

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: CS/SB 2012

INTRODUCER: Children and Families Committee and Senator Baker

SUBJECT: The Agency for Persons with Disabilities

DATE: March 20, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Goltry</u>	<u>Whiddon</u>	<u>CF</u>	Fav/CS
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>HA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2012 makes substantive, conforming, and technical changes to sections of the Florida Statutes that relate to persons with developmental disabilities and the Agency for Persons with Disabilities (APD or “the agency”). These changes:

- Require confirmation by the Senate of the APD director and authorize the agency to create a budget division and an operations division;
- Provide APD with access to the Department of Children and Families’ (DCF) child abuse and vulnerable adult abuse records for the purpose of facility licensure and employment screening;
- Delete language that authorizes court-ordered developmental disability services for children in dependency proceedings;
- Make technical changes allowing the agency to purchase vehicles and exempt agency licensed facilities from requiring food service licenses;
- Amend, update, and delete definitions and insert “people first” language;
- Add rule making authority for client application procedures and eligibility criteria, facility licensing procedures and standards, criteria for imposing fines, in-home subsidies, use of restraint and seclusion, and certification of behavioral analysts;
- Delete language which prohibits charging fees for placement in a residential program;
- Permit employees who are not involved in placement decisions to maintain ownership or employment with a private provider;
- Clarify provisions relating to background screening;
- Add language clarifying that a facility license granted by the agency is not an entitlement;
- Reinstate requirement for quarterly reassessment for in-home subsidies;
- Require that persons must be determined eligible for services by the agency to be involuntarily admitted to residential services;

- Delete language that prohibits denial of services due to inability to pay;
- Authorize the agency, DCF, and the Agency for Health Care Administration (AHCA) to promulgate rules for the use of physical restraints and seclusion;
- Delete language referring to program review by statewide or local advocacy councils;
- Authorize facility residents to select members of advocacy groups from the community as members of resident government;
- Modify the definition of and criteria for sexual misconduct between an employee and a client;
- Delete requirement for the agency Inspector General to investigate an incident of sexual misconduct before reporting it to the state attorney;
- Eliminate training programs (i.e., sheltered workshops) as eligible for a loan under the Community Resource Development program;
- Clarify APD's authority to establish certification programs for behavior analysts;
- Transfer provisions relating to comprehensive transitional education programs to a new section of statute;
- Conform provisions in ch. 400, F.S., relating to intermediate care facilities to changes in ch. 393, F.S.;
- Authorize APD to develop a consumer directed care program;
- Remove obsolete provisions, correct references, and reorganize sections of ch. 393, F.S., and statutes referencing that chapter.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 20.197, 39.001, 39.202, 39.407, 287.155, 381.0072, 383.14, 393.061, 393.062, 393.063, 393.064, 393.0641, 393.065, 393.0651, 393.0654, 393.0655, 393.0657, 393.066, 393.067, 393.0673, 393.0674, 393.0675, 393.0678, 393.068, 393.0695, 393.075, 393.11, 393.122, 393.13, 393.135, 393.15, 393.17, 393.18, 393.23, 393.501, 394.453, 394.455, 394.457, 394.879, 397.405, 400.419, 400.960, 400.967, 402.115, 402.17, 402.181, 402.20, 402.22, 402.33, 408.036, 409.221, 409.908, 409.9127, 411.224, 411.232, 415.102, 415.1035, 415.1055, 415.107, 419.001, 435.03, 490.014, 491.014, 944.602, 945.025, 947.185, 984.19, 984.225, 984.226, 985.224, 1003.58, 17.61, 400.464, 984.22.

II. Present Situation:

In 2004 the developmental disability program in the Department of Children and Family Services (DCF or "department") was transferred to the newly created Agency for Persons with Disabilities (APD or "agency").¹ The agency is still located for administrative purposes within DCF, but it is a separate budget entity and not subject to the control, supervision, or direction of the department. Although the powers, duties, assets, and liabilities of the former Developmental Disabilities (DD) Program Office of DCF were legally moved to APD via a type two transfer, various statutes that related to the DD Program Office were not amended and updated to reflect the creation of the agency and to clarify the jurisdiction of APD.

The agency has the responsibility for the provision of services for persons with developmental disabilities in Florida. The stated agency mission is to support persons with developmental

¹ Chapter 2004-267, Laws of Florida

disabilities in living, learning, and working in all aspects of community life.² The goals of the agency include increasing the number of persons with developmental disabilities who are employed in integrated settings, increasing consumer independence through increasing choice, reducing reliance on institutional settings, reducing the waiting list for services, and improving consumer outcomes and service quality.³

A developmental disability is defined as “a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”⁴ An individual is eligible for services if their domicile is in Florida, they have a developmental disability, and are three years of age or older.⁵ Children who are between the ages of three and five years of age and are at high risk of having a developmental disability are also eligible for services.⁶

Services provided by the agency include an array of community services and supports as well as a limited institutional program. The agency determines eligibility for services, assesses the service needs of persons with developmental disabilities, and provides funding for purchasing the supports and services identified in assessments. The range of services and supports available to an individual include employment and training services, environmental adaptive equipment, personal or family supports, residential habilitation, support coordination, therapeutic supports, and wellness management. There may be eligibility requirements specific to a particular service or support in addition to the general eligibility criteria for services from APD. The majority of services provided to clients of the agency are funded by Medicaid, authorized through a federal waiver.

