

Bill No. CS for SB 394

Barcode 100096

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Floor: AD/2R
05/05/2006 05:30 PM

.
. .
. .
. .
. .

The Conference Committee on CS for SB 394 recommended the following amendment:

Conference Committee Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Paragraph (i) is added to subsection (2) of section 216.181, Florida Statutes, to read:

216.181 Approved budgets for operations and fixed capital outlay.--

(2) Amendments to the original approved operating budgets for operational and fixed capital outlay expenditures must comply with the following guidelines in order to be approved by the Governor and the Legislative Budget Commission for the executive branch and the Chief Justice and the Legislative Budget Commission for the judicial branch:

(i) Notwithstanding paragraph (f), the Agency for Persons with Disabilities is authorized to submit an amendment to adjust its full-time equivalent positions, salary rate, and related budget authority to provide sufficient infrastructure

Bill No. CS for SB 394

Barcode 100096

1 and administrative support. This paragraph expires July 1,
2 2007.

3 Section 2. Subsection (4) of section 393.0661, Florida
4 Statutes, is amended, and subsection (5) is added to that
5 section, to read:

6 393.0661 Home and community-based services delivery
7 system; comprehensive redesign.--The Legislature finds that
8 the home and community-based services delivery system for
9 persons with developmental disabilities and the availability
10 of appropriated funds are two of the critical elements in
11 making services available. Therefore, it is the intent of the
12 Legislature that the Agency for Persons with Disabilities
13 shall develop and implement a comprehensive redesign of the
14 system.

15 (4) Nothing in this section or in any administrative
16 rule shall be construed to prevent or limit the Agency for
17 Health Care Administration, in consultation with the Agency
18 for Persons with Disabilities, from adjusting fees,
19 reimbursement rates, lengths of stay, number of visits, or
20 number of services, or from limiting enrollment, or making any
21 other adjustment necessary to comply with the availability of
22 moneys and any limitations or directions provided for in the
23 General Appropriations Act. ~~If at any time, based upon an~~
24 ~~analysis by the Agency for Health Care Administration in~~
25 ~~consultation with the Agency for Persons with Disabilities,~~
26 ~~the cost of home and community-based waiver services are~~
27 ~~expected to exceed the appropriated amount, the Agency for~~
28 ~~Health Care Administration may implement any adjustment,~~
29 ~~including provider rate reductions, within 30 days in order to~~
30 ~~remain within the appropriation.~~

31 (5) The Agency for Persons with Disabilities shall

Bill No. CS for SB 394

Barcode 100096

1 submit quarterly status reports to the Executive Office of the
2 Governor, the chair of the Senate Ways and Means Committee or
3 its successor, and the chair of the House Fiscal Council or
4 its successor regarding the financial status of home and
5 community-based services, including the number of enrolled
6 individuals who are receiving services through one or more
7 programs; the number of individuals who have requested
8 services who are not enrolled but who are receiving services
9 through one or more programs, with a description indicating
10 the programs from which the individual is receiving services;
11 the number of individuals who have refused an offer of
12 services but who choose to remain on the list of individuals
13 waiting for services; the number of individuals who have
14 requested services but who are receiving no services; a
15 frequency distribution indicating the length of time
16 individuals have been waiting for services; and information
17 concerning the actual and projected costs compared to the
18 amount of the appropriation available to the program and any
19 projected surpluses or deficits. If at any time an analysis by
20 the agency, in consultation with the Agency for Health Care
21 Administration, indicates that the cost of services is
22 expected to exceed the amount appropriated, the agency shall
23 submit a plan in accordance with subsection (4) to the
24 Executive Office of the Governor, the chair of Senate Ways and
25 Means Committee or its successor, and the chair of the House
26 Fiscal Council or its successor to remain within the amount
27 appropriated.

28 Section 3. Paragraphs (a), (j), and (k) of subsection
29 (4) of section 409.221, Florida Statutes, are amended to read:

30 409.221 Consumer-directed care program.--

31 (4) CONSUMER-DIRECTED CARE.--

Bill No. CS for SB 394

Barcode 100096

1 (a) Program established.--The Agency for Health Care
 2 Administration shall establish the consumer-directed care
 3 program which shall be based on the principles of consumer
 4 choice and control. The agency shall implement the program
 5 upon federal approval. The agency shall establish interagency
 6 cooperative agreements with and shall work with the
 7 Departments of Elderly Affairs, Health, and Children and
 8 Family Services and the Agency for Persons with Disabilities
 9 to implement and administer the program. The program shall
 10 allow enrolled persons to choose the providers of services and
 11 to direct the delivery of services, to best meet their
 12 long-term care needs. The program must operate within the
 13 funds appropriated by the Legislature.

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

16 1. The agency and the Departments of Elderly Affairs,
 17 Health, and Children and Family Services and the Agency for
 18 Persons with Disabilities are authorized to adopt and enforce
 19 rules.

