

By the Committees on Judiciary; Children and Families; and  
Senator Baker

590-2486-06

1 A bill to be entitled  
2 An act relating to persons with disabilities;  
3 amending s. 20.197, F.S.; requiring the  
4 director of the Agency for Persons with  
5 Disabilities to be subject to confirmation by  
6 the Senate; requiring the agency to create a  
7 Division of Budget and Planning and a Division  
8 of Operations; authorizing the director to  
9 recommend creating additional subdivisions of  
10 the agency in order to promote efficient and  
11 effective operation of the agency; amending s.  
12 39.001, F.S., relating to the development of a  
13 comprehensive state plan for children;  
14 conforming provisions to the transfer of duties  
15 from the Developmental Disabilities Program  
16 Office within the Department of Children and  
17 Family Services to the Agency for Persons with  
18 Disabilities; amending s. 39.202, F.S.;  
19 providing for certain employees, agents, and  
20 contract providers of the agency to have access  
21 to records concerning cases of child abuse or  
22 neglect for specified purposes; amending s.  
23 39.407, F.S.; deleting provisions authorizing  
24 the treatment of a child under ch. 393, F.S.,  
25 if the child is alleged to be dependent;  
26 amending s. 287.155, F.S.; authorizing the  
27 agency to purchase vehicles under certain  
28 circumstances; amending ss. 381.0072 and  
29 383.14, F.S., relating to food service licenses  
30 and the Genetics and Newborn Screening Advisory  
31 Council, respectively; conforming provisions to

1 the transfer of duties from the Developmental  
2 Disabilities Program Office within the  
3 Department of Children and Family Services to  
4 the Agency for Persons with Disabilities;  
5 repealing s. 393.061, F.S., relating to a short  
6 title; amending s. 393.062, F.S.; revising  
7 legislative findings and intent to conform to  
8 changes in terminology; amending s. 393.063,  
9 F.S.; revising the definitions applicable to  
10 ch. 393, F.S., relating to developmental  
11 disabilities; amending s. 393.064, F.S.;  
12 revising the duties of the Agency for Persons  
13 with Disabilities with respect to prevention  
14 services, evaluations and assessments,  
15 intervention services, and support services;  
16 amending s. 393.0641, F.S.; defining the term  
17 "severe self-injurious behavior" for purposes  
18 of a program of prevention and treatment for  
19 individuals exhibiting such behavior; amending  
20 s. 393.065, F.S., relating to application for  
21 services and the determination of eligibility  
22 for services; providing for children in the  
23 child welfare system to be placed at the top of  
24 the agency's wait list for waiver services;  
25 authorizing the agency to adopt rules; amending  
26 s. 393.0651, F.S., relating to support plans  
27 for families and individuals; revising the age  
28 at which support plans are developed for  
29 children; deleting a prohibition against  
30 assessing certain fees; creating s. 393.0654,  
31 F.S.; specifying circumstances under which an

1 employee of the agency may own, operate, or  
2 work in a private facility under contract with  
3 the agency; amending s. 393.0655, F.S.;  
4 revising the screening requirements for direct  
5 service providers; providing a temporary  
6 exemption from screening requirements for  
7 certain providers; amending s. 393.0657, F.S.;  
8 revising an exemption from certain requirements  
9 for refingerprinting and rescreening; amending  
10 s. 393.066, F.S.; revising certain requirements  
11 for the services provided by the agency;  
12 requiring agency approval for purchased  
13 services; revising the agency's rulemaking  
14 authority; amending s. 393.067, F.S.; revising  
15 requirements governing the agency's licensure  
16 procedures; revising the requirements for  
17 background screening of applicants for  
18 licensure and managers, supervisors, and staff  
19 members of service providers; requiring that  
20 the agency adopt rules governing the reporting  
21 of incidents; deleting certain responsibilities  
22 of the Agency for Health Care Administration  
23 with respect to the development and review of  
24 emergency management plans; amending s.  
25 393.0673, F.S.; providing circumstances under  
26 which the agency may deny, revoke, or suspend a  
27 license or impose a fine; requiring the Agency  
28 for Persons with Disabilities to adopt rules  
29 for evaluating violations and determining the  
30 amount of fines; amending s. 393.0674, F.S.;  
31 providing a penalty for failure by a provider

1 to comply with background screening  
2 requirements; amending s. 393.0675, F.S.;  
3 deleting certain obsolete provisions requiring  
4 that a provider be of good moral character;  
5 amending s. 393.0678, F.S.; deleting provisions  
6 governing receivership proceedings for an  
7 intermediate care facility for the  
8 developmentally disabled; amending s. 393.068,  
9 F.S.; requiring that the family care program  
10 emphasize self-determination; removing  
11 supported employment from the list of services  
12 available under the family care program;  
13 revising certain requirements for reimbursing a  
14 family care program provider; amending s.  
15 393.0695, F.S., relating to in-home subsidies;  
16 requiring that the Agency for Persons with  
17 Disabilities adopt rules for such subsidies;  
18 amending s. 393.075, F.S., relating to  
19 liability coverage for facilities licensed by  
20 the agency; conforming terminology; amending s.  
21 393.11, F.S.; revising provisions governing the  
22 involuntary admission of a person to  
23 residential services; clarifying provisions  
24 governing involuntary commitment; requiring  
25 that a person who is charged with a felony will  
26 have his or her competency determined under ch.  
27 916, F.S.; conforming terminology; amending s.  
28 393.122, F.S.; clarifying requirements  
29 governing applications for continued  
30 residential services; amending s. 393.13, F.S.,  
31 relating to the Bill of Rights of Persons Who

1 are Developmentally Disabled; deleting a  
2 provision protecting minimum wage compensation  
3 for certain programs; limiting the use of  
4 restraint and seclusion; requiring the agency  
5 to adopt rules governing the use of restraint  
6 or seclusion; revising requirements for client  
7 records; deleting certain requirements  
8 governing local advocacy councils; allowing the  
9 resident government to include disability  
10 advocates from the community; amending s.  
11 393.135, F.S.; revising definitions; clarifying  
12 provisions making such misconduct a  
13 second-degree felony; amending s. 393.15, F.S.;  
14 establishing the Community Resources  
15 Development Loan Program to provide loans to  
16 foster homes, group homes, and supported  
17 employment programs; providing legislative  
18 intent; providing eligibility requirements;  
19 providing authorized uses of loan funds;  
20 requiring that the agency adopt rules governing  
21 the loan program; providing requirements for  
22 repaying loans; amending s. 393.17, F.S.;  
23 authorizing the agency to establish  
24 certification programs for persons providing  
25 services to clients; requiring that the agency  
26 establish a certification program for behavior  
27 analysts; requiring that the program be  
28 reviewed and validated; creating s. 393.18,  
29 F.S.; providing for a comprehensive transition  
30 education program for persons who have severe  
31 or moderate maladaptive behaviors; specifying

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

1 Baker Act; amending s. 394.457, F.S.; requiring  
2 the Department of Children and Family Services  
3 to adopt rules for the use of restraint and  
4 seclusion for cases handled under the Baker  
5 Act; amending s. 394.879, F.S.; requiring that  
6 rules be adopted for the use of restraint and  
7 seclusion; amending s. 397.405, F.S.;  
8 clarifying an exemption from licensure provided  
9 to certain facilities licensed under ch. 393,  
10 F.S.; amending s. 400.419, F.S.; requiring that  
11 a list of facilities subject to sanctions or  
12 fines be disseminated to the Agency for Persons  
13 with Disabilities; amending s. 400.960, F.S.;  
14 revising definitions for purposes of part XI of  
15 ch. 400, F.S., relating to nursing homes and  
16 related facilities; amending 400.962, F.S.;  
17 requiring an applicant for a license to operate  
18 an intermediate care facility to agree to  
19 provide or arrange for active treatment  
20 services; providing rulemaking authority;  
21 amending s. 400.967, F.S., relating to rules  
22 and classification of deficiencies; conforming  
23 provisions to the transfer of duties from the  
24 Department of Children and Family Services to  
25 the Agency for Persons with Disabilities;  
26 requiring that rules be adopted for the use of  
27 restraint and seclusion; amending ss. 402.115,  
28 402.17, 402.181, 402.20, 402.22, and 402.33,  
29 F.S.; including the Agency for Persons with  
30 Disabilities within provisions governing the  
31 sharing of information, claims for the care and

1 maintenance of facility residents, county  
2 contracts for services for persons with  
3 developmental disabilities, education programs  
4 for students who reside in state facilities,  
5 and fees for services; conforming provisions to  
6 changes made by the act; correcting a  
7 cross-reference; amending s. 408.036, F.S.,  
8 relating to projects that are exempt from  
9 obtaining a certificate of need; conforming  
10 terminology; amending s. 409.221, F.S.,  
11 relating to the consumer directed care program;  
12 conforming provisions to changes made by the  
13 act; amending ss. 409.908 and 409.9127, F.S.,  
14 relating to the Medicaid program; conforming a  
15 cross-reference; deleting obsolete provisions;  
16 amending ss. 411.224 and 411.232, F.S.;  
17 conforming provisions to the transfer of duties  
18 from the Developmental Disabilities Program  
19 Office within the Department of Children and  
20 Family Services to the Agency for Persons with  
21 Disabilities; amending ss. 415.102, 415.1035,  
22 415.1055, and 415.107, F.S.; conforming  
23 terminology; including the Agency for Persons  
24 with Disabilities within provisions providing  
25 requirements that a facility inform residents  
26 of certain rights, notification requirements  
27 for administrative entities, and requirements  
28 for maintaining the confidentiality of reports  
29 and records; amending s. 435.03, F.S., relating  
30 to screening standards; conforming terminology  
31 and a cross-reference; amending ss. 490.014 and



1 491.014, F.S., relating to exemptions from  
2 licensure for psychologists and certain  
3 specified counselors, respectively; conforming  
4 provisions to changes made by the act; amending  
5 ss. 944.602, 945.025, 947.185, and 985.224,  
6 F.S., relating to the Department of  
7 Corrections, the Parole Commission, and  
8 petitions alleging delinquency; conforming  
9 provisions to the transfer of duties from the  
10 Developmental Disabilities Program Office  
11 within the Department of Children and Family  
12 Services to the Agency for Persons with  
13 Disabilities; amending s. 1003.58, F.S.;  
14 including facilities operated by the Agency for  
15 Persons with Disabilities within provisions  
16 governing the residential care of students;  
17 amending ss. 17.61 and 400.464, F.S., relating  
18 to investment of certain funds and home health  
19 services for persons with disabilities,  
20 respectively; conforming provisions to changes  
21 made by the act; amending s. 744.704, F.S.;  
22 correcting a cross-reference; amending s.  
23 984.22, F.S.; removing a provision that  
24 specifies fines be deposited into the Community  
25 Resources Development Trust Fund; creating part  
26 III of ch. 282, F.S.; requiring that the  
27 executive, legislative, and judicial branches  
28 of state government provide to individuals with  
29 disabilities access to and use of information  
30 and data that is comparable to the information  
31 and data provided to individuals who do not

1 have disabilities; providing certain  
2 exceptions; providing definitions; requiring  
3 that each state agency use accessible  
4 electronic information and information  
5 technology that conforms with specified  
6 provisions of federal law; providing certain  
7 exceptions; requiring the Department of  
8 Management Services to adopt rules; providing  
9 an exception for electronic information and  
10 information technology involving military  
11 activities or criminal intelligence activities;  
12 specifying that the act applies to competitive  
13 solicitations; providing legislative intent;  
14 providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 20.197, Florida Statutes, is  
19 amended to read:

20 20.197 Agency for Persons with Disabilities.--There is  
21 created the Agency for Persons with Disabilities, housed  
22 within the Department of Children and Family Services for  
23 administrative purposes only. The agency shall be a separate  
24 budget entity not subject to control, supervision, or  
25 direction by the Department of Children and Family Services in  
26 any manner, including, but not limited to, personnel,  
27 purchasing, transactions involving real or personal property,  
28 and budgetary matters.

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

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

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

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

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

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

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

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

31 |

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

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

11 Section 2. Paragraph (b) of subsection (7) of section  
12 39.001, Florida Statutes, is amended to read:

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

15 (7) PLAN FOR COMPREHENSIVE APPROACH.--

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

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

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

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

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

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

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

30  
31

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

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

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

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

27           5. The department, the Department of Education, and  
28 the Department of Health shall work together on the  
29 enhancement or adaptation of curriculum materials to assist  
30 instructional personnel in providing instruction through a  
31 multidisciplinary approach on the identification,

1 intervention, and prevention of child abuse, abandonment, and  
2 neglect. The curriculum materials shall be geared toward a  
3 sequential program of instruction at the four progressional  
4 levels, K-3, 4-6, 7-9, and 10-12. Strategies for encouraging  
5 all school districts to utilize the curriculum are to be  
6 included in the comprehensive state plan for the prevention of  
7 child abuse, abandonment, and neglect.

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

1           a. Documentation of the magnitude of the problems of  
2 child abuse, including sexual abuse, physical abuse, and  
3 emotional abuse, and child abandonment and neglect in its  
4 geographical area.

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

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

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

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

25          f. A description of barriers to the accomplishment of  
26 a comprehensive approach to the prevention of child abuse,  
27 abandonment, and neglect.

28          g. Recommendations for changes that can be  
29 accomplished only at the state program level or by legislative  
30 action.

31



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

3           39.202 Confidentiality of reports and records in cases  
4 of child abuse or neglect.--

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

10           (a) Employees, authorized agents, or contract  
11 providers of the department, the Department of Health, the  
12 Agency for Persons with Disabilities, or county agencies  
13 responsible for carrying out:

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

26  
27 Also, employees or agents of the Department of Juvenile  
28 Justice responsible for the provision of services to children,  
29 pursuant to chapters 984 and 985.

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

1           1. Administration or supervision of the department's  
2 program for the prevention, investigation, or treatment of  
3 child abuse, abandonment, or neglect, or abuse, neglect, or  
4 exploitation of a vulnerable adult, when carrying out his or  
5 her official function;

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

10          3. Employing and continuing employment of personnel of  
11 the department or the agency.

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

14          39.407 Medical, psychiatric, and psychological  
15 examination and treatment of child; physical or mental  
16 examination of parent or person requesting custody of child.--

17          (5) A judge may order a child in an out-of-home  
18 placement to be treated by a licensed health care professional  
19 based on evidence that the child should receive treatment. The  
20 judge may also order such child to receive mental health or  
21 developmental disabilities services from a psychiatrist,  
22 psychologist, or other appropriate service provider. Except as  
23 provided in subsection (6), if it is necessary to place the  
24 child in a residential facility for such services, the  
25 procedures and criteria established in s. 394.467 ~~or chapter~~  
26 ~~393 shall be used, whichever is applicable~~. A child may be  
27 provided ~~developmental disabilities or~~ mental health services  
28 in emergency situations, pursuant to the procedures and  
29 criteria contained in s. 394.463(1) ~~or chapter 393, whichever~~  
30 ~~is applicable~~. Nothing in this section confers jurisdiction to  
31

1 the court with regard to determining eligibility or ordering  
2 services under chapter 393.

3 Section 5. Section 287.155, Florida Statutes, is  
4 amended to read:

5 287.155 Motor vehicles; purchase by Division of  
6 Universities, Department of Children and Family Services,  
7 Agency for Persons with Disabilities, Department of Health,  
8 Department of Juvenile Justice, and Department of  
9 Corrections.--

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

23 (2) The Department of Corrections shall, prior to  
24 purchasing motor vehicles, seek to procure the motor vehicles  
25 from those vehicles renovated pursuant to correctional work  
26 programs of the Department of Corrections, and for the use of  
27 residential facilities managed or contracted by the Department  
28 of Juvenile Justice.

29 (3) The Department of Health is authorized, subject to  
30 the approval of the Department of Management Services, to  
31

1 purchase automobiles, trucks, and other automotive equipment  
2 for use by county health departments.

3 Section 6. Paragraph (a) of subsection (3) of section  
4 381.0072, Florida Statutes, is amended to read:

5 381.0072 Food service protection.--It shall be the  
6 duty of the Department of Health to adopt and enforce  
7 sanitation rules consistent with law to ensure the protection  
8 of the public from food-borne illness. These rules shall  
9 provide the standards and requirements for the storage,  
10 preparation, serving, or display of food in food service  
11 establishments as defined in this section and which are not  
12 permitted or licensed under chapter 500 or chapter 509.

13 (3) LICENSES REQUIRED.--

14 (a) Licenses; annual renewals.--Each food service  
15 establishment regulated under this section shall obtain a  
16 license from the department annually. Food service  
17 establishment licenses shall expire annually and are ~~shall~~ not  
18 ~~be~~ transferable from one place or individual to another.  
19 However, those facilities licensed by the department's Office  
20 of Licensure and Certification, the Child Care Services  
21 Program Office, or the Agency for Persons with Developmental  
22 Disabilities Program Office are exempt from this subsection.  
23 It shall be a misdemeanor of the second degree, punishable as  
24 provided in s. 381.0061, s. 775.082, or s. 775.083, for such  
25 an establishment to operate without this license. The  
26 department may refuse a license, or a renewal thereof, to any  
27 establishment that is not constructed or maintained in  
28 accordance with law and with the rules of the department.  
29 Annual application for renewal is ~~shall~~ not ~~be~~ required.

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

1           383.14 Screening for metabolic disorders, other  
2 hereditary and congenital disorders, and environmental risk  
3 factors.--

4           (5) ADVISORY COUNCIL.--There is established a Genetics  
5 and Newborn Screening Advisory Council made up of 15 members  
6 appointed by the Secretary of Health. The council shall be  
7 composed of two consumer members, three practicing  
8 pediatricians, at least one of whom must be a pediatric  
9 hematologist, one representative from each of the four medical  
10 schools in the state, the Secretary of Health or his or her  
11 designee, one representative from the Department of Health  
12 representing Children's Medical Services, one representative  
13 from the Florida Hospital Association, one individual with  
14 experience in newborn screening programs, one individual  
15 representing audiologists, and one representative from the  
16 Agency for Persons with Disabilities ~~Developmental~~  
17 ~~Disabilities Program Office of the Department of Children and~~  
18 ~~Family Services~~. All appointments shall be for a term of 4  
19 years. The chairperson of the council shall be elected from  
20 the membership of the council and shall serve for a period of  
21 2 years. The council shall meet at least semiannually or upon  
22 the call of the chairperson. The council may establish ad hoc  
23 or temporary technical advisory groups to assist the council  
24 with specific topics which come before the council. Council  
25 members shall serve without pay. Pursuant to the provisions of  
26 s. 112.061, the council members are entitled to be reimbursed  
27 for per diem and travel expenses. It is the purpose of the  
28 council to advise the department about:

29           (a) Conditions for which testing should be included  
30 under the screening program and the genetics program.  
31

1 (b) Procedures for collection and transmission of  
2 specimens and recording of results.

