

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

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Subsection (4) of section 393.0661, Florida
 20 Statutes, is amended, and subsection (5) is added to that
 21 section, to read:

22 393.0661 Home and community-based services delivery
 23 system; comprehensive redesign.--The Legislature finds that the
 24 home and community-based services delivery system for persons
 25 with developmental disabilities and the availability of
 26 appropriated funds are two of the critical elements in making
 27 services available. Therefore, it is the intent of the
 28 Legislature that the Agency for Persons with Disabilities shall

HB 5015

2006

29 develop and implement a comprehensive redesign of the system.

30 (4) Nothing in this section or in any administrative rule
31 shall be construed to prevent or limit the Agency for Health
32 Care Administration, in consultation with the Agency for Persons
33 with Disabilities, from adjusting fees, reimbursement rates,
34 lengths of stay, number of visits, or number of services, or
35 from limiting enrollment, or making any other adjustment
36 necessary to comply with the availability of moneys and any
37 limitations or directions provided for in the General
38 Appropriations Act. ~~If at any time, based upon an analysis by~~
39 ~~the Agency for Health Care Administration in consultation with~~
40 ~~the Agency for Persons with Disabilities, the cost of home and~~
41 ~~community-based waiver services are expected to exceed the~~
42 ~~appropriated amount, the Agency for Health Care Administration~~
43 ~~may implement any adjustment, including provider rate~~
44 ~~reductions, within 30 days in order to remain within the~~
45 ~~appropriation.~~

46 (5) The Agency for Persons with Disabilities shall submit
47 quarterly status reports to the Executive Office of the
48 Governor, the chair of the Senate Ways and Means Committee, and
49 the chair of the House Fiscal Council regarding the financial
50 status of home and community-based services provided under the
51 federally approved waiver, including, but not limited to, the
52 number of clients currently being served through the program and
53 information concerning the actual and projected costs as
54 compared to the amount of the appropriation available to the
55 program. If at any time an analysis by the agency finds that the
56 cost of services is expected to exceed the amount appropriated,

57 based on the current rates as implemented on November 1, 2003,
 58 the agency shall implement any adjustment that is necessary
 59 under subsection (4) in order to remain within the
 60 appropriation.

61 Section 2. Paragraph (d) of subsection (15) of section
 62 440.02, Florida Statutes, is amended to read:

63 440.02 Definitions.--When used in this chapter, unless the
 64 context clearly requires otherwise, the following terms shall
 65 have the following meanings:

66 (15)

67 (d) "Employee" does not include:

68 1. An independent contractor who is not engaged in the
 69 construction industry.

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

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

75 (II) The independent contractor holds or has applied for a
 76 federal employer identification number, unless the independent
 77 contractor is a sole proprietor who is not required to obtain a
 78 federal employer identification number under state or federal
 79 regulations;

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

83 (IV) The independent contractor holds one or more bank
 84 accounts in the name of the business entity for purposes of

HB 5015

2006

85 | paying business expenses or other expenses related to services
86 | rendered or work performed for compensation;

87 | (V) The independent contractor performs work or is able to
88 | perform work for any entity in addition to or besides the
89 | employer at his or her own election without the necessity of
90 | completing an employment application or process; or

91 | (VI) The independent contractor receives compensation for
92 | work or services rendered on a competitive-bid basis or
93 | completion of a task or a set of tasks as defined by a
94 | contractual agreement, unless such contractual agreement
95 | expressly states that an employment relationship exists.

96 | b. If four of the criteria listed in sub-subparagraph a.
97 | do not exist, an individual may still be presumed to be an
98 | independent contractor and not an employee based on full
99 | consideration of the nature of the individual situation with
100 | regard to satisfying any of the following conditions:

101 | (I) The independent contractor performs or agrees to
102 | perform specific services or work for a specific amount of money
103 | and controls the means of performing the services or work.

104 | (II) The independent contractor incurs the principal
105 | expenses related to the service or work that he or she performs
106 | or agrees to perform.

107 | (III) The independent contractor is responsible for the
108 | satisfactory completion of the work or services that he or she
109 | performs or agrees to perform.

110 | (IV) The independent contractor receives compensation for
111 | work or services performed for a commission or on a per-job
112 | basis and not on any other basis.

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

115 (VI) The independent contractor has continuing or
 116 recurring business liabilities or obligations.

117 (VII) The success or failure of the independent
 118 contractor's business depends on the relationship of business
 119 receipts to expenditures.

120 c. Notwithstanding anything to the contrary in this
 121 subparagraph, an individual claiming to be an independent
 122 contractor has the burden of proving that he or she is an
 123 independent contractor for purposes of this chapter.

