a) The hearing for involuntary admission shall be
28 conducted, and the order shall be entered, in the county in
29 which the petition is filed ~~person is residing or be as~~
30 ~~convenient to the person as may be consistent with orderly~~
31 ~~procedure~~. The hearing shall be conducted in a physical

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1 setting not likely to be injurious to the person's condition.

2 (b) A hearing on the petition must ~~shall~~ be held as
3 soon as practicable after the petition is filed, but
4 reasonable delay for the purpose of investigation, discovery,
5 or procuring counsel or witnesses shall be granted.

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

10 (d) The person with mental retardation shall be
11 physically present throughout the entire proceeding. If the
12 person's attorney believes that the person's presence at the
13 hearing is not in the person's best interest, the person's
14 presence may be waived once the court has seen the person and
15 the hearing has commenced.

16 (e) The person has ~~shall have~~ the right to present
17 evidence and to cross-examine all witnesses and other evidence
18 alleging the appropriateness of the person's admission to
19 residential care. Other relevant and material evidence
20 regarding the appropriateness of the person's admission to
21 residential services; the most appropriate, least restrictive
22 residential placement; and the appropriate care, treatment,
23 and habilitation of the person, including written or oral
24 reports, may be introduced at the hearing by any interested
25 person.

26 (f) The petitioning commission may be represented by
27 counsel at the hearing. The petitioning commission shall have
28 the right to call witnesses, present evidence, cross-examine
29 witnesses, and present argument on behalf of the petitioning
30 commission.

31 (g) All evidence shall be presented according to

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1 chapter 90. The burden of proof shall be on the party alleging
2 the appropriateness of the person's admission to residential
3 services. The burden of proof shall be by clear and convincing
4 evidence.

5 (h) All stages of each proceeding shall be
6 stenographically reported.

7 (8) ORDER.--

8 (a) In all cases, the court shall issue written
9 findings of fact and conclusions of law to support its
10 decision. The order must ~~shall~~ state the basis for the ~~such~~
11 findings of fact.

12 (b) An order of involuntary admission to residential
13 services may ~~shall~~ not be entered unless the court finds that:

- 14 1. The person is mentally retarded or autistic;
- 15 2. Placement in a residential setting is the least
16 restrictive and most appropriate alternative to meet the
17 person's needs; and

18 3. Because of the person's degree of mental
19 retardation or autism, the person:

- 20 a. Lacks sufficient capacity to give express and
21 informed consent to a voluntary application for services
22 pursuant to s. 393.065 and lacks basic survival and self-care
23 skills to such a degree that close supervision and
24 habilitation in a residential setting is necessary and, if not
25 provided, would result in a real and present threat of
26 substantial harm to the person's well-being; or

- 27 b. Is likely to physically injure others if allowed to
28 remain at liberty.

29 (c) If the evidence presented to the court is not
30 sufficient to warrant involuntary admission to residential
31 services, but the court feels that residential services would

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1 be beneficial, the court may recommend that the person seek
 2 voluntary admission.

3 (d) If an order of involuntary admission to
 4 residential services provided by the ~~developmental services~~
 5 ~~program of the~~ agency is entered by the court, a copy of the
 6 written order shall be served upon the person, the person's
 7 counsel, the agency, and the state attorney and the person's
 8 defense counsel, if applicable. The order of involuntary
 9 admission sent to the agency shall also be accompanied by a
 10 copy of the examining committee's report and other reports
 11 contained in the court file.

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

23 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
 24 RESIDENTIAL SERVICES.--

25 (a) ~~In no case shall~~ An order authorizing an admission
 26 to residential care may not be considered an adjudication of
 27 mental incompetency. A ~~No~~ person is not ~~shall be~~ presumed
 28 incompetent solely by reason of the person's involuntary
 29 admission to residential services. A ~~No~~ person may not ~~shall~~
 30 be denied the full exercise of all legal rights guaranteed to
 31 citizens of this state and of the United States.

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1 (b) Any minor involuntarily admitted to residential
2 services shall, upon reaching majority, be given a hearing to
3 determine the continued appropriateness of his or her
4 involuntary admission.

5 (10) COMPETENCY.--

6 (a) The issue of competency shall be separate and
7 distinct from a determination of the appropriateness of
8 involuntary admission to residential services for a condition
9 of mental retardation.

10 (b) The issue of the competency of a person with
11 mental retardation for purposes of assigning guardianship
12 shall be determined in a separate proceeding according to the
13 procedures and requirements of chapter 744 ~~and the Florida~~
14 ~~Probate Rules~~. The issue of the competency of a person with
15 mental retardation or autism for purposes of determining
16 whether the person is competent to proceed in a criminal trial
17 shall be determined in accordance with chapter 916.

18 (11) CONTINUING JURISDICTION.--The court which issues
19 the initial order for involuntary admission to residential
20 services under this section has ~~shall have~~ continuing
21 jurisdiction to enter further orders to ensure that the person
22 is receiving adequate care, treatment, habilitation, and
23 rehabilitation, including psychotropic medication and
24 behavioral programming. Upon request, the court may transfer
25 the continuing jurisdiction to the court where a client
26 resides if it is different from where the original involuntary
27 admission order was issued. A ~~No~~ person may not be released
28 from an order for involuntary admission to residential
29 services except by the order of the court.

30 (12) APPEAL.--

31 (a) Any party to the proceeding who is affected by an

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1 order of the court may appeal to the appropriate district
2 court of appeal within the time and in the manner prescribed
3 by the Florida Rules of Appellate Procedure.

4 (b) The filing of an appeal by the person with mental
5 retardation shall stay admission of the person into
6 residential care. The stay shall remain in effect during the
7 pendency of all review proceedings in Florida courts until a
8 mandate issues.

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

19 Section 28. Section 393.122, Florida Statutes, is
20 amended to read:

21 393.122 Applications for continued residential
22 services.--

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

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

30 Section 29. Section 393.13, Florida Statutes, is
31 amended to read:

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1 393.13 ~~Personal~~ Treatment of persons with
2 developmental disabilities ~~who are developmentally disabled.--~~

3 (1) SHORT TITLE.--This section ~~act~~ shall be known as
4 "The Bill of Rights of Persons with Developmental Disabilities
5 ~~who are Developmentally Disabled.~~"

6 (2) LEGISLATIVE INTENT.--

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

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

17 1. Abate the use of large institutions.

18 2. Continue the development of community-based
19 services that ~~which~~ provide reasonable alternatives to
20 institutionalization in settings that are least restrictive to
21 the client and that provide opportunities for inclusion in the
22 community.

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

28 4. Reduce the use of sheltered workshops and other
29 noncompetitive employment day activities and promote
30 opportunities for those ~~gainful employment for persons with~~
31 ~~developmental disabilities~~ who choose to seek such employment.

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

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

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

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

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

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

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

30 6. To provide programs for the proper habilitation and
 31 treatment of persons with developmental disabilities which

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1 shall include, but not be limited to, comprehensive
 2 medical/dental care, education, recreation, specialized
 3 therapies, training, social services, transportation,
 4 guardianship, family care programs, day habilitation services,
 5 and habilitative and rehabilitative services suited to the
 6 needs of the individual regardless of age, degree of
 7 disability, or handicapping condition. It is the intent of the
 8 Legislature that no person with developmental disabilities
 9 shall be deprived of these enumerated services by reason of
 10 inability to pay.

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

19 8. To minimize and achieve an ongoing reduction in the
 20 use of restraint and seclusion in facilities and programs
 21 servicing persons with developmental disabilities.

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

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

30 (a) Persons with developmental disabilities shall have
 31 a right to dignity, privacy, and humane care, including the

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1 right to be free from sexual abuse in residential facilities.

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

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

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

18 (e) Persons with developmental disabilities ~~who are~~
19 ~~developmentally disabled~~ shall have a right to social
20 interaction and to participate in community activities.

21 (f) Persons with developmental disabilities ~~who are~~
22 ~~developmentally disabled~~ shall have a right to physical
23 exercise and recreational opportunities.

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

28 (h) Persons with developmental disabilities ~~who are~~
29 ~~developmentally disabled~~ shall have a right to consent to or
30 refuse treatment, subject to the provisions of s. 393.12(2)(a)
31 or chapter 744.

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1 (i) No otherwise qualified person shall, by reason of
 2 having a developmental disability, be excluded from
 3 participation in, or be denied the benefits of, or be subject
 4 to discrimination under, any program or activity which
 5 receives public funds, and all prohibitions set forth under
 6 any other statute shall be actionable under this statute.

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

10 (4) CLIENT RIGHTS.--For purposes of this subsection,
 11 the term "client," as defined in s. 393.063, shall also
 12 include any person served in a facility licensed under
 13 ~~pursuant to~~ s. 393.067.

14 (a) Clients shall have an unrestricted right to
 15 communication:

16 1. Each client ~~is~~ shall be allowed to receive, send,
 17 and mail sealed, unopened correspondence. ~~A~~ No client's
 18 incoming or outgoing correspondence may not ~~shall~~ be opened,
 19 delayed, held, or censored by the facility unless there is
 20 reason to believe that it contains items or substances which
 21 may be harmful to the client or others, in which case the
 22 chief administrator of the facility may direct reasonable
 23 examination of such mail and regulate the disposition of such
 24 items or substances.

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

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1 3. Clients ~~shall~~ have an unrestricted right to
2 visitation subject to reasonable rules of the facility.
3 However, ~~nothing in~~ this provision may not ~~shall~~ be construed
4 to permit infringement upon other clients' rights to privacy.

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

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

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

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

30 (c) Each client shall receive prompt and appropriate
31 medical treatment and care for physical and mental ailments

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1 and for the prevention of any illness or disability. Medical
2 treatment shall be consistent with the accepted standards of
3 medical practice in the community.

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

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

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

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

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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 family support plan. Indoor and outdoor facilities and

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1 equipment for such physical exercise shall be provided.

2 (f) Each client shall receive humane discipline.

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

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

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

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

31 ~~(h) Each client engaged in work programs which require~~

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1 ~~compliance with federal wage and hour laws shall be provided~~
2 ~~with minimum wage protection and fair compensation for labor~~
3 ~~in accordance with the federal wage per hour regulations.~~

4 (h)(i) Clients shall have the right to be free from
5 ~~the unnecessary use of restraint or seclusion physical,~~
6 ~~chemical, or mechanical restraint.~~ Restraints shall be
7 employed only in emergencies or to protect the client or
8 others from imminent injury ~~to himself or herself or others.~~
9 Restraints may ~~shall~~ not be employed as punishment, for the
10 convenience of staff, or as a substitute for a support
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 1.3. Daily reports on the employment of restraint or
25 seclusion ~~physical, chemical, or mechanical restraints by~~
26 ~~those specialists authorized in the use of such restraints~~
27 shall be made to the ~~appropriate~~ chief administrator of the
28 facility or program licensed under this chapter, and a monthly
29 compilation ~~summary~~ of such reports shall be relayed to the
30 agency's local area office ~~district administrator and the~~
31 ~~Florida local advocacy council.~~ The monthly reports shall

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1 summarize all such cases of restraints, the type used, the
 2 duration of usage, and the reasons therefor. The area offices
 3 ~~Districts~~ shall submit monthly summaries of these districtwide
 4 ~~quarterly reports of these summaries~~ to the agency's central
 5 office state Developmental Disabilities Program Office.

