

HB 7075

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1 A bill to be entitled

2 An act relating to developmental disabilities; amending s.
3 393.063, F.S.; revising definitions applicable to ch. 393,
4 F.S., relating to persons with developmental disabilities;
5 amending ss. 287.155, 393.064, 393.0651, 393.066, 393.135,
6 393.22, 393.23, 402.181, 402.22, 408.036, and 435.03,
7 F.S.; conforming terminology to changes made by the act;
8 amending s. 393.0657, F.S.; revising an exemption from
9 certain requirements for refingerprinting and rescreening;
10 amending s. 393.0673, F.S.; providing circumstances under
11 which the Agency for Persons with Disabilities may deny,
12 revoke, or suspend a license or impose a fine; amending s.
13 393.506, F.S.; authorizing direct service providers to
14 administer a certain medication to clients with
15 developmental disabilities; amending s. 400.063, F.S.;
16 conforming a cross-reference; amending s. 916.301, F.S.;
17 clarifying provisions relating to court appointment of
18 certain qualified experts to evaluate a defendant's mental
19 condition; amending s. 916.302, F.S.; authorizing the
20 sheriff to transport a defendant determined incompetent to
21 proceed due to retardation or autism to county jail under
22 certain conditions pending a court appearance at a
23 competency hearing held within a specified period of time;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
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28 Section 1. Subsection (1) of section 287.155, Florida
29 Statutes, is amended to read:

30 287.155 Motor vehicles; purchase by Department of Children
31 and Family Services, Agency for Persons with Disabilities,
32 Department of Health, Department of Juvenile Justice, and
33 Department of Corrections.--

34 (1) The Department of Children and Family Services, the
35 Agency for Persons with Disabilities, the Department of Health,
36 the Department of Juvenile Justice, and the Department of
37 Corrections may, subject to the approval of the Department of
38 Management Services, purchase automobiles, trucks, tractors, and
39 other automotive equipment for the use of institutions or
40 developmental disabilities centers under the management of the
41 Department of Children and Family Services, the Agency for
42 Persons with Disabilities, the Department of Health, and the
43 Department of Corrections, and for the use of residential
44 facilities managed or contracted by the Department of Juvenile
45 Justice.

46 Section 2. Subsections (10) and (31) of section 393.063,
47 Florida Statutes, are amended to read:

48 393.063 Definitions.--For the purposes of this chapter,
49 the term:

50 (10) "Developmental disabilities center ~~institution~~" means
51 a state-owned and state-operated facility, formerly known as a
52 "Sunland Center," providing for the care, habilitation, and
53 rehabilitation of clients with developmental disabilities.

54 (31) "Retardation" means significantly subaverage general
55 intellectual functioning existing concurrently with deficits in

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56 | adaptive behavior that manifests before the age of 18 and can
57 | reasonably be expected to continue indefinitely. "Significantly
58 | subaverage general intellectual functioning," for the purpose of
59 | this definition, means performance which is two or more standard
60 | deviations from the mean score on a standardized intelligence
61 | test specified in the rules of the agency. "Adaptive behavior,"
62 | for the purpose of this definition, means the effectiveness or
63 | degree with which an individual meets the standards of personal
64 | independence and social responsibility expected of his or her
65 | age, cultural group, and community.

66 | Section 3. Subsection (4) of section 393.064, Florida
67 | Statutes, is amended to read:

68 | 393.064 Prevention.--

69 | (4) There is created at the developmental disabilities
70 | center ~~institution~~ in Gainesville a research and education unit.
71 | Such unit shall be named the Raymond C. Philips Research and
72 | Education Unit. The functions of such unit shall include:

73 | (a) Research into the etiology of developmental
74 | disabilities.

75 | (b) Ensuring that new knowledge is rapidly disseminated
76 | throughout the agency.

77 | (c) Diagnosis of unusual conditions and syndromes
78 | associated with developmental disabilities in clients identified
79 | throughout developmental disabilities programs.

80 | (d) Evaluation of families of clients with developmental
81 | disabilities of genetic origin in order to provide them with
82 | genetic counseling aimed at preventing the recurrence of the
83 | disorder in other family members.

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84 (e) Ensuring that health professionals in the
85 developmental disabilities center ~~institution~~ at Gainesville
86 have access to information systems that will allow them to
87 remain updated on newer knowledge and maintain their
88 postgraduate education standards.

89 (f) Enhancing staff training for professionals throughout
90 the agency in the areas of genetics and developmental
91 disabilities.