124 2. A real estate licensee, if that person agrees, in
 125 writing, to perform for remuneration solely by way of
 126 commission.

127 3. Bands, orchestras, and musical and theatrical
 128 performers, including disk jockeys, performing in licensed
 129 premises as defined in chapter 562, if a written contract
 130 evidencing an independent contractor relationship is entered
 131 into before the commencement of such entertainment.

132 4. An owner-operator of a motor vehicle who transports
 133 property under a written contract with a motor carrier which
 134 evidences a relationship by which the owner-operator assumes the
 135 responsibility of an employer for the performance of the
 136 contract, if the owner-operator is required to furnish motor
 137 vehicle equipment as identified in the written contract and the
 138 principal costs incidental to the performance of the contract,
 139 including, but not limited to, fuel and repairs, provided a
 140 motor carrier's advance of costs to the owner-operator when a

141 written contract evidences the owner-operator's obligation to
142 reimburse such advance shall be treated as the owner-operator
143 furnishing such cost and the owner-operator is not paid by the
144 hour or on some other time-measured basis.

145 5. A person whose employment is both casual and not in the
146 course of the trade, business, profession, or occupation of the
147 employer.

148 6. A volunteer, except a volunteer worker for the state or
149 a county, municipality, or other governmental entity. A person
150 who does not receive monetary remuneration for services is
151 presumed to be a volunteer unless there is substantial evidence
152 that a valuable consideration was intended by both employer and
153 employee. For purposes of this chapter, the term "volunteer"
154 includes, but is not limited to:

155 a. Persons who serve in private nonprofit agencies and who
156 receive no compensation other than expenses in an amount less
157 than or equivalent to the standard mileage and per diem expenses
158 provided to salaried employees in the same agency or, if such
159 agency does not have salaried employees who receive mileage and
160 per diem, then such volunteers who receive no compensation other
161 than expenses in an amount less than or equivalent to the
162 customary mileage and per diem paid to salaried workers in the
163 community as determined by the department; and

164 b. Volunteers participating in federal programs
165 established under Pub. L. No. 93-113.

166 7. Unless otherwise prohibited by this chapter, any
167 officer of a corporation who elects to be exempt from this
168 chapter. Such officer is not an employee for any reason under

HB 5015

2006

169 | this chapter until the notice of revocation of election filed
170 | pursuant to s. 440.05 is effective.

171 | 8. An officer of a corporation that is engaged in the
172 | construction industry who elects to be exempt from the
173 | provisions of this chapter, as otherwise permitted by this
174 | chapter. Such officer is not an employee for any reason until
175 | the notice of revocation of election filed pursuant to s. 440.05
176 | is effective.

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

182 | 10. A taxicab, limousine, or other passenger vehicle-for-
183 | hire driver who operates said vehicles pursuant to a written
184 | agreement with a company which provides any dispatch, marketing,
185 | insurance, communications, or other services under which the
186 | driver and any fees or charges paid by the driver to the company
187 | for such services are not conditioned upon, or expressed as a
188 | proportion of, fare revenues.

189 | 11. A person who performs services as a sports official
190 | for an entity sponsoring an interscholastic sports event or for
191 | a public entity or private, nonprofit organization that sponsors
192 | an amateur sports event. For purposes of this subparagraph, such
193 | a person is an independent contractor. For purposes of this
194 | subparagraph, the term "sports official" means any person who is
195 | a neutral participant in a sports event, including, but not
196 | limited to, umpires, referees, judges, linespersons,

197 scorekeepers, or timekeepers. This subparagraph does not apply
 198 to any person employed by a district school board who serves as
 199 a sports official as required by the employing school board or
 200 who serves as a sports official as part of his or her
 201 responsibilities during normal school hours.

202 12. Medicaid-enrolled clients under chapter 393 who are
 203 excluded from the definition of employment under s.
 204 443.1216(4)(d) and served by Adult Day Training Services under
 205 the Home and Community-Based or the Family and Supported Living
 206 Medicaid Waiver program in a sheltered workshop setting licensed
 207 by the United States Department of Labor for the purpose of
 208 training and earning less than the federal hourly minimum wage.

209 13. Medicaid-enrolled clients under chapter 393 who are
 210 excluded from the definition of employment under s.
 211 443.1216(4)(d) and served by Adult Day Training Services under
 212 the Family and Supported Living Medicaid Waiver program in a
 213 sheltered workshop setting licensed by the United States
 214 Department of Labor for the purpose of training and earning less
 215 than the federal hourly minimum wage. ~~This subparagraph expires~~
 216 ~~July 1, 2006.~~

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