

# 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: Judiciary Committee

---

BILL: CS/CS/SB 2012

INTRODUCER: Judiciary Committee, Children and Families Committee, and Senator Baker

SUBJECT: Persons with Disabilities

DATE: April 27, 2006

REVISED: \_\_\_\_\_

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

---

## I. Summary:

The bill 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 agency). These changes:

- Require confirmation by the Senate of the APD director and authorize a budget division and an operations division within the agency;
- Provide APD with access to the child abuse and vulnerable adult abuse records of the Department of Children and Family Services (DCF) for the purpose of facility licensure and employment screening;
- Delete language that authorizes court-ordered developmental disability services for children in dependency proceedings;
- Includes adult day training services and personal care services within the community-based services that are medically necessary to prevent institutionalization.
- 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 that 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;
- Reinstate a 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 a 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; and
- Creates part III of ch. 282, F.S., relating to accessibility of electronic information and information technology for state employees and certain members of the public with disabilities.

This bill substantially amends the following sections of the Florida Statutes: 17.61, 20.197, 39.001, 39.202, 39.407, 287.155, 381.0072, 383.14, 393.062, 393.063, 393.064, 393.0641, 393.065, 393.0651, 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, 393.501, 394.453, 394.455, 394.457, 394.879, 397.405, 400.419, 400.464, 400.960, 400.962, 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, 435.03, 490.014, 491.014, 744.704, 944.602, 945.025, 947.185, 985.224, and 1003.58.

The bill repeals section 393.061, Florida Statutes, and creates sections 393.0654, 393.18, and 393.23, Florida Statutes.

Lastly, this bill creates part III of chapter 282 to include the following new sections of the Florida Statutes: 282.601, 282.602, 282.603, 282.604, 282.605, and 282.606.

## II. Present Situation:

### Developmental Disabilities

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).<sup>1</sup> The agency is 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 disabilities in living, learning, and working in all aspects of community life.<sup>2</sup> 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.<sup>3</sup>

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.”<sup>4</sup> An individual is eligible for services if his or her domicile is in Florida, he or she has a developmental disability, and he or she is three years of age or older.<sup>5</sup> 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.<sup>6</sup>

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.

---

<sup>1</sup> Chapter 2004-267, L.O.F.

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

<sup>3</sup> *Id.*

<sup>4</sup> Section 393.063(10), F.S.

<sup>5</sup> Children from birth to three years of age with developmental disabilities are served by the Division of Children’s Medical Services Prevention and Intervention in the Department of Health, s. 393.064(2), F.S.

<sup>6</sup> “High-risk child” is defined in s. 393.063(23), F.S.

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 developmental disabilities 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 2005-06 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.<sup>7</sup>

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 1,100 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**

Under 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.<sup>8</sup>

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.<sup>9</sup> However, the director of the Agency

---

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

<sup>8</sup> Section 20.197(1), F.S.

<sup>9</sup> Section 120.65(1), F.S.

for Workforce Innovation, created as an agency within DMS, does not require Senate confirmation.<sup>10</sup>

### **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 developmental disability 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.,<sup>11</sup> 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 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**

A court, under s. 39.407, F.S., may order a dependent child to be examined by a health care professional, psychiatrist, psychologist, or developmental disability evaluation team.<sup>12</sup> The judge may also order the child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service provider.<sup>13</sup> 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, is determined in

---

<sup>10</sup> Section 20.50, F.S.

<sup>11</sup> Section 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. (Emphasis added.)

Section 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*. (Emphasis added.)

<sup>12</sup> Section 39.407(4), F.S.

<sup>13</sup> Section 39.407(5), F.S.

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 U.S.C. s. 1396a, 42 C.F.R. s. 431.200 et seq., and rule 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 Appeal. 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.<sup>14</sup>

## 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 certain 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.<sup>15</sup>

## Dual Employment

Current statute<sup>16</sup> 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 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.

---

<sup>14</sup> Agency for Persons with Disabilities, Senate Bill 2012 Analysis, March 7, 2006.

<sup>15</sup> See s. 393.063, F.S., for definitions applicable to the developmental disabilities chapter.