3 (c) Methods whereby screening programs and genetics  
4 services for children now provided or proposed to be offered  
5 in the state may be more effectively evaluated, coordinated,  
6 and consolidated.

7 Section 8. Section 393.061, Florida Statutes, is  
8 repealed.

9 Section 9. Section 393.062, Florida Statutes, is  
10 amended to read:

11 393.062 Legislative findings and declaration of  
12 intent.--The Legislature finds and declares that existing  
13 state programs for the treatment of individuals with  
14 developmental disabilities ~~who are developmentally disabled,~~  
15 which often unnecessarily place clients in institutions, are  
16 unreasonably costly, are ineffective in bringing the  
17 individual client to his or her maximum potential, and are in  
18 fact debilitating to many ~~a great majority of~~ clients. A  
19 redirection in state treatment programs for individuals with  
20 developmental disabilities ~~who are developmentally disabled~~ is  
21 necessary if any significant amelioration of the problems  
22 faced by such individuals is ever to take place. Such  
23 redirection should place primary emphasis on programs that  
24 ~~have the potential to prevent or reduce the severity of~~  
25 developmental disabilities. Further, the ~~Legislature declares~~  
26 ~~that~~ greatest priority shall be given to the development and  
27 implementation of community-based ~~residential placements,~~  
28 services that, ~~and treatment programs for individuals who are~~  
29 ~~developmentally disabled which~~ will enable ~~such~~ individuals  
30 with developmental disabilities to achieve their greatest  
31 potential for independent and productive living, ~~which will~~

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

1 developmental disabilities receiving care shall be of good  
2 moral character.

3 Section 10. Section 393.063, Florida Statutes, is  
4 amended to read:

5 393.063 Definitions.--For the purposes of this  
6 chapter, the term:

7 (1) "Agency" means the Agency for Persons with  
8 Disabilities.

9 (2) "Adult day training" means training services that  
10 take place in a nonresidential setting, separate from the home  
11 or facility in which the client resides, are intended to  
12 support the participation of clients in daily, meaningful, and  
13 valued routines of the community, and may include work-like  
14 settings that do not meet the definition of supported  
15 employment.

16 ~~(3)(2)~~ "Autism" means a pervasive, neurologically  
17 based developmental disability of extended duration which  
18 causes severe learning, communication, and behavior disorders  
19 with age of onset during infancy or childhood. Individuals  
20 with autism exhibit impairment in reciprocal social  
21 interaction, impairment in verbal and nonverbal communication  
22 and imaginative ability, and a markedly restricted repertoire  
23 of activities and interests.

24 ~~(4)(3)~~ "Cerebral palsy" means a group of disabling  
25 symptoms of extended duration which results from damage to the  
26 developing brain that may occur before, during, or after birth  
27 and that results in the loss or impairment of control over  
28 voluntary muscles. For the purposes of this definition,  
29 cerebral palsy does not include those symptoms or impairments  
30 resulting solely from a stroke.

31



1           ~~(5)(4)~~ "Client" means any person determined eligible  
2 by the agency for services under this chapter.

3           ~~(6)(5)~~ "Client advocate" means a friend or relative of  
4 the client, or of the client's immediate family, who advocates  
5 for the best interests of the client in any proceedings under  
6 this chapter in which the client or his or her family has the  
7 right or duty to participate.

8           ~~(7)(6)~~ "Comprehensive assessment" means the process  
9 used to determine eligibility for services under this chapter.

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

30           ~~(a)~~ ~~Comprehensive transitional education programs~~  
31 ~~shall include a minimum of two component centers or units, one~~

1 ~~of which shall be either an intensive treatment and~~  
2 ~~educational center or a transitional training and educational~~  
3 ~~center, which provide services to persons with maladaptive~~  
4 ~~behaviors in the following sequential order:~~

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

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

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

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

28 ~~5. Independent living education center. This component~~  
29 ~~is a facility providing a family living environment for~~  
30 ~~persons with maladaptive behaviors, in a largely unrestricted~~  
31

1 ~~setting which includes education and monitoring appropriate to~~  
2 ~~support the development of independent living skills.~~

3 ~~(b) Centers or units that are components of a~~  
4 ~~comprehensive transitional education program are subject to~~  
5 ~~the license issued to the comprehensive transitional education~~  
6 ~~program and may be located on either single or multiple sites.~~

7 ~~(c) Comprehensive transitional education programs~~  
8 ~~shall develop individual education plans for each person with~~  
9 ~~maladaptive behaviors who receives services therein. Such~~  
10 ~~individual education plans shall be developed in accordance~~  
11 ~~with the criteria specified in 20 U.S.C. ss. 401 et seq., and~~  
12 ~~34 C.F.R. part 300.~~

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

16 ~~(e) This subsection shall authorize licensure for~~  
17 ~~comprehensive transitional education programs which by July 1,~~  
18 ~~1989:~~

- 19 ~~1. Are in actual operation; or~~
- 20 ~~2. Own a fee simple interest in real property for~~  
21 ~~which a county or city government has approved zoning allowing~~  
22 ~~for the placement of the facilities described in this~~  
23 ~~subsection, and have registered an intent with the department~~  
24 ~~to operate a comprehensive transitional education program.~~  
25 ~~However, nothing shall prohibit the assignment by such a~~  
26 ~~registrant to another entity at a different site within the~~  
27 ~~state, so long as there is compliance with all criteria of the~~  
28 ~~comprehensive transitional education program and local zoning~~  
29 ~~requirements and provided that each residential facility~~  
30 ~~within the component centers or units of the program~~

1 ~~authorized under this subparagraph shall not exceed a capacity~~  
2 ~~of 15 persons.~~

3 ~~(8) "Day habilitation facility" means any~~  
4 ~~nonresidential facility which provides day habilitation~~  
5 ~~services.~~

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

15 ~~(9)(10)~~ "Developmental disability" means a disorder or  
16 syndrome that is attributable to retardation, cerebral palsy,  
17 autism, spina bifida, or Prader-Willi syndrome; that manifests  
18 before the age of 18; and that constitutes a substantial  
19 handicap that can reasonably be expected to continue  
20 indefinitely.

21 ~~(10)(11)~~ "Developmental disabilities institution"  
22 means a state-owned and state-operated facility, formerly  
23 known as a "Sunland Center," providing for the care,  
24 habilitation, and rehabilitation of clients with developmental  
25 disabilities.

26 ~~(11)(12)~~ "Direct service provider," ~~also known as~~  
27 ~~"caregiver" in chapters 39 and 415 or "caretaker" in~~  
28 ~~provisions relating to employment security checks,~~ means a  
29 person 18 years of age or older who has direct face-to-face  
30 contact with a client while providing services to the client  
31 ~~individuals with developmental disabilities, or has access to~~

1 a client's living areas or to a client's funds or personal  
2 property, ~~and is not a relative of such individuals.~~

3 ~~(12)(13)~~ "Domicile" means the place where a client  
4 legally resides, which place is his or her permanent home.  
5 Domicile may be established as provided in s. 222.17. Domicile  
6 may not be established in Florida by a minor who has no parent  
7 domiciled in Florida, or by a minor who has no legal guardian  
8 domiciled in Florida, or by any alien not classified as a  
9 resident alien.

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

15 ~~(15)~~ "Epilepsy" means a chronic brain disorder of  
16 various causes which is characterized by recurrent seizures  
17 due to excessive discharge of cerebral neurons. When found  
18 concurrently with retardation, autism, or cerebral palsy,  
19 epilepsy is considered a secondary disability for which the  
20 client is eligible to receive services to ameliorate this  
21 condition pursuant to this chapter.

22 ~~(13)(16)~~ "Express and informed consent" means consent  
23 voluntarily given in writing with sufficient knowledge and  
24 comprehension of the subject matter ~~involved~~ to enable the  
25 person giving consent to make a knowing ~~an understanding and~~  
26 ~~enlightened~~ decision without any element of force, fraud,  
27 deceit, duress, or other form of constraint or coercion.

28 ~~(14)(17)~~ "Family care program" means the program  
29 established in s. 393.068.

30 ~~(18)~~ "Follow along services" means those support  
31 services provided to persons with developmental disabilities

1 ~~in all supported employment programs and may include, but are~~  
2 ~~not limited to, family support, assistance in meeting~~  
3 ~~transportation and medical needs, employer intervention,~~  
4 ~~performance evaluation, advocacy, replacement, retraining or~~  
5 ~~promotional assistance, or other similar support services.~~

6 ~~(15)(19)~~ "Foster care facility" means a residential  
7 facility licensed under this chapter which provides a family  
8 living environment including supervision and care necessary to  
9 meet the physical, emotional, and social needs of its  
10 residents. The capacity of such a facility ~~may shall~~ not be  
11 more than three residents.

12 ~~(16)(20)~~ "Group home facility" means a residential  
13 facility licensed under this chapter which provides a family  
14 living environment including supervision and care necessary to  
15 meet the physical, emotional, and social needs of its  
16 residents. The capacity of such a facility shall be at least 4  
17 but not more than 15 residents. ~~For the purposes of this~~  
18 ~~chapter, group home facilities shall not be considered~~  
19 ~~commercial enterprises.~~

20 ~~(17)(21)~~ "Guardian advocate" means a person appointed  
21 by a written order of the court to represent a person with  
22 developmental disabilities under s. 393.12.

23 ~~(18)(22)~~ "Habilitation" means the process by which a  
24 client is assisted to acquire and maintain those life skills  
25 which enable the client to cope more effectively with the  
26 demands of his or her condition and environment and to raise  
27 the level of his or her physical, mental, and social  
28 efficiency. It includes, but is not limited to, programs of  
29 formal structured education and treatment.

30  
31

1           ~~(19)(23)~~ "High-risk child" means, for the purposes of  
2 this chapter, a child from 3 ~~birth~~ to 5 years of age with one  
3 or more of the following characteristics:

4           (a) A developmental delay in cognition, language, or  
5 physical development.

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

9           (c) A child with a parent or guardian with  
10 developmental disabilities who requires assistance in meeting  
11 the child's developmental needs.

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

14           ~~(20)(24)~~ "Intermediate care facility for the  
15 developmentally disabled" or "ICF/DD" means a residential  
16 facility licensed and certified pursuant to part XI of chapter  
17 400.

18           ~~(25)~~ ~~"Job coach" means a person who provides~~  
19 ~~employment related training at a worksite to individuals with~~  
20 ~~developmental disabilities.~~

21           ~~(21)(26)~~ "Medical/dental services" means medically  
22 necessary ~~those~~ services that ~~which~~ are provided or ordered  
23 for a client by a person licensed under ~~pursuant to the~~  
24 ~~provisions of~~ chapter 458, chapter 459, or chapter 466. Such  
25 services may include, but are not limited to, prescription  
26 drugs, specialized therapies, nursing supervision,  
27 hospitalization, dietary services, prosthetic devices,  
28 surgery, specialized equipment and supplies, adaptive  
29 equipment, and other services as required to prevent or  
30 alleviate a medical or dental condition.

31

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

4           ~~(28) "Normalization principle" means the principle of~~  
5 ~~letting the client obtain an existence as close to the normal~~  
6 ~~as possible, making available to the client patterns and~~  
7 ~~conditions of everyday life which are as close as possible to~~  
8 ~~the norm and patterns of the mainstream of society.~~

9           ~~(22)(29) "Personal care services" means include, but~~  
10 ~~are not limited to, such services as:~~ individual assistance  
11 with or supervision of essential activities of daily living  
12 for self-care, including ambulation, bathing, dressing,  
13 eating, grooming, and toileting, and other similar services  
14 that are incidental to the care furnished and essential to the  
15 health, safety, and welfare of the client when there is no one  
16 else available to perform those services the agency may define  
17 ~~by rule. "Personal services" shall not be construed to mean~~  
18 ~~the provision of medical, nursing, dental, or mental health~~  
19 ~~services by the staff of a facility, except as provided in~~  
20 ~~this chapter. In addition, an emergency response device~~  
21 ~~installed in the apartment or living area of a resident shall~~  
22 ~~not be classified as a personal service.~~

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

29           ~~(31) "Reassessment" means a process which periodically~~  
30 ~~develops, through annual review and revision of a client's~~  
31



1 ~~family or individual support plan, a knowledgeable statement~~  
2 ~~of current needs and past development for each client.~~

3 ~~(24)(32)~~ "Relative" means an individual who is  
4 connected by affinity or consanguinity to the client and who  
5 is 18 years of age or older ~~more~~.

6 ~~(25)(33)~~ "Resident" means any person with  
7 developmental disabilities ~~who is developmentally disabled~~  
8 residing at a residential facility ~~in the state~~, whether or  
9 not such person is a client of the agency.

10 ~~(26)(34)~~ "Residential facility" means a facility  
11 providing room and board and personal care for persons with  
12 developmental disabilities.

13 ~~(27)(35)~~ "Residential habilitation" means supervision  
14 and training ~~assistance provided~~ with the acquisition,  
15 retention, or improvement in skills related to activities of  
16 daily living, such as personal hygiene skills ~~grooming and~~  
17 ~~cleanliness, homemaking skills bedmaking and household chores,~~  
18 ~~eating and the preparation of food~~, and the social and  
19 adaptive skills necessary to enable the individual to reside  
20 in the community ~~a noninstitutional setting~~.

21 ~~(28)(36)~~ "Residential habilitation center" means a  
22 community residential facility licensed under this chapter  
23 which ~~that~~ provides ~~residential~~ services. The  
24 capacity of such a facility shall not be fewer than nine  
25 residents. After October 1, 1989, ~~no~~ new residential  
26 habilitation centers may not ~~shall~~ be licensed and the  
27 licensed capacity ~~shall not be increased~~ for any existing  
28 residential habilitation center may not be increased.

29 ~~(29)(37)~~ "Respite service" means appropriate,  
30 short-term, temporary care that is provided to a person with  
31 developmental disabilities to meet the planned or emergency

1 needs of the person or the family or other direct service  
2 provider.

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

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

10 (b) A drug used as a restraint is a medication used to  
11 control the person's behavior or to restrict his or her  
12 freedom of movement and is not a standard treatment for the  
13 person's medical or psychiatric condition. Physically holding  
14 a person during a procedure to forcibly administer  
15 psychotropic medication is a physical restraint.

16 (c) Restraint does not include physical devices, such  
17 as orthopedically prescribed appliances, surgical dressings  
18 and bandages, supportive body bands, or other physical holding  
19 when necessary for routine physical examinations and tests;  
20 for purposes of orthopedic, surgical, or other similar medical  
21 treatment; when used to provide support for the achievement of  
22 functional body position or proper balance; or when used to  
23 protect a person from falling out of bed.

24 ~~(31)(38)~~ "Retardation" means significantly subaverage  
25 general intellectual functioning existing concurrently with  
26 deficits in adaptive behavior ~~and manifested during the period~~  
27 ~~from conception to age 18.~~ "Significantly subaverage general  
28 intellectual functioning," for the purpose of this definition,  
29 means performance which is two or more standard deviations  
30 from the mean score on a standardized intelligence test  
31 specified in the rules of the agency. "Adaptive behavior," for

1 | the purpose of this definition, means the effectiveness or  
2 | degree with which an individual meets the standards of  
3 | personal independence and social responsibility expected of  
4 | his or her age, cultural group, and community.

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

13 |       (33) "Self-determination" means an individual's  
14 | freedom to exercise the same rights as all other citizens,  
15 | authority to exercise control over funds needed for one's own  
16 | support, including prioritizing these funds when necessary,  
17 | responsibility for the wise use of public funds, and  
18 | self-advocacy to speak and advocate for oneself in order to  
19 | gain independence and ensure that individuals with a  
20 | developmental disability are treated equally.

21 |       ~~(39) "Severe self injurious behavior" means any~~  
22 | ~~chronic behavior that results in injury to the person's own~~  
23 | ~~body, which includes, but is not limited to, self hitting,~~  
24 | ~~head banging, self biting, scratching, and the ingestion of~~  
25 | ~~harmful or potentially harmful nutritive or nonnutritive~~  
26 | ~~substances.~~

27 |       (34)(40) "Specialized therapies" means those  
28 | treatments or activities prescribed by and provided by an  
29 | appropriately trained, licensed, or certified professional or  
30 | staff person and may include, but are not limited to, physical  
31 | therapy, speech therapy, respiratory therapy, occupational

1 therapy, behavior therapy, physical management services, and  
2 related specialized equipment and supplies.

3 ~~(35)(41)~~ "Spina bifida" means, for purposes of this  
4 chapter, a person with a medical diagnosis of spina bifida  
5 cystica or myelomeningocele.

6 ~~(36)(42)~~ "Support coordinator" means a person who is  
7 designated by the agency to assist individuals and families in  
8 identifying their capacities, needs, and resources, as well as  
9 finding and gaining access to necessary supports and services;  
10 coordinating the delivery of supports and services; advocating  
11 on behalf of the individual and family; maintaining relevant  
12 records; and monitoring and evaluating the delivery of  
13 supports and services to determine the extent to which they  
14 meet the needs and expectations identified by the individual,  
15 family, and others who participated in the development of the  
16 support plan.

17 ~~(43)~~ "~~Supported employee~~" ~~means a person who requires~~  
18 ~~and receives supported employment services in order to~~  
19 ~~maintain community based employment.~~

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

26 ~~(38)(45)~~ "Supported living" means a category of  
27 individually determined services designed and coordinated in  
28 such a manner as to provide assistance to adult clients who  
29 require ongoing supports to live as independently as possible  
30 in their own homes, to be integrated into the community, and  
31

1 to participate in community life to the fullest extent  
2 possible.

