

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health and Human Services Appropriations Committee

BILL: CS/SB 1954

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Rich

SUBJECT: Developmental Disabilities

DATE: April 14, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Fav/CS
2.	Stovall	Wilson	HR	Favorable
3.	Peters	Peters	HA	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Committee Substitute for Senate Bill 1954 amends the definition of the term “retardation” to be consistent with the term “developmental disability.” The committee substitute changes the term “developmental disabilities institutions” throughout ch. 393, F.S., to the term “developmental disabilities centers” to accurately reflect the nature of services delivered to the clients of the Agency for Persons with Disabilities (APD or “the agency”).

The committee substitute amends the background screening requirements for direct service providers. The committee substitute also authorizes the APD to suspend, revoke, or fine a residential facility licensee if that facility has been found to be responsible for abuse, neglect, abandonment, or exploitation of a child or vulnerable adult.

The committee substitute authorizes the APD to deny an application for licensure if a facility has been found to be responsible for abuse, neglect, abandonment, or exploitation of a child or vulnerable adult, or previously had a license revoked by the APD, the Department of Children and Family Services (DCF), or the Agency for Health Care Administration (AHCA).

The committee substitute provides that unlicensed direct care staff, with proper and validated training may administer enteral medication to the APD clients.

This bill substantially amends ss. 287.155, 393.063, 393.064, 393.0651, 393.0655, 393.066, 393.0673, 393.135, 393.22, 393.23, 393.506, 402.181, 402.22, 435.03, and repeals s. 393.0657 of the Florida Statutes.

II. Present Situation:

In October 2004, the APD became an agency separate from the DCF, specifically tasked with serving the needs of Floridians with developmental disabilities.¹ Prior to that time, it existed as the Developmental Disabilities Program.²

The primary purpose of the APD is to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served by the agency, provide assistance in identifying needs, and funding to purchase supports and services.³

Developmental Disabilities Institutions

Clients of the APD may receive services through home or community settings, private intermediate care facilities, or state-run developmental services institutions. Developmental services institutions provide secure⁴ residential services for individuals who have been charged with a serious crime and who have been found by the court to be incompetent to proceed through the court process due to mental retardation.⁵ There are currently three non-secure developmental services institutions which are staffed by state employees:⁶

- Gulf Coast Center
- Marianna Sunland
- Tacachale

Direct Service Provider

A direct service provider is a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client's living areas or to a client's funds or personal property.⁷

¹ Section 393.063(9), Florida Statutes, defines the term "developmental disability" as a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

² Agency for Persons with Disabilities website, <http://apd.myflorida.com/about> (last visited on April 4, 2008).

³ OPPAGA website, <http://www.oppaga.state.fl.us/profiles/5060> (last visited on April 4, 2008).

⁴ The only secure forensic facility under APD is the Mentally Retarded Defendant Program (MRDP) in Chattahoochee. (See APD website: <http://apd.myflorida.com/mrdp/> - last visited April 4, 2008).

⁵ OPPAGA website, <http://www.oppaga.state.fl.us/profiles/5060> (last visited on April 4, 2008).

⁶ Agency for Persons with Disabilities website, <http://apd.myflorida.com/customers/institutions.htm> (last visited April 4, 2008).

⁷ S. 393.063(11), F.S.

Background Screening

Currently, the APD requires that each direct service provider submit to a Level 2 employment screening pursuant to ch. 435, F.S.⁸ Section 393.0657, F.S., currently exempts a person who has undergone any portion of the background screening requirements required in s. 393.0655, F.S., within the last year from being required to repeat those screening requirements.

Section 402.3057, F.S., exempts certain individuals from background screening requirements pursuant to ch. 393, F.S. The exemption does not apply to an individual who has had a 90-day break in employment.⁹

Administration of Medication

In 2006, the Legislature amended s. 393.506, F.S., to provide that a direct service provider who is not currently licensed to administer medication may supervise the self-administration of medication or may administer several types of prescription medications to clients, including:¹⁰

- Oral,
- Transdermal,
- Ophthalmic,
- Otic,
- Rectal,
- Inhaled, or
- Topical.

In order to supervise the self-administration of medication or to administer medications, a direct service provider must satisfactorily complete a training course of not less than 4 hours in medication administration and be found competent to supervise the self-administration of medication by a client or to administer medication to a client in a safe and sanitary manner. Competency must be assessed and validated at least annually by a registered nurse licensed pursuant to ch. 464, F.S., or a physician licensed pursuant to ch 458, F.S., or ch. 459, F.S., in an onsite setting and must include the registered nurse or physician personally observing the direct service provider satisfactorily supervising the self-administration of medication by a client, and administering medication to a client.

The client or the client's guardian or legal representative must give his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service provider.

According to the APD, the 2006 legislation inadvertently omitted from the list of authorized practices the authority to administer medication through feeding tubes, which is one method of enteral administration of medication.

⁸ Section 393.0655, F.S.

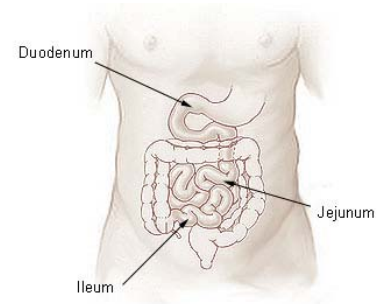
⁹ Section 402.3057, F.S.

¹⁰ Chapter 2006-37, L.O.F.

Enteral Administration of Medication

Enteral tubes are frequently inserted as part of medical treatment in a wide range of patient situations.¹¹ Patients with an enteral tube are cared for by nurses in a variety of settings, including general and specialized acute care areas, aged care facilities and at home. Regardless of the setting, nurses have the primary responsibility for administering medication through enteral tubes. Medication administration via an enteral tube is a reasonably common nursing intervention that entails a number of skills, including preparing the medication, verifying the tube position, flushing the tube and assessing for potential complications. If medications are not given effectively through an enteral tube, harmful consequences may result leading to increased morbidity, for example, tube occlusion, diarrhea and aspiration pneumonia.