6 2.4. The agency shall adopt by rule standards and
 7 procedures relating to the use of restraint and seclusion ~~post~~
 8 ~~a copy of the rules adopted under this section in each living~~
 9 ~~unit of residential facilities.~~ Such rules must be consistent
 10 with recognized best practices; prohibit inherently dangerous
 11 restraint or seclusion procedures; establish limitations on
 12 the use and duration of restraint and seclusion; establish
 13 measures to ensure the safety of clients and staff during an
 14 incident of restraint or seclusion; establish procedures for
 15 staff to follow before, during, and after incidents of
 16 restraint or seclusion, including individualized plans for the
 17 use of restraints or seclusion in emergency situations;
 18 establish professional qualifications of and training for
 19 staff who may order or be engaged in the use of restraint or
 20 seclusion; establish requirements for facility data collection
 21 and reporting relating to the use of restraint and seclusion;
 22 and establish procedures relating to the documentation of the
 23 use of restraint or seclusion in the client's facility or
 24 program record. A copy of the rules adopted under this
 25 ~~subparagraph~~ ~~section~~ shall be given to the client, parent,
 26 guardian or guardian advocate, and all staff members of
 27 ~~licensed~~ facilities and programs licensed under this chapter
 28 and made a part of all staff preservice and inservice training
 29 programs.

30 (i)(j)1. Each client shall have a central record. The
 31 central record shall be established by the agency at the time

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1 that an individual is determined eligible for services, shall
 2 be maintained by the client's support coordinator, and must
 3 contain information ~~include data~~ pertaining to admission,
 4 diagnosis and treatment history, present condition, and such
 5 other information as may be required ~~under rules of the~~
 6 ~~agency.~~ The central record is the property of the agency.

7 ~~1.2.~~ Unless waived by the client, if competent, or the
 8 client's parent or legal guardian if the client is
 9 incompetent, the client's central record shall be confidential
 10 and exempt from the provisions of s. 119.07(1), and no part of
 11 it shall be released except:

12 a. The record may be released to physicians,
 13 attorneys, and government agencies having need of the record
 14 to aid the client, as designated by the client, if competent,
 15 or the client's parent or legal guardian, if the client is
 16 incompetent.

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

20 c. The record or any part thereof may be disclosed to
 21 a qualified researcher, a staff member of the facility where
 22 the client resides, or an employee of the agency when the
 23 administrator of the facility or the director of the agency
 24 deems it necessary for the treatment of the client,
 25 maintenance of adequate records, compilation of treatment
 26 data, or evaluation of programs.

27 d. Information from the records may be used for
 28 statistical and research purposes if the information is
 29 abstracted in such a way to protect the identity of
 30 individuals.

31 ~~3. All central records for each client in residential~~

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1 ~~facilities shall be kept on uniform forms distributed by the~~
2 ~~agency. The central record shall accurately summarize each~~
3 ~~client's history and present condition.~~

4 2.4. The client, if competent, or the client's parent
5 or legal guardian if the client is incompetent, shall be
6 supplied with a copy of the client's central record upon
7 request.

8 ~~(j)(k)~~ Each client residing in a residential facility
9 who is eligible to vote in public elections according to the
10 laws of the state has ~~shall have~~ the right to vote. Facilities
11 operators shall arrange the means to exercise the client's
12 right to vote.

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

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

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1 understands, of the above legal rights of persons with
2 developmental disabilities.

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

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

19 393.135 Sexual misconduct prohibited; reporting
20 required; penalties.--

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

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

27 (b) "Sexual activity" means:

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

30 2. The oral, anal, or vaginal penetration by or union
31 with the sexual organ of another or the anal or vaginal

1 penetration of another by any other object.

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

6 4. Intentionally masturbating in the presence of
7 another person.

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

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

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

25 (2) A covered person ~~An employee~~ who engages in sexual
26 misconduct with an individual with a developmental disability
27 who:

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

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

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

4 ~~(b)(c)~~ Is eligible to receive ~~Receives~~ services from
5 the 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. A covered person ~~An~~
9 ~~employee~~ may be found guilty of violating this subsection
10 without having 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 a covered person ~~an~~
14 ~~employee~~ who+

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

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

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

25 The covered person ~~Such employee~~ shall also prepare, date, and
26 sign an independent report that specifically describes the
27 nature of the sexual misconduct, the location and time of the
28 incident, and the persons involved. The covered person
29 ~~employee~~ shall deliver the report to the supervisor or program
30 director, who is responsible for providing copies to the
31 agency's local office and the agency's ~~department's~~ inspector

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1 general. ~~The inspector general shall immediately conduct an~~
 2 ~~appropriate administrative investigation, and, if there is~~
 3 ~~probable cause to believe that sexual misconduct has occurred,~~
 4 ~~the inspector general shall notify the state attorney in the~~
 5 ~~circuit in which the incident occurred.~~

6 Section 31. Section 393.15, Florida Statutes, is
 7 amended to read:

8 393.15 Legislative intent; Community Resources
 9 Development Loan Program ~~Trust Fund~~.--

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

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

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1 ~~(2)(3)~~ There is created a Community Resources
 2 Development Loan Program in ~~Trust Fund in the State Treasury~~
 3 ~~to be used by~~ the agency for the purpose of granting loans to
 4 eligible programs for the initial costs of development of the
 5 programs. In order to be eligible for the program, a foster
 6 home, group home, or supported employment program must:

7 (a) Serve persons with developmental disabilities;

8 (b) Be a nonprofit corporation, partnership, or sole
 9 proprietorship; and

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

13 (3) Loans may be made to pay for the costs of
 14 development and ~~may include~~ structural modification, the
 15 purchase of equipment and fire and safety devices,
 16 preoperational staff training, and the purchase of insurance.
 17 Such costs may ~~shall~~ not include the actual construction of a
 18 facility and may not be in lieu of payment for maintenance,
 19 client services, or care provided.

20 (4) The agency may grant to an eligible program a
 21 lump-sum loan in one payment not to exceed the cost ~~to the~~
 22 ~~program~~ of providing 2 months' services, care, or maintenance
 23 to each person with developmental disabilities ~~who is~~
 24 ~~developmentally disabled~~ to be placed in the program by the
 25 agency, or the actual cost of firesafety renovations to a
 26 facility required by the state, whichever is greater. ~~Loans~~
 27 ~~granted to programs shall not be in lieu of payment for~~
 28 ~~maintenance, services, or care provided, but shall stand~~
 29 ~~separate and distinct.~~

30 (5) The agency shall adopt rules, as provided in
 31 ~~chapter 120,~~ to determine the criteria ~~standards~~ under which a

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1 program shall be eligible to receive a loan ~~as provided in~~
 2 ~~this section~~ and the methodology ~~criteria~~ for the equitable
 3 allocation of loan ~~trust~~ funds when eligible applications
 4 exceed the funds available.

5 ~~(6)(5)~~ Any loan granted by the agency under this
 6 section shall be repaid by the program within 5 years and the
 7 amount paid shall be deposited into the agency's
 8 Administrative Trust Fund. Moneys repaid shall be used to fund
 9 new loans. A program that operates as a nonprofit corporation
 10 meeting the requirements of s. 501(c)(3) of the Internal
 11 Revenue Code, and that seeks forgiveness of its loan shall
 12 submit to the agency an annual ~~a~~ statement setting forth the
 13 service it has provided during the year together with such
 14 other information as the agency by rule shall require, and,
 15 upon approval of each such annual statement, the agency may
 16 ~~shall~~ forgive up to 20 percent of the principal of any such
 17 loan granted ~~after June 30, 1975.~~

18 ~~(7)(6)~~ If any program that has received a loan under
 19 this section ceases to accept, or provide care, services, or
 20 maintenance to persons placed in the program by the
 21 department, or if such program files papers of bankruptcy, at
 22 that point in time the loan shall become an interest-bearing
 23 loan at the rate of 5 percent per annum on the entire amount
 24 of the initial loan which shall be repaid within a 1-year
 25 period from the date on which the program ceases to provide
 26 care, services, or maintenance, or files papers in bankruptcy,
 27 and the amount of the loan due plus interest shall constitute
 28 a lien in favor of the state against all real and personal
 29 property of the program. The lien shall be perfected by the
 30 appropriate officer of the agency by executing and
 31 acknowledging a statement of the name of the program and the

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1 amount due on the loan and a copy of the promissory note,
 2 which shall be recorded by the agency with the clerk of the
 3 circuit court in the county wherein the program is located. If
 4 the program has filed a petition for bankruptcy, the agency
 5 shall file and enforce the lien in the bankruptcy proceedings.
 6 Otherwise, the lien shall be enforced in the manner provided
 7 in s. 85.011. All funds received by the agency from the
 8 enforcement of the lien shall be deposited in the agency's
 9 Administrative ~~Community Resources Development~~ Trust Fund and
 10 used to fund new loans.

11 Section 32. Section 393.17, Florida Statutes, is
 12 amended to read:

13 393.17 Behavioral programs; certification of behavior
 14 analysts.--

15 (1) The agency may establish a certification process
 16 for behavior analysts in order to ensure that only qualified
 17 employees and service providers provide behavioral analysis
 18 services to clients. The procedures must be established by
 19 rule and must include criteria for scope of practice,
 20 qualifications for certification, including training and
 21 testing requirements, continuing education requirements for
 22 ongoing certification, and standards of performance. The
 23 procedures must also include decertification procedures that
 24 may be used to determine whether an individual continues to
 25 meet the qualifications for certification or the professional
 26 performance standards and, if not, the procedures necessary to
 27 decertify an employee or service provider.

28 (2) The agency shall ~~may~~ recognize the certification
 29 of behavior analysts awarded by a nonprofit corporation that
 30 adheres to the national standards of boards that determine
 31 professional credentials and whose mission is to meet

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1 professional credentialing needs identified by behavior
 2 analysts, state governments, and consumers of behavior
 3 analysis services ~~and whose work has the support of the~~
 4 ~~Association for Behavior Analysis International. The~~
 5 certification procedure recognized by the agency must undergo
 6 regular psychometric review and validation, pursuant to a job
 7 analysis survey of the profession and standards established by
 8 content experts in the field.

9 Section 33. Section 393.18, Florida Statutes, is
 10 created to read:

11 393.18 Comprehensive transitional education
 12 program.--A comprehensive transition education program is a
 13 group of jointly operating centers or units, the collective
 14 purpose of which is to provide a sequential series of
 15 educational care, training, treatment, habilitation, and
 16 rehabilitation services to persons who have developmental
 17 disabilities and who have severe or moderate maladaptive
 18 behaviors. However, this section does not require such
 19 programs to provide services only to persons with
 20 developmental disabilities. All such services shall be
 21 temporary in nature and delivered in a structured residential
 22 setting, having the primary goal of incorporating the
 23 principle of self-determination in establishing permanent
 24 residence for persons with maladaptive behaviors in facilities
 25 that are not associated with the comprehensive transitional
 26 education program. The staff shall include behavior analysts
 27 and teachers, as appropriate, who shall be available to
 28 provide services in each component center or unit of the
 29 program. A behavior analyst must be certified pursuant to s.
 30 393.17.

31 (1) Comprehensive transitional education programs

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1 shall include a minimum of two component centers or units, one
 2 of which shall be an intensive treatment and educational
 3 center or a transitional training and educational center,
 4 which provides services to persons with maladaptive behaviors
 5 in the following sequential order:

6 (a) Intensive treatment and educational center.--This
 7 component is a self-contained residential unit providing
 8 intensive behavioral and educational programming for persons
 9 with severe maladaptive behaviors whose behaviors preclude
 10 placement in a less-restrictive environment due to the threat
 11 of danger or injury to themselves or others. Continuous-shift
 12 staff shall be required for this component.

13 (b) Transitional training and educational
 14 center.--This component is a residential unit for persons with
 15 moderate maladaptive behaviors providing concentrated
 16 psychological and educational programming that emphasizes a
 17 transition toward a less-restrictive environment.
 18 Continuous-shift staff shall be required for this component.

19 (c) Community transition residence.--This component is
 20 a residential center providing educational programs and any
 21 support services, training, and care that are needed to assist
 22 persons with maladaptive behaviors to avoid regression to more
 23 restrictive environments while preparing them for more
 24 independent living. Continuous-shift staff shall be required
 25 for this component.