3 ~~(39)(46)~~ "Training" means a planned approach to  
4 assisting a client to attain or maintain his or her maximum  
5 potential and includes services ranging from sensory  
6 stimulation to instruction in skills for independent living  
7 and employment.

8 ~~(40)(47)~~ "Treatment" means the prevention,  
9 amelioration, or cure of a client's physical and mental  
10 disabilities or illnesses.

11 Section 11. Subsections (1), (2), and (4) of section  
12 393.064, Florida Statutes, are amended to read:

13 393.064 Prevention.--

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

30 (2) Prevention services provided by the agency shall  
31 ~~developmental services program~~ include services to high-risk

1 ~~and developmentally disabled~~ children from 3 ~~birth~~ to 5 years  
2 of age, and their families, to meet the intent of chapter 411.  
3 Except for services for children from birth to age 3 years  
4 which ~~Such services shall include individual evaluations or~~  
5 ~~assessments necessary to diagnose a developmental disability~~  
6 ~~or high risk condition and to determine appropriate individual~~  
7 ~~family and support services, unless evaluations or assessments~~  
8 are the responsibility of the Division of Children's Medical  
9 Services in the Department of Health Prevention and  
10 ~~Intervention for children ages birth to 3 years eligible for~~  
11 ~~services under this chapter~~ or part H of the Individuals with  
12 Disabilities Education Act, such services ~~and~~ may include:  
13       (a) Individual evaluations or assessments necessary to  
14 diagnose a developmental disability or high-risk condition and  
15 to determine appropriate, individual family and support  
16 services.  
17       (b)(a) Early intervention services, including  
18 developmental training and specialized therapies. ~~Early~~  
19 ~~intervention services, which are the responsibility of the~~  
20 ~~Division of Children's Medical Services Prevention and~~  
21 ~~Intervention for children ages birth to 3 years who are~~  
22 ~~eligible for services under this chapter or under part H of~~  
23 ~~the Individuals with Disabilities Education Act, shall not be~~  
24 ~~provided through the developmental services program unless~~  
25 ~~funding is specifically appropriated to the developmental~~  
26 ~~services program for this purpose.~~  
27       (c)(b) Support services, such as respite care, parent  
28 education and training, parent-to-parent counseling, homemaker  
29 services, and other services which allow families to maintain  
30 and provide quality care to children in their homes. ~~The~~  
31 ~~Division of Children's Medical Services Prevention and~~

1 ~~Intervention is responsible for the provision of services to~~  
2 ~~children from birth to 3 years who are eligible for services~~  
3 ~~under this chapter.~~

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

8 (a) Research into the etiology of developmental  
9 disabilities.

10 (b) Ensuring that new knowledge is rapidly  
11 disseminated throughout ~~the developmental services program of~~  
12 the agency.

13 (c) Diagnosis of unusual conditions and syndromes  
14 associated with developmental disabilities in clients  
15 identified throughout ~~the developmental~~ disabilities services  
16 programs.

17 (d) Evaluation of families of clients with  
18 developmental disabilities of genetic origin in order to  
19 provide them with genetic counseling aimed at preventing the  
20 recurrence of the disorder in other family members.

21 (e) Ensuring that health professionals in the  
22 developmental disabilities services institution at Gainesville  
23 have access to information systems that will allow them to  
24 remain updated on newer knowledge and maintain their  
25 postgraduate education standards.

26 (f) Enhancing staff training for professionals  
27 throughout the agency in the areas of genetics and  
28 developmental disabilities.

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

31

1           393.0641 Program for the prevention and treatment of  
2 severe self-injurious behavior.--

3           (1) Contingent upon specific appropriations, there is  
4 created a diagnostic, treatment, training, and research  
5 program for clients exhibiting severe self-injurious behavior.

6 As used in this section, the term "severe self-injurious  
7 behavior" means any chronic behavior that results in injury to  
8 the person's own body, including, but not limited to,  
9 self-hitting, head banging, self-biting, scratching, and the  
10 ingestion of harmful or potentially harmful nutritive or  
11 nonnutritive substances.

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

13           (a) Serve as a resource center for information,  
14 training, and program development.

15           (b) Research the diagnosis and treatment of severe  
16 self-injurious behavior, and related disorders, and develop  
17 methods of prevention and treatment of self-injurious  
18 behavior.

19           (c) Identify individuals in critical need.

20           (d) Develop treatment programs which are meaningful to  
21 individuals with developmental disabilities, in critical need,  
22 while safeguarding and respecting the legal and human rights  
23 of the individuals.

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

26           (f) Collect data on the type, severity, incidence, and  
27 demographics of individuals with severe self-injurious  
28 behavior, and disseminate the data.

29           ~~(3)(2)~~ ~~The This~~ program shall adhere to the provisions  
30 of s. 393.13.

31



1           ~~(4)(3)~~ The agency may contract for the provision of  
2 any portion or all of the services required by the program.

3           ~~(5)(4)~~ The agency may ~~has the authority to~~ license  
4 this program and ~~shall~~ adopt rules to administer ~~implement~~ the  
5 program.

6           Section 13. Subsections (1) and (4) of section  
7 393.065, Florida Statutes, are amended, and subsections (5)  
8 and (6) are added to that section, to read:

9           393.065 Application and eligibility determination.--

10           (1) Application for services shall be made in writing  
11 to the agency, in the service area ~~district~~ in which the  
12 applicant resides. The agency ~~Employees of the agency's~~  
13 ~~developmental services program~~ shall review each applicant for  
14 eligibility within 45 days after the date the application is  
15 signed for children under 6 years of age and within 60 days  
16 after the date the application is signed for all other  
17 applicants. When necessary to definitively identify individual  
18 conditions or needs, the agency shall provide a comprehensive  
19 assessment. Only applicants ~~individuals~~ whose domicile is in  
20 Florida are eligible for services. Information accumulated by  
21 other agencies, including professional reports and collateral  
22 data, shall be considered in this process when available.

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

1 assessments shall ~~must~~ be funded under Title XIX of the Social  
2 Security Act.

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

10 (6) The agency may adopt rules specifying application  
11 procedures and eligibility criteria as needed to administer  
12 this section.

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

15 393.0651 Family or individual support plan.--The  
16 agency shall provide directly or contract for the development  
17 of a an appropriate family support plan for children ages 3  
18 ~~birth~~ to 18 years of age and an individual support plan for  
19 each client. ~~The parent or guardian of~~ The client ~~or~~, if  
20 competent, the client's parent or guardian ~~client~~, or, when  
21 appropriate, the client advocate, shall be consulted in the  
22 development of the plan and shall receive a copy of the plan.  
23 Each plan must ~~shall~~ include the most appropriate, least  
24 restrictive, and most cost-beneficial environment for  
25 accomplishment of the objectives for client progress and a  
26 specification of all services authorized. The plan must ~~shall~~  
27 include provisions for the most appropriate level of care for  
28 the client. Within the specification of needs and services for  
29 each client, when residential care is necessary, the agency  
30 shall move toward placement of clients in residential  
31 facilities based within the client's community. The ultimate

1 goal of each plan, whenever possible, shall be to enable the  
2 client to live a dignified life in the least restrictive  
3 setting, be that in the home or in the community. For children  
4 under 6 years of age, the family support plan shall be  
5 developed within the 45-day application period as specified in  
6 s. 393.065(1); for all applicants 6 years of age or older, the  
7 family or individual support plan shall be developed within  
8 the 60-day period as specified in that subsection.

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

11 (2)~~(a)~~ The family or individual support plan shall be  
12 integrated with the individual education plan (IEP) for all  
13 clients who are public school students entitled to a free  
14 appropriate public education under the Individuals with  
15 Disabilities Education Act, I.D.E.A., as amended. The family  
16 or individual support plan and IEP shall be implemented to  
17 maximize the attainment of educational and habilitation goals.

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

1           (b) For clients who are entering or exiting the school  
2 system, an interdepartmental staffing team composed of  
3 representatives of the agency and the local school system  
4 shall develop a written transitional living and training plan  
5 with the participation of the client or with the parent or  
6 guardian of the client, or the client advocate, as  
7 appropriate.

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

11           (4) In the development of the family or individual  
12 support plan, a client advocate may be appointed by the  
13 support planning team for a client who is a minor or for a  
14 client who is not capable of express and informed consent  
15 when:

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

17           (b) The whereabouts of the parent or guardian cannot  
18 be discovered; or

19           (c) The state is the only legal representative of the  
20 client.

21  
22 Such appointment shall not be construed to extend the powers  
23 of the client advocate to include any of those powers  
24 delegated by law to a legal guardian.

25           (5) The agency shall place a client in the most  
26 appropriate and least restrictive, and cost-beneficial,  
27 residential facility according to his or her individual  
28 support habilitation plan. ~~The parent or guardian of~~ The  
29 client ~~or~~, if competent, the client's parent or guardian  
30 ~~client~~, or, when appropriate, the client advocate, and the  
31 administrator of the ~~residential~~ facility to which placement

1 is proposed shall be consulted in determining the appropriate  
2 placement for the client. Considerations for placement shall  
3 be made in the following order:

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

6 (b) Foster care facility.

7 (c) Group home facility.

8 (d) Intermediate care facility for the developmentally  
9 disabled.

10 (e) Other facilities licensed by the agency which  
11 offer special programs for people with developmental  
12 disabilities.

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

14 (6) In developing a client's annual family or  
15 individual support plan, the individual or family with the  
16 assistance of the support planning team shall identify  
17 measurable objectives for client progress and shall specify a  
18 time period expected for achievement of each objective.

19 (7) The individual, family, and support coordinator  
20 shall review progress in achieving the objectives specified in  
21 each client's family or individual support plan, and shall  
22 revise the plan annually, following consultation with the  
23 client, if competent, or with the parent or guardian of the  
24 client, or, when appropriate, the client advocate. The agency  
25 or designated contractor shall annually report in writing to  
26 the client, if competent, or to the parent or guardian of the  
27 client, or to the client advocate, when appropriate, with  
28 respect to the client's habilitative and medical progress.

29 (8) Any client, or any parent of a minor client, or  
30 guardian, authorized guardian advocate, or client advocate for  
31 a client, who is substantially affected by the client's

1 initial family or individual support plan, or the annual  
2 review thereof, shall have the right to file a notice to  
3 challenge the decision pursuant to ss. 120.569 and 120.57.  
4 Notice of such right to appeal shall be included in all  
5 support plans provided by the agency.

6 Section 15. Section 393.0654, Florida Statutes, is  
7 created to read.

8 393.0654 Direct service providers; private sector  
9 services.--It is not a violation of s. 112.313(7) for a direct  
10 service provider who is employed by the agency to own,  
11 operate, or work in a private facility that is a service  
12 provider under contract with the agency if:

13 (1) The employee does not have any role in the  
14 agency's placement recommendations or the client's  
15 decisionmaking process regarding placement;

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

19 (3) The employee's employment outside the agency does  
20 not create a conflict with the employee's public duties and  
21 does not impede the full and faithful discharge of the  
22 employee's duties as assigned by the agency; and

23 (4) The service provider discloses the dual employment  
24 or ownership status to the agency and all clients within the  
25 provider's care. The disclosure must be given to the agency,  
26 the client, and the client's guardian or guardian advocate, if  
27 appropriate.

28 Section 16. Section 393.0655, Florida Statutes, is  
29 amended to read:

30 393.0655 Screening of direct service providers.--  
31

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

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

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

23 (c) A person selected by the family or the individual  
24 with developmental disabilities and paid by the family or the  
25 individual to provide supports or services is not required to  
26 have a background screening under this section.

27 (d) Persons 12 years of age or older, including family  
28 members, residing with ~~a the~~ direct services provider who  
29 provides services to clients in his or her own place of  
30 residence, ~~including family members,~~ are subject to background  
31

1 screening; however, such persons who are 12 to 18 years of age  
2 shall be screened for delinquency records only.

3 (e) A direct service provider who is awaiting the  
4 completion of background screening is temporarily exempt from  
5 the screening requirements under this section if the provider  
6 is under the direct and constant visual supervision of persons  
7 who meet the screening requirements of this section. Such  
8 exemption expires 90 days after the direct service provider  
9 first provides care or services to clients, has access to a  
10 client's living areas, or has access to a client's funds or  
11 personal property.

12 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency may  
13 grant exemptions from disqualification from working with  
14 children or adults with developmental disabilities only as  
15 provided in s. 435.07.

16 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE  
17 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints  
18 and the state criminal records checks shall be borne by the  
19 employer or by the employee or individual who is being  
20 screened.

21 (4) ~~TERMINATION EXCLUSION FROM OWNING, OPERATING, OR~~  
22 ~~BEING EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL~~  
23 ~~FACILITY; HEARINGS PROVIDED.--~~

24 (a) The agency shall deny, suspend, terminate, or  
25 revoke a license, certification, rate agreement, purchase  
26 order, or contract, or pursue other remedies provided in s.  
27 393.0673, s. 393.0675, or s. 393.0678 in addition to or in  
28 lieu of denial, suspension, termination, or revocation for  
29 failure to comply with this section.

30 (b) When the agency has reasonable cause to believe  
31 that grounds for denial or termination of employment exist, it



1 shall notify, in writing, the employer and the person ~~direct~~  
2 ~~service provider~~ affected, stating the specific record that  
3 ~~which~~ indicates noncompliance with the standards in this  
4 section.

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

10 (d) Refusal on the part of an employer to dismiss a  
11 manager, supervisor, or direct service provider who has been  
12 found to be in noncompliance with standards of this section  
13 shall result in automatic denial, termination, or revocation  
14 of the license or, certification, rate agreement, purchase  
15 order, or contract, in addition to any other remedies pursued  
16 by the agency.

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

19 393.0657 Persons not required to be refingerprinted or  
20 rescreened.--Persons who have undergone any portion of the  
21 background screening required under s. 393.0655 within the  
22 last 12 months are ~~Any provision of law to the contrary~~  
23 ~~notwithstanding, human resource personnel who have been~~  
24 ~~fingerprinted or screened pursuant to chapters 393, 394, 397,~~  
25 ~~402, and 409, and teachers who have been fingerprinted~~  
26 ~~pursuant to chapter 1012, who have not been unemployed for~~  
27 ~~more than 90 days thereafter, and who under the penalty of~~  
28 ~~perjury attest to the completion of such fingerprinting or~~  
29 ~~screening and to compliance with the provisions of this~~  
30 ~~section and the standards for good moral character as~~  
31 ~~contained in such provisions as ss. 110.1127(3), 393.0655(1),~~

1 ~~394.457(6), 397.451, 402.305(2), and 409.175(6), shall not be~~  
2 required to repeat such screening ~~be refingerprinted or~~  
3 ~~rescreened~~ in order to comply with the ~~any direct service~~  
4 ~~provider screening or fingerprinting~~ requirements. Such  
5 persons are responsible for providing documentation of the  
6 screening and shall undergo screening for any remaining  
7 background screening requirements that have never been  
8 conducted or have not been completed within the last 12  
9 months.

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

12 393.066 Community services and treatment ~~for persons~~  
13 ~~who are developmentally disabled.--~~

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

24 (2) All services needed shall be purchased instead of  
25 provided directly by the agency, when such arrangement is more  
26 cost-efficient than having those services provided directly.  
27 All purchased services must be approved by the agency.

28 (3) Community-based services that are medically  
29 necessary to prevent institutionalization shall, to the extent  
30 of available resources, include:

31

- 1           (a) Adult day training ~~habilitation~~ services,  
2 ~~including developmental training services.~~
- 3           (b) Family care services.
- 4           (c) Guardian advocate referral services.
- 5           (d) Medical/dental services, except that medical  
6 services shall not be provided to clients with spina bifida  
7 except as specifically appropriated by the Legislature.
- 8           (e) Parent training.
- 9           (f) Personal care services.
- 10          ~~(g)(f)~~ Recreation.
- 11          ~~(h)(g)~~ Residential facility services.
- 12          ~~(i)(h)~~ Respite services.
- 13          ~~(j)(i)~~ Social services.
- 14          ~~(k)(j)~~ Specialized therapies.
- 15          ~~(l)(k)~~ Supported employment, ~~including enclave, job~~  
16 ~~coach, mobile work crew, and follow along services.~~
- 17          ~~(m)(l)~~ Supported living.
- 18          ~~(n)(m)~~ Training, including behavioral-analysis  
19 services ~~behavioral programming.~~
- 20          ~~(o)(n)~~ Transportation.
- 21          ~~(p)(o)~~ Other habilitative and rehabilitative services  
22 as needed.
- 23          (4) The agency shall utilize the services of private  
24 businesses, not-for-profit organizations, and units of local  
25 government whenever such services are more cost-efficient than  
26 such services provided directly by the department, including  
27 arrangements for provision of residential facilities.
- 28          (5) In order to improve the potential for utilization  
29 of more cost-effective, community-based residential  
30 facilities, the agency shall promote the statewide development  
31 of day habilitation services for clients who live with a

1 direct service provider in a community-based residential  
2 facility and who do not require 24-hour-a-day care in a  
3 hospital or other health care institution, but who may, in the  
4 absence of day habilitation services, require admission to a  
5 developmental disabilities institution. Each day service  
6 facility shall provide a protective physical environment for  
7 clients, ensure that direct service providers meet minimum  
8 screening standards as required in s. 393.0655, make available  
9 to all day habilitation service participants at least one meal  
10 on each day of operation, provide facilities to enable  
11 participants to obtain needed rest while attending the  
12 program, as appropriate, and provide social and educational  
13 activities designed to stimulate interest and provide  
14 socialization skills.

15 (6) To promote independence and productivity, the  
16 agency shall provide supports and services, within available  
17 resources, to assist clients enrolled in Medicaid waivers who  
18 choose to pursue gainful employment.

19 (7) For the purpose of making needed community-based  
20 residential facilities available at the least possible cost to  
21 the state, the agency is authorized to lease privately owned  
22 residential facilities under long-term rental agreements, if  
23 such rental agreements are projected to be less costly to the  
24 state over the useful life of the facility than state purchase  
25 or state construction of such a facility.