92 Section 4. Paragraph (f) of subsection (5) of section
93 393.0651, Florida Statutes, is amended to read:

94 393.0651 Family or individual support plan.--The agency
95 shall provide directly or contract for the development of a
96 family support plan for children ages 3 to 18 years of age and
97 an individual support plan for each client. The client, if
98 competent, the client's parent or guardian, or, when
99 appropriate, the client advocate, shall be consulted in the
100 development of the plan and shall receive a copy of the plan.
101 Each plan must include the most appropriate, least restrictive,
102 and most cost-beneficial environment for accomplishment of the
103 objectives for client progress and a specification of all
104 services authorized. The plan must include provisions for the
105 most appropriate level of care for the client. Within the
106 specification of needs and services for each client, when
107 residential care is necessary, the agency shall move toward
108 placement of clients in residential facilities based within the
109 client's community. The ultimate goal of each plan, whenever
110 possible, shall be to enable the client to live a dignified life
111 in the least restrictive setting, be that in the home or in the

112 community. For children under 6 years of age, the family support
 113 plan shall be developed within the 45-day application period as
 114 specified in s. 393.065(1); for all applicants 6 years of age or
 115 older, the family or individual support plan shall be developed
 116 within the 60-day period as specified in that subsection.

117 (5) The agency shall place a client in the most
 118 appropriate and least restrictive, and cost-beneficial,
 119 residential facility according to his or her individual support
 120 plan. The client, if competent, the client's parent or guardian,
 121 or, when appropriate, the client advocate, and the administrator
 122 of the facility to which placement is proposed shall be
 123 consulted in determining the appropriate placement for the
 124 client. Considerations for placement shall be made in the
 125 following order:

126 (f) Developmental disabilities center ~~institution~~.

127 Section 5. Section 393.0657, Florida Statutes, is amended
 128 to read:

129 393.0657 Persons not required to be refingerprinted or
 130 rescreened.--Persons who have undergone any portion of the
 131 background screening required under s. 393.0655 within the last
 132 12 months are not required to repeat such screening in order to
 133 comply with the screening requirements if such persons have not
 134 been unemployed for more than 90 consecutive days since that
 135 screening occurred. Such persons are responsible for providing
 136 documentation of the screening and shall undergo screening for
 137 any remaining background screening requirements that have never
 138 been conducted or have not been completed within the last 12
 139 months.

140 Section 6. Subsection (5) of section 393.066, Florida
 141 Statutes, is amended to read:

142 393.066 Community services and treatment.--

143 (5) In order to improve the potential for utilization of
 144 more cost-effective, community-based residential facilities, the
 145 agency shall promote the statewide development of day
 146 habilitation services for clients who live with a direct service
 147 provider in a community-based residential facility and who do
 148 not require 24-hour-a-day care in a hospital or other health
 149 care institution, but who may, in the absence of day
 150 habilitation services, require admission to a developmental
 151 disabilities center ~~institution~~. Each day service facility shall
 152 provide a protective physical environment for clients, ensure
 153 that direct service providers meet minimum screening standards
 154 as required in s. 393.0655, make available to all day
 155 habilitation service participants at least one meal on each day
 156 of operation, provide facilities to enable participants to
 157 obtain needed rest while attending the program, as appropriate,
 158 and provide social and educational activities designed to
 159 stimulate interest and provide socialization skills.

160 Section 7. Section 393.0673, Florida Statutes, is amended
 161 to read:

162 393.0673 Denial, suspension, or revocation of license;
 163 moratorium on admissions; administrative fines; procedures.--

164 (1) The agency may ~~deny~~, ~~revoke~~, or suspend a license or
 165 impose an administrative fine, not to exceed \$1,000 per
 166 violation per day, if:

167 (a) The ~~applicant~~ or licensee has:

168 1.(a) ~~Has~~ Falsely represented or omitted a material fact
 169 in its license application submitted under s. 393.067;~~;~~

170 2.(b) ~~Has~~ Had prior action taken against it under the
 171 Medicaid or Medicare program; ~~or~~

172 3.(e) ~~Has~~ Failed to comply with the applicable
 173 requirements of this chapter or rules applicable to the
 174 ~~applicant or licensee; or~~

175 (b) The Department of Children and Family Services has
 176 verified that the licensee is responsible for the abuse,
 177 neglect, or abandonment of a child or the abuse, neglect, or
 178 exploitation of a vulnerable adult.