20 2. The agency shall take all necessary action to
 21 ensure state compliance with federal regulations. The agency
 22 shall apply for any necessary federal waivers or waiver
 23 amendments needed to implement the program.

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

Barcode 100096

1 improvements to the program.

2 Section 4. Paragraph (d) of subsection (15) of section
3 440.02, Florida Statutes, is amended to read:

4 440.02 Definitions.--When used in this chapter, unless
5 the context clearly requires otherwise, the following terms
6 shall have the following meanings:

7 (15)

8 (d) "Employee" does not include:

9 1. An independent contractor who is not engaged in the
10 construction industry.

11 a. In order to meet the definition of independent
12 contractor, at least four of the following criteria must be
13 met:

14 (I) The independent contractor maintains a separate
15 business with his or her own work facility, truck, equipment,
16 materials, or similar accommodations;

17 (II) The independent contractor holds or has applied
18 for a federal employer identification number, unless the
19 independent contractor is a sole proprietor who is not
20 required to obtain a federal employer identification number
21 under state or federal regulations;

22 (III) The independent contractor receives compensation
23 for services rendered or work performed and such compensation
24 is paid to a business rather than to an individual;

25 (IV) The independent contractor holds one or more bank
26 accounts in the name of the business entity for purposes of
27 paying business expenses or other expenses related to services
28 rendered or work performed for compensation;

29 (V) The independent contractor performs work or is
30 able to perform work for any entity in addition to or besides
31 the employer at his or her own election without the necessity

Bill No. CS for SB 394

Barcode 100096

1 of completing an employment application or process; or

2 (VI) The independent contractor receives compensation
3 for work or services rendered on a competitive-bid basis or
4 completion of a task or a set of tasks as defined by a
5 contractual agreement, unless such contractual agreement
6 expressly states that an employment relationship exists.

7 b. If four of the criteria listed in sub-subparagraph
8 a. do not exist, an individual may still be presumed to be an
9 independent contractor and not an employee based on full
10 consideration of the nature of the individual situation with
11 regard to satisfying any of the following conditions:

12 (I) The independent contractor performs or agrees to
13 perform specific services or work for a specific amount of
14 money and controls the means of performing the services or
15 work.

16 (II) The independent contractor incurs the principal
17 expenses related to the service or work that he or she
18 performs or agrees to perform.

19 (III) The independent contractor is responsible for
20 the satisfactory completion of the work or services that he or
21 she performs or agrees to perform.

22 (IV) The independent contractor receives compensation
23 for work or services performed for a commission or on a
24 per-job basis and not on any other basis.

25 (V) The independent contractor may realize a profit or
26 suffer a loss in connection with performing work or services.

27 (VI) The independent contractor has continuing or
28 recurring business liabilities or obligations.

29 (VII) The success or failure of the independent
30 contractor's business depends on the relationship of business
31 receipts to expenditures.

Bill No. CS for SB 394

Barcode 100096

1 c. Notwithstanding anything to the contrary in this
2 subparagraph, an individual claiming to be an independent
3 contractor has the burden of proving that he or she is an
4 independent contractor for purposes of this chapter.

5 2. A real estate licensee, if that person agrees, in
6 writing, to perform for remuneration solely by way of
7 commission.

8 3. Bands, orchestras, and musical and theatrical
9 performers, including disk jockeys, performing in licensed
10 premises as defined in chapter 562, if a written contract
11 evidencing an independent contractor relationship is entered
12 into before the commencement of such entertainment.

13 4. An owner-operator of a motor vehicle who transports
14 property under a written contract with a motor carrier which
15 evidences a relationship by which the owner-operator assumes
16 the responsibility of an employer for the performance of the
17 contract, if the owner-operator is required to furnish motor
18 vehicle equipment as identified in the written contract and
19 the principal costs incidental to the performance of the
20 contract, including, but not limited to, fuel and repairs,
21 provided a motor carrier's advance of costs to the
22 owner-operator when a written contract evidences the
23 owner-operator's obligation to reimburse such advance shall be
24 treated as the owner-operator furnishing such cost and the
25 owner-operator is not paid by the hour or on some other
26 time-measured basis.

27 5. A person whose employment is both casual and not in
28 the course of the trade, business, profession, or occupation
29 of the employer.

30 6. A volunteer, except a volunteer worker for the
31 state or a county, municipality, or other governmental entity.

Bill No. CS for SB 394

Barcode 100096

1 A person who does not receive monetary remuneration for
2 services is presumed to be a volunteer unless there is
3 substantial evidence that a valuable consideration was
4 intended by both employer and employee. For purposes of this
5 chapter, the term "volunteer" includes, but is not limited to:

6 a. Persons who serve in private nonprofit agencies and
7 who receive no compensation other than expenses in an amount
8 less than or equivalent to the standard mileage and per diem
9 expenses provided to salaried employees in the same agency or,
10 if such agency does not have salaried employees who receive
11 mileage and per diem, then such volunteers who receive no
12 compensation other than expenses in an amount less than or
13 equivalent to the customary mileage and per diem paid to
14 salaried workers in the community as determined by the
15 department; and

16 b. Volunteers participating in federal programs
17 established under Pub. L. No. 93-113.