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

30 Section 19. Section 393.067, Florida Statutes, is  
31 amended to read:

1           393.067 Facility licensure ~~of residential facilities~~  
2 ~~and comprehensive transitional education programs.--~~

3           (1) The agency shall provide through its licensing  
4 authority and by rule license application procedures, a system  
5 ~~of~~ provider qualifications, facility and client care  
6 standards, requirements for client records, requirements for  
7 staff qualifications and training criteria for meeting  
8 ~~standards~~, and requirements for monitoring foster care for  
9 ~~residential~~ facilities, group home facilities, residential  
10 habilitation centers, and comprehensive transitional education  
11 programs that serve agency clients.

12           (2) The agency shall conduct annual inspections and  
13 reviews of ~~residential~~ facilities and ~~comprehensive~~  
14 ~~transitional education~~ programs licensed under this section  
15 annually.

16           (3) An application for a license under this section  
17 must ~~for a residential facility or a comprehensive~~  
18 ~~transitional education program shall~~ be made to the agency on  
19 a form furnished by it and shall be accompanied by the  
20 appropriate license fee.

21           (4) The application shall be under oath and shall  
22 contain the following:

23           (a) The name and address of the applicant, if an  
24 applicant is an individual; if the applicant is a firm,  
25 partnership, or association, the name and address of each  
26 member thereof; if the applicant is a corporation, its name  
27 and address and the name and address of each director and each  
28 officer thereof; and the name by which the facility or program  
29 is to be known.

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

1 (c) The name of the person or persons under whose  
2 management or supervision the facility or program will be  
3 conducted.

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

7 (e) The number and location of the component centers  
8 or units which will compose the comprehensive transitional  
9 education program.

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

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

14 (h) Certification that the staff of the facility or  
15 program will receive training to detect and prevent sexual  
16 abuse of residents and clients.

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

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

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

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

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

31

1           ~~(5)(b)~~ As a prerequisite for issuance of an the  
2 initial or renewal license, the applicant, and any manager,  
3 supervisor, and staff member of the direct service provider of  
4 a facility or program licensed under this section, must have  
5 submitted to background screening as required under s.  
6 393.0655. A license may not be issued or renewed if the  
7 applicant or any manager, supervisor, or staff member of the  
8 direct service provider has failed background screenings as  
9 required under s. 393.0655. The agency shall determine by rule  
10 the frequency of background screening. The applicant shall  
11 submit with each initial or renewal application a signed  
12 affidavit under penalty of perjury stating that the applicant  
13 and any manager, supervisor, or staff member of the direct  
14 service provider is in compliance with all requirements for  
15 background screening. ~~to a residential facility or~~  
16 ~~comprehensive transitional education program:~~  
17           ~~1. The applicant shall submit to the agency a complete~~  
18 ~~set of fingerprints, taken by an authorized law enforcement~~  
19 ~~agency or an employee of the agency who is trained to take~~  
20 ~~fingerprints, for the manager, supervisor, or direct service~~  
21 ~~providers of the facility or program;~~  
22           ~~2. The agency shall submit the fingerprints to the~~  
23 ~~Department of Law Enforcement for state processing and for~~  
24 ~~federal processing by the Federal Bureau of Investigation; and~~  
25           ~~3. The agency shall review the record of the manager~~  
26 ~~or supervisor with respect to the crimes specified in s.~~  
27 ~~393.0655(1) and shall notify the applicant of its findings.~~  
28 ~~When disposition information is missing on a criminal record,~~  
29 ~~it is the responsibility of the manager or supervisor, upon~~  
30 ~~request of the agency, to obtain and supply within 30 days the~~  
31 ~~missing disposition information to the agency. Failure to~~



1 ~~supply the missing information within 30 days or to show~~  
2 ~~reasonable efforts to obtain such information shall result in~~  
3 ~~automatic disqualification.~~

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

15 ~~(6) Each applicant for licensure as an intermediate~~  
16 ~~care facility for the developmentally disabled must comply~~  
17 ~~with the following requirements:~~

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

29 ~~(b) The agency may require background screening of any~~  
30 ~~other individual who is an applicant if the agency has~~  
31 ~~probable cause to believe that he or she has been convicted of~~

1 ~~a crime or has committed any other offense prohibited under~~  
2 ~~the level 2 standards for screening set forth in chapter 435.~~

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

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

30 ~~(e) Each applicant must submit to the agency, with its~~  
31 ~~application, a description and explanation of any exclusions,~~

1 ~~permanent suspensions, or terminations of the applicant from~~  
2 ~~the Medicare or Medicaid programs. Proof of compliance with~~  
3 ~~the requirements for disclosure of ownership and control~~  
4 ~~interests under the Medicaid or Medicare programs shall be~~  
5 ~~accepted in lieu of this submission.~~

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

24 ~~(g) A license may not be granted to an applicant if~~  
25 ~~the applicant or managing employee has been found guilty of,~~  
26 ~~regardless of adjudication, or has entered a plea of nolo~~  
27 ~~contendere or guilty to, any offense prohibited under the~~  
28 ~~level 2 standards for screening set forth in chapter 435,~~  
29 ~~unless an exemption from disqualification has been granted by~~  
30 ~~the agency as set forth in chapter 435.~~

31

1           ~~(h) The agency may deny or revoke licensure if the~~  
2 ~~applicant:~~

3           1. ~~Has falsely represented a material fact in the~~  
4 ~~application required by paragraph (c) or paragraph (f), or has~~  
5 ~~omitted any material fact from the application required by~~  
6 ~~paragraph (c) or paragraph (f); or~~

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

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

12          ~~(6)(7)~~ The applicant shall furnish satisfactory proof  
13 of financial ability to operate and conduct the facility or  
14 program in accordance with the requirements of this chapter  
15 and adopted all rules promulgated hereunder.

16          ~~(7)(8)~~ The agency shall adopt rules establishing  
17 minimum standards for ~~licensure of residential~~ facilities and  
18 ~~comprehensive transitional education~~ programs licensed under  
19 this section, including rules requiring facilities and  
20 programs to train staff to detect and prevent sexual abuse of  
21 residents and clients, minimum standards of quality and  
22 adequacy of client care, incident-reporting requirements, and  
23 uniform firesafety standards established by the State Fire  
24 Marshal which are appropriate to the size of the facility or  
25 of the component centers or units of the program.

26          ~~(8)(9)~~ The agency ~~and the Agency for Health Care~~  
27 ~~Administration~~, after consultation with the Department of  
28 Community Affairs, shall adopt rules for foster care  
29 ~~residential~~ facilities, group home facilities, and residential  
30 habilitation centers which establish ~~under the respective~~  
31 ~~regulatory jurisdiction of each establishing~~ minimum standards

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

23 |       ~~(9)(10)~~ The agency may conduct unannounced inspections  
24 | to determine compliance by foster care residential facilities,  
25 | group home facilities, residential habilitation centers, and  
26 | comprehensive transitional education programs with the  
27 | applicable provisions of this chapter and the rules adopted  
28 | pursuant hereto, including the rules adopted for training  
29 | staff of a facility or a program to detect and prevent sexual  
30 | abuse of residents and clients. The facility or program shall  
31 |

1 make copies of inspection reports available to the public upon  
2 request.

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

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

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

13 ~~(10)(12) Each residential facility or comprehensive~~  
14 ~~transitional education program licensed under this section by~~  
15 ~~the agency shall forward annually to the agency a true and~~  
16 accurate sworn statement of its costs of providing care to  
17 clients funded by the agency.

18 ~~(11)(13) The agency may audit the records of any~~  
19 ~~residential facility or comprehensive transitional education~~  
20 program that it has reason to believe may not be in full  
21 compliance with the provisions of this section; provided that,  
22 any financial audit of such facility or program shall be  
23 limited to the records of clients funded by the agency.

24 ~~(12)(14) The agency shall establish, for the purpose~~  
25 of control of licensure costs, a uniform management  
26 information system and a uniform reporting system with uniform  
27 definitions and reporting categories.

28 ~~(13)(15) Facilities and programs licensed pursuant to~~  
29 this section shall adhere to all rights specified in s.  
30 393.13, including those enumerated in s. 393.13(4).

31

1           ~~(14)(16)~~ An ~~No~~ unlicensed ~~residential~~ facility or  
2 ~~comprehensive transitional education~~ program ~~may not~~ shall  
3 receive state funds. A license for the operation of a facility  
4 or program shall not be renewed if the licensee has any  
5 outstanding fines assessed pursuant to this chapter wherein  
6 final adjudication of such fines has been entered.

7           ~~(15)(17)~~ The agency is ~~shall~~ not ~~be~~ required to  
8 contract with new facilities licensed after October 1, 1989,  
9 pursuant to this chapter. Pursuant to chapter 287, the agency  
10 shall continue to contract within available resources for  
11 residential services with facilities licensed prior to October  
12 1, 1989, if such facilities comply with the provisions of this  
13 chapter and all other applicable laws and regulations.

14           Section 20. Section 393.0673, Florida Statutes, is  
15 amended to read:

16           393.0673 Denial, suspension, revocation of license;  
17 moratorium on admissions; administrative fines; procedures.--

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

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

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

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

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

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

11           ~~(4)(3)~~ The agency may issue an order immediately  
12 suspending or revoking a license when it determines that any  
13 condition in the facility presents a danger to the health,  
14 safety, or welfare of the residents in the facility.

15           ~~(5)(4)~~ The agency may impose an immediate moratorium  
16 on admissions to any facility when the department determines  
17 that any condition in the facility presents a threat to the  
18 health, safety, or welfare of the residents in the facility.

19           (6) The agency shall establish by rule criteria for  
20 evaluating the severity of violations and for determining the  
21 amount of fines imposed.

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

24           393.0674 Penalties.--

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

28           (a) Fail, by false statement, misrepresentation,  
29 impersonation, or other fraudulent means, to disclose in any  
30 application for voluntary or paid employment a material fact  
31



1 used in making a determination as to such person's  
2 qualifications to be a direct service provider;

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

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

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

16 393.0675 Injunctive proceedings authorized.--

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

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

27 393.0678 Receivership proceedings.--

28 (1) The agency may petition a court of competent  
29 jurisdiction for the appointment of a receiver for ~~an~~  
30 ~~intermediate care facility for the developmentally disabled,~~ a  
31 residential habilitation center, or a group home facility

1 owned and operated by a corporation or partnership when any of  
2 the following conditions exist:

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

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

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

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

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

30 393.068 Family care program.--  
31

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

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

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

1 (n) Support coordination.

2 ~~(o) Supported employment.~~

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

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

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

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

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

31 393.0695 Provision of in-home subsidies.--

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

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

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

11           393.075 General liability coverage.--

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

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

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

5 |       393.11 Involuntary admission to residential  
6 | services.--

7 |       (1) JURISDICTION.--When a person is mentally retarded  
8 | and requires involuntary admission to residential services  
9 | provided by the agency, the circuit court of the county in  
10 | which the person resides shall have jurisdiction to conduct a  
11 | hearing and enter an order involuntarily admitting the person  
12 | in order that the person may receive the care, treatment,  
13 | habilitation, and rehabilitation which the person needs. For  
14 | the purpose of identifying mental retardation, diagnostic  
15 | capability shall be established by the agency. Except as  
16 | otherwise specified, the proceedings under this section shall  
17 | be governed by the Florida Rules of Civil Procedure.

18 |       (2) PETITION.--

19 |       (a) A petition for involuntary admission to  
20 | residential services may be executed by a petitioning  
21 | commission. ~~For proposed involuntary admission to residential~~  
22 | ~~services arising out of chapter 916, the petition may be filed~~  
23 | ~~by a petitioning commission, the agency, the state attorney of~~  
24 | ~~the circuit from which the defendant was committed, or the~~  
25 | ~~defendant's attorney.~~

26 |       (b) The petitioning commission shall consist of three  
27 | persons. One of these persons shall be a physician licensed  
28 | and practicing under chapter 458 or chapter 459.

29 |       (c) The petition shall be verified and shall:  
30 |  
31 |

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

4           2. State the name, age, county of residence, and  
5 present address of the person with mental retardation or  
6 autism;

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

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

15          5. State which residential setting is the least  
16 restrictive and most appropriate alternative and specify the  
17 factual information on which the ~~such~~ belief is based.

18          (d) The petition shall be filed in the circuit court  
19 of the county in which the person with mental retardation or  
20 autism resides.

21          (3) NOTICE.--

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

30          (b) Whenever a motion or petition has been filed  
31 pursuant to s. 916.303 to dismiss criminal charges against a

1 defendant with retardation or autism, and a petition is filed  
2 to involuntarily admit the defendant to residential services  
3 under this section, the notice of the filing of the petition  
4 shall also be given to the defendant's attorney, ~~and to the~~  
5 state attorney of the circuit from which the defendant was  
6 committed, and the agency.

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

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

15 (4) AGENCY DEVELOPMENTAL SERVICES PARTICIPATION.--

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

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

27 (c) The report must ~~shall~~ contain the findings of the  
28 agency's developmental services program ~~evaluation,~~ and any  
29 recommendations deemed appropriate, and a determination of  
30 whether the person is eligible for services under this  
31 chapter.



1           (5) EXAMINING COMMITTEE.--

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

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

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

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

29           (e) The committee shall prepare a written report for  
30 the court. The report must ~~shall~~ explicitly document the  
31 extent that the person meets the criteria for involuntary

1 admission. The report, and expert testimony, ~~must shall~~  
2 include, but not be limited to:

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

6 2. Whether, because of the person's degree of mental  
7 retardation, the person:

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

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

16 c. Is likely to physically injure others if allowed to  
17 remain at liberty.

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

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

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

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

28 (g) Members of the examining committee shall receive a  
29 reasonable fee to be determined by the court. The fees are to  
30 be paid from the general revenue fund of the county in which  
31

1 | the person with mental retardation resided when the petition  
2 | was filed.

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

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

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

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

24 |         (7) HEARING.--

25 |         (a) The hearing for involuntary admission shall be  
26 | conducted, and the order shall be entered, in the county in  
27 | which the petition is filed ~~person is residing or be as~~  
28 | ~~convenient to the person as may be consistent with orderly~~  
29 | ~~procedure~~. The hearing shall be conducted in a physical  
30 | setting not likely to be injurious to the person's condition.

31 |

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

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

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

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

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

30           (g) All evidence shall be presented according to  
31 chapter 90. The burden of proof shall be on the party alleging

1 | the appropriateness of the person's admission to residential  
2 | services. The burden of proof shall be by clear and convincing  
3 | evidence.

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

6 |         (8) ORDER.--

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

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

13 |             1. The person is mentally retarded or autistic;

14 |             2. Placement in a residential setting is the least  
15 | restrictive and most appropriate alternative to meet the  
16 | person's needs; and

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

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

26 |                 b. Is likely to physically injure others if allowed to  
27 | remain at liberty.

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

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

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

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

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

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

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

5 (10) COMPETENCY.--

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

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

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

30 (12) APPEAL.--

31

1 (a) Any party to the proceeding who is affected by an  
2 order of the court, including the agency, may appeal to the  
3 appropriate district court of appeal within the time and in  
4 the manner prescribed by the Florida Rules of Appellate  
5 Procedure.

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

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

21 Section 28. Section 393.122, Florida Statutes, is  
22 amended to read:

23 393.122 Applications for continued residential  
24 services.--

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

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



1           Section 29. Section 393.13, Florida Statutes, is  
2 amended to read:

3           393.13 ~~Personal~~ Treatment of persons with  
4 developmental disabilities ~~who are developmentally disabled.--~~

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

8           (2) LEGISLATIVE INTENT.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Persons with developmental disabilities shall have  
2 a right to dignity, privacy, and humane care, including the  
3 right to be free from sexual abuse in residential facilities.

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

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

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

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

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

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

30 (h) Persons with developmental disabilities ~~who are~~  
31 ~~developmentally disabled~~ shall have a right to consent to or

1 refuse treatment, subject to the provisions of s. 393.12(2)(a)  
2 or chapter 744.

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

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

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

16 (a) Clients shall have an unrestricted right to  
17 communication:

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

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

1 administrator of the facility may direct reasonable  
2 observation and monitoring to the telephone communication.

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

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

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

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

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

1 (c) Each client shall receive prompt and appropriate  
2 medical treatment and care for physical and mental ailments  
3 and for the prevention of any illness or disability. Medical  
4 treatment shall be consistent with the accepted standards of  
5 medical practice in the community.

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

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

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

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

25 5. Pharmacy services shall be delivered in accordance  
26 with the provisions of chapter 465.

27 6. Prior to instituting a plan of experimental medical  
28 treatment or carrying out any necessary surgical procedure,  
29 express and informed consent shall be obtained from the  
30 client, if competent, or the client's parent or legal  
31 guardian. Information upon which the client shall make

1 necessary treatment and surgery decisions shall include, but  
2 not be limited to:

3       a. The nature and consequences of such procedures.  
4       b. The risks, benefits, and purposes of such  
5 procedures.  
6       c. Alternate procedures available.

7       7. When the parent or legal guardian of the client is  
8 unknown or unlocatable and the physician is unwilling to  
9 perform surgery based solely on the client's consent, a court  
10 of competent jurisdiction shall hold a hearing to determine  
11 the appropriateness of the surgical procedure. The client  
12 shall be physically present, unless the client's medical  
13 condition precludes such presence, represented by counsel, and  
14 provided the right and opportunity to be confronted with, and  
15 to cross-examine, all witnesses alleging the appropriateness  
16 of such procedure. In such proceedings, the burden of proof by  
17 clear and convincing evidence shall be on the party alleging  
18 the appropriateness of such procedures. The express and  
19 informed consent of a person described in subparagraph 6. may  
20 be withdrawn at any time, with or without cause, prior to  
21 treatment or surgery.

22       8. The absence of express and informed consent  
23 notwithstanding, a licensed and qualified physician may render  
24 emergency medical care or treatment to any client who has been  
25 injured or who is suffering from an acute illness, disease, or  
26 condition if, within a reasonable degree of medical certainty,  
27 delay in initiation of emergency medical care or treatment  
28 would endanger the health of the client.