The Developmental Disabilities Home and Community-Based Services (DD-HCBS) waiver program is a Medicaid funded program and the largest source of funding for APD services. Services provided through the DD-HCBS waiver program enable children and adults to live in a family setting in their own home or in a licensed residential setting and avoid institutionalization. Clients receiving services through this program are also eligible for all services in the Medicaid state plan.

The Family and Supported Living (FSL) waiver makes services available to children and adults who live with their family or in their own home. Although fewer DD services are available under this waiver, clients are also eligible for all services in the Medicaid state plan.

The agency estimates that the total enrollment in both waiver programs for FY 2005/2006 will be 32,603 clients. The enrollment for all waiver and General Revenue funded services is projected by APD to be approximately 40,000 by the end of FY 2005/2006.⁷

² Agency for Persons with Disabilities, briefing materials provided to Senate Committee on Children and Families, October 18, 2005.

³ Ibid.

⁴ s. 393.063 (10), F.S.

⁵ Children from birth to three years of age with developmental disabilities are served by Children’s Medical Services in the Department of Health, s. 393.064, F.S.

⁶ “High-risk child” is defined in s. 393.063(23) F.S.

⁷ Agency for Persons with Disabilities, briefing materials provided to Senate Committee on Children and Families, October 18, 2005.

The agency also provides fiscal and programmatic management of developmental disabilities institutions and those community-based services currently funded by general revenue. There are three developmental disabilities institutions serving approximately 1100 residents.

In recent years, the developmental disability program has instituted a number of fiscal and programmatic management controls to address escalating costs and growing waiting lists for services. These include a standardized rate structure, prior service authorization, pre-payment billing review, and support coordination. Together these activities have resulted in significant economies, which have allowed the agency to greatly increase the number of clients served and reduce the waiting list for services.

Agency for Persons with Disabilities

According to s. 20.197, F.S., the agency is housed within DCF for administrative purposes but is not subject to the control, supervision, or direction of DCF in any manner including personnel, purchasing, property, or budgetary matters. The director is the agency head and is appointed by, and serves at the pleasure of, the Governor. The director has the responsibility for administering the affairs of the agency, establishing administrative units, and employing the staff necessary to discharge the powers and duties of APD.

The requirement for Senate confirmation of agency directors comparable to the director of the APD varies depending on the language of the authorizing statute. For example, the director of the Division of Administrative Hearings, a separate budget entity within the Department of Management Services (DMS) and not subject to the department's control, supervision, or direction, requires Senate confirmation. However, the director of the Agency for Workforce Innovation, created as an agency within DMS, does not require Senate confirmation.

Access to Confidential Records

Currently, the Department of Health (DOH), the Agency for Health Care Administration (AHCA), and the Department of Elder Affairs (DOEA) have access to abuse records as provided in s. 39.202, F.S., and s. 415.107, F.S. Prior to 2004 when it was part of DCF, the developmental disability program had access to both child and adult abuse records and investigations. Access to these records provided information necessary for licensing facilities housing DD clients and provided managers with reports of abuse or neglect to clients in licensed facilities. These records are confidential pursuant to s. 39.202, F.S., and s. 415.107, F.S.,⁸ and the agency is now unable to access reports that involve instances of alleged abuse that occur in facilities licensed by APD. As a result, since 2004, whenever DCF has had to remove a resident from an APD-licensed

⁸ s. 39.202 (1), F.S., reads "In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in the possession of those entities granted access as set forth in this section.

s. 415.107, F.S., reads, "In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113."

facility because of abuse or neglect in that facility, DCF has been unable to share any information about the abuse with the agency.

Court-Ordered Treatment for Dependent Children

Pursuant to s. 39.407, F.S., a court may order a dependent child to be examined by a health care professional, psychiatrist, psychologist, or developmental disability evaluation team. The judge may also order the child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service provider. According to APD, the references to developmental disabilities in this section are inconsistent with other provisions in state and federal law and are creating confusion for clients, families, child welfare workers, and the courts. Although mental health services may be ordered by a court, eligibility for services for persons with disabilities, including children, are determined in accordance with ch. 393, F.S., which specifies the criteria for qualifying an individual for services.

