

603-1847-06

Proposed Committee Substitute by the Committee on Health and Human Services Appropriations

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A bill to be entitled

An act relating to social services; amending s. 393.0661, F.S.; deleting provisions requiring the Agency for Health Care Administration to make certain adjustments with respect to home and community-based services; requiring that the Agency for Persons with Disabilities report to the Governor and Legislature the financial status of home and community-based services provided under a federally approved waiver; requiring that the agency adjust the rates for such services in order to remain within the amount appropriated; amending s. 440.02, F.S.; deleting provisions providing for the expiration of an exemption from coverage under workers' compensation law for certain clients enrolled in the Medicaid program who are served by Adult Day Training Services; providing an effective date.

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

Section 1. Subsection (4) of section 393.0661, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

393.0661 Home and community-based services delivery system; comprehensive redesign.--The Legislature finds that the home and community-based services delivery system for persons with developmental disabilities and the availability of appropriated funds are two of the critical elements in making services available. Therefore, it is the intent of the

Bill No. SB 394

Barcode 965776

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1 Legislature that the Agency for Persons with Disabilities
2 shall develop and implement a comprehensive redesign of the
3 system.

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

20 (5) The Agency for Persons with Disabilities shall
21 submit quarterly status reports to the Executive Office of the
22 Governor, the chair of the Senate Ways and Means Committee,
23 and the chair of the House Fiscal Council regarding the
24 financial status of home and community-based services provided
25 under the federally approved waiver, including, but not
26 limited to, the number of clients currently being served
27 through the program and information concerning the actual and
28 projected costs as compared to the amount of the appropriation
29 available to the program. If at any time an analysis by the
30 agency finds that the cost of services is expected to exceed
31 the amount appropriated, based on the current rates as

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1 implemented on November 1, 2003, the agency shall implement
 2 any adjustment that is necessary under subsection (4) in order
 3 to remain within the appropriation.

4 Section 2. Paragraph (d) of subsection (15) of section
 5 440.02, Florida Statutes, is amended to read:

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

9 (15)

10 (d) "Employee" does not include:

11 1. An independent contractor who is not engaged in the
 12 construction industry.

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

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

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

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

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

31 (V) The independent contractor performs work or is

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1 able to perform work for any entity in addition to or besides
2 the employer at his or her own election without the necessity
3 of completing an employment application or process; or

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

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

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

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

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

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

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

29 (VI) The independent contractor has continuing or
30 recurring business liabilities or obligations.

31 (VII) The success or failure of the independent

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1 contractor's business depends on the relationship of business
2 receipts to expenditures.

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

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

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

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

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

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

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

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

18 b. Volunteers participating in federal programs
19 established under Pub. L. No. 93-113.

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

25 8. An officer of a corporation that is engaged in the
26 construction industry who elects to be exempt from the
27 provisions of this chapter, as otherwise permitted by this
28 chapter. Such officer is not an employee for any reason until
29 the notice of revocation of election filed pursuant to s.
30 440.05 is effective.

31 9. An exercise rider who does not work for a single

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1 horse farm or breeder, and who is compensated for riding on a
 2 case-by-case basis, provided a written contract is entered
 3 into prior to the commencement of such activity which
 4 evidences that an employee/employer relationship does not
 5 exist.

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

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

28 12. Medicaid-enrolled clients under chapter 393 who
 29 are excluded from the definition of employment under s.
 30 443.1216(4)(d) and served by Adult Day Training Services under
 31 the Home and Community-Based or the Family and Supported

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1 Living Medicaid Waiver program in a sheltered workshop setting
2 licensed by the United States Department of Labor for the
3 purpose of training and earning less than the federal hourly
4 minimum wage.

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

13 Section 3. This act shall take effect upon becoming a
14 law.

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