<sup>16</sup> Section 112.313, F.S.

## 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 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.”<sup>17</sup> 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 “[e]very 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.”<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

## 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

---

<sup>17</sup> Section 435.04(1), F.S.

<sup>18</sup> Section 435.05(1)(a), F.S.

<sup>19</sup> Section 393.067, F.S.

<sup>20</sup> For example, s. 409.175(2)(f), F.S, relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies, specifies that receipt of a license “shall not create a property right in the recipient” and “is not an entitlement.”

the circuit court of the county in which the person resides. 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 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, the person is notified of his or her 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 Third District Court of Appeal has consistently precluded intervention by APD based upon a lack of standing; therefore, the issue of whether these individuals actually meet 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.”<sup>21</sup> 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(1)(c), 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 “[h]as no reason to believe that the person with whom the employee engaged in sexual misconduct is a client receiving services.”<sup>22</sup> The agency reports that this disclaimer is problematic in pursuing prosecution because 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 administrative 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.”<sup>23</sup>

---

<sup>21</sup> Section 393.13(2)(d)6., F.S.

<sup>22</sup> Section 393.135(4), F.S.

<sup>23</sup> Section 393.135(5), F.S.



## 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 had the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005.<sup>24</sup> Of 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 facilities serving mental health patients shall develop: 1) criteria for use of restraint, seclusion, or isolation; 2) procedures for documenting use of restraint, seclusion, or isolation; and 3) a system for investigating complaints by persons receiving services. The statute further specifies that a facility may not use seclusion or restraint for punishment, to compensate for inadequate staffing, or for staff convenience.<sup>25</sup>

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.<sup>26</sup> 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.

---

<sup>24</sup> 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 information is on file at the Advocacy Center. States are not required to report deaths in developmental disabilities facilities to CMS."

<sup>25</sup> Section 394.459(4)(c), F.S.

<sup>26</sup> 42 CFR Sec 482.13(7)

## **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 deleted.<sup>27</sup>

## **Access to Information Technology/Data**

Section 508 of the Rehabilitation Act of 1973<sup>28</sup> is part of the larger Americans with Disabilities Act. Section 508 requires federal agencies to ensure that their procurement of information technology takes into account the needs of all end users, including disabled persons, by providing detailed requirements for websites and computer programs.<sup>29</sup> Providing such requirements enhances the ability of federal employees with disabilities to have access to and use of information and data that is comparable to that provided to others. Under Section 508, “comparable access” is not required if it would impose an “undue burden” on the agency.<sup>30</sup>

On its MyFlorida.com portal, the State of Florida has adopted a formal statement on website accessibility for persons with disabilities (the “Accessibility Statement”). The statement reads in part:

Section 504 states that “no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under” any program or activity that either receives Federal financial assistance or is conducted by any Executive agency.

Section 508 now establishes requirements for electronic and information technology developed, maintained, procured, or used by the Federal government. Section 508 requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.[...]

While these standards currently apply to federal government, it is the direct responsibility of Florida state government agencies and their web designers and developers to become familiar with these accessibility guidelines and to

---

<sup>27</sup> See s. 80, ch. 2004-267, L.O.F.

<sup>28</sup> Section 508 is codified at 29 U.S.C. s. 794d. See generally <http://www.section508.gov>.

<sup>29</sup> The technical standards are contained in Subpart B of Section 508, available online, <http://www.section508.gov/index.cfm?FuseAction=Content&ID=12>.

<sup>30</sup> 29 U.S.C. s. 794d(a)(1)(A).

apply these principles in designing and creating any official State of Florida web site.<sup>31</sup>

### III. Effect of Proposed Changes:

The bill makes substantive, conforming, and technical changes to sections of the Florida Statutes, which relate to persons with developmental disabilities and the Agency for Persons with Disabilities (APD or agency). Some of the changes are designed to conform statutory provisions to the transfer in 2004 of the developmental disability program in the Department of Children and Family Services (DCF or department) to the newly created agency. Other changes are based on recommendations from the agency based on its delivery of developmental disability services. Following is a section-by-section analysis of the bill.