Jurisdiction for challenges to APD actions regarding services and eligibility for services is governed by 42 USC 1396a, 42 CFR 431.200 et seq., and 65-2.042 F.A.C., through the fair hearings process. In the event APD denies or reduces a service, a client is entitled to a fair hearing. If APD prevails, the client can appeal to the appropriate District Court of Appeals. If the client prevails at a fair hearing, APD cannot appeal. The agency maintains that, unlike DCF, APD is not a party to these proceedings. Some dependency courts, pursuant to s. 39.407(5), F.S., have ordered APD to provide services to children. The agency has challenged these court orders via Petitions for Writs of Prohibition, claiming a lack of jurisdiction. In each case, these writs were granted, and the dependency court orders were reversed.⁹

Definitions

The *Developmental Services Waiver Services Medicaid Coverage & Limitations Handbook* has been incorporated by reference in rule 59G-13.080, F.A.C. The handbook defines many of the same services that are defined in s. 393.063, F.S.; however, the definitions used in the handbook provide the current standard for services for persons with developmental disabilities. In addition to these service definitions, diagnostic terminology and nomenclature in the field of developmental disabilities have evolved significantly over the years, making some of the statutory terms obsolete. For example, the service characterized as “supported employment” has gone through a significant transition making the terms currently in statute (i.e., enclave, follow-along services, job coach, and mobile work crew) outdated. Other definitions currently in statute, (including “epilepsy,” “normalization,” and “reassessment,”) are no longer relevant to the current system.

Dual Employment

Current statute¹⁰ prohibits a state employee from being simultaneously employed with a provider doing business with the state entity by which the person is employed. However, as APD continues to close institutional facilities and place clients in the community, there is a need to establish and staff private providers to serve these clients. The agency has found that as the institutions close and many of the staff currently caring for residents will lose their state jobs when the facility closes, these staff often seek employment with private providers serving the

⁹ Agency for Persons with Disabilities, Senate Bill 2012 Analysis, March 7, 2006.

¹⁰ s. 112.313, F.S.

clients leaving the institution. This practice is beneficial to clients as it provides continuity of care and stability during an otherwise disruptive and stressful period of transition. Without specific authority for a narrow exception to this prohibition, an agency employee will not be able to accept employment with a private agency without leaving their state position by resignation or termination.

Background Screening

Section 393.0655, F.S., requires background screening for “direct service providers who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under s. 393.067 and any other person, including volunteers, who provide care or services, who have access to a client's living areas, or who have access to a client's funds or personal property.” Level 2 background screening includes “fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.”¹¹ In addition to the level 2 screening, s. 393.0655, F.S., requires that prospective employees have an employment history check as provided in s. 435.03, F.S. The statute provides that “every person employed in a position for which employment screening is required must, within 5 working days after starting to work, submit to the employer a complete set of information necessary to conduct a screening under this section.”¹² The statutes are silent on prohibiting access to vulnerable clients during the time that background screening is being conducted.

Licensing

Current licensing authority for residential facilities and comprehensive transitional education programs provides requirements for the application process and employee screening.¹³ The statute provides authority for the agency to promulgate rules for minimum standards for facilities and programs. The current statute is silent on creating a property right or entitlement by virtue of licensure, which is addressed in similar licensing provisions in other statutes.¹⁴

In-Home Subsidies

The Agency currently issues in-home subsidy payments to qualified individuals with developmental disabilities. Current statutory language mandates on-going reviews of the subsidy amounts on an annual basis, changed from quarterly in 2004. The agency reports that fluctuations in consumer income and assets, which occur throughout the year, necessitate more frequent review of in-home subsidies in order to ensure they are commensurate with individual consumer needs.

Involuntary Admissions

Section 393.11, F.S., provides the criteria and process for involuntarily admitting persons with mental retardation to residential care. Jurisdiction for involuntary admissions lies with the circuit courts. Once the court orders involuntary care, that person becomes a client of APD and the agency is responsible for providing services for the person. The agency reports that in some

¹¹ s. 435.04 (1), F.S.

¹² s. 435.05, F.S.

¹³ s. 393.067, F.S.

¹⁴ s. 409.175, F.S.

instances, the involuntary admission process has become a way of obtaining services for persons APD has already determined do not meet eligibility criteria.

The process for determining eligibility for developmental disability services is established in s. 393.065, F.S. The statute requires submission of an application for services and the agency evaluates and determines whether an applicant meets eligibility criteria. If APD determines the person is not eligible, they are notified of their administrative appeal rights. The agency reports that in some situations rather than using the administrative appeal process, a court-determined involuntary admission is sought. This determination is then made in accordance with court criteria, and the individual is involuntarily placed with a court order for services to be provided and funded by APD. Because the agency is not a party to the case, it does not have standing to appeal. The 3rd District Court of Appeal has consistently precluded intervention by APD based upon no standing therefore the issue of whether these individuals actually meets ch. 393, F.S., eligibility criteria and are eligible for services has not been tested.

