

By the Committee on Health and Human Services Appropriations;  
and Senator Saunders

603-2004-06

1    A bill to be entitled  
2    An act relating to social services; amending s.  
3    393.0661, F.S.; deleting provisions requiring  
4    the Agency for Health Care Administration to  
5    make certain adjustments with respect to home  
6    and community-based services; requiring that  
7    the Agency for Persons with Disabilities report  
8    to the Governor and Legislature the financial  
9    status of home and community-based services  
10     provided under a federally approved waiver;  
11     requiring that the agency adjust the rates for  
12     such services in order to remain within the  
13     amount appropriated; amending s. 440.02, F.S.;  
14     deleting provisions providing for the  
15     expiration of an exemption from coverage under  
16     workers' compensation law for certain clients  
17     enrolled in the Medicaid program who are served  
18     by Adult Day Training Services; providing an  
19     effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23     Section 1. Subsection (4) of section 393.0661, Florida  
24 Statutes, is amended, and subsection (5) is added to that  
25 section, to read:

26     393.0661 Home and community-based services delivery  
27 system; comprehensive redesign.--The Legislature finds that  
28 the home and community-based services delivery system for  
29 persons with developmental disabilities and the availability  
30 of appropriated funds are two of the critical elements in  
31 making services available. Therefore, it is the intent of the

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

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;

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1           (V) The independent contractor performs work or is  
2 able to perform work for any entity in addition to or besides  
3 the employer at his or her own election without the necessity  
4 of completing an employment application or process; or

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

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

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

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

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

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

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

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

1 (VII) The success or failure of the independent  
2 contractor's business depends on the relationship of business  
3 receipts to expenditures.

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

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

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

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

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1           5. A person whose employment is both casual and not in  
2 the course of the trade, business, profession, or occupation  
3 of the employer.

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

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

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

21           b. Volunteers participating in federal programs  
22 established under Pub. L. No. 93-113.

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

28           8. An officer of a corporation that is engaged in the  
29 construction industry who elects to be exempt from the  
30 provisions of this chapter, as otherwise permitted by this  
31 chapter. Such officer is not an employee for any reason until

1 | the notice of revocation of election filed pursuant to s.  
2 | 440.05 is effective.

3 |           9. An exercise rider who does not work for a single  
4 | horse farm or breeder, and who is compensated for riding on a  
5 | case-by-case basis, provided a written contract is entered  
6 | into prior to the commencement of such activity which  
7 | evidences that an employee/employer relationship does not  
8 | exist.

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

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

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1           12. Medicaid-enrolled clients under chapter 393 who  
2 are excluded from the definition of employment under s.  
3 443.1216(4)(d) and served by Adult Day Training Services under  
4 the Home and Community-Based or the Family and Supported  
5 Living Medicaid Waiver program in a sheltered workshop setting  
6 licensed by the United States Department of Labor for the  
7 purpose of training and earning less than the federal hourly  
8 minimum wage.

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

17           Section 3. This act shall take effect upon becoming a  
18 law.

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20                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
21                   COMMITTEE SUBSTITUTE FOR  
22                   Senate Bill 394

23 Deletes provisions requiring the Agency for Health Care  
24 Administration to make certain adjustments to home and  
community-based services.

25 Requires the Agency for Persons with Disabilities (APD) to  
26 report to the Governor and Legislature the financial status of  
the home and community-based service waivers and authorizes  
27 APD to make adjustments necessary to remain within the  
appropriation based on the November 1, 2003 rates.

28 Deletes provisions providing for the expiration of an  
29 exemption from the workers' compensation law for certain  
clients enrolled in the Medicaid program who are served by  
30 adult day training services.