**Section 1.** Amends s. 20.197, F.S., requiring Senate confirmation of the director of APD; establishing a Division of Budget and Planning and a Division of Operations within the agency; and authorizing the agency director to recommend establishment of additional divisions, bureaus, sections, and subsections of the agency.

**Section 2.** Amends s. 39.001, F.S., adding APD to the agencies represented on an inter-program 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., adding 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 disability program was in DCF, access to report 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. The statute currently states that the judge may order the child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate provider. The bill adds a statement specifying that this section, however, does not confer jurisdiction on the court to determine eligibility or order services under ch. 393, governing developmental disabilities services administered by APD.

**Section 5.** Amends s. 287.155, F.S., including APD among the agencies authorized to purchase vehicles for institutions. This is a conforming change to extend to APD the same authority available to the program when it was part of DCF.

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

---

<sup>31</sup> Available online at <http://www.myflorida.com/myflorida/accessibility.html>. Although it does not carry the force of law, the accessibility statement appears to indicate that state agencies aspire to comply with the technical requirements of Section 508.

**Section 7.** Amends s. 383.14, F.S., substituting APD for the Developmental Disabilities Program Office at DCF as a member of the Genetics and Newborn Screening Advisory Council.

**Section 8.** Repeals s. 393.061, F.S., which provides that the short title of ch. 393, F.S., is the “Developmental Disabilities Prevention and Community Services Act.”

**Section 9.** Amends s. 393.062, F.S., removing obsolete provisions from and updating language consistent with current terminology in the legislative findings.

**Section 10.** Amends s. 393.063, F.S., revising and transferring definitions used in ch. 393, F.S., including:

- Defining the term “adult day training.”
- Moving the definition and licensing provisions relating to “comprehensive transitional education program” from the definition section to a new section of statute (proposed s. 393.18, F.S.). (See section 33 of the bill.)
- Deleting definitions for “day habilitation facility” and “day habilitation service.”
- Amending the definition of a “developmental disability” to include the requirement that the disability manifests before age 18.<sup>32</sup>
- Amending the definition of “direct service provider” to provide that such a person has face-to-face contact with a client while providing services to the client.
- Deleting the definition of “enclave,” which is currently used only in s. 393.066(3)(k), F.S., and this reference is deleted in a later section of the bill.
- Deleting the definition of “epilepsy,” as the term no longer appears elsewhere in ch. 393, F.S.
- Updating the definition for “express and informed consent.”
- Deleting 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 a later section of the bill.
- Clarifying the definition of “foster care facility” to distinguish it from foster homes for dependent children.
- Clarifying and updating the definition of “group home facility,” deleting a statement that they are not considered commercial enterprises.
- Updating the definition of “high-risk child” to conform to current practice and to provide that this is a child from 3 to 5 years of age, rather than a child from birth to 5 years of age.

---

<sup>32</sup> 45 C.F.R. s. 1385 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 individuals 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.”

- Deleting the definition of “job coach,” which is currently used only in s. 393.066(3)(k), F.S., and this reference is deleted in a later section of the bill.
- Clarifying the definition of “medical/dental services” to specify that the term refers to “medically necessary” services.
- Deleting 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 a later section of the bill.
- Deleting the definition of “normalization principle” as it is an obsolete term.
- Deleting the definition of “personal services,” which is used only in s. 393.068(7), F.S.
- Deleting the definition of “reassessment,” as the term is not used in ch. 393, F.S.
- Amending the definition of “residential habilitation” to clarify that it is supervision and training and occurs in a community setting, and updating terminology.
- Adding a definition of “restraint” as a physical, mechanical, or chemical means of controlling dangerous behavior.
- Adding a definition of “seclusion,” which is “the involuntary isolation of a person in a room or area from which the person is prevented from leaving.”
- Adding a definition of “self-determination” (to replace the definition for “normalization”).
- Transferring the definition for “severe self-injurious behavior” to s. 393.0641, F.S., which is the only section where it is used.
- Deleting the definition of “supported employee,” as the term is not used in ch. 393, F.S.