Entitlement

Current law provides legislative intent that “(n)o person with developmental disabilities shall be deprived of these enumerated services by reason of inability to pay.”¹⁵ The agency suggests that this language could be interpreted to create an entitlement to services and that this interpretation could negate any appropriation limitations currently imposed on Medicaid Waiver services.

Sexual Misconduct

Section 393.135, F.S., defines “sexual misconduct” as “any sexual activity between an employee and a client regardless of the consent of the client.” The statute includes a disclaimer that exempts situations in which the employee is legally married to the client or “has no reason to believe that the person with whom the employee engaged in sexual misconduct is a client receiving services.”¹⁶ The agency reports that this disclaimer is problematic in pursuing prosecution since the state is required to prove “what the person knew and when they knew it.”

Current law requires that reports of alleged sexual misconduct be sent to the Office of Inspector General of the department, who is to “conduct an appropriate investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.”¹⁷

Use of Restraint and Seclusion

According to the Advocacy Center for Persons with Disabilities (Advocacy Center), based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida has the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005.¹⁸ Of

¹⁵ s. 393.13(2)(d)6., F.S.

¹⁶ s. 393.135(4), F.S.

¹⁷ s. 393.135(5), F.S.

¹⁸ Advocacy Center for Persons with Disabilities, Inc. personal communication, March 20, 2006, which states: “According to CMS, the states that reported the most restraint/seclusion-related deaths in 2004 were California with 4 and New York with 3. When the population of California and Florida psychiatric facilities is considered, Florida led the nation in the per capita rate of restraint/seclusion-related deaths in 2004. This holds true historically. When CMS first required reporting nationally, CMS received 20 death reports between August 1999 and March 2000. Of those 20 deaths, 7 were in Florida. A memorandum to P&A Executive Directors from Curt Decker and Gary Gross dated March 30, 2000, and containing this

these deaths, 14 of the 16 suspicious deaths that came to the attention of the Advocacy Center involved the use of restraint and/or seclusion. The Advocacy Center learned of these deaths from a variety of sources, including the CMS, AHCA, APD, DCF, and newspaper articles, as well as from families and friends of the deceased. However, the unreliability and uncertainty of the reporting procedures in Florida make it difficult to know with complete certainty the extent of use of restraint and seclusion.

Both the agency and DCF have some statutory provisions in place regarding the use of restraint and seclusion. Section 393.13(4)(i), F.S., states, “Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.”

Similarly s. 394.459(4)(b), F.S., provides that “Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.”

Pursuant to federal law, CMS must report Florida restraint or seclusion related deaths to the Advocacy Center. Hospitals receiving federal funds must report to CMS any deaths that occur while an individual is restrained or in seclusion or where it is reasonable to assume that an individual’s death is a result of restraint and seclusion.¹⁹ However, according to the Advocacy Center, Florida hospitals are often late sending reports to CMS, which then often fails to notify the Advocacy Center in a timely manner or sends incomplete information.

Behavior Analysts

Under s. 402.731, F.S., DCF is authorized to establish certification programs by rule for employees and services providers. This statute authorizes DCF to create the certification program for behavior analysts and to adopt rules (chapter 65B-4, F.A.C.), relating to the certification of behavior analysts. In 2004, with the creation of APD, s. 393.17, F.S., was amended to authorize the agency to recognize the certification of behavior analysts awarded by a nonprofit corporation. The standards in the rule continue to be the standard for certification. However, the rule authority in the statute was subsequently deleted.

information is on file at the Advocacy Center. States are not required to report deaths in developmental disabilities facilities to CMS.”

¹⁹ 42 CFR Sec 482.13(7)

III. Effect of Proposed Changes:

Section by Section Analysis.

Section 1 amends s. 20.197, F.S., to require Senate confirmation of the director of APD and to authorize the agency director to create divisions of budget and planning and a division of operations.

Section 2 amends s. 39.001, F.S., adding APD to the agencies represented on an interprogram task force to create a comprehensive state plan for the prevention of abuse, abandonment, and neglect of children.

Section 3 amends s. 39.202, F.S., to add APD to the list of agencies that have access to DCF child abuse and neglect records for the purpose of licensing residential facilities and taking action against agency employees who are alleged to have perpetrated abuse or neglect. When the developmental services program was in DCF, access to reports records was available for these purposes.

Section 4 amends s. 39.407, F.S., relating to authority of a judge to order treatment for a child in out-of-home placement. This section deletes language that includes treatment for developmental disabilities as one of the services that the court can order be provided to a child. Although mental health services may be ordered by a court, eligibility for services for persons with disabilities, including children, are determined in accordance with ch. 393, F.S., which specifies the criteria for qualifying an individual for services for developmental disabilities.

