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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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