26 (d) Alternative living center.--This component is a
 27 residential unit providing an educational and family living
 28 environment for persons with maladaptive behaviors in a
 29 moderately unrestricted setting. Residential staff shall be
 30 required for this component.

31 (e) Independent living education center.--This

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1 component is a facility providing a family living environment
 2 for persons with maladaptive behaviors in a largely
 3 unrestricted setting and includes education and monitoring
 4 that is appropriate to support the development of independent
 5 living skills.

6 (2) Components of a comprehensive transitional
 7 education program are subject to the license issued under s.
 8 393.067 to a comprehensive transitional education program and
 9 may be located on a single site or multiple sites.

10 (3) Comprehensive transitional education programs
 11 shall develop individual education plans for each person with
 12 maladaptive behaviors who receives services from the program.
 13 Each individual education plan shall be developed in
 14 accordance with the criteria specified in 20 U.S.C. ss. 401 et
 15 seq., and 34 C.F.R. part 300.

16 (4) The total number of persons with maladaptive
 17 behaviors who are being provided with services in a
 18 comprehensive transitional education program may not in any
 19 instance exceed 120 residents.

20 (5) This section shall authorize licensure for
 21 comprehensive transitional education programs which by July 1,
 22 1989:

23 (a) Were in actual operation; or

24 (b) Owned a fee simple interest in real property for
 25 which a county or city government has approved zoning allowing
 26 for the placement of the facilities described in this
 27 subsection, and have registered an intent with the agency to
 28 operate a comprehensive transitional education program.

29 However, nothing shall prohibit the assignment by such a
 30 registrant to another entity at a different site within the
 31 state, so long as there is compliance with all criteria of

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1 this program and local zoning requirements and provided that
2 each residential facility within the component centers or
3 units of the program authorized under this subparagraph does
4 not exceed a capacity of 15 persons.

5 Section 34. Section 393.23, Florida Statutes, is
6 created to read:

7 393.23 Developmental disabilities institutions; trust
8 accounts.--All receipts from the operation of canteens,
9 vending machines, hobby shops, sheltered workshops, activity
10 centers, farming projects, and other like activities operated
11 in a developmental disabilities institution, and moneys
12 donated to the institution, must be deposited in a trust
13 account in any bank, credit union, or savings and loan
14 association authorized by the State Treasury as a qualified
15 depositor to do business in this state, if the moneys are
16 available on demand.

17 (1) Moneys in the trust account must be expended for
18 the benefit, education, and welfare of clients. However, if
19 specified, moneys that are donated to the institution must be
20 expended in accordance with the intentions of the donor. Trust
21 account money may not be used for the benefit of employees of
22 the agency, or to pay the wages of such employees. The welfare
23 of the clients includes the expenditure of funds for the
24 purchase of items for resale at canteens or vending machines,
25 and for the establishment of, maintenance of, and operation of
26 canteens, hobby shops, recreational or entertainment
27 facilities, sheltered workshops, activity centers, farming
28 projects, or other like facilities or programs established at
29 the institutions for the benefit of clients.

30 (2) The institution may invest, in the manner
31 authorized by law for fiduciaries, any money in a trust

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1 account which is not necessary for immediate use. The interest
2 earned and other increments derived from the investments of
3 the money must be deposited into the trust account for the
4 benefit of clients.

5 (3) The accounting system of an institution must
6 account separately for revenues and expenses for each
7 activity. The institution shall reconcile the trust account to
8 the institution's accounting system and check registers and to
9 the accounting system of the Chief Financial Officer.

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

13 (5) Funds shall be expended in accordance with
14 requirements and guidelines established by the Chief Financial
15 Officer.

16 Section 35. Section 393.501, Florida Statutes, is
17 amended to read:

18 393.501 Rulemaking.--

19 (1) The agency ~~may~~ shall adopt rules pursuant to ss.
20 120.536(1) and 120.54 to carry out its statutory duties the
21 provisions of this chapter.

22 (2) Such rules shall address the number of facilities
23 on a single ~~lot parcel~~ or on adjacent lots parcels of land,
24 ~~and in addition, for ICF/MR, the rate and location of facility~~
25 ~~development and level of care. In adopting rules, an~~
26 alternative living center and an independent living education
27 center, as described in s. 393.18, shall be subject to the
28 provisions of s. 419.001, except that such centers shall be
29 exempt from the 1,000-foot-radius requirement of s. 419.001(2)
30 if:

31 (a) The centers are located on a site zoned in a

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1 manner that permits all the components of a comprehensive
2 transition education center to be located on the site; or

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

5 Section 36. Section 394.453, Florida Statutes, is
6 amended to read:

7 394.453 Legislative intent.--It is the intent of the
8 Legislature to authorize and direct the Department of Children
9 and Family Services to evaluate, research, plan, and recommend
10 to the Governor and the Legislature programs designed to
11 reduce the occurrence, severity, duration, and disabling
12 aspects of mental, emotional, and behavioral disorders. It is
13 the intent of the Legislature that treatment programs for such
14 disorders shall include, but not be limited to, comprehensive
15 health, social, educational, and rehabilitative services to
16 persons requiring intensive short-term and continued treatment
17 in order to encourage them to assume responsibility for their
18 treatment and recovery. It is intended that such persons be
19 provided with emergency service and temporary detention for
20 evaluation when required; that they be admitted to treatment
21 facilities on a voluntary basis when extended or continuing
22 care is needed and unavailable in the community; that
23 involuntary placement be provided only when expert evaluation
24 determines that it is necessary; that any involuntary
25 treatment or examination be accomplished in a setting which is
26 clinically appropriate and most likely to facilitate the
27 person's return to the community as soon as possible; and that
28 individual dignity and human rights be guaranteed to all
29 persons who are admitted to mental health facilities or who
30 are being held under s. 394.463. It is the further intent of
31 the Legislature that the least restrictive means of

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1 intervention be employed based on the individual needs of each
2 person, within the scope of available services. It is the
3 policy of this state that the use of restraint and seclusion
4 on clients is justified only as an emergency safety measure to
5 be used in response to imminent danger to the client or
6 others. It is, therefore, the intent of the Legislature to
7 achieve an ongoing reduction in the use of restraint and
8 seclusion in programs and facilities serving persons with
9 mental illness.

10 Section 37. Present subsections (28) through (33) of
11 section 394.455, Florida Statutes, are redesignated as
12 subsections (30) through (35), respectively, and new
13 subsections (28) and (29) are added to that section, to read:

14 394.455 Definitions.--As used in this part, unless the
15 context clearly requires otherwise, the term:

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

22 (b) A drug used as a restraint is a medication used to
23 control the person's behavior or to restrict his or her
24 freedom of movement. Physically holding a person during a
25 procedure to forcibly administer psychotropic medication is a
26 physical restraint.

27 (c) Restraint does not include physical devices, such
28 as orthopedically prescribed appliances, surgical dressings
29 and bandages, supportive body bands, or other physical holding
30 when necessary for routine physical examinations and tests; or
31 for purposes of orthopedic, surgical, or other similar medical

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1 treatment; when used to provide support for the achievement of
2 functional body position or proper balance; or when used to
3 protect a person from falling out of bed.

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

12 Section 38. Paragraph (b) of subsection (5) of section
13 394.457, Florida Statutes, is amended to read:

14 394.457 Operation and administration.--

15 (5) RULES.--

16 (b) The department shall adopt rules necessary for the
17 implementation and administration of the provisions of this
18 part, and a program subject to the provisions of this part
19 shall not be permitted to operate unless rules designed to
20 ensure the protection of the health, safety, and welfare of
21 the patients treated through such program have been adopted.

22 Rules adopted under this subsection must include provisions
23 governing the use of restraint and seclusion which are
24 consistent with recognized best practices and professional
25 judgment; prohibit inherently dangerous restraint or seclusion
26 procedures; establish limitations on the use and duration of
27 restraint and seclusion; establish measures to ensure the
28 safety of program participants and staff during an incident of
29 restraint or seclusion; establish procedures for staff to
30 follow before, during, and after incidents of restraint or
31 seclusion; establish professional qualifications of and

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1 training for staff who may order or be engaged in the use of
 2 restraint or seclusion; and establish mandatory reporting,
 3 data collection, and data dissemination procedures and
 4 requirements. Rules adopted under this subsection must require
 5 that each instance of the use of restraint or seclusion be
 6 documented in the record of the patient.

7 Section 39. Paragraph (g) is added to subsection (1)
 8 of section 394.879, Florida Statutes, to read:

9 394.879 Rules; enforcement.--

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

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

30 Section 40. Subsection (9) of section 397.405, Florida
 31 Statutes, is amended to read:

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1 397.405 Exemptions from licensure.--The following are
2 exempt from the licensing provisions of this chapter:

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

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

26 Section 41. Subsection (13) of section 400.419,
27 Florida Statutes, is amended to read:

28 400.419 Violations; imposition of administrative
29 fines; grounds.--

30 (13) The agency shall develop and disseminate an
31 annual list of all facilities sanctioned or fined \$5,000 or

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

15 Section 42. Section 400.960, Florida Statutes, is
 16 amended to read:

17 400.960 Definitions.--As used in this part, the term:

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

22 (2) "Agency" means the Agency for Health Care
 23 Administration.

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

1 ~~interests.~~

2 (4) "Cerebral palsy" has the same meaning as in s.
3 393.063. ~~means a group of disabling symptoms of extended~~
4 ~~duration which results from damage to the developing brain~~
5 ~~occurring before, during, or after birth and resulting in the~~
6 ~~loss or impairment of control over voluntary muscles. The term~~
7 ~~does not include those symptoms or impairments resulting~~
8 ~~solely from a stroke.~~

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

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

17 ~~(7) "Department" means the Department of Children and~~
18 ~~Family Services.~~

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

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

29 ~~(10) "Epilepsy" means a chronic brain disorder of~~
30 ~~various causes which is characterized by recurrent seizures~~
31 ~~due to excessive discharge of cerebral neurons. When found~~

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1 ~~concurrently with retardation, autism, or cerebral palsy,~~
 2 ~~epilepsy is considered a secondary disability for which the~~
 3 ~~client is eligible to receive services to ameliorate this~~
 4 ~~condition according to the provisions of this part.~~

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

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

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

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

30 (b) A drug used as a restraint is a medication used to
 31 control the person's behavior or to restrict his or her

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1 freedom of movement. Physically holding a person during a
2 procedure to forcibly administer psychotropic medication is a
3 physical restraint.

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

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

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

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1 isolation due to a person's medical condition or symptoms.

2 ~~(13)(15)~~ "Spina bifida" has the same meaning as in s.

3 ~~393.063 means a medical diagnosis of spina bifida cystica or~~
4 ~~myelomeningocele.~~

5 Section 43. Subsection (12) is added to section
6 400.962, Florida Statutes, to read:

7 400.962 License required; license application.--

8 (12) The applicant must agree to provide or arrange
9 for active treatment services by an interdisciplinary team to
10 maximize individual independence or prevent regression or loss
11 of functional status. Standards for active treatment shall be
12 adopted by the Agency for Health Care Administration by rule
13 pursuant to ss. 120.536(1) and 120.54. Active treatment
14 services shall be provided in accordance with the individual
15 support plan and shall be reimbursed as part of the per diem
16 rate as paid under the Medicaid program.