Section 5 amends s. 287.155, F.S., to include APD among the agencies authorized to purchase vehicles for institutions. This is a technical change to extend to APD the same authority available to the program as part of DCF.

Section 6 amends s. 381.0072, F.S., relating to food service licenses, exempting APD facilities from being required to have a food service establishment licenses. This is a technical change to extend to APD the same exemption that was available to the program as part of DCF.

Section 7 amends s. 383.14, F.S., to substitute APD for the DD Program Office at DCF as a member of the Genetics and Newborn Screening Advisory Council.

Section 8 repeals s. 393.061, F.S., which refers to the Developmental Disabilities Prevention and Community Services Act, which is the short title of chapter 393, F.S.

Section 9 amends s. 393.062, F.S., relating to legislative findings removing obsolete provisions and updating language consistent with current terminology.

Section 10 amends s. 393.063, F.S., relating to definitions used in the chapter. This section:

- Moves the definition and licensing provisions relating to “comprehensive transitional education programs” from the definition section to a new section of statute (i.e., s. 393.18, F.S.).
- Deletes definitions for “day habilitation facility” and “day habilitation services.”

- Amends the definition of a “developmental disability” to include the requirement that the disability manifests before age 18.²⁰
- Amends the definition of “direct service provider.”
- Deletes the definition of “enclave” which is currently used only in s. 393.066(3) (k), F.S., and this reference is deleted in Section 14 of the bill.
- Deletes the definition of “epilepsy,” as the term no longer appears elsewhere in ch. 393, F.S., and updates the definition for “express and informed consent.”
- Deletes the definition of “follow along services” which is currently used only in s. 393.066(3)(k), F.S., and this reference is deleted in Section 14 of the bill.
- Clarifies the definition of “foster care facility” (to distinguish it from foster homes for dependent children).
- Clarifies and updates the definition of “group home facility” clarifying that these are not commercial enterprises.
- Updates the definition of “high-risk child” to conform to current practice.
- Deletes the definition of “job coach” which is currently used only in s. 393.066(3)(k), F.S., and this reference is deleted in Section 14 of the bill.
- Clarifies the definition of “medical/dental services” adding the term “medically necessary.”
- Deletes the definition of “mobile work crew” which is currently used only in s. 393.066(3)(k), F.S., and this reference is deleted in Section 14 of the bill.
- Deletes the definition of “normalization principle” as it is an obsolete term.
- Deletes the definition of “personal services” which is used only in s. 393.068(7), F.S.
- Deletes the definition of “reassessment” as the term is not used in ch. 393, F.S.
- Amends the definition of “residential habilitation” to clarify that it is supervision and training and occurs in a community setting; updates terminology.
- Adds a definition of “restraint” as a physical, mechanical, or chemical means of controlling dangerous behavior.
- Adds a definition of “seclusion.”
- Adds a definition of “self-determination” (to replace definition for “normalization.”)
- Transfers the definition for “self-injurious behavior” to s. 393.0641, F.S., which is the only section where it is used.
- Deletes the definition of “supported employee” as the term is not used in ch. 393, F.S.

Section 11 amends s. 393.064, F.S., relating to prevention services, updating and clarifying provisions consistent with the responsibilities of the Department of Health to provide preventive

²⁰ 45CFR1385 states “developmental disability” means a severe, chronic disability of an individual 5 years of age or older that (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (2) Is manifested before the individual attains age 22; (3) Is likely to continue indefinitely; (4) Results in substantial functional limitations in three or more of the following areas of major life activity--(i) Self-care; (ii) Receptive and expressive language; (iii) Learning; (iv) Mobility; (v) Self-direction; (vi) Capacity for independent living; and (vii) Economic self-sufficiency. (5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, except that such term, when applied to infants and young children means individual from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”

services to children up to age three. The agency is responsible for children from ages three to five. Includes evaluations or assessments as part of prevention services provided by the agency.

Section 12 amends s. 393.0641, F.S., to include the definition of “self-injurious behavior” which is deleted from definitions and added to this section that describes programs for prevention and treatment of self-injurious behavior.

Section 13 amends s. 393.065, F.S., deleting obsolete language and adding authority for the agency to establish rules for client application procedures and eligibility criteria. Requires that the agency place certain children in the DCF child welfare system at the top of the wait list for waiver services.

Section 14 amends s. 393.0651, F.S., relating to requirements for a family or individual support plan deleting a provision prohibiting the state from deducting residential costs for children from social security disability payments. The agency maintains that they will continue to abide by court rulings that prohibit such deductions but they propose taking this language out of the statute in the event that there are later modifications to the ruling on which this provision is based.