18 7. Unless otherwise prohibited by this chapter, any
19 officer of a corporation who elects to be exempt from this
20 chapter. Such officer is not an employee for any reason under
21 this chapter until the notice of revocation of election filed
22 pursuant to s. 440.05 is effective.

23 8. An officer of a corporation that is engaged in the
24 construction industry who elects to be exempt from the
25 provisions of this chapter, as otherwise permitted by this
26 chapter. Such officer is not an employee for any reason until
27 the notice of revocation of election filed pursuant to s.
28 440.05 is effective.

29 9. An exercise rider who does not work for a single
30 horse farm or breeder, and who is compensated for riding on a
31 case-by-case basis, provided a written contract is entered

Bill No. CS for SB 394

Barcode 100096

1 into prior to the commencement of such activity which
2 evidences that an employee/employer relationship does not
3 exist.

4 10. A taxicab, limousine, or other passenger
5 vehicle-for-hire driver who operates said vehicles pursuant to
6 a written agreement with a company which provides any
7 dispatch, marketing, insurance, communications, or other
8 services under which the driver and any fees or charges paid
9 by the driver to the company for such services are not
10 conditioned upon, or expressed as a proportion of, fare
11 revenues.

12 11. A person who performs services as a sports
13 official for an entity sponsoring an interscholastic sports
14 event or for a public entity or private, nonprofit
15 organization that sponsors an amateur sports event. For
16 purposes of this subparagraph, such a person is an independent
17 contractor. For purposes of this subparagraph, the term
18 "sports official" means any person who is a neutral
19 participant in a sports event, including, but not limited to,
20 umpires, referees, judges, linespersons, scorekeepers, or
21 timekeepers. This subparagraph does not apply to any person
22 employed by a district school board who serves as a sports
23 official as required by the employing school board or who
24 serves as a sports official as part of his or her
25 responsibilities during normal school hours.

26 12. Medicaid-enrolled clients under chapter 393 who
27 are excluded from the definition of employment under s.
28 443.1216(4)(d) and served by Adult Day Training Services under
29 the Home and Community-Based or the Family and Supported
30 Living Medicaid Waiver program in a sheltered workshop setting
31 licensed by the United States Department of Labor for the

Bill No. CS for SB 394

Barcode 100096

1 purpose of training and earning less than the federal hourly
2 minimum wage.

3 13. Medicaid-enrolled clients under chapter 393 who
4 are excluded from the definition of employment under s.
5 443.1216(4)(d) and served by Adult Day Training Services under
6 the Family and Supported Living Medicaid Waiver program in a
7 sheltered workshop setting licensed by the United States
8 Department of Labor for the purpose of training and earning
9 less than the federal hourly minimum wage. ~~This subparagraph~~
10 ~~expires July 1, 2006.~~

11 Section 5. This act shall take effect upon becoming a
12 law.

13
14

15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete everything before the enacting clause

18

19 and insert:

20 A bill to be entitled
21 An act relating to social services; amending s.
22 216.181, F.S.; authorizing the Agency for
23 Persons with Disabilities to submit an
24 amendment to its original approved operating
25 budget for certain purposes; providing for
26 future repeal; amending s. 393.0661, F.S.;
27 deleting provisions requiring the Agency for
28 Health Care Administration to make certain
29 adjustments with respect to home and
30 community-based services; requiring that the
31 Agency for Persons with Disabilities report

Bill No. CS for SB 394

Barcode 100096

1 quarterly to the Governor and Legislature the
2 financial status of home and community-based
3 services provided under a federally approved
4 waiver; specifying contents of the reports;
5 requiring that the agency, in consultation with
6 the Agency for Health Care Administration,
7 submit a plan to the Legislative Budget
8 Commission for approval of adjustments to the
9 rates for such services in order to remain
10 within the amount appropriated; amending s.
11 409.221, F.S., relating to the
12 consumer-directed care program; providing that
13 the interagency cooperative agreements
14 established by the Agency for Health Care
15 Administration shall include the Agency for
16 Persons with Disabilities; authorizing the
17 Agency for Persons with Disabilities to adopt
18 and enforce certain rules, review and assess
19 implementation of the program, and submit a
20 report to the Legislature; amending s. 440.02,
21 F.S.; deleting provisions providing for the
22 expiration of an exemption from coverage under
23 workers' compensation law for certain clients
24 enrolled in the Medicaid program who are served
25 by Adult Day Training Services; providing an
26 effective date.

27
28
29
30
31