Enteral feeding tubes may be inserted orally, nasally, or percutaneously, by manual insertion at the bedside, traditional surgical techniques, laparoscopy, endoscopy, or fluoroscopic guidance. Enteral nutrition formulas may be infused into the stomach, duodenum, or jejunum. The duodenum is the first part of the small intestine. It is located between the stomach and jejunum (the middle part of the small intestine).¹² (See diagram at right.)



The following identifies the main characteristics of various types of feeding tubes:¹³

- Naogastric (NG tube)
 - For short-term use (less than 6 weeks),
 - Used in patients with functional GI tract, and
 - Small size increases potential for tube blockages;
- Nasoduodenal or nasojejunal
 - For short-term use,
 - Used in patients with functional GI tract,
 - May be used postoperatively following gastric surgery,
 - Cannot be used for intermittent bolus feedings, and
 - Longer than NG tube;
- Gastrostomy (PEG tube or G-tube)
 - Surgically or laparoscopically placed tube,
 - For long-term use,
 - Directly into the stomach,
 - Used in patients with functional GI tract,
 - Frequently used for patients with swallowing difficulties secondary to neurologic disease, brain injury, etc., and

¹¹ Phillips, Nicole M; Nay, Rhonda *International Journal of Evidence-based Healthcare*, Volume 5, Number 3, September 2007 , pp. 324-353 Nursing administration of medication via enteral tubes in adults: a systematic review <<http://www.ingentaconnect.com/content/bsc/jbr/2007/00000005/00000003/art00005>> (Last visited on April 4, 2008)

¹² See Wikipedia: duodenum, found at: <<http://en.wikipedia.org/wiki/Duodenum>> (Last visited on April 4, 2008).

¹³ See 2004 American Society of Consultant Pharmacists and MED-PASS, Inc., citing Bockus, S. *When your patient needs tube feedings – making the right decisions. Nursing. 93:July:23-42* found at: <http://www.med-pass.com/Docs/Products/samples/A96970RCK_sp.pdf> (Last visited on April 4, 2008).

- Often has side port for medication administration;
- Jejunostomy (PEJ tube or J-tube)
 - Requires surgical placement in the jejunum,
 - Commonly used for long-term use, but can be used short-term after GI tract surgery,
 - Used in patients at risk for aspiration and for patients whose GI tracts are compromised above the jejunum, and
 - Higher risk for tube blockages with this type of tube due to its smaller diameter.

III. Effect of Proposed Changes:

Sections 1, 3, 4, 6, 8, 9, 10, 12, 13, and 14. Amend ss. 287.155, 393.064, 393.0651, 393.066, 393.135, 393.22, 393.23, 402.181, 402.22, and 402.03, F.S., to change the term “developmental disabilities institutions” to “developmental disabilities centers.” The agency cites the negative connotation of the term “institution” projected on an individual who is receiving services from an institution, for the purpose of this technical change. Currently, two of the three non-secure developmental disability institutions are called “centers” such as, Sunland Center, Marianna, and Gulf Coast Center, Fort Myers.

Section 2. Amends s. 393.063, F.S., to revise the definition of “retardation” to specify that the condition must manifest before the age of 18 and be expected to continue indefinitely. According to the APD, this change is being made to ensure consistency with the definition of the term “developmental disability.”¹⁴

Section 5. Amends s. 393.0655, F.S., to provide that a direct service provider who has undergone any part of the employment screening within one year is not required to repeat the screening unless he or she has been unemployed for more than 90 consecutive days. The committee substitute provides that the direct service provider is responsible for providing documentation of the screening and must undergo any remaining screening requirements that have never been conducted or that have not been conducted within 1 year.

Currently, s. 402.3057, F.S., provides a similar provision to human resource personnel who have been fingerprinted or screened pursuant to ch. 393, F.S. According to the APD, this change will offer additional safeguards regarding persons hired to provide services to persons with developmental disabilities by requiring an individual who has not been employed for more than 90 days or screened within a year, to be re-screened.

Section 7. Amends s. 396.0673, F.S., to authorize the APD to suspend, revoke, or fine a residential facility licensee or deny an application for licensure if the DCF has verified that the licensee or applicant is responsible for abuse, neglect, abandonment, or exploitation of a child or vulnerable adult. The APD may also deny an application for licensure if the applicant previously had a license to operate a residential facility revoked by the APD, the DCF, or the AHCA.

¹⁴ Section 393.063(9), F.S., defines the term “developmental disability” as a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

According to the AHCA, this provision may require the development of a process that provides continual monitoring and communication between the APD and the AHCA.

Section 11. Amends s. 393.506, F.S., to provide that in addition to other tasks identified in law, a direct service provider, not licensed to administer medication, may administer enteral prescription medications to a client as provided in s. 393.506, F.S.

Section 15. Repeals s. 393.0657, F.S., relating to persons not required to be refingerprinted or rescreened.

Section 16. Provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The authorization for a direct service provider who is not currently licensed to administer medication to supervise the self-administration of enteral medication or to administer enteral medications to a client in s. 393.506, F.S., might need to be narrowed and additional training required in order to protect the health and safety of the client.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 26, 2008:

- Clarifies and expands the APD's authority to deny, revoke, or suspend a license or application for licensure in s. 393.0673, F.S.
- Reinstates current law in s. 400.063, F.S., relating to the residential facility license fees and fines collected by the APD that are deposited into the AHCA's Resident Protection Trust Fund.

- B. **Amendments:**

None.