Section 15 creates s. 393.0654, F.S., permitting agency employees to have dual employment with a private employer without violating s. 112.313(7), F.S., which prohibits such arrangements with certain conditions. This narrow exception from s. 112.313, F.S., allows dual employment during the transition from institutional programs operated by the state to programs operated by private providers.

Section 16 amends s. 393.0655, F.S., updating, clarifying, and closing a loophole that allows persons whose employment screening has not been completed to be unsupervised while providing services to agency clients. Exempts employees awaiting screening results but requires direct and constant supervision of any employee until the screening is complete and the exemption expires after 90 days.

Section 17 amends s. 393.0657, F.S., updating provisions relating to re-screening requirements for persons who have already been screened.

Section 18 amends s. 393.066, F.S., updating references and terminology and authorizes the agency to develop rules for service definitions, eligibility criteria, and procedures for purchase of services.

Section 19 amends s. 393.067, F.S., relating to facility licensure, updating and clarifying, removing obsolete provisions, specifying rule authority, deleting provisions relating to zoning which are moved to s. 393.501, F.S., in Section 31 of the bill. This language will facilitate the agency’s ability to revoke licenses in situations where the health and safety of individuals with developmental disabilities may be in jeopardy due to unsafe environments. It adds language stating that a license does not create a property right and is a public trust and a privilege. It also states that this privilege must guide a finder of fact in any proceeding initiated by the agency. This language is comparable to that found in s. 409.175(2), F.S., relating to licensure of family foster homes by DCF.

Section 20 amends s. 393.0673, F.S., relating to license violations providing rule authority to establish uniform criteria for evaluating the severity of violations and determining the amount of fines.

Section 21 amends s. 393.0674, F.S., relating to criminal penalties, making technical updates.

Section 22 amends s. 393.0675, F.S., relating to injunctive proceedings, making an editorial change.

Section 23 amends s. 393.0678, F.S., relating to receivership proceedings, deleting obsolete provisions.

Section 24 amends s. 393.068, F.S., relating to the family care program, to conform with definition changes and make editorial changes relating to payment methods for in-home subsidies.

Section 25 amends s. 393.0695, F.S., relating to in-home subsidies, requiring reassessment on a quarterly basis rather than annually and adding rule-making authority to administer the program.

Section 26 amends s. 393.075, F.S., relating to risk management liability coverage, making technical updates to conform to creation of APD.

Section 27 amends s. 393.11, F.S., relating to involuntary admission, making technical updates and adding language requiring that a person must be determined eligible for services by the agency to be ordered into involuntary admission and specifying that involuntary admission is not to be used for persons who have been determined incompetent to proceed under chapter 916, F.S. This clarifies that involuntary commitment for persons who commit felony offenses is to be done in accordance with chapter 916, F.S., not chapter 393, F.S.

Section 28 amends s. 393.122, F.S., relating to eligibility for agency services, updating and making technical changes.

Section 29 amends s. 393.13, F.S., relating to the rights of persons with developmental disabilities:

- Stating legislative intent relating to inclusion, self-determination, reduction in the use of restraint and seclusion;
- Requiring that agency rules for monitoring behavioral programs address the use of restraints and seclusion and that the agency adopt rules on use of restraint and requiring documentation in client record of use of restraint or seclusion;
- Clarifying the distinction between clients' central records and a facility's client records; and;
- Removing provisions that require the local advocacy council to receive notification of violations of client rights relating to treatment programs for severe behavior disorders and deleting language that allows the local advocacy councils to review programs.

- Allowing residents to select representatives from community advocacy groups to serve as members of resident governments, deleting requirement for a representative of the local advocacy council.

Section 30 amends s. 393.135, F.S., relating to sexual misconduct, adding the term “covered person” and deleting “employee,” clarifying that volunteers, intern, contractors or any other person providing services are included, clarifying the covered person’s relationship to the client, expanding the offense to include persons eligible to receive services from the agency, and requiring direct reporting rather than through the agency’s inspector general. The agency proposes this language to make the offense of sexual misconduct apply to clients to whom the covered person is rendering services or lives in the same home as the client being served. This clarification also deletes the defense that the perpetrator had no reason to believe that the client was a member of the protected class. The agency reports that the current provision is unclear as it applies to all employees and all clients. This language also expands the protected class to all persons eligible for services under ch. 393, F.S. Currently, the protection extends only to persons receiving residential services.

Section 31 amends s. 393.15, F.S., relating to the Community Resources Development Loan program, updating language and eliminating language permitting loans to support developmental training (i.e., sheltered workshops).

Section 32 amends s. 393.17, F.S., relating to the certification of behavior analysts, providing authority for the agency to establish certification programs for behavioral analysts including rule authority for the current program certifying behavior analysts. This section adopts certification language from the DCF statute to authorize the agency to establish certification programs and restores rule authority that was inadvertently omitted. The agency states that it intends to maintain the current certification program conducted by the nonprofit organization, which is working satisfactorily.