29       (d) Each client shall have access to individual  
30 storage space for his or her private use.  
31



1 (e) Each client shall be provided with appropriate  
2 physical exercise as prescribed in the client's individual or  
3 family support plan. Indoor and outdoor facilities and  
4 equipment for such physical exercise shall be provided.

5 (f) Each client shall receive humane discipline.

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

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

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

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

1 ~~in this section shall prohibit the review of programs by the~~  
2 ~~Florida statewide or local advocacy councils.~~

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

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

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

25 ~~2. Totally enclosed cribs and barred enclosures shall~~  
26 ~~be considered restraints.~~

27 ~~1.3.~~ Daily reports on the employment of restraint or  
28 seclusion ~~physical, chemical, or mechanical restraints by~~  
29 ~~those specialists authorized in the use of such restraints~~  
30 shall be made to the ~~appropriate~~ chief administrator of the  
31 facility or program licensed under this chapter, and a monthly

1 ~~compilation summary~~ of such reports shall be relayed to the  
2 ~~agency's local area office district administrator and the~~  
3 ~~Florida local advocacy council~~. The monthly reports shall  
4 summarize all such cases of restraints, the type used, the  
5 duration of usage, and the reasons therefor. The area offices  
6 ~~Districts~~ shall submit monthly summaries of these districtwide  
7 ~~quarterly reports of these summaries~~ to the agency's central  
8 office state Developmental Disabilities Program Office.  
9       2.4. The agency shall adopt by rule standards and  
10 procedures relating to the use of restraint and seclusion ~~post~~  
11 ~~a copy of the rules adopted under this section in each living~~  
12 ~~unit of residential facilities~~. Such rules must be consistent  
13 with recognized best practices; prohibit inherently dangerous  
14 restraint or seclusion procedures; establish limitations on  
15 the use and duration of restraint and seclusion; establish  
16 measures to ensure the safety of clients and staff during an  
17 incident of restraint or seclusion; establish procedures for  
18 staff to follow before, during, and after incidents of  
19 restraint or seclusion, including individualized plans for the  
20 use of restraints or seclusion in emergency situations;  
21 establish professional qualifications of and training for  
22 staff who may order or be engaged in the use of restraint or  
23 seclusion; establish requirements for facility data collection  
24 and reporting relating to the use of restraint and seclusion;  
25 and establish procedures relating to the documentation of the  
26 use of restraint or seclusion in the client's facility or  
27 program record. A copy of the rules adopted under this  
28 ~~subparagraph section~~ shall be given to the client, parent,  
29 guardian or guardian advocate, and all staff members of  
30 ~~licensed facilities and programs licensed under this chapter~~  
31

1 and made a part of all staff preservice and inservice training  
2 programs.

3 ~~(i)(j)1.~~ Each client shall have a central record. The  
4 central record shall be established by the agency at the time  
5 that an individual is determined eligible for services, shall  
6 be maintained by the client's support coordinator, and must  
7 contain information ~~include data~~ pertaining to admission,  
8 diagnosis and treatment history, present condition, and such  
9 other information as may be required ~~under rules of the~~  
10 ~~agency.~~ The central record is the property of the agency.

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

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

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

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

31

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

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

9           ~~2.4.~~ The client, if competent, or the client's parent  
10 or legal guardian if the client is incompetent, shall be  
11 supplied with a copy of the client's central record upon  
12 request.

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

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

30           (6) NOTICE OF RIGHTS.--Each person with developmental  
31 disabilities, if competent, or parent or legal guardian of

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

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

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

24 393.135 Sexual misconduct prohibited; reporting  
25 required; penalties.--

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

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

1 (b) "Sexual activity" means:  
2 1. Fondling the genital area, groin, inner thighs,  
3 buttocks, or breasts of a person.  
4 2. The oral, anal, or vaginal penetration by or union  
5 with the sexual organ of another or the anal or vaginal  
6 penetration of another by any other object.  
7 3. Intentionally touching in a lewd or lascivious  
8 manner the breasts, genitals, the genital area, or buttocks,  
9 or the clothing covering them, of a person, or forcing or  
10 enticing a person to touch the perpetrator.  
11 4. Intentionally masturbating in the presence of  
12 another person.  
13 5. Intentionally exposing the genitals in a lewd or  
14 lascivious manner in the presence of another person.  
15 6. Intentionally committing any other sexual act that  
16 does not involve actual physical or sexual contact with the  
17 victim, including, but not limited to, sadomasochistic abuse,  
18 sexual bestiality, or the simulation of any act involving  
19 sexual activity in the presence of a victim.  
20 (c) "Sexual misconduct" means any sexual activity  
21 between a covered person ~~an employee~~ and a client to whom a  
22 covered person renders services, care, or support on behalf of  
23 the agency or its providers, or between a covered person and  
24 another client who lives in the same home as the client to  
25 whom a covered person is rendering the services, care, or  
26 support, regardless of the consent of the client. The term  
27 does not include an act done for a bona fide medical purpose  
28 or an internal search conducted in the lawful performance of  
29 duty by a covered person ~~an employee~~.  
30  
31

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

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

5           (a)(b) Resides in a residential facility, including  
6 any comprehensive transitional education program,  
7 developmental disabilities services institution, foster care  
8 facility, group home facility, intermediate care facility for  
9 the developmentally disabled, or residential habilitation  
10 center; or

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

13  
14 commits a felony of the second degree, punishable as provided  
15 in s. 775.082, s. 775.083, or s. 775.084. A covered person ~~An~~  
16 ~~employee~~ may be found guilty of violating this subsection  
17 without having committed the crime of sexual battery.

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

20           (4) This section does not apply to a covered person ~~an~~  
21 ~~employee~~ who:

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

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

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



1 ~~The covered person~~ Such employee shall also prepare, date, and  
2 sign an independent report that specifically describes the  
3 nature of the sexual misconduct, the location and time of the  
4 incident, and the persons involved. The covered person  
5 ~~employee~~ shall deliver the report to the supervisor or program  
6 director, who is responsible for providing copies to the  
7 agency's local office and the agency's department's inspector  
8 general. ~~The inspector general shall immediately conduct an~~  
9 ~~appropriate administrative investigation, and, if there is~~  
10 ~~probable cause to believe that sexual misconduct has occurred,~~  
11 ~~the inspector general shall notify the state attorney in the~~  
12 ~~circuit in which the incident occurred.~~

13 Section 31. Section 393.15, Florida Statutes, is  
14 amended to read:

15 393.15 Legislative intent; Community Resources  
16 Development Loan Program Trust Fund.--

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

1 care, group home, ~~developmental training~~, and supported  
2 employment programs for persons with developmental  
3 disabilities ~~who are developmentally disabled~~.

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

8 ~~(2)(3)~~ There is created a Community Resources  
9 Development Loan Program in Trust Fund in the State Treasury  
10 ~~to be used by~~ the agency for the purpose of granting loans to  
11 eligible programs for the initial costs of development of the  
12 programs. In order to be eligible for the program, a foster  
13 home, group home, or supported employment program must:

14 (a) Serve persons with developmental disabilities;

15 (b) Be a nonprofit corporation, partnership, or sole  
16 proprietorship; and

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

20 (3) Loans may be made to pay for the costs of  
21 development and may include structural modification, the  
22 purchase of equipment and fire and safety devices,  
23 preoperational staff training, and the purchase of insurance.  
24 Such costs may shall not include the actual construction of a  
25 facility and may not be in lieu of payment for maintenance,  
26 client services, or care provided.

27 (4) The agency may grant to an eligible program a  
28 lump-sum loan in one payment not to exceed the cost ~~to the~~  
29 ~~program~~ of providing 2 months' services, care, or maintenance  
30 to each person with developmental disabilities ~~who is~~  
31 ~~developmentally disabled~~ to be placed in the program by the

1 agency, or the actual cost of firesafety renovations to a  
2 facility required by the state, whichever is greater. ~~Loans~~  
3 ~~granted to programs shall not be in lieu of payment for~~  
4 ~~maintenance, services, or care provided, but shall stand~~  
5 ~~separate and distinct.~~

6 (5) The agency shall adopt rules, ~~as provided in~~  
7 ~~chapter 120,~~ to determine the criteria standards under which a  
8 program shall be eligible to receive a loan ~~as provided in~~  
9 ~~this section~~ and the methodology criteria for the equitable  
10 allocation of loan ~~trust~~ funds when eligible applications  
11 exceed the funds available.

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

25 (7)(6) If any program that has received a loan under  
26 this section ceases to accept, or provide care, services, or  
27 maintenance to persons placed in the program by the  
28 department, or if such program files papers of bankruptcy, at  
29 that point in time the loan shall become an interest-bearing  
30 loan at the rate of 5 percent per annum on the entire amount  
31 of the initial loan which shall be repaid within a 1-year

1 period from the date on which the program ceases to provide  
2 care, services, or maintenance, or files papers in bankruptcy,  
3 and the amount of the loan due plus interest shall constitute  
4 a lien in favor of the state against all real and personal  
5 property of the program. The lien shall be perfected by the  
6 appropriate officer of the agency by executing and  
7 acknowledging a statement of the name of the program and the  
8 amount due on the loan and a copy of the promissory note,  
9 which shall be recorded by the agency with the clerk of the  
10 circuit court in the county wherein the program is located. If  
11 the program has filed a petition for bankruptcy, the agency  
12 shall file and enforce the lien in the bankruptcy proceedings.  
13 Otherwise, the lien shall be enforced in the manner provided  
14 in s. 85.011. All funds received by the agency from the  
15 enforcement of the lien shall be deposited in the agency's  
16 Administrative Community Resources Development Trust Fund and  
17 used to fund new loans.

18 Section 32. Section 393.17, Florida Statutes, is  
19 amended to read:

20 393.17 Behavioral programs; certification of behavior  
21 analysts.--

22 (1) The agency may establish a certification process  
23 for behavior analysts in order to ensure that only qualified  
24 employees and service providers provide behavioral analysis  
25 services to clients. The procedures must be established by  
26 rule and must include criteria for scope of practice,  
27 qualifications for certification, including training and  
28 testing requirements, continuing education requirements for  
29 ongoing certification, and standards of performance. The  
30 procedures must also include decertification procedures that  
31 may be used to determine whether an individual continues to

1 meet the qualifications for certification or the professional  
2 performance standards and, if not, the procedures necessary to  
3 decertify an employee or service provider.

4       (2) The agency shall ~~may~~ recognize the certification  
5 of behavior analysts awarded by a nonprofit corporation that  
6 adheres to the national standards of boards that determine  
7 professional credentials and whose mission is to meet  
8 professional credentialing needs identified by behavior  
9 analysts, state governments, and consumers of behavior  
10 analysis services ~~and whose work has the support of the~~  
11 ~~Association for Behavior Analysis International.~~ The  
12 certification procedure recognized by the agency must undergo  
13 regular psychometric review and validation, pursuant to a job  
14 analysis survey of the profession and standards established by  
15 content experts in the field.

16       Section 33. Section 393.18, Florida Statutes, is  
17 created to read:

18       393.18 Comprehensive transitional education  
19 program.--A comprehensive transition education program is a  
20 group of jointly operating centers or units, the collective  
21 purpose of which is to provide a sequential series of  
22 educational care, training, treatment, habilitation, and  
23 rehabilitation services to persons who have developmental  
24 disabilities and who have severe or moderate maladaptive  
25 behaviors. However, this section does not require such  
26 programs to provide services only to persons with  
27 developmental disabilities. All such services shall be  
28 temporary in nature and delivered in a structured residential  
29 setting, having the primary goal of incorporating the  
30 principle of self-determination in establishing permanent  
31 residence for persons with maladaptive behaviors in facilities

1 that are not associated with the comprehensive transitional  
2 education program. The staff shall include behavior analysts  
3 and teachers, as appropriate, who shall be available to  
4 provide services in each component center or unit of the  
5 program. A behavior analyst must be certified pursuant to s.  
6 393.17.

7 (1) Comprehensive transitional education programs  
8 shall include a minimum of two component centers or units, one  
9 of which shall be an intensive treatment and educational  
10 center or a transitional training and educational center,  
11 which provides services to persons with maladaptive behaviors  
12 in the following sequential order:

13 (a) Intensive treatment and educational center.--This  
14 component is a self-contained residential unit providing  
15 intensive behavioral and educational programming for persons  
16 with severe maladaptive behaviors whose behaviors preclude  
17 placement in a less-restrictive environment due to the threat  
18 of danger or injury to themselves or others. Continuous-shift  
19 staff shall be required for this component.

20 (b) Transitional training and educational  
21 center.--This component is a residential unit for persons with  
22 moderate maladaptive behaviors providing concentrated  
23 psychological and educational programming that emphasizes a  
24 transition toward a less-restrictive environment.  
25 Continuous-shift staff shall be required for this component.

26 (c) Community transition residence.--This component is  
27 a residential center providing educational programs and any  
28 support services, training, and care that are needed to assist  
29 persons with maladaptive behaviors to avoid regression to more  
30 restrictive environments while preparing them for more  
31

1 independent living. Continuous-shift staff shall be required  
2 for this component.

3 (d) Alternative living center.--This component is a  
4 residential unit providing an educational and family living  
5 environment for persons with maladaptive behaviors in a  
6 moderately unrestricted setting. Residential staff shall be  
7 required for this component.

8 (e) Independent living education center.--This  
9 component is a facility providing a family living environment  
10 for persons with maladaptive behaviors in a largely  
11 unrestricted setting and includes education and monitoring  
12 that is appropriate to support the development of independent  
13 living skills.

14 (2) Components of a comprehensive transitional  
15 education program are subject to the license issued under s.  
16 393.067 to a comprehensive transitional education program and  
17 may be located on a single site or multiple sites.

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

24 (4) The total number of persons with maladaptive  
25 behaviors who are being provided with services in a  
26 comprehensive transitional education program may not in any  
27 instance exceed 120 residents.

28 (5) This section shall authorize licensure for  
29 comprehensive transitional education programs which by July 1,  
30 1989:

31 (a) Were in actual operation; or

1           (b) Owned a fee simple interest in real property for  
2 which a county or city government has approved zoning allowing  
3 for the placement of the facilities described in this  
4 subsection, and have registered an intent with the agency to  
5 operate a comprehensive transitional education program.  
6 However, nothing shall prohibit the assignment by such a  
7 registrant to another entity at a different site within the  
8 state, so long as there is compliance with all criteria of  
9 this program and local zoning requirements and provided that  
10 each residential facility within the component centers or  
11 units of the program authorized under this subparagraph does  
12 not exceed a capacity of 15 persons.

13           Section 34. Section 393.23, Florida Statutes, is  
14 created to read:

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

25           (1) Moneys in the trust account must be expended for  
26 the benefit, education, and welfare of clients. However, if  
27 specified, moneys that are donated to the institution must be  
28 expended in accordance with the intentions of the donor. Trust  
29 account money may not be used for the benefit of employees of  
30 the agency, or to pay the wages of such employees. The welfare  
31 of the clients includes the expenditure of funds for the



1 purchase of items for resale at canteens or vending machines,  
2 and for the establishment of, maintenance of, and operation of  
3 canteens, hobby shops, recreational or entertainment  
4 facilities, sheltered workshops, activity centers, farming  
5 projects, or other like facilities or programs established at  
6 the institutions for the benefit of clients.

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

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

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

21       (5) Funds shall be expended in accordance with  
22 requirements and guidelines established by the Chief Financial  
23 Officer.

24       Section 35. Section 393.501, Florida Statutes, is  
25 amended to read:

26       393.501 Rulemaking.--

27       (1) The agency ~~may shall~~ adopt rules pursuant to ss.  
28 120.536(1) and 120.54 to carry out its statutory duties the  
29 provisions of this chapter.

30       (2) Such rules shall address the number of facilities  
31 on a single lot ~~parcel~~ or on adjacent lots ~~parcels of land,~~

1 ~~and in addition, for ICF/MR, the rate and location of facility~~  
2 ~~development and level of care. In adopting rules, an~~  
3 alternative living center and an independent living education  
4 center, as described in s. 393.18, shall be subject to the  
5 provisions of s. 419.001, except that such centers shall be  
6 exempt from the 1,000-foot-radius requirement of s. 419.001(2)  
7 if:

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

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

13 Section 36. Section 394.453, Florida Statutes, is  
14 amended to read:

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

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

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

22 394.455 Definitions.--As used in this part, unless the  
23 context clearly requires otherwise, the term:

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

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

1 freedom of movement and not part of the standard treatment  
2 regimen of the person with a diagnosed mental illness who is a  
3 client of the department. Physically holding a person during a  
4 procedure to forcibly administer psychotropic medication is a  
5 physical restraint.

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

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

22 Section 38. Paragraph (b) of subsection (5) of section  
23 394.457, Florida Statutes, is amended to read:

24 394.457 Operation and administration.--

25 (5) RULES.--

26 (b) The department shall adopt rules necessary for the  
27 implementation and administration of the provisions of this  
28 part, and a program subject to the provisions of this part  
29 shall not be permitted to operate unless rules designed to  
30 ensure the protection of the health, safety, and welfare of  
31 the patients treated through such program have been adopted.

1 Rules adopted under this subsection must include provisions  
2 governing the use of restraint and seclusion which are  
3 consistent with recognized best practices and professional  
4 judgment; prohibit inherently dangerous restraint or seclusion  
5 procedures; establish limitations on the use and duration of  
6 restraint and seclusion; establish measures to ensure the  
7 safety of program participants and staff during an incident of  
8 restraint or seclusion; establish procedures for staff to  
9 follow before, during, and after incidents of restraint or  
10 seclusion; establish professional qualifications of and  
11 training for staff who may order or be engaged in the use of  
12 restraint or seclusion; and establish mandatory reporting,  
13 data collection, and data dissemination procedures and  
14 requirements. Rules adopted under this subsection must require  
15 that each instance of the use of restraint or seclusion be  
16 documented in the record of the patient.