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

19 400.967 Rules and classification of deficiencies.--

20 (2) Pursuant to the intention of the Legislature, the
21 agency, in consultation with the Agency for Persons with
22 Disabilities ~~Department of Children and Family Services~~ and
23 the Department of Elderly Affairs, shall adopt and enforce
24 rules to administer this part, which shall include reasonable
25 and fair criteria governing:

26 (a) The location and construction of the facility;
27 including fire and life safety, plumbing, heating, cooling,
28 lighting, ventilation, and other housing conditions that will
29 ensure the health, safety, and comfort of residents. The
30 agency shall establish standards for facilities and equipment
31 to increase the extent to which new facilities and a new wing

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1 or floor added to an existing facility after July 1, 2000, are
2 structurally capable of serving as shelters only for
3 residents, staff, and families of residents and staff, and
4 equipped to be self-supporting during and immediately
5 following disasters. The Agency for Health Care Administration
6 shall work with facilities licensed under this part and report
7 to the Governor and the Legislature by April 1, 2000, its
8 recommendations for cost-effective renovation standards to be
9 applied to existing facilities. In making such rules, the
10 agency shall be guided by criteria recommended by nationally
11 recognized, reputable professional groups and associations
12 having knowledge concerning such subject matters. The agency
13 shall update or revise such criteria as the need arises. All
14 facilities must comply with those lifesafety code requirements
15 and building code standards applicable at the time of approval
16 of their construction plans. The agency may require
17 alterations to a building if it determines that an existing
18 condition constitutes a distinct hazard to life, health, or
19 safety. The agency shall adopt fair and reasonable rules
20 setting forth conditions under which existing facilities
21 undergoing additions, alterations, conversions, renovations,
22 or repairs are required to comply with the most recent updated
23 or revised standards.

24 (b) The number and qualifications of all personnel,
25 including management, medical nursing, and other personnel,
26 having responsibility for any part of the care given to
27 residents.

28 (c) All sanitary conditions within the facility and
29 its surroundings, including water supply, sewage disposal,
30 food handling, and general hygiene, which will ensure the
31 health and comfort of residents.

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1 (d) The equipment essential to the health and welfare
2 of the residents.

3 (e) A uniform accounting system.

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

6 (g) The preparation and annual update of a
7 comprehensive emergency management plan. The agency shall
8 adopt rules establishing minimum criteria for the plan after
9 consultation with the Department of Community Affairs. At a
10 minimum, the rules must provide for plan components that
11 address emergency evacuation transportation; adequate
12 sheltering arrangements; postdisaster activities, including
13 emergency power, food, and water; postdisaster transportation;
14 supplies; staffing; emergency equipment; individual
15 identification of residents and transfer of records; and
16 responding to family inquiries. The comprehensive emergency
17 management plan is subject to review and approval by the local
18 emergency management agency. During its review, the local
19 emergency management agency shall ensure that the following
20 agencies, at a minimum, are given the opportunity to review
21 the plan: the Department of Elderly Affairs, the Agency for
22 Persons with Disabilities ~~Department of Children and Family~~
23 ~~Services~~, the Agency for Health Care Administration, and the
24 Department of Community Affairs. Also, appropriate volunteer
25 organizations must be given the opportunity to review the
26 plan. The local emergency management agency shall complete its
27 review within 60 days and either approve the plan or advise
28 the facility of necessary revisions.

29 (h) The posting of licenses. Each licensee shall post
30 its license in a prominent place that is in clear and
31 unobstructed public view at or near the place where residents

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1 are being admitted to the facility.

2 (i) The use of restraint and seclusion. Such rules
3 must be consistent with recognized best practices; prohibit
4 inherently dangerous restraint or seclusion procedures;
5 establish limitations on the use and duration of restraint and
6 seclusion; establish measures to ensure the safety of clients
7 and staff during an incident of restraint or seclusion;
8 establish procedures for staff to follow before, during, and
9 after incidents of restraint or seclusion, including
10 individualized plans for the use of restraints or seclusion in
11 emergency situations; establish professional qualifications of
12 and training for staff who may order or be engaged in the use
13 of restraint or seclusion; establish requirements for facility
14 data collection and reporting relating to the use of restraint
15 and seclusion; and establish procedures relating to the
16 documentation of the use of restraint or seclusion in the
17 client's facility or program record.

18 Section 45. Section 402.115, Florida Statutes, is
19 amended to read:

20 402.115 Sharing confidential or exempt
21 information.--Notwithstanding any other provision of law to
22 the contrary, the Department of Health, ~~and~~ the Department of
23 Children and Family Services, and the Agency for Persons with
24 Disabilities may share confidential information or information
25 exempt from disclosure under chapter 119 on any individual who
26 is or has been the subject of a program within the
27 jurisdiction of each agency. Information so exchanged remains
28 confidential or exempt as provided by law.

29 Section 46. Section 402.17, Florida Statutes, is
30 amended to read:

31 402.17 Claims for care and maintenance; trust

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1 | property.--The Department of Children and Family Services and
 2 | the Agency for Persons with Disabilities shall protect the
 3 | financial interest of the state with respect to claims that
 4 | ~~which~~ the state may have for the care and maintenance of
 5 | clients of the department or agency. The department or agency
 6 | shall, as trustee, hold in trust and administer money ~~of~~
 7 | ~~clients~~ and property designated for the personal benefit of
 8 | clients. The department or agency shall act as trustee of
 9 | clients' money and property entrusted to it in accordance with
 10 | the usual fiduciary standards applicable generally to
 11 | trustees, and shall act to protect both the short-term and
 12 | long-term interests of the clients for whose benefit it is
 13 | holding such money and property.

14 | (1) CLAIMS FOR CARE AND MAINTENANCE.--

15 | (a) The department or agency shall perform the
 16 | following acts:

17 | 1. Receive and supervise the collection of sums due
 18 | the state.

19 | 2. Bring any court action necessary to collect any
 20 | claim the state may have against any client, former client,
 21 | guardian of any client or former client, executor or
 22 | administrator of the client's estate, or any person against
 23 | whom any client or former client may have a claim.

24 | 3. Obtain a copy of any inventory or appraisal of the
 25 | client's property filed with any court.

26 | 4. Obtain from the department's Economic
 27 | Self-Sufficiency Services Program Office a financial status
 28 | report on any client or former client, including the ability
 29 | of third parties responsible for such client to pay all or
 30 | part of the cost of the client's care and maintenance.

31 | 5. Petition the court for appointment of a guardian or

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1 administrator for an otherwise unrepresented client or former
2 client should the financial status report or other information
3 indicate the need for such action. The cost of any such action
4 shall be charged against the assets or estate of the client.

5 6. Represent the interest of the state in any
6 litigation in which a client or former client is a party.

7 7. File claims with any person, firm, or corporation
8 or with any federal, state, county, district, or municipal
9 agency on behalf of an unrepresented client.

10 8. Represent the state in the settlement of the
11 estates of deceased clients or in the settlement of estates in
12 which a client or a former client against whom the state may
13 have a claim has a financial interest.

14 9. Establish procedures by rule for the use of amounts
15 held in trust for the client to pay for the cost of care and
16 maintenance, if such amounts would otherwise cause the client
17 to become ineligible for services which are in the client's
18 best interests.

19 (b) The department or agency ~~of Children and Family~~
20 ~~Services~~ may charge off accounts if it certifies that the
21 accounts are uncollectible after diligent efforts have been
22 made to collect them. If the department certifies an account
23 to the Department of Financial Services, setting forth the
24 circumstances upon which it predicates the uncollectibility,
25 and if, pursuant to s. 17.04, the Department of Financial
26 Services concurs, the account shall be charged off.

27 (2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE
28 OR BENEFIT OF ANY CLIENT.--The department or agency shall
29 perform the following acts:

30 (a) Accept and administer in trust, as a trustee
31 having a fiduciary responsibility to a client ~~of the~~

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1 ~~department~~, any money or other property received for personal
 2 use or benefit of that client. In the case of children in the
 3 legal custody of the department, following the termination of
 4 the parental rights ~~as to that client~~, until the child ~~such~~
 5 ~~client~~ leaves the legal custody of the department due to ~~the~~
 6 ~~client's~~ adoption or attaining ~~because the client attains~~ the
 7 age of 18 or, in the case of children who are otherwise in the
 8 custody of the department, the court having jurisdiction over
 9 such child ~~client~~ shall have jurisdiction, upon application of
 10 the department or other interested party, to review or approve
 11 any extraordinary action of the department acting as trustee
 12 as to the child's ~~client's~~ money or other property. When
 13 directed by a court of competent jurisdiction, the department
 14 may further hold money or property of a child ~~person under the~~
 15 ~~age of 18~~ who has been in the care, custody, or control of the
 16 department and who is the subject of a court proceeding during
 17 the pendency of that proceeding.

18 (b) Deposit the money in banks qualified as state
 19 depositories, or in any bank, credit union, or savings and
 20 loan association authorized to do business in this state,
 21 provided moneys so deposited or held by such institutions are
 22 fully insured by a federal depository or share insurance
 23 program, or an approved state depository or share insurance
 24 program, and are available on demand.

25 (c) Withdraw the money and use it to meet current
 26 needs of clients. For purposes of this paragraph, "current
 27 needs" includes payment of fees assessed under s. 402.33. The
 28 amount of money withdrawn ~~by the department to meet current~~
 29 ~~needs of a client~~ shall take into account the need of the
 30 department or agency, as the trustee of a client's money and
 31 property, to provide for the long-term needs of a client,

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1 including, but not limited to, ensuring that ~~to provide for~~
 2 ~~the need of~~ a client under the age of 18 will ~~to~~ have
 3 sufficient financial resources available to be able to
 4 function as an adult upon reaching the age of 18, meeting ~~or~~
 5 ~~to meet~~ the special needs of a client who has a disability and
 6 whose special needs cannot otherwise be met by any form of
 7 public assistance or family resources, or maintaining ~~to~~
 8 ~~maintain~~ the client's eligibility for public assistance,
 9 including medical assistance, under state or federal law.

10 (d) As trustee, invest in the manner authorized by law
 11 for fiduciaries money not used for current needs of clients.
 12 Such investments may include, but shall not be limited to,
 13 investments in savings share accounts of any credit union
 14 chartered under the laws of the United States and doing
 15 business in this state, and savings share accounts of any
 16 credit union chartered under the laws of this state, provided
 17 the credit union is insured under the federal share insurance
 18 program or an approved state share insurance program.

19 (3) DEPOSIT OF FUNDS RECEIVED.--Funds received by the
 20 Department of Children and Family Services in accordance with
 21 s. 402.33 shall be deposited into a trust fund for the
 22 operation of the department.

23 (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the
 24 death of any client affected by the provisions of this
 25 section, any unclaimed money held in trust by the department,
 26 the agency, or by the Chief Financial Officer for the child
 27 ~~him or her~~ shall be applied first to the payment of any unpaid
 28 claim of the state against the client, and any balance
 29 remaining unclaimed for a period of 1 year shall escheat to
 30 the state as unclaimed funds held by fiduciaries.

31 (5) LEGAL REPRESENTATION.--To the extent that the

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1 budget will permit, the Department of Legal Affairs shall
 2 furnish the legal services to carry out the provisions of this
 3 section. Upon the request of the department or agency ~~of~~
 4 ~~Children and Family Services~~, the various state and county
 5 attorneys shall assist in litigation within their
 6 jurisdiction. ~~The~~ ~~Such~~ department or agency may retain legal
 7 counsel for necessary legal services which cannot be furnished
 8 by the Department of Legal Affairs and the various state and
 9 county attorneys.

10 (6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.--

11 (a) The department or agency ~~of Children and Family~~
 12 ~~Services~~ may deposit any funds of clients in its possession in
 13 any bank in the state or may invest or reinvest such funds in
 14 bonds or obligations of the United States for the payment of
 15 which the full faith and credit of the United States is
 16 pledged. For purposes of deposit only, the funds of any client
 17 may be mingled with the funds of any other clients.

18 (b) The interest or increment accruing on such funds
 19 shall be the property of the clients and shall be used or
 20 conserved for the personal use or benefit of the ~~individual~~
 21 client, in accordance with the department's or agency's
 22 fiduciary responsibility as a trustee for the money and
 23 property of the client ~~held by the department~~. Such interest
 24 shall not accrue to the general welfare of all clients.
 25 Whenever any proposed action of the department or agency,
 26 acting in its own interest, may conflict with the department's
 27 or agency's ~~obligation as a trustee with a~~ fiduciary
 28 responsibility to the client, the department or agency shall
 29 promptly present the matter to a court of competent
 30 jurisdiction for the court's determination as to what action
 31 the department or agency may take. The department or agency

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1 shall establish ~~rules governing~~ reasonable fees by rule for
 2 the cost of administering such accounts and for establishing
 3 the minimum balance eligible to earn interest.