**Section 11.** Amends s. 393.064, F.S., updating and clarifying provisions consistent with the responsibilities of the DOH to provide preventive services to children up to age 3. The agency is responsible for children from age 3 to 5. Including evaluations or assessments as part of prevention services provided by the agency.

**Section 12.** Amends s. 393.0641, F.S., including the definition of “self-injurious behavior,” which is deleted from the definitions section, s. 393.063, F.S.; and amending rule-making authority to be permissive.

**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. Requiring 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., deleting a provision prohibiting the state from deducting residential costs for children from social security disability payments. The agency maintains that it will continue to abide by court rulings that prohibit such deductions, but it proposes 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. The new section establishes conditions under which an agency employee may own, operate, or work in a private facility that is a service provider under contract with the agency.

**Section 16.** Amends s. 393.0655, F.S., closing a loophole that allows persons whose employment screening has not been completed to be unsupervised while providing services to agency clients. The bill exempts employees awaiting screening results but requires direct and constant visual supervision of any employee until the screening is complete. 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 authorizing the agency to develop rules for service definitions, eligibility criteria, and procedures for purchase of services. Specifies that community-based services that are medically necessary to prevent institutionalization shall include adult day training services and personal care services.

**Section 19.** Amends s. 393.067, F.S., updating and clarifying terminology, removing obsolete provisions, specifying rule authority, and deleting provisions relating to zoning which are moved to s. 393.501, F.S., in section 35 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.

**Section 20.** Amends s. 393.0673, F.S., relating to denial, suspension, and revocation of licenses and the imposition of fines for violations. Providing rule authority to establish uniform criteria for evaluating the severity of violations and determining the amount of fines. The bill delineates grounds for denial, revocation, or suspension of a license, including making a false representation on a license application; prior actions taken against the entity under the Medicare or Medicaid programs; and failure to comply with ch. 393, F.S., and its related rules.

**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, specifying that the agency may institute proceedings to terminate the operation of a provider of supports or services if the provider has refused to terminate a direct service provider not in compliance with screening requirements.

**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, conforming the language with definition changes and making 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 the creation of APD.

**Section 27.** Amends s. 393.11, F.S., relating to involuntary admission of a mentally retarded person, making technical updates. The bill specifies that APA may appeal decisions relating to the involuntary admission of a mentally retarded person under this statute.

**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:

- Providing legislative intent relating to inclusion, self-determination, and 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 the use of restraints and requiring documentation in client records of the use of restraint or seclusion;
- Clarifying the distinction between clients' central records and a facility's client records;
- 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; and
- Allowing residents to select representatives from community advocacy groups to serve as members of resident governments, and deleting requirements for a representative of the local advocacy council.

**Section 30.** Amends s. 393.135, F.S., relating to sexual misconduct, replacing the term "employee" with the term "covered person," to clarify that volunteers, interns, contractors or any other person providing services are included, in addition to employees and paid staff members; 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 who live 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 that permit 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 a nonprofit organization, which it reports is working satisfactorily. The bill requires, rather than authorizes, the agency to recognize the certification of behavior analysts awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials.

**Section 33.** Creates s. 393.18, F.S., transferring the licensure for comprehensive transitional education programs from the definition section (s. 393.063(7), F.S.) 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; and requires an accounting system, payment of sales tax to the Department of Revenue, and compliance with requirements and guidelines of the 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 into this section from s. 393.067, F.S.

**Section 36.** Amends s. 394.453, F.S., relating to legislative intent for the Baker Act, 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 of Children and Family Services to adopt rules governing the use of restraint and seclusion and requiring that the rules 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, and establishing reporting, data collection, and data dissemination procedures and requirements. 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, and establishing reporting, data collection, and data dissemination procedures and requirements. 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 intermediate care facilities for the developmentally disabled (ICF/DDs), updating and deleting unused definitions, cross-referencing definitions to ch. 393, F.S., and adding definitions of “restraint” and “seclusion” as they relate to licensure of ICF/DDs.

**Section 43.** Amends s. 400.962, F.S., relating to licensure requirements for intermediate care facilities for the developmentally disabled (ICF/DDs). The bill requires applicants to agree to provide or arrange for active treatment services by an interdisciplinary team to maximize individual independence or prevent regression.