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

19 394.879 Rules; enforcement.--

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

24 (g) The use of restraint and seclusion is consistent  
25 with recognized best practices and professional judgment; that  
26 inherently dangerous restraint or seclusion procedures are  
27 prohibited; that limitations are established on the use and  
28 duration of restraint and seclusion; that measures are  
29 established to ensure the safety of program participants and  
30 staff during an incident of restraint or seclusion; that  
31 procedures are created for staff to follow before, during, and

1 after incidents of restraint or seclusion; that professional  
2 qualifications and training are established for staff who may  
3 order or be engaged in the use of restraint or seclusion; and  
4 that mandatory reporting, data collection, and data  
5 dissemination procedures and requirements are instituted.  
6 Rules adopted under this section must require that any  
7 instance of the use of restraint or seclusion shall be  
8 documented in the record of the client.

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

11           397.405 Exemptions from licensure.--The following are  
12 exempt from the licensing provisions of this chapter:

13           (9) Facilities licensed under chapter 393 which s-  
14 ~~393.063 that~~, in addition to providing services to persons  
15 with developmental disabilities who are developmentally  
16 ~~disabled as defined therein~~, also provide services to persons  
17 developmentally at risk as a consequence of exposure to  
18 alcohol or other legal or illegal drugs while in utero.

19  
20 The exemptions from licensure in this section do not apply to  
21 any service provider that receives an appropriation, grant, or  
22 contract from the state to operate as a service provider as  
23 defined in this chapter or to any substance abuse program  
24 regulated pursuant to s. 397.406. Furthermore, this chapter  
25 may not be construed to limit the practice of a physician  
26 licensed under chapter 458 or chapter 459, a psychologist  
27 licensed under chapter 490, or a psychotherapist licensed  
28 under chapter 491 who provides substance abuse treatment, so  
29 long as the physician, psychologist, or psychotherapist does  
30 not represent to the public that he or she is a licensed  
31 service provider and does not provide services to clients

1 pursuant to part V of this chapter. Failure to comply with any  
2 requirement necessary to maintain an exempt status under this  
3 section is a misdemeanor of the first degree, punishable as  
4 provided in s. 775.082 or s. 775.083.

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

7 400.419 Violations; imposition of administrative  
8 fines; grounds.--

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

25 Section 42. Section 400.960, Florida Statutes, is  
26 amended to read:

27 400.960 Definitions.--As used in this part, the term:

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

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

3           (3) "Autism" has the same meaning as in s. 393.063.  
4 ~~means a pervasive, neurologically based developmental~~  
5 ~~disability of extended duration which causes severe learning,~~  
6 ~~communication, and behavior disorders with age of onset during~~  
7 ~~infancy or childhood. Individuals with autism exhibit~~  
8 ~~impairment in reciprocal social interaction, impairment in~~  
9 ~~verbal and nonverbal communication and imaginative ability,~~  
10 ~~and a markedly restricted repertoire of activities and~~  
11 ~~interests.~~

12           (4) "Cerebral palsy" has the same meaning as in s.  
13 393.063. ~~means a group of disabling symptoms of extended~~  
14 ~~duration which results from damage to the developing brain~~  
15 ~~occurring before, during, or after birth and resulting in the~~  
16 ~~loss or impairment of control over voluntary muscles. The term~~  
17 ~~does not include those symptoms or impairments resulting~~  
18 ~~solely from a stroke.~~

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

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

27           ~~(7) "Department" means the Department of Children and~~  
28 ~~Family Services.~~

29           ~~(6)(8)~~ "Developmental disability" has the same meaning  
30 as in s. 393.063 ~~means a disorder or syndrome that is~~  
31 ~~attributable to retardation, cerebral palsy, autism, spina~~



1 ~~bifida, or Prader Willi syndrome and that constitutes a~~  
2 ~~substantial handicap that can reasonably be expected to~~  
3 ~~continue indefinitely.~~

4 ~~(7)(9)~~ "Direct service provider" means a person 18  
5 years of age or older who has direct contact with individuals  
6 with developmental disabilities and who is unrelated to the  
7 individuals with developmental disabilities.

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

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

20 ~~(8)(12)~~ "Intermediate care facility for the  
21 developmentally disabled" means a residential facility  
22 licensed and certified in accordance with state law, and  
23 certified by the Federal Government, pursuant to the Social  
24 Security Act, as a provider of Medicaid services to persons  
25 with developmental disabilities who are developmentally  
26 disabled.

27 ~~(9)(13)~~ "Prader-Willi syndrome" has the same meaning  
28 as in s. 393.063. ~~means an inherited condition typified by~~  
29 ~~neonatal hypotonia with failure to thrive, hyperphagia, or an~~  
30 ~~excessive drive to eat which leads to obesity, usually at 18~~  
31 ~~to 36 months of age, mild to moderate retardation,~~

1 ~~hypogonadism, short stature, mild facial dysmorphism, and a~~  
2 ~~characteristic neurobehavior.~~

3       (10)(a) "Restraint" means a physical device, method,  
4 or drug used to control behavior. A physical restraint is any  
5 manual method or physical or mechanical device, material, or  
6 equipment attached or adjacent to the individual's body so  
7 that he or she cannot easily remove the restraint and which  
8 restricts freedom of movement or normal access to one's body.

9       (b) A drug used as a restraint is a medication used to  
10 control the person's behavior or to restrict his or her  
11 freedom of movement. Physically holding a person during a  
12 procedure to forcibly administer psychotropic medication is a  
13 physical restraint.

14       (c) Restraint does not include physical devices, such  
15 as orthopedically prescribed appliances, surgical dressings  
16 and bandages, supportive body bands, or other physical holding  
17 when necessary for routine physical examinations and tests;  
18 for purposes of orthopedic, surgical, or other similar medical  
19 treatment; when used to provide support for the achievement of  
20 functional body position or proper balance; or when used to  
21 protect a person from falling out of bed.

22       ~~(11)(14)~~ "Retardation" has the same meaning as in s.  
23 393.063. means significantly subaverage general intellectual  
24 functioning existing concurrently with deficits in adaptive  
25 behavior and manifested during the period from conception to  
26 age 18. "Significantly subaverage general intellectual  
27 functioning," for the purpose of this definition, means  
28 performance that is two or more standard deviations from the  
29 mean score on a standardized intelligence test specified in  
30 rules of the department. "Deficits in adaptive behavior," for  
31 the purpose of this definition, means deficits in the

1 ~~effectiveness or degree with which an individual meets the~~  
2 ~~standards of personal independence and social responsibility~~  
3 ~~expected of his or her age, cultural group, and community.~~

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

12 ~~(13)(15) "Spina bifida" has the same meaning as in s.~~  
13 ~~393.063 means a medical diagnosis of spina bifida cystica or~~  
14 ~~myelomeningocele.~~

15 Section 43. Subsection (12) is added to section  
16 400.962, Florida Statutes, to read:

17 400.962 License required; license application.--

18 (12) The applicant must agree to provide or arrange  
19 for active treatment services by an interdisciplinary team to  
20 maximize individual independence or prevent regression or loss  
21 of functional status. Standards for active treatment shall be  
22 adopted by the Agency for Health Care Administration by rule  
23 pursuant to ss. 120.536(1) and 120.54. Active treatment  
24 services shall be provided in accordance with the individual  
25 support plan and shall be reimbursed as part of the per diem  
26 rate as paid under the Medicaid program.

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

29 400.967 Rules and classification of deficiencies.--

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

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

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

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

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

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

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

13 (e) A uniform accounting system.

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

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

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

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

12 (i) The use of restraint and seclusion. Such rules  
13 must be consistent with recognized best practices; prohibit  
14 inherently dangerous restraint or seclusion procedures;  
15 establish limitations on the use and duration of restraint and  
16 seclusion; establish measures to ensure the safety of clients  
17 and staff during an incident of restraint or seclusion;  
18 establish procedures for staff to follow before, during, and  
19 after incidents of restraint or seclusion, including  
20 individualized plans for the use of restraints or seclusion in  
21 emergency situations; establish professional qualifications of  
22 and training for staff who may order or be engaged in the use  
23 of restraint or seclusion; establish requirements for facility  
24 data collection and reporting relating to the use of restraint  
25 and seclusion; and establish procedures relating to the  
26 documentation of the use of restraint or seclusion in the  
27 client's facility or program record.

28 Section 45. Section 402.115, Florida Statutes, is  
29 amended to read:

30 402.115 Sharing confidential or exempt  
31 information.--Notwithstanding any other provision of law to

1 | the contrary, the Department of Health, ~~and~~ the Department of  
2 | Children and Family Services, and the Agency for Persons with  
3 | Disabilities may share confidential information or information  
4 | exempt from disclosure under chapter 119 on any individual who  
5 | is or has been the subject of a program within the  
6 | jurisdiction of each agency. Information so exchanged remains  
7 | confidential or exempt as provided by law.

8 |       Section 46. Section 402.17, Florida Statutes, is  
9 | amended to read:

10 |       402.17 Claims for care and maintenance; trust  
11 | property.--The Department of Children and Family Services and  
12 | the Agency for Persons with Disabilities shall protect the  
13 | financial interest of the state with respect to claims that  
14 | ~~which~~ the state may have for the care and maintenance of  
15 | clients of the department or agency. The department or agency  
16 | shall, as trustee, hold in trust and administer money ~~of~~  
17 | ~~clients~~ and property designated for the personal benefit of  
18 | clients. The department or agency shall act as trustee of  
19 | clients' money and property entrusted to it in accordance with  
20 | the usual fiduciary standards applicable generally to  
21 | trustees, and shall act to protect both the short-term and  
22 | long-term interests of the clients for whose benefit it is  
23 | holding such money and property.

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

25 |       (a) The department or agency shall perform the  
26 | following acts:

27 |       1. Receive and supervise the collection of sums due  
28 | the state.

29 |       2. Bring any court action necessary to collect any  
30 | claim the state may have against any client, former client,  
31 | guardian of any client or former client, executor or

1 administrator of the client's estate, or any person against  
2 whom any client or former client may have a claim.

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

5 4. Obtain from the department's Economic  
6 Self-Sufficiency Services Program Office a financial status  
7 report on any client or former client, including the ability  
8 of third parties responsible for such client to pay all or  
9 part of the cost of the client's care and maintenance.

10 5. Petition the court for appointment of a guardian or  
11 administrator for an otherwise unrepresented client or former  
12 client should the financial status report or other information  
13 indicate the need for such action. The cost of any such action  
14 shall be charged against the assets or estate of the client.

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

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

20 8. Represent the state in the settlement of the  
21 estates of deceased clients or in the settlement of estates in  
22 which a client or a former client against whom the state may  
23 have a claim has a financial interest.

24 9. Establish procedures by rule for the use of amounts  
25 held in trust for the client to pay for the cost of care and  
26 maintenance, if such amounts would otherwise cause the client  
27 to become ineligible for services which are in the client's  
28 best interests.

29 (b) The department or agency ~~of Children and Family~~  
30 ~~Services~~ may charge off accounts if it certifies that the  
31 accounts are uncollectible after diligent efforts have been



1 made to collect them. If the department certifies an account  
2 to the Department of Financial Services, setting forth the  
3 circumstances upon which it predicates the uncollectibility,  
4 and if, pursuant to s. 17.04, the Department of Financial  
5 Services concurs, the account shall be charged off.

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

9 (a) Accept and administer in trust, as a trustee  
10 having a fiduciary responsibility to a client ~~of the~~  
11 ~~department~~, any money or other property received for personal  
12 use or benefit of that client. In the case of children in the  
13 legal custody of the department, following the termination of  
14 the parental rights ~~as to that client~~, until the child ~~such~~  
15 ~~client~~ leaves the legal custody of the department due to ~~the~~  
16 ~~client's~~ adoption or attaining ~~because the client attains~~ the  
17 age of 18 or, in the case of children who are otherwise in the  
18 custody of the department, the court having jurisdiction over  
19 such child ~~client~~ shall have jurisdiction, upon application of  
20 the department or other interested party, to review or approve  
21 any extraordinary action of the department acting as trustee  
22 as to the child's ~~client's~~ money or other property. When  
23 directed by a court of competent jurisdiction, the department  
24 may further hold money or property of a child ~~person under the~~  
25 ~~age of 18~~ who has been in the care, custody, or control of the  
26 department and who is the subject of a court proceeding during  
27 the pendency of that proceeding.

28 (b) Deposit the money in banks qualified as state  
29 depositories, or in any bank, credit union, or savings and  
30 loan association authorized to do business in this state,  
31 provided moneys so deposited or held by such institutions are

1 fully insured by a federal depository or share insurance  
2 program, or an approved state depository or share insurance  
3 program, and are available on demand.

4 (c) Withdraw the money and use it to meet current  
5 needs of clients. For purposes of this paragraph, "current  
6 needs" includes payment of fees assessed under s. 402.33. The  
7 amount of money withdrawn ~~by the department to meet current~~  
8 ~~needs of a client~~ shall take into account the need of the  
9 department or agency, as the trustee of a client's money and  
10 property, to provide for the long-term needs of a client,  
11 including, but not limited to, ensuring that ~~to provide for~~  
12 ~~the need of~~ a client under the age of 18 will ~~to~~ have  
13 sufficient financial resources available to be able to  
14 function as an adult upon reaching the age of 18, meeting ~~or~~  
15 ~~to meet~~ the special needs of a client who has a disability and  
16 whose special needs cannot otherwise be met by any form of  
17 public assistance or family resources, or maintaining ~~to~~  
18 ~~maintain~~ the client's eligibility for public assistance,  
19 including medical assistance, under state or federal law.

20 (d) As trustee, invest in the manner authorized by law  
21 for fiduciaries money not used for current needs of clients.  
22 Such investments may include, but shall not be limited to,  
23 investments in savings share accounts of any credit union  
24 chartered under the laws of the United States and doing  
25 business in this state, and savings share accounts of any  
26 credit union chartered under the laws of this state, provided  
27 the credit union is insured under the federal share insurance  
28 program or an approved state share insurance program.

29 (3) DEPOSIT OF FUNDS RECEIVED.--Funds received by the  
30 Department of Children and Family Services in accordance with  
31

1 s. 402.33 shall be deposited into a trust fund for the  
2 operation of the department.

3 (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the  
4 death of any client affected by the provisions of this  
5 section, any unclaimed money held in trust by the department,  
6 the agency, or by the Chief Financial Officer for the child  
7 ~~him or her~~ shall be applied first to the payment of any unpaid  
8 claim of the state against the client, and any balance  
9 remaining unclaimed for a period of 1 year shall escheat to  
10 the state as unclaimed funds held by fiduciaries.

11 (5) LEGAL REPRESENTATION.--To the extent that the  
12 budget will permit, the Department of Legal Affairs shall  
13 furnish the legal services to carry out the provisions of this  
14 section. Upon the request of the department or agency ~~of~~  
15 ~~Children and Family Services,~~ the various state and county  
16 attorneys shall assist in litigation within their  
17 jurisdiction. ~~The Such~~ department or agency may retain legal  
18 counsel for necessary legal services which cannot be furnished  
19 by the Department of Legal Affairs and the various state and  
20 county attorneys.

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

22 (a) The department or agency ~~of Children and Family~~  
23 ~~Services~~ may deposit any funds of clients in its possession in  
24 any bank in the state or may invest or reinvest such funds in  
25 bonds or obligations of the United States for the payment of  
26 which the full faith and credit of the United States is  
27 pledged. For purposes of deposit only, the funds of any client  
28 may be mingled with the funds of any other clients.

29 (b) The interest or increment accruing on such funds  
30 shall be the property of the clients and shall be used or  
31 conserved for the personal use or benefit of the ~~individual~~

1 client, in accordance with the department's or agency's  
2 fiduciary responsibility as a trustee for the money and  
3 property of the client ~~held by the department~~. Such interest  
4 shall not accrue to the general welfare of all clients.  
5 Whenever any proposed action of the department or agency,  
6 acting in its own interest, may conflict with the department's  
7 or agency's ~~obligation as a trustee with a~~ fiduciary  
8 responsibility to the client, the department or agency shall  
9 promptly present the matter to a court of competent  
10 jurisdiction for the court's determination as to what action  
11 the department or agency may take. The department or agency  
12 shall establish ~~rules governing~~ reasonable fees by rule for  
13 the cost of administering such accounts and for establishing  
14 the minimum balance eligible to earn interest.

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

18 (a) Whenever a client of the department for whom the  
19 department is holding money or property as a trustee attains  
20 the age of 18, and thereby will no longer be in the legal  
21 custody of the department, the department shall promptly  
22 disburse such money and property ~~of the client the department~~  
23 ~~has held as a trustee~~ to that client, or as that client  
24 directs, as soon as practicable ~~once the client attains the~~  
25 ~~age of 18~~.

26 (b) Whenever a client of the department over the age  
27 of 18 for whom the department is holding money or property as  
28 a trustee no longer requires the care, custody, control, or  
29 services of the department, the department shall promptly  
30 disburse such money and property ~~of the client the department~~  
31

1 ~~has held as a trustee~~ to that client, or as that client or a  
2 court directs, as soon as practicable.

3 (c) When a client under the age of 18 who has been in  
4 the legal custody, care, or control of the department and for  
5 whom the department is holding money or property as a trustee  
6 attains the age of 18 and has a physical or mental disability,  
7 or is otherwise incapacitated or incompetent to handle that  
8 client's own financial affairs, the department shall apply for  
9 a court order from a court of competent jurisdiction to  
10 establish a trust on behalf of that client. Where there is no  
11 willing relative of the client acceptable to the court  
12 available to serve as trustee of such proposed trust, the  
13 court may enter an order authorizing the department to serve  
14 as trustee of a separate trust under such terms and conditions  
15 as the court determines appropriate to the circumstances.

16 (d) When a client under the age of 18 who has been in  
17 the legal custody, care, or control of the department and for  
18 whom the department is holding money or property as a trustee  
19 leaves the care, custody, and control of the department due to  
20 adoption or placement of the client with a relative, or as  
21 otherwise directed by a court of competent jurisdiction, the  
22 department shall notify that court of the existence of the  
23 money and property ~~in the possession of the department~~ either  
24 prior to, or promptly after, receiving knowledge of the change  
25 of custody, care, or control. The department shall apply for  
26 an order from the court exercising jurisdiction over the  
27 client to direct the disposition of the money and property  
28 belonging to that client. The court order may establish a  
29 trust in which the money and property of the client will be  
30 deposited, appoint a guardian of a property as to the money or  
31 property of the client, or direct the creation of a Uniform

1 Transfers ~~Gifts~~ to Minors Act account on behalf of that  
2 client, ~~as the court finds appropriate and~~ under the terms and  
3 conditions the court determines appropriate to the  
4 circumstances.