4 (7) DISPOSITION OF MONEY AND PROPERTY OF CLIENTS UPON
 5 ATTAINING AGE 18 OR DISCHARGE FROM CARE, CUSTODY, CONTROL, OR
 6 SERVICES OF THE DEPARTMENT.--

7 (a) Whenever a client of the department for whom the
 8 department is holding money or property as a trustee attains
 9 the age of 18, and thereby will no longer be in the legal
 10 custody of the department, the department shall promptly
 11 disburse such money and property ~~of the client the department~~
 12 ~~has held as a trustee~~ to that client, or as that client
 13 directs, as soon as practicable ~~once the client attains the~~
 14 ~~age of 18.~~

15 (b) Whenever a client of the department over the age
 16 of 18 for whom the department is holding money or property as
 17 a trustee no longer requires the care, custody, control, or
 18 services of the department, the department shall promptly
 19 disburse such money and property ~~of the client the department~~
 20 ~~has held as a trustee~~ to that client, or as that client or a
 21 court directs, as soon as practicable.

22 (c) When a client under the age of 18 who has been in
 23 the legal custody, care, or control of the department and for
 24 whom the department is holding money or property as a trustee
 25 attains the age of 18 and has a physical or mental disability,
 26 or is otherwise incapacitated or incompetent to handle that
 27 client's own financial affairs, the department shall apply for
 28 a court order from a court of competent jurisdiction to
 29 establish a trust on behalf of that client. Where there is no
 30 willing relative of the client acceptable to the court
 31 available to serve as trustee of such proposed trust, the

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1 court may enter an order authorizing the department to serve
2 as trustee of a separate trust under such terms and conditions
3 as the court determines appropriate to the circumstances.

4 (d) When a client under the age of 18 who has been in
5 the legal custody, care, or control of the department and for
6 whom the department is holding money or property as a trustee
7 leaves the care, custody, and control of the department due to
8 adoption or placement of the client with a relative, or as
9 otherwise directed by a court of competent jurisdiction, the
10 department shall notify that court of the existence of the
11 money and property ~~in the possession of the department~~ either
12 prior to, or promptly after, receiving knowledge of the change
13 of custody, care, or control. The department shall apply for
14 an order from the court exercising jurisdiction over the
15 client to direct the disposition of the money and property
16 belonging to that client. The court order may establish a
17 trust in which the money and property of the client will be
18 deposited, appoint a guardian of a property as to the money or
19 property of the client, or direct the creation of a Uniform
20 Transfers ~~Gifts~~ to Minors Act account on behalf of that
21 client, ~~as the court finds appropriate~~ and under the terms and
22 conditions the court determines appropriate to the
23 circumstances.

24 Section 47. Section 402.181, Florida Statutes, is
25 amended to read:

26 402.181 State Institutions Claims Program.--

27 (1) There is created a State Institutions Claims
28 Program, for the purpose of making restitution for property
29 damages and direct medical expenses for injuries caused by
30 shelter children or foster children, or escapees, inmates, or
31 patients of state institutions under the Department of

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1 Children and Family Services, the Department of Health, the
2 Department of Juvenile Justice, ~~or~~ the Department of
3 Corrections, or the Agency for Persons with Disabilities.

4 (2) Claims for restitution may be filed with the
5 Department of Legal Affairs at its office in accordance with
6 regulations prescribed by the Department of Legal Affairs. The
7 Department of Legal Affairs shall have full power and
8 authority to hear, investigate, and determine all questions in
9 respect to such claims and is authorized, within the limits of
10 current appropriations, to pay individual claims up to \$1,000
11 or, with respect to children in foster care and their
12 families, individual claims up to \$1,500. Claims in excess of
13 these amounts shall continue to require legislative approval.

14 (3)(a) The Department of Legal Affairs shall make or
15 cause to be made such investigations as it considers necessary
16 in respect to such claims. Hearings shall be held in
17 accordance with chapter 120.

18 (b) The Department of Legal Affairs shall work with
19 the Department of Children and Family Services, the Department
20 of Health, the Department of Juvenile Justice, ~~and~~ the
21 Department of Corrections, and the Agency for Persons with
22 Disabilities to streamline the process of investigations,
23 hearings, and determinations with respect to claims under this
24 section, to ensure that eligible claimants receive restitution
25 within a reasonable time.

26 Section 48. Section 402.20, Florida Statutes, is
27 amended to read:

28 402.20 County contracts authorized for services and
29 facilities for in mental health and developmental disabilities
30 ~~retardation areas.~~--The boards of county commissioners are
31 authorized to provide monetary grants and facilities, and to

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1 enter into renewable contracts, for services and facilities,
 2 for a period not to exceed 2 years, with public and private
 3 hospitals, clinics, and laboratories; other state agencies,
 4 departments, or divisions; the state colleges and
 5 universities; the community colleges; private colleges and
 6 universities; counties; municipalities; towns; townships; and
 7 any other governmental unit or nonprofit organization which
 8 provides needed facilities for persons with mental illness or
 9 developmental disabilities ~~the mentally ill or retarded~~. These
 10 services are hereby declared to be for a public and county
 11 purpose. The county commissioners may make periodic
 12 inspections to assure that the services or facilities provided
 13 under this chapter meet the standards of the Department of
 14 Children and Family Services and the Agency for Persons with
 15 Disabilities.

16 Section 49. Section 402.22, Florida Statutes, is
 17 amended to read:

18 402.22 Education program for students who reside in
 19 residential care facilities operated by the Department of
 20 Children and Family Services or the Agency for Persons with
 21 Disabilities.--

22 (1)(a) The Legislature recognizes that the Department
 23 of Children and Family Services and the Agency for Persons
 24 with Disabilities have under their ~~has under its~~ residential
 25 care students with critical problems of physical impairment,
 26 emotional disturbance, mental impairment, and learning
 27 impairment.

28 (b) The Legislature recognizes the vital role of
 29 education in the rehabilitation of such students. It is the
 30 intent of the Legislature that all such students benefit from
 31 educational services and receive such services.

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1 (c) It is the intent of the Legislature that
 2 educational services be coordinated with appropriate and
 3 existing diagnostic and evaluative, social, followup, and
 4 other therapeutic services of the department and agency ~~of~~
 5 ~~Children and Family Services~~ so that the effect of the total
 6 rehabilitation process is maximized.

7 (d) It is the intent of the Legislature that, as
 8 educational programs for students in residential care
 9 facilities are implemented by the district school board,
 10 educational personnel in the ~~Department of Children and Family~~
 11 ~~Services~~ residential care facilities who meet the
 12 qualifications for employees of the district school board be
 13 employed by the district school board.

14 (2) District school boards shall establish educational
 15 programs for all students ages 5 through 18 under the
 16 residential care of the Department of Children and Family
 17 Services and the Agency for Persons with Disabilities, and may
 18 provide for students below age 3 as provided for in s.
 19 1003.21(1)(e). Funding of such programs shall be pursuant to
 20 s. 1011.62.

21 (3) Notwithstanding any provisions of chapters 39,
 22 393, 394, and 397 to the contrary, the services of the
 23 Department of Children and Family Services and the Agency for
 24 Persons with Disabilities and those of the Department of
 25 Education and district school boards shall be mutually
 26 supportive and complementary of each other. The education
 27 programs provided by the district school board shall meet the
 28 standards prescribed by the State Board of Education and the
 29 district school board. Decisions regarding the design and
 30 delivery of department or agency ~~of Children and Family~~
 31 ~~Services~~ treatment or habilitative services shall be made by

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1 interdisciplinary teams of professional and paraprofessional
 2 staff of which appropriate district school system
 3 administrative and instructional personnel shall be invited to
 4 be participating members. The requirements for maintenance of
 5 confidentiality as prescribed in chapters 39, 393, 394, and
 6 397 shall be applied to information used by such
 7 interdisciplinary teams, and such information shall be exempt
 8 from the provisions of ss. 119.07(1) and 286.011.

9 (4) Students age 18 and under who are under the
 10 residential care of the Department of Children and Family
 11 Services or the Agency for Persons with Disabilities and who
 12 receive an education program shall be calculated as full-time
 13 equivalent student membership in the appropriate cost factor
 14 as provided for in s. 1011.62(1)(c). Residential care
 15 facilities ~~of the Department of Children and Family Services~~
 16 shall include, but not be limited to, developmental
 17 disabilities services institutions and state mental health
 18 facilities. All students shall receive their education program
 19 from the district school system, and funding shall be
 20 allocated through the Florida Education Finance Program for
 21 the district school system.

22 (5) Instructional and special educational services
 23 that ~~which~~ are provided to ~~mental health and retardation~~
 24 clients with mental illness or developmental disabilities of
 25 the department's or agency's ~~in the Department of Children and~~
 26 ~~Family Services~~ residential care facilities by local school
 27 districts shall not be less than 180 days or 900 hours;
 28 however, the 900 hours may be distributed over a 12-month
 29 period, unless otherwise stated in rules developed by the
 30 State Board of Education, with the concurrence of the
 31 department or agency and adopted ~~of Children and Family~~

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1 ~~Services promulgated~~ pursuant to subsection (6).

2 (6) The State Board of Education, ~~and~~ the Department
3 of Children and Family Services, and the Agency for Persons
4 with Disabilities may adopt ~~shall have the authority to~~
5 ~~promulgate~~ rules to ~~which shall~~ assist in the orderly transfer
6 of the instruction of students from department or agency
7 ~~Department of Children and Family Services~~ residential care
8 facilities to the district school system or to the public
9 education agency and which shall assist in implementing the
10 specific intent as stated in this act.

11 (7) Notwithstanding the provisions of s.
12 1001.42(4)(n), the educational program at the Marianna Sunland
13 Center in Jackson County shall be operated by the Department
14 of Education, either directly or through grants or contractual
15 agreements with other public educational agencies. The annual
16 state allocation to any such agency shall be computed pursuant
17 to s. 1011.62(1), (2), and (5) and allocated in the amount
18 that would have been provided the local school district in
19 which the residential facility is located.

20 Section 50. Paragraph (c) of subsection (1) and
21 subsection (2) of section 402.33, Florida Statutes, are
22 amended to read:

23 402.33 Department authority to charge fees for
24 services provided.--

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

26 (c) "Department" means the Department of Children and
27 Family Services, ~~and~~ the Department of Health, and the Agency
28 for Persons with Disabilities.

29 (2) The department, in accordance with rules
30 established by it, shall either charge, assess, or collect, or
31 cause to be charged, assessed, or collected, fees for any

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1 service it provides to its clients either directly or through
2 its agencies or contractors, except for:

3 (a) Diagnosis and evaluation procedures necessary to
4 determine the client's eligibility and need for services
5 provided by the department;

6 (b) Customary and routine information and referral
7 services;

8 (c) Educational services provided in lieu of public
9 education;

10 (d) Specific services exempted by law from fee
11 assessment;

12 (e) Emergency shelter or emergency detention care and
13 custody prior to a detention hearing under chapter 39;

14 (f) Specific classes or types of services provided in
15 programs funded by grants, donations, or contracts that
16 prohibit charging fees;

17 (g) Developmental disability services provided under
18 chapter 393 to any person who is determined to be eligible for
19 such services ~~by the department~~ and whose earned income falls
20 below the federal Health and Human Services Poverty
21 Guidelines, unless such fees are collected from third-party
22 benefits and benefit payments; or

23 (h) Any type of service for which the department
24 determines that the net estimated revenue from such fees after
25 deducting any loss of funds from federal grants occasioned by
26 such fees will be less than the estimated cost to charge and
27 collect such fees.