Section 33 creates s. 393.18, F.S., transferring the licensure for comprehensive transitional education programs from the definition section to this new section.

Section 34 creates s. 393.23, F.S., relating to developmental disabilities institutions’ trust accounts, adapting provisions currently found in s. 402.18, F.S., which applied to APD when these institutions were under DCF. This section authorizes the agency to regulate the expenditure of funds generated from the operations of canteens, vending machines, hobby shops, and other client enterprises, and donations. Provides that the moneys in trust accounts are solely for the welfare of clients; requires accounting system, payment of sales tax to the Department of Revenue, compliance with requirements and guidelines of Chief Financial Officer.

Section 35 amends s. 393.501, F.S., relating to general rule authority, updating and making technical changes and transferring provisions relating to zoning from s. 393.067, F.S.

Section 36 amends s. 394.453, F.S., relating to legislative intent, adding a policy statement regarding the use of restraint and seclusion in programs and services for persons with mental illnesses.

Section 37 amends s. 394.455, F.S., adding definitions of “restraint” and “seclusion” as they relate to treatment services for persons with mental illness.

Section 38 amends s. 394.457, F.S., authorizing the department to adopt rules governing the use of restraint and seclusion and requiring that the rule address best practices and professional judgment in the use of restraint and seclusion, limitations on the use and duration, measures to ensure safety of clients and staff, prohibiting certain dangerous procedures, establishing reporting, data collection, and data dissemination. Requiring that rules specify that each instance of restraint and seclusion be documented in the client’s record.

Section 39 amends s. 394.879, F.S., relating to licensure of crisis stabilization units, requiring that rules adopted by AHCA and DCF regarding these programs address best practices and professional judgment in the use of restraint and seclusion, limitations on the use and duration, measures to ensure safety of clients and staff, prohibiting certain dangerous procedures, establishing reporting, data collection, and data dissemination. Requiring that rules specify that each instance of restraint and seclusion be documented in the client’s record

Section 40 amends s. 397.405, F.S., relating to exemptions from licensure for substance abuse services, conforming to the creation of APD.

Section 41 amends s. 400.419, F.S., relating to assisted living facilities, conforming to the creation of APD.

Section 42 amends s. 400.960, F.S., relating to definitions for licensure of ICF/DDs, updating and deleting unused definitions, cross referencing definitions to ch. 393, F.S., adding definitions of “restraint” and “seclusion” as they relate to licensure of ICF/DDs.

Section 43 amends s. 400.967, F.S., relating to rules for the licensure of ICF/DDs and licensure deficiencies, conforming to the creation of APD; requiring that rules adopted by AHCA and APD regarding these programs address best practices and professional judgment in the use of restraint and seclusion, limitations on the use and duration, measures to ensure safety of clients and staff, prohibiting certain dangerous procedures, establishing reporting, data collection, and data dissemination. Requiring that rules specify that each instance of restraint and seclusion be documented in the client’s record

Section 44 amends s. 402.115, F.S., relating to sharing confidential information, including APD as an agency that can share confidential information regarding clients with DOH and DCF.

Section 45 amends s. 402.17, F.S., relating to claims for care and maintenance and holding client property in trust, adding the agency as responsible for protecting financial interests of the state.

Section 46 amends s. 402.181, F.S., relating to claims for restitution, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 47 amends s. 402.20, F.S., relating to county contracts for services and facilities, conforming to the creation of APD and the transfer of the developmental disability program from DCF to the agency.

Section 48 amends s. 402.22, F.S., relating to education programs for students residing in residential care facilities, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 49 amends s. 402.33, F.S., relating to authority to charge fees, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 50 amends s. 408.036, F.S., relating to certificate of need, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 51 amends s. 409.221, F.S., relating to consumer-directed care programs in Medicaid, adding APD as an agency that can manage this program. Currently the Department of Elder Affairs is responsible for the administration of the consumer-directed care program, which permits agency clients to select and manage their Medicaid waiver services. While some of the persons served in the program are elderly, over 85 percent are clients of APD. For this reason there is discussion about having the agency manage that portion of the program, and this amendment would authorize this transition.²¹

Section 52 amends s. 409.908, F.S., relating to Medicaid reimbursement, updating and conforming.

Section 53 amends s. 409.9127, F.S., relating to utilization review, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 54 amends s. 411.224, F.S., relating to family support planning, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 55 amends s. 411.232, F.S., relating to the children's investment program, conforming.

Section 56 amends s. 415.102, F.S., relating to vulnerable adults, updating definitions.