5 Section 47. Section 402.181, Florida Statutes, is  
6 amended to read:

7 402.181 State Institutions Claims Program.--

8 (1) There is created a State Institutions Claims  
9 Program, for the purpose of making restitution for property  
10 damages and direct medical expenses for injuries caused by  
11 shelter children or foster children, or escapees, inmates, or  
12 patients of state institutions under the Department of  
13 Children and Family Services, the Department of Health, the  
14 Department of Juvenile Justice, ~~or~~ the Department of  
15 Corrections, or the Agency for Persons with Disabilities.

16 (2) Claims for restitution may be filed with the  
17 Department of Legal Affairs at its office in accordance with  
18 regulations prescribed by the Department of Legal Affairs. The  
19 Department of Legal Affairs shall have full power and  
20 authority to hear, investigate, and determine all questions in  
21 respect to such claims and is authorized, within the limits of  
22 current appropriations, to pay individual claims up to \$1,000  
23 or, with respect to children in foster care and their  
24 families, individual claims up to \$1,500. Claims in excess of  
25 these amounts shall continue to require legislative approval.

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

30 (b) The Department of Legal Affairs shall work with  
31 the Department of Children and Family Services, the Department

1 of Health, the Department of Juvenile Justice, ~~and~~ the  
2 Department of Corrections, and the Agency for Persons with  
3 Disabilities to streamline the process of investigations,  
4 hearings, and determinations with respect to claims under this  
5 section, to ensure that eligible claimants receive restitution  
6 within a reasonable time.

7 Section 48. Section 402.20, Florida Statutes, is  
8 amended to read:

9 402.20 County contracts authorized for services and  
10 facilities for in mental health and developmental disabilities  
11 ~~retardation areas~~.--The boards of county commissioners are  
12 authorized to provide monetary grants and facilities, and to  
13 enter into renewable contracts, for services and facilities,  
14 for a period not to exceed 2 years, with public and private  
15 hospitals, clinics, and laboratories; other state agencies,  
16 departments, or divisions; the state colleges and  
17 universities; the community colleges; private colleges and  
18 universities; counties; municipalities; towns; townships; and  
19 any other governmental unit or nonprofit organization which  
20 provides needed facilities for persons with mental illness or  
21 developmental disabilities ~~the mentally ill or retarded~~. These  
22 services are hereby declared to be for a public and county  
23 purpose. The county commissioners may make periodic  
24 inspections to assure that the services or facilities provided  
25 under this chapter meet the standards of the Department of  
26 Children and Family Services and the Agency for Persons with  
27 Disabilities.

28 Section 49. Section 402.22, Florida Statutes, is  
29 amended to read:

30 402.22 Education program for students who reside in  
31 residential care facilities operated by the Department of

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

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

9 (b) The Legislature recognizes the vital role of  
10 education in the rehabilitation of such students. It is the  
11 intent of the Legislature that all such students benefit from  
12 educational services and receive such services.

13 (c) It is the intent of the Legislature that  
14 educational services be coordinated with appropriate and  
15 existing diagnostic and evaluative, social, followup, and  
16 other therapeutic services of the department and agency of  
17 ~~Children and Family Services~~ so that the effect of the total  
18 rehabilitation process is maximized.

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

26 (2) District school boards shall establish educational  
27 programs for all students ages 5 through 18 under the  
28 residential care of the Department of Children and Family  
29 Services and the Agency for Persons with Disabilities, and may  
30 provide for students below age 3 as provided for in s.  
31



1 1003.21(1)(e). Funding of such programs shall be pursuant to  
2 s. 1011.62.

3 (3) Notwithstanding any provisions of chapters 39,  
4 393, 394, and 397 to the contrary, the services of the  
5 Department of Children and Family Services and the Agency for  
6 Persons with Disabilities and those of the Department of  
7 Education and district school boards shall be mutually  
8 supportive and complementary of each other. The education  
9 programs provided by the district school board shall meet the  
10 standards prescribed by the State Board of Education and the  
11 district school board. Decisions regarding the design and  
12 delivery of department or agency ~~of Children and Family~~  
13 ~~Services~~ treatment or habilitative services shall be made by  
14 interdisciplinary teams of professional and paraprofessional  
15 staff of which appropriate district school system  
16 administrative and instructional personnel shall be invited to  
17 be participating members. The requirements for maintenance of  
18 confidentiality as prescribed in chapters 39, 393, 394, and  
19 397 shall be applied to information used by such  
20 interdisciplinary teams, and such information shall be exempt  
21 from the provisions of ss. 119.07(1) and 286.011.

22 (4) Students age 18 and under who are under the  
23 residential care of the Department of Children and Family  
24 Services or the Agency for Persons with Disabilities and who  
25 receive an education program shall be calculated as full-time  
26 equivalent student membership in the appropriate cost factor  
27 as provided for in s. 1011.62(1)(c). Residential care  
28 facilities ~~of the Department of Children and Family Services~~  
29 shall include, but not be limited to, developmental  
30 disabilities ~~services~~ institutions and state mental health  
31 facilities. All students shall receive their education program

1 from the district school system, and funding shall be  
2 allocated through the Florida Education Finance Program for  
3 the district school system.

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

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

24 (7) Notwithstanding the provisions of s.  
25 1001.42(4)(n), the educational program at the Marianna Sunland  
26 Center in Jackson County shall be operated by the Department  
27 of Education, either directly or through grants or contractual  
28 agreements with other public educational agencies. The annual  
29 state allocation to any such agency shall be computed pursuant  
30 to s. 1011.62(1), (2), and (5) and allocated in the amount  
31

1 that would have been provided the local school district in  
2 which the residential facility is located.

3 Section 50. Paragraph (c) of subsection (1) and  
4 subsection (2) of section 402.33, Florida Statutes, are  
5 amended to read:

6 402.33 Department authority to charge fees for  
7 services provided.--

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

9 (c) "Department" means the Department of Children and  
10 Family Services, ~~and~~ the Department of Health, and the Agency  
11 for Persons with Disabilities.

12 (2) The department, in accordance with rules  
13 established by it, shall either charge, assess, or collect, or  
14 cause to be charged, assessed, or collected, fees for any  
15 service it provides to its clients either directly or through  
16 its agencies or contractors, except for:

17 (a) Diagnosis and evaluation procedures necessary to  
18 determine the client's eligibility and need for services  
19 provided by the department;

20 (b) Customary and routine information and referral  
21 services;

22 (c) Educational services provided in lieu of public  
23 education;

24 (d) Specific services exempted by law from fee  
25 assessment;

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

28 (f) Specific classes or types of services provided in  
29 programs funded by grants, donations, or contracts that  
30 prohibit charging fees;

31

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

7 (h) Any type of service for which the department  
8 determines that the net estimated revenue from such fees after  
9 deducting any loss of funds from federal grants occasioned by  
10 such fees will be less than the estimated cost to charge and  
11 collect such fees.

12  
13 Fees, other than third-party benefits and benefit payments,  
14 may not be charged for services provided to indigents whose  
15 only sources of income are from state and federal aid. In  
16 addition, fees may not be charged parents of a minor client  
17 for services requested by the minor without parental consent  
18 or for services provided a minor client who has been  
19 permanently committed to the care and custody of the  
20 department with parental rights permanently severed. However,  
21 lack of parental consent does not preclude the charging of  
22 fees established under chapter 39. ~~The department may not~~  
23 ~~require~~ A client who is receiving wages that which are below  
24 the minimum wage under the federal Fair Labor Standards Act  
25 may not be required to pay fees from such wages. Voluntary  
26 payments for services must be encouraged.

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

29 408.036 Projects subject to review; exemptions.--  
30  
31

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

4           (r) For beds in state mental health treatment  
5 facilities operated under s. 394.455~~(32)~~~~(30)~~ and state mental  
6 health forensic facilities operated under s. 916.106(8).

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

9           Section 52. Paragraphs (a), (j), and (k) of subsection  
10 (4) of section 409.221, Florida Statutes, are amended to read:  
11 409.221 Consumer-directed care program.--

12           (4) CONSUMER-DIRECTED CARE.--

13           (a) Program established.--The Agency for Health Care  
14 Administration shall establish the consumer-directed care  
15 program which shall be based on the principles of consumer  
16 choice and control. The agency shall implement the program  
17 upon federal approval. The agency shall establish interagency  
18 cooperative agreements with and shall work with the  
19 Departments of Elderly Affairs, Health, and Children and  
20 Family Services and the Agency for Persons with Disabilities  
21 to implement and administer the program. The program shall  
22 allow enrolled persons to choose the providers of services and  
23 to direct the delivery of services, to best meet their  
24 long-term care needs. The program must operate within the  
25 funds appropriated by the Legislature.

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

28           1. The agency and the Departments of Elderly Affairs,  
29 Health, and Children and Family Services and the Agency for  
30 Persons with Disabilities are authorized to adopt and enforce  
31 rules.

1           2. The agency shall take all necessary action to  
2 ensure state compliance with federal regulations. The agency  
3 shall apply for any necessary federal waivers or waiver  
4 amendments needed to implement the program.

5           (k) Reviews and reports.--The agency and the  
6 Departments of Elderly Affairs, Health, and Children and  
7 Family Services and the Agency for Persons with Disabilities  
8 shall each, on an ongoing basis, review and assess the  
9 implementation of the consumer-directed care program. By  
10 January 15 of each year, the agency shall submit a written  
11 report to the Legislature that includes each department's  
12 review of the program and contains recommendations for  
13 improvements to the program.

14           Section 53. Paragraph (a) of subsection (2) and  
15 subsection (8) of section 409.908, Florida Statutes, are  
16 amended to read:

17           409.908 Reimbursement of Medicaid providers.--Subject  
18 to specific appropriations, the agency shall reimburse  
19 Medicaid providers, in accordance with state and federal law,  
20 according to methodologies set forth in the rules of the  
21 agency and in policy manuals and handbooks incorporated by  
22 reference therein. These methodologies may include fee  
23 schedules, reimbursement methods based on cost reporting,  
24 negotiated fees, competitive bidding pursuant to s. 287.057,  
25 and other mechanisms the agency considers efficient and  
26 effective for purchasing services or goods on behalf of  
27 recipients. If a provider is reimbursed based on cost  
28 reporting and submits a cost report late and that cost report  
29 would have been used to set a lower reimbursement rate for a  
30 rate semester, then the provider's rate for that semester  
31 shall be retroactively calculated using the new cost report,

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

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

20 2. Unless otherwise limited or directed in the General  
21 Appropriations Act, reimbursement to hospitals licensed under  
22 part I of chapter 395 for the provision of swing-bed nursing  
23 home services must be made on the basis of the average  
24 statewide nursing home payment, and reimbursement to a  
25 hospital licensed under part I of chapter 395 for the  
26 provision of skilled nursing services must be made on the  
27 basis of the average nursing home payment for those services  
28 in the county in which the hospital is located. When a  
29 hospital is located in a county that does not have any  
30 community nursing homes, reimbursement shall ~~must~~ be  
31 determined by averaging the nursing home payments~~7~~ in counties

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

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



1 | the developmental services waiver as part of a  
2 | home-and-community-based continuum of care for Medicaid  
3 | recipients who receive waiver services.

4 |       Section 54. Subsection (3) of section 409.9127,  
5 | Florida Statutes, is amended to read:

6 |           409.9127 Preauthorization and concurrent utilization  
7 | review; conflict-of-interest standards.--

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

13 |       Section 55. Paragraph (c) of subsection (2) and  
14 | subsection (5) of section 411.224, Florida Statutes, are  
15 | amended to read:

16 |           411.224 Family support planning process.--The  
17 | Legislature establishes a family support planning process to  
18 | be used by the Department of Children and Family Services as  
19 | the service planning process for targeted individuals,  
20 | children, and families under its purview.

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

24 |           (c) Children from age 3 ~~birth~~ through age 5 who are  
25 | served by the Agency for Persons with Disabilities  
26 | ~~Developmental Disabilities Program Office of the Department of~~  
27 | ~~Children and Family Services.~~

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

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

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

10 411.232 Children's Early Investment Program.--

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

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

16 415.102 Definitions of terms used in ss.

17 415.101-415.113.--As used in ss. 415.101-415.113, the term:

18 (8) "Facility" means any location providing day or  
19 residential care or treatment for vulnerable adults. The term  
20 "facility" may include, but is not limited to, any hospital,  
21 state institution, nursing home, assisted living facility,  
22 adult family-care home, adult day care center, residential  
23 facility licensed under chapter 393, adult day training center  
24 ~~group home~~, or mental health treatment center.

25 Section 58. Section 415.1035, Florida Statutes, is  
26 amended to read:

27 415.1035 Facility's duty to inform residents of their  
28 right to report abusive, neglectful, or exploitive  
29 practices.--The department shall work cooperatively with the  
30 Agency for Health Care Administration, the Agency for Persons  
31 with Disabilities, and the Department of Elderly Affairs to

1 ensure that every facility that serves vulnerable adults  
2 informs residents of their right to report abusive,  
3 neglectful, or exploitive practices. Each facility must  
4 establish appropriate policies and procedures to facilitate  
5 such reporting.

6 Section 59. Subsections (1) and (10) of section  
7 415.1055, Florida Statutes, are amended to read:

8 415.1055 Notification to administrative entities.--

9 (1) Upon receipt of a report that alleges that an  
10 employee or agent of the department, the Agency for Persons  
11 with Disabilities, or the Department of Elderly Affairs,  
12 acting in an official capacity, has committed an act of abuse,  
13 neglect, or exploitation, the department shall notify the  
14 state attorney in whose circuit the abuse, neglect, or  
15 exploitation occurred. This notification may be oral or  
16 written.

17 (10) When a report has been received and the  
18 department has reason to believe that a vulnerable adult  
19 resident of a facility licensed by the Agency for Health Care  
20 Administration or the Agency for Persons with Disabilities has  
21 been the victim of abuse, neglect, or exploitation, the  
22 department shall provide a copy of its investigation to the  
23 appropriate agency. If the investigation determines that a  
24 health professional licensed or certified under the Department  
25 of Health may have abused, neglected, or exploited a  
26 vulnerable adult, the department shall also provide a copy to  
27 the Department of Health.

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

30 415.107 Confidentiality of reports and records.--

31

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

5 (a) Employees or agents of the department, the Agency  
6 for Persons with Disabilities, ~~of~~ the Agency for Health Care  
7 Administration, or ~~of~~ the Department of Elderly Affairs who  
8 are responsible for carrying out protective investigations,  
9 ongoing protective services, or licensure or approval of  
10 nursing homes, assisted living facilities, adult day care  
11 centers, adult family-care homes, home care for the elderly,  
12 hospices, residential facilities licensed under chapter 393,  
13 or other facilities used for the placement of vulnerable  
14 adults.

15 (h) Any appropriate official of the department, the  
16 Agency for Persons with Disabilities, ~~of~~ the Agency for Health  
17 Care Administration, or ~~of~~ the Department of Elderly Affairs  
18 who is responsible for:

19 1. Administration or supervision of the programs for  
20 the prevention, investigation, or treatment of abuse, neglect,  
21 or exploitation of vulnerable adults when carrying out an  
22 official function; or

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

26 Section 61. Paragraph (a) of subsection (3) of section  
27 435.03, Florida Statutes, is amended to read:

28 435.03 Level 1 screening standards.--

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

30 (a) For employees and employers licensed or registered  
31 pursuant to chapter 400, and for employees and employers of

1 developmental disabilities ~~services~~ institutions as defined in  
2 s. 393.063, intermediate care facilities for the  
3 developmentally disabled as defined in s. 400.960 ~~s. 393.063~~,  
4 and mental health treatment facilities as defined in s.  
5 394.455, meets the requirements of this chapter.

6 Section 62. Paragraph (a) of subsection (2) of section  
7 490.014, Florida Statutes, is amended to read:

8 490.014 Exemptions.--

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

11 (a) Is a salaried employee of a government agency;  
12 developmental disability facility or ~~services~~ program, mental  
13 health, alcohol, or drug abuse facility operating under  
14 ~~pursuant to~~ chapter 393, chapter 394, or chapter 397;  
15 subsidized child care program, subsidized child care case  
16 management program, or child care resource and referral  
17 program operating pursuant to chapter 402; child-placing or  
18 child-caring agency licensed pursuant to chapter 409; domestic  
19 violence center certified pursuant to chapter 39; accredited  
20 academic institution; or research institution, if such  
21 employee is performing duties for which he or she was trained  
22 and hired solely within the confines of such agency, facility,  
23 or institution, so long as the employee is not held out to the  
24 public as a psychologist pursuant to s. 490.012(1)(a).

25 Section 63. Paragraph (a) of subsection (4) of section  
26 491.014, Florida Statutes, is amended to read:

27 491.014 Exemptions.--

28 (4) No person shall be required to be licensed,  
29 provisionally licensed, registered, or certified under this  
30 chapter who:  
31

1           (a) Is a salaried employee of a government agency;  
2 developmental disability facility or ~~services~~ program, mental  
3 health, alcohol, or drug abuse facility operating under  
4 ~~pursuant to~~ chapter 393, chapter 394, or chapter 397;  
5 subsidized child care program, subsidized child care case  
6 management program, or child care resource and referral  
7 program operating pursuant to chapter 402; child-placing or  
8 child-caring agency licensed pursuant to chapter 409; domestic  
9 violence center certified pursuant to chapter 39; accredited  
10 academic institution; or research institution, if such  
11 employee is performing duties for which he or she was trained  
12 and hired solely within the confines of such agency, facility,  
13 or institution, so long as the employee is not held out to the  
14 public as a clinical social worker, mental health counselor,  
15 or marriage and family therapist.