28
29 Fees, other than third-party benefits and benefit payments,
30 may not be charged for services provided to indigents whose
31 only sources of income are from state and federal aid. In

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1 addition, fees may not be charged parents of a minor client
 2 for services requested by the minor without parental consent
 3 or for services provided a minor client who has been
 4 permanently committed to the care and custody of the
 5 department with parental rights permanently severed. However,
 6 lack of parental consent does not preclude the charging of
 7 fees established under chapter 39. ~~The department may not~~
 8 ~~require~~ A client who is receiving wages that ~~which~~ are below
 9 the minimum wage under the federal Fair Labor Standards Act
 10 may not be required to pay fees from such wages. Voluntary
 11 payments for services must be encouraged.

12 Section 51. Paragraphs (r) and (s) of subsection (3)
 13 of section 408.036, Florida Statutes, are amended to read:

14 408.036 Projects subject to review; exemptions.--

15 (3) EXEMPTIONS.--Upon request, the following projects
 16 are subject to exemption from the provisions of subsection
 17 (1):

18 (r) For beds in state mental health treatment
 19 facilities operated under s. 394.455(32)(30) and state mental
 20 health forensic facilities operated under s. 916.106(8).

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

23 Section 52. Paragraphs (a), (j), and (k) of subsection
 24 (4) of section 409.221, Florida Statutes, are amended to read:

25 409.221 Consumer-directed care program.--

26 (4) CONSUMER-DIRECTED CARE.--

27 (a) Program established.--The Agency for Health Care
 28 Administration shall establish the consumer-directed care
 29 program which shall be based on the principles of consumer
 30 choice and control. The agency shall implement the program
 31 upon federal approval. The agency shall establish interagency

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1 cooperative agreements with and shall work with the
 2 Departments of Elderly Affairs, Health, and Children and
 3 Family Services and the Agency for Persons with Disabilities
 4 to implement and administer the program. The program shall
 5 allow enrolled persons to choose the providers of services and
 6 to direct the delivery of services, to best meet their
 7 long-term care needs. The program must operate within the
 8 funds appropriated by the Legislature.

9 (j) Rules; federal waivers.--In order to implement
 10 this section:

11 1. The agency and the Departments of Elderly Affairs,
 12 Health, and Children and Family Services and the Agency for
 13 Persons with Disabilities are authorized to adopt and enforce
 14 rules.

15 2. The agency shall take all necessary action to
 16 ensure state compliance with federal regulations. The agency
 17 shall apply for any necessary federal waivers or waiver
 18 amendments needed to implement the program.

19 (k) Reviews and reports.--The agency and the
 20 Departments of Elderly Affairs, Health, and Children and
 21 Family Services and the Agency for Persons with Disabilities
 22 shall each, on an ongoing basis, review and assess the
 23 implementation of the consumer-directed care program. By
 24 January 15 of each year, the agency shall submit a written
 25 report to the Legislature that includes each department's
 26 review of the program and contains recommendations for
 27 improvements to the program.

28 Section 53. Paragraph (a) of subsection (2) and
 29 subsection (8) of section 409.908, Florida Statutes, are
 30 amended to read:

31 409.908 Reimbursement of Medicaid providers.--Subject

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1 to specific appropriations, the agency shall reimburse
2 Medicaid providers, in accordance with state and federal law,
3 according to methodologies set forth in the rules of the
4 agency and in policy manuals and handbooks incorporated by
5 reference therein. These methodologies may include fee
6 schedules, reimbursement methods based on cost reporting,
7 negotiated fees, competitive bidding pursuant to s. 287.057,
8 and other mechanisms the agency considers efficient and
9 effective for purchasing services or goods on behalf of
10 recipients. If a provider is reimbursed based on cost
11 reporting and submits a cost report late and that cost report
12 would have been used to set a lower reimbursement rate for a
13 rate semester, then the provider's rate for that semester
14 shall be retroactively calculated using the new cost report,
15 and full payment at the recalculated rate shall be effected
16 retroactively. Medicare-granted extensions for filing cost
17 reports, if applicable, shall also apply to Medicaid cost
18 reports. Payment for Medicaid compensable services made on
19 behalf of Medicaid eligible persons is subject to the
20 availability of moneys and any limitations or directions
21 provided for in the General Appropriations Act or chapter 216.
22 Further, nothing in this section shall be construed to prevent
23 or limit the agency from adjusting fees, reimbursement rates,
24 lengths of stay, number of visits, or number of services, or
25 making any other adjustments necessary to comply with the
26 availability of moneys and any limitations or directions
27 provided for in the General Appropriations Act, provided the
28 adjustment is consistent with legislative intent.

29 (2)(a)1. Reimbursement to nursing homes licensed under
30 part II of chapter 400 and state-owned-and-operated
31 intermediate care facilities for the developmentally disabled

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1 licensed under part XI of chapter 400 ~~chapter 393~~ must be made
2 prospectively.

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

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1 nursing home residents in the hospital.

2 (8) A provider of home-based or community-based
3 services rendered pursuant to a federally approved waiver
4 shall be reimbursed based on an established or negotiated rate
5 for each service. These rates shall be established according
6 to an analysis of the expenditure history and prospective
7 budget developed by each contract provider participating in
8 the waiver program, or under any other methodology adopted by
9 the agency and approved by the Federal Government in
10 accordance with the waiver. ~~Effective July 1, 1996,~~ Privately
11 owned and operated community-based residential facilities
12 which meet agency requirements and which formerly received
13 Medicaid reimbursement for the optional intermediate care
14 facility for the mentally retarded service may participate in
15 the developmental services waiver as part of a
16 home-and-community-based continuum of care for Medicaid
17 recipients who receive waiver services.

18 Section 54. Subsection (3) of section 409.9127,
19 Florida Statutes, is amended to read:

20 409.9127 Preauthorization and concurrent utilization
21 review; conflict-of-interest standards.--

22 (3) The agency shall help the Agency for Persons with
23 Disabilities ~~Department of Children and Family Services~~ meet
24 the requirements of s. 393.065(4). Only admissions approved
25 pursuant to such assessments are eligible for reimbursement
26 under this chapter.

27 Section 55. Paragraph (c) of subsection (2) and
28 subsection (5) of section 411.224, Florida Statutes, are
29 amended to read:

30 411.224 Family support planning process.--The
31 Legislature establishes a family support planning process to

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1 be used by the Department of Children and Family Services as
2 the service planning process for targeted individuals,
3 children, and families under its purview.

4 (2) To the extent possible within existing resources,
5 the following populations must be included in the family
6 support planning process:

7 (c) Children from age 3 ~~birth~~ through age 5 who are
8 served by the Agency for Persons with Disabilities
9 ~~Developmental Disabilities Program Office of the Department of~~
10 ~~Children and Family Services.~~

11 (5) There must be only a single-family support plan to
12 address the problems of the various family members unless the
13 family requests that an individual family support plan be
14 developed for different members of that family. The family
15 support plan must replace individual habilitation plans for
16 children from 3 ~~birth~~ through 5 years old who are served by
17 the Agency for Persons with Disabilities ~~Developmental~~
18 ~~Disabilities Program Office of the Department of Children and~~
19 ~~Family Services. To the extent possible, the family support~~
20 ~~plan must replace other case-planning forms used by the~~
21 ~~Department of Children and Family Services.~~

22 Section 56. Subsection (4) of section 411.232, Florida
23 Statutes, is amended to read:

24 411.232 Children's Early Investment Program.--

25 (4) RULES FOR IMPLEMENTATION.--The Department of
26 Health ~~and Rehabilitative Services~~ shall adopt rules necessary
27 to implement this section.

28 Section 57. Subsection (8) of section 415.102, Florida
29 Statutes, is amended to read:

30 415.102 Definitions of terms used in ss.

31 415.101-415.113.--As used in ss. 415.101-415.113, the term:

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1 (8) "Facility" means any location providing day or
 2 residential care or treatment for vulnerable adults. The term
 3 "facility" may include, but is not limited to, any hospital,
 4 state institution, nursing home, assisted living facility,
 5 adult family-care home, adult day care center, residential
 6 facility licensed under chapter 393, adult day training center
 7 ~~group home~~, or mental health treatment center.

8 Section 58. Section 415.1035, Florida Statutes, is
 9 amended to read:

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

20 Section 59. Subsections (1) and (10) of section
 21 415.1055, Florida Statutes, are amended to read:

22 415.1055 Notification to administrative entities.--

23 (1) Upon receipt of a report that alleges that an
 24 employee or agent of the department, the Agency for Persons
 25 with Disabilities, or the Department of Elderly Affairs,
 26 acting in an official capacity, has committed an act of abuse,
 27 neglect, or exploitation, the department shall notify the
 28 state attorney in whose circuit the abuse, neglect, or
 29 exploitation occurred. This notification may be oral or
 30 written.

31 (10) When a report has been received and the

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1 department has reason to believe that a vulnerable adult
 2 resident of a facility licensed by the Agency for Health Care
 3 Administration or the Agency for Persons with Disabilities has
 4 been the victim of abuse, neglect, or exploitation, the
 5 department shall provide a copy of its investigation to the
 6 appropriate agency. If the investigation determines that a
 7 health professional licensed or certified under the Department
 8 of Health may have abused, neglected, or exploited a
 9 vulnerable adult, the department shall also provide a copy to
 10 the Department of Health.

11 Section 60. Paragraphs (a) and (h) of subsection (3)
 12 of section 415.107, Florida Statutes, are amended to read:

13 415.107 Confidentiality of reports and records.--

14 (3) Access to all records, excluding the name of the
 15 reporter which shall be released only as provided in
 16 subsection (6), shall be granted only to the following
 17 persons, officials, and agencies:

18 (a) Employees or agents of the department, the Agency
 19 for Persons with Disabilities, ~~of~~ the Agency for Health Care
 20 Administration, or ~~of~~ the Department of Elderly Affairs who
 21 are responsible for carrying out protective investigations,
 22 ongoing protective services, or licensure or approval of
 23 nursing homes, assisted living facilities, adult day care
 24 centers, adult family-care homes, home care for the elderly,
 25 hospices, residential facilities licensed under chapter 393,
 26 or other facilities used for the placement of vulnerable
 27 adults.

28 (h) Any appropriate official of the department, the
 29 Agency for Persons with Disabilities, ~~of~~ the Agency for Health
 30 Care Administration, or ~~of~~ the Department of Elderly Affairs
 31 who is responsible for:

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1 1. Administration or supervision of the programs for
 2 the prevention, investigation, or treatment of abuse, neglect,
 3 or exploitation of vulnerable adults when carrying out an
 4 official function; or

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

8 Section 61. Paragraph (a) of subsection (3) of section
 9 435.03, Florida Statutes, is amended to read:

10 435.03 Level 1 screening standards.--

11 (3) Standards must also ensure that the person:

12 (a) For employees and employers licensed or registered
 13 pursuant to chapter 400, and for employees and employers of
 14 developmental disabilities ~~services~~ institutions as defined in
 15 s. 393.063, intermediate care facilities for the
 16 developmentally disabled as defined in s. 400.960 ~~s. 393.063~~,
 17 and mental health treatment facilities as defined in s.
 18 394.455, meets the requirements of this chapter.

19 Section 62. Paragraph (a) of subsection (2) of section
 20 490.014, Florida Statutes, is amended to read:

21 490.014 Exemptions.--

22 (2) No person shall be required to be licensed or
 23 provisionally licensed under this chapter who:

24 (a) Is a salaried employee of a government agency;
 25 developmental disability facility or ~~services~~ program, mental
 26 health, alcohol, or drug abuse facility operating under
 27 ~~pursuant to~~ chapter 393, chapter 394, or chapter 397;
 28 subsidized child care program, subsidized child care case
 29 management program, or child care resource and referral
 30 program operating pursuant to chapter 402; child-placing or
 31 child-caring agency licensed pursuant to chapter 409; domestic

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1 violence center certified pursuant to chapter 39; accredited
 2 academic institution; or research institution, if such
 3 employee is performing duties for which he or she was trained
 4 and hired solely within the confines of such agency, facility,
 5 or institution, so long as the employee is not held out to the
 6 public as a psychologist pursuant to s. 490.012(1)(a).