Section 57 amends s. 415.1035, F.S., relating to abuse reporting responsibilities, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 58 amends s. 415.1055, F.S., relating to notification of adult abuse by employees, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 59 amends s. 415.107, F.S., relating to sharing of confidential information, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 60 amends s. 419.001, F.S., relating to siting of residential facilities, conforming to the transfer of the developmental disability program from DCF and the creation of APD and AHCA, and updating terminology.

²¹ Agency for Persons with Disabilities, Amendment to Senate Bill 2012 Analysis, March 13, 2006.

Section 61 amends s. 435.03, F.S., relating to background screening, updating and correcting a cross reference.

Section 62 amends s. 490.014, F.S., relating to exemptions from licensure as a clinical psychologist, updating references to developmental disability facilities.

Section 63 amends s. 491.014, F.S., relating to exemptions from licensure as a clinical social worker, mental health counselor, or marriage and family therapist, updating references to developmental disability facilities.

Section 64 amends s. 944.602, F.S., relating to the release of mentally retarded inmates, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 65 amends s. 945.025, F.S., relating to the Department of Corrections, conforming to the transfer of the developmental disability program from DCF and the creation of APD and deleting obsolete language.

Section 66 amends s. 947.185, F.S., relating to parole, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 67 amends s. 984.19, F.S., relating to medical screening of children in need of services, deleting language that includes treatment for developmental disabilities as one of the services that the court can order be provided to a child in need of services. Although mental health services may be ordered by a court, eligibility for services for persons with disabilities, including children, are determined in accordance with ch. 393, F.S., which specifies the criteria for qualifying an individual for services for developmental disabilities, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 68 amends s. 984.225, F.S., relating to children in need of services, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 69 amends s. 984.226, F.S., relating to children in need of services, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 70 amends s. 985.224, F.S., relating to delinquency, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 71 amends s. 1003.58, F.S., relating to students in residential facilities, conforming to the transfer of the developmental disability program from DCF and the creation of APD.

Section 72 amends s. 17.61, F.S., relating to the Chief Financial Officer, specifying that the Community Resource Loan Trust Fund is in APD.

Section 73 amends s. 400.464, F.S., correcting a cross reference.

Section 74 amends s. 984.22, F.S., relating to powers of disposition for children in need of services, deleting language that directs that child support payments for children in foster care be deposited in the Community Resources Development Trust Fund. This trust fund no longer exists. This reference to children in foster care is obsolete as the children in need of services programs are now in the Department of Juvenile Justice, not DCF.

Section 75 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is unclear how some of the provisions in this bill may affect individuals who are currently receiving services from the agency. If changes in definitions result in loss of eligibility for services for some clients, these individuals will have to seek services elsewhere.

C. Government Sector Impact:

The agency reports that this legislation will have no fiscal impact on APD. The agency did not indicate whether some of the provisions of this bill that may have the effect of limiting access to some services would result in savings to APD or AHCA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A number of advocacy groups have expressed concern about some of the provisions in this bill. Most of these concerns have focused on several sections that these groups believe will negatively affect the ability of persons with developmental disabilities to access needed services. The most frequently mentioned concerns relate to the following proposed changes:

- Section 4 amending s. 39.407(5), F.S., removing the authority of family court judges to order that services be provided to dependent children with developmental disabilities. The Association for Retarded Citizens (ARC) of Florida and the Florida Developmental Disabilities Council (FDDC) have indicated that they believe that this provision will result in a loss of accountability for providing appropriate services for these vulnerable children. The Advocacy Center for Persons with Disabilities, the federally mandated protection and advocacy agency in Florida, has also noted that this change is “out of step with the direction that DD and children’s advocates feel APD should be moving to solve the problem of the unmet needs of people with DD in the foster care system.”²² Florida’s Children First, Inc. has serious concerns about the elimination of this language, as they believe that children in foster care may be denied needed services. Further, they believe that eliminating this language will result in services provided by APD to children in the child welfare system will occur without judicial review.²³ Section 13 of this committee substitute requires that the agency place children in the child welfare system who have an open case in the statewide automated child welfare information system at the top of the waiting list for waiver services.
- Section 10 amending definitions, particularly the deletion of certain services from the statute and the deletion of “epilepsy.” The ARC, FDDC, and Advocacy Center have expressed concerns that these changes will exclude some individuals who are currently receiving services and are severely disabled and will result in the elimination of services.
- Section 29 amending s. 393.13(2)(b)6, F.S., strikes language relating to intent regarding clients unable to pay for services. Advocates believe this deletion could lead to requiring clients to make co-payments for services. The agency proposes the elimination of this language because it is their opinion that this provision could be interpreted to create an entitlement. According to advocates, this concern is unwarranted because this language has been in statute for decades and has never been construed as a basis for an entitlement.

This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²² Advocacy Center for Persons with Disabilities, written communication, February 1, 2006.

²³ Florida’s Children First, Inc., email correspondence Andrea Moore to Tara Hopper, March 20, 2006.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