16           Section 64. Section 944.602, Florida Statutes, is  
17 amended to read:

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

29           Section 65. Subsections (2) and (3) of section  
30 945.025, Florida Statutes, are amended to read:

31           945.025 Jurisdiction of department.--

1           (2) In establishing, operating, and utilizing these  
2 facilities, the department shall attempt, whenever possible,  
3 to avoid the placement of nondangerous offenders who have  
4 potential for rehabilitation with repeat offenders or  
5 dangerous offenders. Medical, mental, and psychological  
6 problems shall be diagnosed and treated whenever possible. The  
7 Department of Children and Family Services and the Agency for  
8 Persons with Disabilities shall cooperate to ensure the  
9 delivery of services to persons under the custody or  
10 supervision of the department. When it is the intent of the  
11 department to transfer a mentally ill or retarded prisoner to  
12 the Department of Children and Family Services or the Agency  
13 for Persons with Disabilities, an involuntary commitment  
14 hearing shall be held according to the provisions of chapter  
15 393 or chapter 394.

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

1 community residential facility may be deemed a part of the  
2 state correctional system for purposes of maintaining custody  
3 of offenders, and for this purpose the department may contract  
4 for and purchase the services of such facilities.

5 Section 66. Section 947.185, Florida Statutes, is  
6 amended to read:

7 947.185 Application for mental retardation services as  
8 condition of parole.--The Parole Commission may require as a  
9 condition of parole that any inmate who has been diagnosed as  
10 mentally retarded as defined in s. 393.063 shall, upon  
11 release, apply for ~~retardation~~ services from the Agency for  
12 Persons with Disabilities ~~Department of Children and Family~~  
13 ~~Services~~.

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

16 985.224 Medical, psychiatric, psychological, substance  
17 abuse, and educational examination and treatment.--

18 (1) After a detention petition or a petition for  
19 delinquency has been filed, the court may order the child  
20 named in the petition to be examined by a physician. The court  
21 may also order the child to be evaluated by a psychiatrist or  
22 a psychologist, by a district school board educational needs  
23 assessment team, or, if a developmental disability is  
24 suspected or alleged, by a ~~the~~ developmental disabilities  
25 diagnostic and evaluation team with ~~of~~ the Agency for Persons  
26 with Disabilities ~~Department of Children and Family Services~~.  
27 If it is necessary to place a child in a residential facility  
28 for such evaluation, the criteria and procedures established  
29 in chapter 393, chapter 394, or chapter 397, whichever is  
30 applicable, shall be used.

31



1           Section 68. Section 1003.58, Florida Statutes, is  
2 amended to read:

3           1003.58 Students in residential care facilities.--Each  
4 district school board shall provide educational programs  
5 according to rules of the State Board of Education to students  
6 who reside in residential care facilities operated by the  
7 Department of Children and Family Services or the Agency for  
8 Persons with Disabilities.

9           (1) The district school board shall not be charged any  
10 rent, maintenance, utilities, or overhead on such facilities.  
11 Maintenance, repairs, and remodeling of existing facilities  
12 shall be provided by the Department of Children and Family  
13 Services or the Agency for Persons with Disabilities, as  
14 appropriate.

15           (2) If additional facilities are required, the  
16 district school board and the Department of Children and  
17 Family Services or the Agency for Persons with Disabilities,  
18 as appropriate, shall agree on the appropriate site based on  
19 the instructional needs of the students. When the most  
20 appropriate site for instruction is on district school board  
21 property, a special capital outlay request shall be made by  
22 the commissioner in accordance with s. 1013.60. When the most  
23 appropriate site is on state property, state capital outlay  
24 funds shall be requested by the department or agency in  
25 accordance with chapter 216 of Children and Family Services as  
26 provided by s. 216.043 and shall be submitted as specified by  
27 s. 216.023. Any instructional facility to be built on state  
28 property shall have educational specifications jointly  
29 developed by the school district and the department or agency  
30 of Children and Family Services and approved by the Department  
31 of Education. The size of space and occupant design capacity

1 criteria as provided by state board rules shall be used for  
2 remodeling or new construction whether facilities are provided  
3 on state property or district school board property. The  
4 planning of such additional facilities shall incorporate  
5 current state ~~Department of Children and Family Services~~  
6 deinstitutionalization goals and plans.

7 (3) The district school board shall have full and  
8 complete authority in the matter of the assignment and  
9 placement of such students in educational programs. The parent  
10 of an exceptional student shall have the same due process  
11 rights as are provided under s. 1003.57(5).

12 (4) The district school board shall have a written  
13 agreement with the Department of Children and Family Services  
14 and the Agency for Persons with Disabilities outlining the  
15 respective duties and responsibilities of each party.

16  
17 Notwithstanding the provisions herein, the educational program  
18 at the Marianna Sunland Center in Jackson County shall be  
19 operated by the Department of Education, either directly or  
20 through grants or contractual agreements with other public or  
21 duly accredited educational agencies approved by the  
22 Department of Education.

23 Section 69. Paragraph (c) of subsection (3) of section  
24 17.61, Florida Statutes, is amended to read:

25 17.61 Chief Financial Officer; powers and duties in  
26 the investment of certain funds.--

27 (3)

28 (c) Except as provided in this paragraph and except  
29 for moneys described in paragraph (d), the following agencies  
30 shall not invest trust fund moneys as provided in this  
31 section, but shall retain such moneys in their respective

1 trust funds for investment, with interest appropriated to the  
2 General Revenue Fund, pursuant to s. 17.57:  
3 1. The Agency for Health Care Administration, except  
4 for the Tobacco Settlement Trust Fund.  
5 2. The Agency for Persons with Disabilities, except  
6 for:  
7 a. The Federal Grants Trust Fund.  
8 b. The Tobacco Settlement Trust Fund.  
9 ~~3.2.~~ The Department of Children and Family Services,  
10 except for:  
11 a. The Alcohol, Drug Abuse, and Mental Health Trust  
12 Fund.  
13 b. The Community Resources Development Trust Fund.  
14 c. The Refugee Assistance Trust Fund.  
15 d. The Social Services Block Grant Trust Fund.  
16 e. The Tobacco Settlement Trust Fund.  
17 f. The Working Capital Trust Fund.  
18 ~~4.3.~~ The Department of Community Affairs, only for the  
19 Operating Trust Fund.  
20 ~~5.4.~~ The Department of Corrections.  
21 ~~6.5.~~ The Department of Elderly Affairs, except for:  
22 a. The Federal Grants Trust Fund.  
23 b. The Tobacco Settlement Trust Fund.  
24 ~~7.6.~~ The Department of Health, except for:  
25 a. The Federal Grants Trust Fund.  
26 b. The Grants and Donations Trust Fund.  
27 c. The Maternal and Child Health Block Grant Trust  
28 Fund.  
29 d. The Tobacco Settlement Trust Fund.  
30 ~~8.7.~~ The Department of Highway Safety and Motor  
31 Vehicles, only for:

- 1           a. The DUI Programs Coordination Trust Fund.  
2           b. The Security Deposits Trust Fund.  
3           ~~9.8.~~ The Department of Juvenile Justice.  
4           ~~10.9.~~ The Department of Law Enforcement.  
5           ~~11.10.~~ The Department of Legal Affairs.  
6           ~~12.11.~~ The Department of State, only for:  
7           a. The Grants and Donations Trust Fund.  
8           b. The Records Management Trust Fund.  
9           ~~13.12.~~ The Executive Office of the Governor, only for:  
10          a. The Economic Development Transportation Trust Fund.  
11          b. The Economic Development Trust Fund.  
12          ~~14.13.~~ The Florida Public Service Commission, only for  
13 the Florida Public Service Regulatory Trust Fund.  
14          ~~15.14.~~ The Justice Administrative Commission.  
15          ~~16.15.~~ The state courts system.  
16          Section 70. Paragraph (b) of subsection (5) of section  
17 400.464, Florida Statutes, is amended to read:  
18           400.464 Home health agencies to be licensed;  
19 expiration of license; exemptions; unlawful acts; penalties.--  
20           (5) The following are exempt from the licensure  
21 requirements of this part:  
22           (b) Home health services provided by a state agency,  
23 either directly or through a contractor with:  
24           1. The Department of Elderly Affairs.  
25           2. The Department of Health, a community health  
26 center, or a rural health network that furnishes home visits  
27 for the purpose of providing environmental assessments, case  
28 management, health education, personal care services, family  
29 planning, or followup treatment, or for the purpose of  
30 monitoring and tracking disease.  
31

1           3. Services provided to persons with ~~who have~~  
2 developmental disabilities, as defined in s. 393.063.

3           4. Companion and sitter organizations that were  
4 registered under s. 400.509(1) on January 1, 1999, and were  
5 authorized to provide personal services ~~under s. 393.063(33)~~  
6 under a developmental services provider certificate on January  
7 1, 1999, may continue to provide such services to past,  
8 present, and future clients of the organization who need such  
9 services, notwithstanding the provisions of this act.

10           5. The Department of Children and Family Services.

11           Section 71. Subsection (7) of section 744.704, Florida  
12 Statutes, is amended to read:

13           744.704 Powers and duties.--

14           (7) A public guardian shall not commit a ward to a  
15 mental health treatment facility, as defined in s.  
16 394.455(32)~~(30)~~, without an involuntary placement proceeding  
17 as provided by law.

18           Section 72. Subsection (4) of section 984.22, Florida  
19 Statutes, is amended to read:

20           984.22 Powers of disposition.--

21           (4) All payments of fees made to the department under  
22 ~~pursuant to~~ this chapter, or child support payments made to  
23 the department pursuant to subsection (3), shall be deposited  
24 in the General Revenue Fund. ~~In cases in which the child is~~  
25 ~~placed in foster care with the Department of Children and~~  
26 ~~Family Services, such child support payments shall be~~  
27 ~~deposited in the Community Resources Development Trust Fund.~~

28           Section 73. Part III of chapter 282, Florida Statutes,  
29 consisting of sections 282.601, 282.602, 282.603, 282.604,  
30 282.605, and 282.606, is created to read:

31                               PART III

1                   ACCESSIBILITY OF INFORMATION AND TECHNOLOGY

2                   282.601 Accessibility of electronic information and  
3 information technology.--

4                   (1) In order to improve the accessibility of  
5 electronic information and information technology and increase  
6 the successful education, employment, access to governmental  
7 information and services, and involvement in community life,  
8 the executive, legislative, and judicial branches of state  
9 government shall, when developing, competitively procuring,  
10 maintaining, or using electronic information or information  
11 technology acquired on or after July 1, 2006, ensure that  
12 state employees with disabilities have access to and are  
13 provided with information and data comparable to the access  
14 and use by state employees who are not individuals with  
15 disabilities, unless an undue burden would be imposed on the  
16 agency.

17                   (2) Individuals with disabilities who are members of  
18 the public seeking information or services from state agencies  
19 that are subject to this part shall be provided with access to  
20 and use of information and data comparable to that provided to  
21 the public who are not individuals with disabilities, unless  
22 an undue burden would be imposed on the agency.

23                   282.602 Definitions.--As used in this part, the term:

24                   (1) "Accessible electronic information and information  
25 technology" means electronic information and information  
26 technology that conforms to the standards for accessible  
27 electronic information and information technology as set forth  
28 by s. 508 of the Rehabilitation Act of 1973, as amended, and  
29 29 U.S.C. 794(d), including the regulations set forth under 36  
30 C.F.R. part 1194.

1           (2) "Alternate methods" means a different means of  
2 providing information to people with disabilities, including  
3 product documentation. The term includes, but is not limited  
4 to, voice, facsimile, relay service, TTY, Internet posting,  
5 captioning, text-to-speech synthesis, and audio description.

6           (3) "Electronic information and information  
7 technology" includes information technology and any equipment  
8 or interconnected system or subsystem of equipment which is  
9 used in creating, converting, or duplicating data or  
10 information. The term includes, but is not limited to,  
11 telecommunications products such as telephones, information  
12 kiosks and transaction machines, Internet web sites,  
13 multimedia systems, and office equipment such as copiers and  
14 facsimile machines. The term does not include any equipment  
15 that contains embedded information technology that is an  
16 integral part of the product if the principal function of the  
17 technology is not the acquisition, storage, manipulation,  
18 management, movement, control, display, switching,  
19 interchange, transmission, or reception of data or  
20 information.

21           (4) "Information technology" means any equipment or  
22 interconnected system or subsystem of equipment which is used  
23 in the automatic acquisition, storage, manipulation,  
24 management, movement, control, display, switching,  
25 interchange, transmission, or reception of data or  
26 information. The term includes computers, ancillary equipment,  
27 software, firmware and similar procedures, services and  
28 support services, and related resources.

29           (5) "Undue burden" means significant difficulty or  
30 expense. In determining whether an action would result in an  
31 undue burden, a state agency shall consider all agency

1 resources that are available to the program or component for  
2 which the product is being developed, procured, maintained, or  
3 used.

4 (6) "State agency" means any agency of the executive,  
5 legislative, or judicial branch of state government.

6 282.603 Access to electronic and information  
7 technology for persons with disabilities; undue burden;  
8 limitations.--

9 (1) Each state agency shall develop, procure,  
10 maintain, and use accessible electronic information and  
11 information technology acquired on or after July 1, 2006, that  
12 conforms to the applicable provisions set forth by s. 508 of  
13 the Rehabilitation Act of 1973, as amended, and 29 U.S.C.  
14 794(d), including the regulations set forth under 36 C.F.R.  
15 part 1194, except when compliance with this section imposes an  
16 undue burden; however in such instance, a state agency must  
17 provide individuals with disabilities with the information and  
18 data involved by an alternative method of access which allows  
19 the individual to use the information and data.

20 (2) This section does not require a state agency to  
21 install specific accessibility-related software or attach an  
22 assistive-technology device at a work station of a state  
23 employee who is not an individual with a disability.

24 (3) This section does not require a state agency, when  
25 providing the public with access to information or data  
26 through electronic information technology, to make products  
27 owned by the state agency available for access and use by  
28 individuals with disabilities at a location other than the  
29 location at which the electronic information and information  
30 technology are normally provided to the public, and this  
31 section does not require a state agency to purchase products



1 for access and use by individuals with disabilities at a  
2 location other than at the location where the electronic  
3 information and information technology are normally provided  
4 to the public.

5 282.604 Adoption of rules.--The Department of  
6 Management Services shall, with input from stakeholders, adopt  
7 rules pursuant to ss. 120.536(1) and 120.54 for the  
8 development, procurement, maintenance, and use of accessible  
9 electronic information technology by governmental units.

10 282.605 Exceptions.--

11 (1) This part does not apply to electronic information  
12 and information technology of the Department of Military  
13 Affairs or the Florida National Guard if the function,  
14 operation, or use of the information or technology involves  
15 intelligence activities or cryptologic activities related to  
16 national security, the command and control of military forces,  
17 equipment that is an integral part of a weapon or weapons  
18 system, or systems that are critical to the direct fulfillment  
19 of military or intelligence missions. Systems that are  
20 critical to the direct fulfillment of military or intelligence  
21 missions do not include a system that is used for routine  
22 administrative and business applications, including, but not  
23 limited to, payroll, finance, logistics, and  
24 personnel-management applications.

25 (2) This part does not apply to electronic information  
26 and information technology of a state agency if the function,  
27 operation, or use of the information or technology involves  
28 criminal intelligence activities. Such activities do not  
29 include information or technology that is used for routine  
30 administrative and business applications, including, but not  
31

1 limited to, payroll, finance, logistics, and  
2 personnel-management applications.

3 (3) This part does not apply to electronic information  
4 and information technology that is acquired by a contractor  
5 and that is incidental to the contract.

6 (4) This part applies to competitive solicitations  
7 issued or new systems developed by a state agency on or after  
8 July 1, 2006.

9 282.606 Intent.--It is the intent of the Legislature  
10 that, in construing this part, due consideration and great  
11 weight be given to the interpretations of the federal courts  
12 relating to comparable provisions of s. 508 of the  
13 Rehabilitation Act of 1973, as amended, and 29 U.S.C. 794(d),  
14 including the regulations set forth under 36 C.F.R. part 1194,  
15 as of July 1, 2006.

16 Section 74. This act shall take effect July 1, 2006.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                                   COMMITTEE SUBSTITUTE FOR  
3                                   CS for Senate Bill 2012

4 This committee substitute differs from the prior committee  
5 substitute in that it:

6 Specifies that the authority of a judge under s. 39.407, F.S.,  
7 to order a child to receive mental health or developmental  
8 disabilities services from a psychiatrist, psychologist, or  
9 other appropriate provider does not confer jurisdiction on the  
10 court to determine eligibility or order services under the  
11 statutes governing developmental disabilities services  
12 administered by the Agency for Persons with Disabilities (APD  
13 or agency).

14 Deletes proposed language that circumscribed the court's  
15 jurisdiction to involuntarily admit a mentally retarded person  
16 to residential services provided by the agency, and instead  
17 specifies that the APD may appeal decisions relating to such  
18 involuntary admissions.

19 Clarifies the bill's definition of "restraint" to provide that  
20 a drug used as a restraint does not include a drug that is  
21 part of the standard treatment regimen of a person with  
22 diagnosed mental illness who is a client of the Department of  
23 Children and Family Services.

24 Includes adult day training services and personal care  
25 services within the community-based services that are  
26 medically necessary to prevent institutionalization.

27 Deletes proposed language specifying that a facility license  
28 granted by the agency is not an entitlement.

29 Delineates grounds for denial, revocation, or suspension of a  
30 license, including making a false representation on a license  
31 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.

Prescribes further the rules that the APD must adopt governing  
standards and procedures relating to the use of restraint and  
seclusion.

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.

Requires applicants for licensure as intermediate care  
facilities for the developmentally disabled (ICF/DDs) to agree  
to provide or arrange for active treatment services by an  
interdisciplinary team to maximize individual independence or  
prevent regression.

Creates part III of ch. 282, F.S., relating to accessibility  
of electronic information and information technology for  
certain individuals with disabilities.

1 Requires the executive, legislative, and judicial branches of  
2 state government, when developing or procuring electronic  
3 information or information technology, to ensure that state  
4 employees with disabilities have access to data and  
5 information comparable to what non-disabled state employees  
6 have--unless doing so would create an undue burden on the  
7 agency.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31