7 Section 63. Paragraph (a) of subsection (4) of section
 8 491.014, Florida Statutes, is amended to read:

9 491.014 Exemptions.--

10 (4) No person shall be required to be licensed,
 11 provisionally licensed, registered, or certified under this
 12 chapter who:

13 (a) Is a salaried employee of a government agency;
 14 developmental disability facility or ~~services~~ program, mental
 15 health, alcohol, or drug abuse facility operating under
 16 ~~pursuant to~~ chapter 393, chapter 394, or chapter 397;
 17 subsidized child care program, subsidized child care case
 18 management program, or child care resource and referral
 19 program operating pursuant to chapter 402; child-placing or
 20 child-caring agency licensed pursuant to chapter 409; domestic
 21 violence center certified pursuant to chapter 39; accredited
 22 academic institution; or research institution, if such
 23 employee is performing duties for which he or she was trained
 24 and hired solely within the confines of such agency, facility,
 25 or institution, so long as the employee is not held out to the
 26 public as a clinical social worker, mental health counselor,
 27 or marriage and family therapist.

28 Section 64. Section 944.602, Florida Statutes, is
 29 amended to read:

30 944.602 Agency notification ~~of Department of Children~~
 31 ~~and Family Services~~ before release of mentally retarded

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1 inmates.--Before the release by parole, release by reason of
 2 gain-time allowances provided for in s. 944.291, or expiration
 3 of sentence of any inmate who has been diagnosed as mentally
 4 retarded as defined in s. 393.063, the Department of
 5 Corrections shall notify the Agency for Persons with
 6 Disabilities ~~Department of Children and Family Services~~ in
 7 order that sufficient time be allowed to notify the inmate or
 8 the inmate's representative, in writing, at least 7 days prior
 9 to the inmate's release, of available community services.

10 Section 65. Subsections (2) and (3) of section
 11 945.025, Florida Statutes, are amended to read:

12 945.025 Jurisdiction of department.--

13 (2) In establishing, operating, and utilizing these
 14 facilities, the department shall attempt, whenever possible,
 15 to avoid the placement of nondangerous offenders who have
 16 potential for rehabilitation with repeat offenders or
 17 dangerous offenders. Medical, mental, and psychological
 18 problems shall be diagnosed and treated whenever possible. The
 19 Department of Children and Family Services and the Agency for
 20 Persons with Disabilities shall cooperate to ensure the
 21 delivery of services to persons under the custody or
 22 supervision of the department. When it is the intent of the
 23 department to transfer a mentally ill or retarded prisoner to
 24 the Department of Children and Family Services or the Agency
 25 for Persons with Disabilities, an involuntary commitment
 26 hearing shall be held according to the provisions of chapter
 27 393 or chapter 394.

28 (3) There shall be other correctional facilities,
 29 including detention facilities of varying levels of security,
 30 work-release facilities, and community correctional
 31 facilities, halfway houses, and other approved community

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1 residential and nonresidential facilities and programs;
 2 however, no adult correctional facility may be established by
 3 changing the use and purpose of any mental health facility or
 4 mental health institution under the jurisdiction of any state
 5 agency or department without authorization in the General
 6 Appropriation Act or other approval by the Legislature. ~~Any~~
 7 ~~facility the purpose and use of which was changed subsequent~~
 8 ~~to January 1, 1975, shall be returned to its original use and~~
 9 ~~purpose by July 1, 1977. However, the G. Pierce Wood Memorial~~
 10 ~~Hospital located at Arcadia, DeSoto County, may not be~~
 11 ~~converted into a correctional facility as long as such~~
 12 ~~hospital is in use as a state mental health hospital.~~ Any
 13 community residential facility may be deemed a part of the
 14 state correctional system for purposes of maintaining custody
 15 of offenders, and for this purpose the department may contract
 16 for and purchase the services of such facilities.

17 Section 66. Section 947.185, Florida Statutes, is
 18 amended to read:

19 947.185 Application for mental retardation services as
 20 condition of parole.--The Parole Commission may require as a
 21 condition of parole that any inmate who has been diagnosed as
 22 mentally retarded as defined in s. 393.063 shall, upon
 23 release, apply for ~~retardation~~ services from the Agency for
 24 Persons with Disabilities ~~Department of Children and Family~~
 25 ~~Services.~~

26 Section 67. Subsection (1) of section 985.224, Florida
 27 Statutes, is amended to read:

28 985.224 Medical, psychiatric, psychological, substance
 29 abuse, and educational examination and treatment.--

30 (1) After a detention petition or a petition for
 31 delinquency has been filed, the court may order the child

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1 named in the petition to be examined by a physician. The court
 2 may also order the child to be evaluated by a psychiatrist or
 3 a psychologist, by a district school board educational needs
 4 assessment team, or, if a developmental disability is
 5 suspected or alleged, by a ~~the~~ developmental disabilities
 6 diagnostic and evaluation team ~~with~~ of the Agency for Persons
 7 with Disabilities ~~Department of Children and Family Services.~~
 8 If it is necessary to place a child in a residential facility
 9 for such evaluation, the criteria and procedures established
 10 in chapter 393, chapter 394, or chapter 397, whichever is
 11 applicable, shall be used.

12 Section 68. Section 1003.58, Florida Statutes, is
 13 amended to read:

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

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

26 (2) If additional facilities are required, the
 27 district school board and the Department of Children and
 28 Family Services or the Agency for Persons with Disabilities,
 29 as appropriate, shall agree on the appropriate site based on
 30 the instructional needs of the students. When the most
 31 appropriate site for instruction is on district school board

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1 property, a special capital outlay request shall be made by
 2 the commissioner in accordance with s. 1013.60. When the most
 3 appropriate site is on state property, state capital outlay
 4 funds shall be requested by the department or agency in
 5 accordance with chapter 216 of Children and Family Services as
 6 provided by s. 216.043 and shall be submitted as specified by
 7 s. 216.023. Any instructional facility to be built on state
 8 property shall have educational specifications jointly
 9 developed by the school district and the department or agency
 10 of Children and Family Services and approved by the Department
 11 of Education. The size of space and occupant design capacity
 12 criteria as provided by state board rules shall be used for
 13 remodeling or new construction whether facilities are provided
 14 on state property or district school board property. The
 15 planning of such additional facilities shall incorporate
 16 current state Department of Children and Family Services
 17 deinstitutionalization goals and plans.

18 (3) The district school board shall have full and
 19 complete authority in the matter of the assignment and
 20 placement of such students in educational programs. The parent
 21 of an exceptional student shall have the same due process
 22 rights as are provided under s. 1003.57(5).

23 (4) The district school board shall have a written
 24 agreement with the Department of Children and Family Services
 25 and the Agency for Persons with Disabilities outlining the
 26 respective duties and responsibilities of each party.

27
 28 Notwithstanding the provisions herein, the educational program
 29 at the Marianna Sunland Center in Jackson County shall be
 30 operated by the Department of Education, either directly or
 31 through grants or contractual agreements with other public or

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1 | duly accredited educational agencies approved by the
2 | Department of Education.

3 | Section 69. Paragraph (c) of subsection (3) of section
4 | 17.61, Florida Statutes, is amended to read:

5 | 17.61 Chief Financial Officer; powers and duties in
6 | the investment of certain funds.--

7 | (3)

8 | (c) Except as provided in this paragraph and except
9 | for moneys described in paragraph (d), the following agencies
10 | shall not invest trust fund moneys as provided in this
11 | section, but shall retain such moneys in their respective
12 | trust funds for investment, with interest appropriated to the
13 | General Revenue Fund, pursuant to s. 17.57:

14 | 1. The Agency for Health Care Administration, except
15 | for the Tobacco Settlement Trust Fund.

16 | 2. The Agency for Persons with Disabilities, except
17 | for:

18 | a. The Federal Grants Trust Fund.

19 | b. The Tobacco Settlement Trust Fund.

20 | ~~3.2.~~ The Department of Children and Family Services,
21 | except for:

22 | a. The Alcohol, Drug Abuse, and Mental Health Trust
23 | Fund.

24 | b. The Community Resources Development Trust Fund.

25 | c. The Refugee Assistance Trust Fund.

26 | d. The Social Services Block Grant Trust Fund.

27 | e. The Tobacco Settlement Trust Fund.

28 | f. The Working Capital Trust Fund.

29 | ~~4.3.~~ The Department of Community Affairs, only for the
30 | Operating Trust Fund.

31 | ~~5.4.~~ The Department of Corrections.

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1 ~~6.5.~~ The Department of Elderly Affairs, except for:

2 a. The Federal Grants Trust Fund.

3 b. The Tobacco Settlement Trust Fund.

4 ~~7.6.~~ The Department of Health, except for:

5 a. The Federal Grants Trust Fund.

6 b. The Grants and Donations Trust Fund.

7 c. The Maternal and Child Health Block Grant Trust
8 Fund.

9 d. The Tobacco Settlement Trust Fund.

10 ~~8.7.~~ The Department of Highway Safety and Motor
11 Vehicles, only for:

12 a. The DUI Programs Coordination Trust Fund.

13 b. The Security Deposits Trust Fund.

14 ~~9.8.~~ The Department of Juvenile Justice.

15 ~~10.9.~~ The Department of Law Enforcement.

16 ~~11.10.~~ The Department of Legal Affairs.

17 ~~12.11.~~ The Department of State, only for:

18 a. The Grants and Donations Trust Fund.

19 b. The Records Management Trust Fund.

20 ~~13.12.~~ The Executive Office of the Governor, only for:

21 a. The Economic Development Transportation Trust Fund.

22 b. The Economic Development Trust Fund.

23 ~~14.13.~~ The Florida Public Service Commission, only for
24 the Florida Public Service Regulatory Trust Fund.

25 ~~15.14.~~ The Justice Administrative Commission.

26 ~~16.15.~~ The state courts system.

27 Section 70. Paragraph (b) of subsection (5) of section
28 400.464, Florida Statutes, is amended to read:

29 400.464 Home health agencies to be licensed;

30 expiration of license; exemptions; unlawful acts; penalties.--

31 (5) The following are exempt from the licensure

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1 requirements of this part:

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

4 1. The Department of Elderly Affairs.

5 2. The Department of Health, a community health
6 center, or a rural health network that furnishes home visits
7 for the purpose of providing environmental assessments, case
8 management, health education, personal care services, family
9 planning, or followup treatment, or for the purpose of
10 monitoring and tracking disease.

11 3. Services provided to persons with ~~who have~~
12 developmental disabilities, as defined in s. 393.063.

13 4. Companion and sitter organizations that were
14 registered under s. 400.509(1) on January 1, 1999, and were
15 authorized to provide personal services ~~under s. 393.063(33)~~
16 under a developmental services provider certificate on January
17 1, 1999, may continue to provide such services to past,
18 present, and future clients of the organization who need such
19 services, notwithstanding the provisions of this act.

20 5. The Department of Children and Family Services.

21 Section 71. Subsection (7) of section 744.704, Florida
22 Statutes, is amended to read:

23 744.704 Powers and duties.--

24 (7) A public guardian shall not commit a ward to a
25 mental health treatment facility, as defined in s.
26 394.455(32)~~(30)~~, without an involuntary placement proceeding
27 as provided by law.

