

1 A bill to be entitled
2 An act relating to social services; amending s.
3 216.181, F.S.; authorizing the Agency for
4 Persons with Disabilities to submit an
5 amendment to its original approved operating
6 budget for certain purposes; providing for
7 future repeal; amending s. 393.0661, F.S.;
8 deleting provisions requiring the Agency for
9 Health Care Administration to make certain
10 adjustments with respect to home and
11 community-based services; requiring that the
12 Agency for Persons with Disabilities report
13 quarterly to the Governor and Legislature the
14 financial status of home and community-based
15 services provided under a federally approved
16 waiver; specifying contents of the reports;
17 requiring that the agency, in consultation with
18 the Agency for Health Care Administration,
19 submit a plan to the Legislative Budget
20 Commission for approval of adjustments to the
21 rates for such services in order to remain
22 within the amount appropriated; amending s.
23 409.221, F.S., relating to the
24 consumer-directed care program; providing that
25 the interagency cooperative agreements
26 established by the Agency for Health Care
27 Administration shall include the Agency for
28 Persons with Disabilities; authorizing the
29 Agency for Persons with Disabilities to adopt
30 and enforce certain rules, review and assess
31 implementation of the program, and submit a

1 report to the Legislature; amending s. 440.02,
2 F.S.; deleting provisions providing for the
3 expiration of an exemption from coverage under
4 workers' compensation law for certain clients
5 enrolled in the Medicaid program who are served
6 by Adult Day Training Services; providing an
7 effective date.
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9 Be It Enacted by the Legislature of the State of Florida:
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11 Section 1. Paragraph (i) is added to subsection (2) of
12 section 216.181, Florida Statutes, to read:

13 216.181 Approved budgets for operations and fixed
14 capital outlay.--

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

21 (i) Notwithstanding paragraph (f), the Agency for
22 Persons with Disabilities is authorized to submit an amendment
23 to adjust its full-time equivalent positions, salary rate, and
24 related budget authority to provide sufficient infrastructure
25 and administrative support. This paragraph expires July 1,
26 2007.

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

30 393.0661 Home and community-based services delivery
31 system; comprehensive redesign.--The Legislature finds that

1 the home and community-based services delivery system for
2 persons with developmental disabilities and the availability
3 of appropriated funds are two of the critical elements in
4 making services available. Therefore, it is the intent of the
5 Legislature that the Agency for Persons with Disabilities
6 shall develop and implement a comprehensive redesign of the
7 system.

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

24 (5) The Agency for Persons with Disabilities shall
25 submit quarterly status reports to the Executive Office of the
26 Governor, the chair of the Senate Ways and Means Committee or
27 its successor, and the chair of the House Fiscal Council or
28 its successor regarding the financial status of home and
29 community-based services, including the number of enrolled
30 individuals who are receiving services through one or more
31 programs; the number of individuals who have requested

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

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

23 409.221 Consumer-directed care program.--

24 (4) CONSUMER-DIRECTED CARE.--

25 (a) Program established.--The Agency for Health Care
 26 Administration shall establish the consumer-directed care
 27 program which shall be based on the principles of consumer
 28 choice and control. The agency shall implement the program
 29 upon federal approval. The agency shall establish interagency
 30 cooperative agreements with and shall work with the
 31 Departments of Elderly Affairs, Health, and Children and

1 Family Services and the Agency for Persons with Disabilities
2 to implement and administer the program. The program shall
3 allow enrolled persons to choose the providers of services and
4 to direct the delivery of services, to best meet their
5 long-term care needs. The program must operate within the
6 funds appropriated by the Legislature.

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

9 1. The agency and the Departments of Elderly Affairs,
10 Health, and Children and Family Services and the Agency for
11 Persons with Disabilities are authorized to adopt and enforce
12 rules.

13 2. The agency shall take all necessary action to
14 ensure state compliance with federal regulations. The agency
15 shall apply for any necessary federal waivers or waiver
16 amendments needed to implement the program.

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

26 Section 4. Paragraph (d) of subsection (15) of section
27 440.02, Florida Statutes, is amended to read:

28 440.02 Definitions.--When used in this chapter, unless
29 the context clearly requires otherwise, the following terms
30 shall have the following meanings:

31 (15)

1 (d) "Employee" does not include:

2 1. An independent contractor who is not engaged in the
3 construction industry.

4 a. In order to meet the definition of independent
5 contractor, at least four of the following criteria must be
6 met:

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

10 (II) The independent contractor holds or has applied
11 for a federal employer identification number, unless the
12 independent contractor is a sole proprietor who is not
13 required to obtain a federal employer identification number
14 under state or federal regulations;

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

18 (IV) The independent contractor holds one or more bank
19 accounts in the name of the business entity for purposes of
20 paying business expenses or other expenses related to services
21 rendered or work performed for compensation;

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

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

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

6 (I) The independent contractor performs or agrees to
7 perform specific services or work for a specific amount of
8 money and controls the means of performing the services or
9 work.

10 (II) The independent contractor incurs the principal
11 expenses related to the service or work that he or she
12 performs or agrees to perform.

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

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

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

21 (VI) The independent contractor has continuing or
22 recurring business liabilities or obligations.

23 (VII) The success or failure of the independent
24 contractor's business depends on the relationship of business
25 receipts to expenditures.

26 c. Notwithstanding anything to the contrary in this
27 subparagraph, an individual claiming to be an independent
28 contractor has the burden of proving that he or she is an
29 independent contractor for purposes of this chapter.
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1 2. A real estate licensee, if that person agrees, in
2 writing, to perform for remuneration solely by way of
3 commission.

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

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

23 5. A person whose employment is both casual and not in
24 the course of the trade, business, profession, or occupation
25 of the employer.

26 6. A volunteer, except a volunteer worker for the
27 state or a county, municipality, or other governmental entity.
28 A person who does not receive monetary remuneration for
29 services is presumed to be a volunteer unless there is
30 substantial evidence that a valuable consideration was
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1 intended by both employer and employee. For purposes of this
2 chapter, the term "volunteer" includes, but is not limited to:

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

13 b. Volunteers participating in federal programs
14 established under Pub. L. No. 93-113.

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

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

26 9. An exercise rider who does not work for a single
27 horse farm or breeder, and who is compensated for riding on a
28 case-by-case basis, provided a written contract is entered
29 into prior to the commencement of such activity which
30 evidences that an employee/employer relationship does not
31 exist.

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

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

23 12. Medicaid-enrolled clients under chapter 393 who
24 are excluded from the definition of employment under s.
25 443.1216(4)(d) and served by Adult Day Training Services under
26 the Home and Community-Based or the Family and Supported
27 Living Medicaid Waiver program in a sheltered workshop setting
28 licensed by the United States Department of Labor for the
29 purpose of training and earning less than the federal hourly
30 minimum wage.

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1 13. 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 Family and Supported Living Medicaid Waiver program in a
5 sheltered workshop setting licensed by the United States
6 Department of Labor for the purpose of training and earning
7 less than the federal hourly minimum wage. ~~This subparagraph~~
8 ~~expires July 1, 2006.~~

9 Section 5. This act shall take effect upon becoming a
10 law.

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