**Section 44.** 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, and establishing reporting, data collection, and data dissemination procedures and requirements. Requiring that rules specify that each instance of restraint and seclusion be documented in the client’s record.

**Section 45.** 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 46.** 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 47.** 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 48.** 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 49.** 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 50.** 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 51.** 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 52.** 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 Elderly Affairs (DOEA) 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.<sup>33</sup>

**Section 53.** Amends s. 409.908, F.S., relating to Medicaid reimbursement, updating and making conforming technical changes.

**Section 54.** 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 55.** 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 56.** Amends s. 411.232, F.S., relating to the children's investment program, correcting an obsolete reference to the Department of Health and Rehabilitative Services.

**Section 57.** Amends s. 415.102, F.S., relating to vulnerable adults, updating a definition.

**Section 58.** 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 59.** 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 60.** 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 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.

---

<sup>33</sup> Agency for Persons with Disabilities, Amendment to Senate Bill 2012 Analysis, March 13, 2006.

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

**Section 68.** 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 69.** Amends s. 17.61, F.S., relating to the Chief Financial Officer, specifying that the Community Resource Loan Trust Fund is in APD.

**Section 70.** Amends s. 400.464, F.S., correcting a cross reference.

**Section 71.** Amends s. 744.704, F.S., correcting a cross reference.

**Section 72.** 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 73.** Creates part III of ch. 282, F.S., relating to accessibility of electronic information and information technology for persons with disabilities. Specifically, the bill:

- Requires the executive, legislative, and judicial branches of state government to, when developing or procuring electronic information or information technology, ensure that state employees with disabilities have access to data and information comparable to what non-disabled state employees have – unless doing so would create an undue burden on the agency.
- Provides the disabled members of the public seeking information or services from the state shall be provided with access to and use of information and data comparable to members of the public who are not disabled.
- Provides definitions.
- Directs each state agency to develop and procure accessible electronic information and information technology acquired on or after July 1, 2006, that conforms to the federal

- Rehabilitation Act of 1973.<sup>34</sup> If this requirement imposes an undue burden, the agency must nonetheless provide disabled individuals with an alternative method of access to such data and information.
- Directs the Department of Management Services to adopt rules for the development, procurement, maintenance, and use of accessible electronic information technology by governmental units.
  - Provides exceptions to the requirements of the new law, including for electronic information and information technology of the Department of Military Affairs and the Florida National Guard when intelligence activities are implicated.

**Section 74.** The bill provides an effective of July 1, 2006.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **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.

---

<sup>34</sup> Section 508 of the Rehabilitation Act of 1973, which is part of the larger Americans with Disabilities Act, requires federal agencies to ensure that their procurement of information technology takes into account the needs of all end users, including disabled persons, by providing detailed requirements for websites and computer programs.

**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.

The bill creates part III of ch. 282, F.S., relating to accessibility of electronic information and information technology for state employees and certain members of the public with disabilities. Among other requirements, this new part requires the executive, legislative, and judicial branches of state government, when developing or procuring electronic information or information technology, to ensure that state employees with disabilities have access to data and information comparable to what non-disabled state employees have – unless doing so would create an undue burden on the agency. It is not known, as of the writing of this analysis, what fiscal impact these provisions may have on state agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

A number of advocacy groups have expressed concerns 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.”<sup>35</sup> Florida’s Children First, Inc., has serious concerns about the elimination of this language, as it believes that children in foster care may be denied needed services. Further, it believes that eliminating this language will result in services provided by APD to children in the child welfare system occurring without judicial review.<sup>36</sup> Section 13 of this bill, amending s. 93.065, F.S., require the agency to place children in the child welfare system who has 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 in s. 393.063, F.S., particularly the deletion of certain services from the statute and the deletion of “epilepsy.” The ARC, FDDC, and Advocacy

---

<sup>35</sup> Advocacy Center for Persons with Disabilities, written communication, February 1, 2006.

<sup>36</sup> Florida’s Children First, Inc., email correspondence from Andrea Moore to Tara Hopper, March 20, 2006.

---

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.

---

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

---

## **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.

---