28 Section 72. Subsection (4) of section 984.22, Florida
29 Statutes, is amended to read:

30 984.22 Powers of disposition.--

31 (4) All payments of fees made to the department under

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1 ~~pursuant to this chapter, or child support payments made to~~
 2 ~~the department pursuant to subsection (3), shall be deposited~~
 3 ~~in the General Revenue Fund. In cases in which the child is~~
 4 ~~placed in foster care with the Department of Children and~~
 5 ~~Family Services, such child support payments shall be~~
 6 ~~deposited in the Community Resources Development Trust Fund.~~

7 Section 73. This act shall take effect July 1, 2006.

8
9
10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause

13
14 and insert:

15 A bill to be entitled

16 An act relating to persons with disabilities;
 17 amending s. 20.197, F.S.; requiring the
 18 director of the Agency for Persons with
 19 Disabilities to be subject to confirmation by
 20 the Senate; requiring the agency to create a
 21 Division of Budget and Planning and a Division
 22 of Operations; authorizing the director to
 23 recommend creating additional subdivisions of
 24 the agency in order to promote efficient and
 25 effective operation of the agency; amending s.
 26 39.001, F.S., relating to the development of a
 27 comprehensive state plan for children;
 28 conforming provisions to the transfer of duties
 29 from the Developmental Disabilities Program
 30 Office within the Department of Children and
 31 Family Services to the Agency for Persons with

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

2 providing for certain employees, agents, and

3 contract providers of the agency to have access

4 to records concerning cases of child abuse or

5 neglect for specified purposes; amending s.

6 39.407, F.S.; deleting provisions authorizing

7 the treatment of a child under ch. 393, F.S.,

8 if the child is alleged to be dependent;

9 amending s. 287.155, F.S.; authorizing the

10 agency to purchase vehicles under certain

11 circumstances; amending ss. 381.0072 and

12 383.14, F.S., relating to food service licenses

13 and the Genetics and Newborn Screening Advisory

14 Council, respectively; conforming provisions to

15 the transfer of duties from the Developmental

16 Disabilities Program Office within the

17 Department of Children and Family Services to

18 the Agency for Persons with Disabilities;

19 repealing s. 393.061, F.S., relating to a short

20 title; amending s. 393.062, F.S.; revising

21 legislative findings and intent to conform to

22 changes in terminology; amending s. 393.063,

23 F.S.; revising the definitions applicable to

24 ch. 393, F.S., relating to developmental

25 disabilities; amending s. 393.064, F.S.;

26 revising the duties of the Agency for Persons

27 with Disabilities with respect to prevention

28 services, evaluations and assessments,

29 intervention services, and support services;

30 amending s. 393.0641, F.S.; defining the term

31 "severe self-injurious behavior" for purposes

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1 of a program of prevention and treatment for
2 individuals exhibiting such behavior; amending
3 s. 393.065, F.S., relating to application for
4 services and the determination of eligibility
5 for services; providing for children in the
6 child welfare system to be placed at the top of
7 the agency's wait list for waiver services;
8 authorizing the agency to adopt rules; amending
9 s. 393.0651, F.S., relating to support plans
10 for families and individuals; revising the age
11 at which support plans are developed for
12 children; deleting a prohibition against
13 assessing certain fees; creating s. 393.0654,
14 F.S.; specifying circumstances under which an
15 employee of the agency may own, operate, or
16 work in a private facility under contract with
17 the agency; amending s. 393.0655, F.S.;
18 revising the screening requirements for direct
19 service providers; providing a temporary
20 exemption from screening requirements for
21 certain providers; amending s. 393.0657, F.S.;
22 revising an exemption from certain requirements
23 for refingerprinting and rescreening; amending
24 s. 393.066, F.S.; revising certain requirements
25 for the services provided by the agency;
26 requiring agency approval for purchased
27 services; revising the agency's rulemaking
28 authority; amending s. 393.067, F.S.; revising
29 requirements governing the agency's licensure
30 procedures; revising the requirements for
31 background screening of applicants for

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1 licensure and managers, supervisors, and staff
 2 members of service providers; requiring that
 3 the agency adopt rules governing the reporting
 4 of incidents; deleting certain responsibilities
 5 of the Agency for Health Care Administration
 6 with respect to the development and review of
 7 emergency management plans; amending s.
 8 393.0673, F.S.; providing circumstances under
 9 which the agency may deny, revoke, or suspend a
 10 license or impose a fine; requiring the Agency
 11 for Persons with Disabilities to adopt rules
 12 for evaluating violations and determining the
 13 amount of fines; amending s. 393.0674, F.S.;
 14 providing a penalty for failure by a provider
 15 to comply with background screening
 16 requirements; amending s. 393.0675, F.S.;
 17 deleting certain obsolete provisions requiring
 18 that a provider be of good moral character;
 19 amending s. 393.0678, F.S.; deleting provisions
 20 governing receivership proceedings for an
 21 intermediate care facility for the
 22 developmentally disabled; amending s. 393.068,
 23 F.S.; requiring that the family care program
 24 emphasize self-determination; removing
 25 supported employment from the list of services
 26 available under the family care program;
 27 revising certain requirements for reimbursing a
 28 family care program provider; amending s.
 29 393.0695, F.S., relating to in-home subsidies;
 30 requiring that the Agency for Persons with
 31 Disabilities adopt rules for such subsidies;

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1 amending s. 393.075, F.S., relating to
2 liability coverage for facilities licensed by
3 the agency; conforming terminology; amending s.
4 393.11, F.S.; revising provisions governing the
5 involuntary admission of a person to
6 residential services; clarifying provisions
7 governing involuntary commitment; requiring
8 that a person who is charged with a felony will
9 have his or her competency determined under ch.
10 916, F.S.; conforming terminology; amending s.
11 393.122, F.S.; clarifying requirements
12 governing applications for continued
13 residential services; amending s. 393.13, F.S.,
14 relating to the Bill of Rights of Persons Who
15 are Developmentally Disabled; deleting a
16 provision protecting minimum wage compensation
17 for certain programs; limiting the use of
18 restraint and seclusion; requiring the agency
19 to adopt rules governing the use of restraint
20 or seclusion; revising requirements for client
21 records; deleting certain requirements
22 governing local advocacy councils; allowing the
23 resident government to include disability
24 advocates from the community; amending s.
25 393.135, F.S.; revising definitions; clarifying
26 provisions making such misconduct a
27 second-degree felony; amending s. 393.15, F.S.;
28 establishing the Community Resources
29 Development Loan Program to provide loans to
30 foster homes, group homes, and supported
31 employment programs; providing legislative

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1 intent; providing eligibility requirements;
2 providing authorized uses of loan funds;
3 requiring that the agency adopt rules governing
4 the loan program; providing requirements for
5 repaying loans; amending s. 393.17, F.S.;
6 authorizing the agency to establish
7 certification programs for persons providing
8 services to clients; requiring that the agency
9 establish a certification program for behavior
10 analysts; requiring that the program be
11 reviewed and validated; creating s. 393.18,
12 F.S.; providing for a comprehensive transition
13 education program for persons who have severe
14 or moderate maladaptive behaviors; specifying
15 the types of treatment and education centers
16 providing services under the program; providing
17 requirements for licensure; requiring
18 individual education plans for persons
19 receiving services; limiting the number of
20 persons who may receive services in such a
21 program; authorizing licensure of certain
22 existing programs; creating s. 393.23, F.S.;
23 requiring that receipts from operating
24 canteens, vending machines, and other like
25 activities in a developmental disabilities
26 institution be deposited in a trust account in
27 a bank, credit union, or savings and loan
28 association; describing how the moneys earned
29 may be expended; allowing for the investment of
30 the funds; requiring that the accounting system
31 at the institution account for the revenues and

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1 expenses of the activities; requiring that
2 sales tax moneys be remitted to the Department
3 of Revenue; amending s. 393.501, F.S.; revising
4 the agency's rulemaking authority; providing
5 requirements for rules governing alternative
6 living centers and independent living education
7 centers; amending s. 394.453, F.S.; declaring
8 that the policy of the state is to achieve an
9 ongoing reduction of the use of restraint and
10 seclusion on persons with mental illness who
11 are served by programs and facilities operated,
12 licensed, or monitored by the agency; amending
13 s. 394.455, F.S.; defining the terms
14 "restraint" and "seclusion" for purposes of the
15 Baker Act; amending s. 394.457, F.S.; requiring
16 the Department of Children and Family Services
17 to adopt rules for the use of restraint and
18 seclusion for cases handled under the Baker
19 Act; amending s. 394.879, F.S.; requiring that
20 rules be adopted for the use of restraint and
21 seclusion; amending s. 397.405, F.S.;

22 clarifying an exemption from licensure provided
23 to certain facilities licensed under ch. 393,
24 F.S.; amending s. 400.419, F.S.; requiring that
25 a list of facilities subject to sanctions or
26 fines be disseminated to the Agency for Persons
27 with Disabilities; amending s. 400.960, F.S.;

28 revising definitions for purposes of part XI of
29 ch. 400, F.S., relating to nursing homes and
30 related facilities; amending 400.962, F.S.;

31 requiring an applicant for a license to operate

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1 an intermediate care facility to agree to
2 provide or arrange for active treatment
3 services; providing rulemaking authority;
4 amending s. 400.967, F.S., relating to rules
5 and classification of deficiencies; conforming
6 provisions to the transfer of duties from the
7 Department of Children and Family Services to
8 the Agency for Persons with Disabilities;
9 requiring that rules be adopted for the use of
10 restraint and seclusion; amending ss. 402.115,
11 402.17, 402.181, 402.20, 402.22, and 402.33,
12 F.S.; including the Agency for Persons with
13 Disabilities within provisions governing the
14 sharing of information, claims for the care and
15 maintenance of facility residents, county
16 contracts for services for persons with
17 developmental disabilities, education programs
18 for students who reside in state facilities,
19 and fees for services; conforming provisions to
20 changes made by the act; correcting a
21 cross-reference; amending s. 408.036, F.S.,
22 relating to projects that are exempt from
23 obtaining a certificate of need; conforming
24 terminology; amending s. 409.221, F.S.,
25 relating to the consumer directed care program;
26 conforming provisions to changes made by the
27 act; amending ss. 409.908 and 409.9127, F.S.,
28 relating to the Medicaid program; conforming a
29 cross-reference; deleting obsolete provisions;
30 amending ss. 411.224 and 411.232, F.S.;

31 conforming provisions to the transfer of duties

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1 from the Developmental Disabilities Program
2 Office within the Department of Children and
3 Family Services to the Agency for Persons with
4 Disabilities; amending ss. 415.102, 415.1035,
5 415.1055, and 415.107, F.S.; conforming
6 terminology; including the Agency for Persons
7 with Disabilities within provisions providing
8 requirements that a facility inform residents
9 of certain rights, notification requirements
10 for administrative entities, and requirements
11 for maintaining the confidentiality of reports
12 and records; amending s. 435.03, F.S., relating
13 to screening standards; conforming terminology
14 and a cross-reference; amending ss. 490.014 and
15 491.014, F.S., relating to exemptions from
16 licensure for psychologists and certain
17 specified counselors, respectively; conforming
18 provisions to changes made by the act; amending
19 ss. 944.602, 945.025, 947.185, and 985.224,
20 F.S., relating to the Department of
21 Corrections, the Parole Commission, and
22 petitions alleging delinquency; conforming
23 provisions to the transfer of duties from the
24 Developmental Disabilities Program Office
25 within the Department of Children and Family
26 Services to the Agency for Persons with
27 Disabilities; amending s. 1003.58, F.S.;
28 including facilities operated by the Agency for
29 Persons with Disabilities within provisions
30 governing the residential care of students;
31 amending ss. 17.61 and 400.464, F.S., relating

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1 to investment of certain funds and home health
2 services for persons with disabilities,
3 respectively; conforming provisions to changes
4 made by the act; amending s. 744.704, F.S.;
5 correcting a cross-reference; amending s.
6 984.22, F.S.; removing a provision that
7 specifies fines be deposited into the Community
8 Resources Development Trust Fund; providing an
9 effective date.

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