179 (2) The agency may deny an application for licensure
 180 submitted under s. 393.067 if:

181 (a) The applicant has:

182 1. Falsely represented or omitted a material fact in its
 183 license application submitted under s. 393.067;

184 2. Had prior action taken against it under the Medicaid or
 185 Medicare program;

186 3. Failed to comply with the applicable requirements of
 187 this chapter or rules applicable to the applicant; or

188 4. Previously had a license to operate a residential
 189 facility revoked by the agency, the Department of Children and
 190 Family Services, or the Agency for Health Care Administration;
 191 or

192 (b) The Department of Children and Family Services has
 193 verified that the applicant is responsible for the abuse,
 194 neglect, or abandonment of a child or the abuse, neglect, or
 195 exploitation of a vulnerable adult.

196 (3)~~(2)~~ All hearings shall be held within the county in
 197 which the licensee or applicant operates or applies for a
 198 license to operate a facility as defined herein.

199 (4)~~(3)~~ The agency, as a part of any final order issued by
 200 it under this chapter, may impose such fine as it deems proper,
 201 except that such fine may not exceed \$1,000 for each violation.
 202 Each day a violation of this chapter occurs constitutes a
 203 separate violation and is subject to a separate fine, but in no
 204 event may the aggregate amount of any fine exceed \$10,000. Fines
 205 paid by any facility licensee under the provisions of this
 206 subsection shall be deposited in the Resident Protection Trust
 207 Fund and expended as provided in s. 400.063.

208 (5)~~(4)~~ The agency may issue an order immediately
 209 suspending or revoking a license when it determines that any
 210 condition in the facility presents a danger to the health,
 211 safety, or welfare of the residents in the facility.

212 (6)~~(5)~~ The agency may impose an immediate moratorium on
 213 admissions to any facility when the agency ~~department~~ determines
 214 that any condition in the facility presents a threat to the
 215 health, safety, or welfare of the residents in the facility.

216 (7)~~(6)~~ The agency shall establish by rule criteria for
 217 evaluating the severity of violations and for determining the
 218 amount of fines imposed.

219 Section 8. Paragraph (a) of subsection (2) of section
 220 393.135, Florida Statutes, is amended to read:

221 393.135 Sexual misconduct prohibited; reporting required;
 222 penalties.--

223 (2) A covered person who engages in sexual misconduct with
 224 an individual with a developmental disability who:

225 (a) Resides in a residential facility, including any
 226 comprehensive transitional education program, developmental
 227 disabilities center ~~institution~~, foster care facility, group
 228 home facility, intermediate care facility for the
 229 developmentally disabled, or residential habilitation center; or

230
 231 commits a felony of the second degree, punishable as provided in
 232 s. 775.082, s. 775.083, or s. 775.084. A covered person may be
 233 found guilty of violating this subsection without having
 234 committed the crime of sexual battery.

235 Section 9. Section 393.22, Florida Statutes, is amended to
 236 read:

237 393.22 Financial commitment to community services
 238 programs.--In order to ensure that whenever a number of persons
 239 move from a center ~~an institution~~ serving persons with
 240 developmental disabilities which is sufficient to allow an
 241 entire residential unit within that center ~~institution~~ to be
 242 closed, no less than 80 percent of the direct costs of providing
 243 services to persons who had resided in that unit shall be
 244 reallocated for community services.

245 Section 10. Section 393.23, Florida Statutes, is amended
 246 to read:

247 393.23 Developmental disabilities centers ~~institutions~~;
 248 trust accounts.--All receipts from the operation of canteens,
 249 vending machines, hobby shops, sheltered workshops, activity
 250 centers, farming projects, and other like activities operated in

251 a developmental disabilities center ~~institution~~, and moneys
 252 donated to the center ~~institution~~, must be deposited in a trust
 253 account in any bank, credit union, or savings and loan
 254 association authorized by the State Treasury as a qualified
 255 depository to do business in this state, if the moneys are
 256 available on demand.

257 (1) Moneys in the trust account must be expended for the
 258 benefit, education, and welfare of clients. However, if
 259 specified, moneys that are donated to the center ~~institution~~
 260 must be expended in accordance with the intentions of the donor.
 261 Trust account money may not be used for the benefit of employees
 262 of the agency or to pay the wages of such employees. The welfare
 263 of the clients includes the expenditure of funds for the
 264 purchase of items for resale at canteens or vending machines,
 265 and for the establishment of, maintenance of, and operation of
 266 canteens, hobby shops, recreational or entertainment facilities,
 267 sheltered workshops, activity centers, farming projects, or
 268 other like facilities or programs established at the center
 269 ~~institutions~~ for the benefit of clients.

270 (2) The center ~~institution~~ may invest, in the manner
 271 authorized by law for fiduciaries, any money in a trust account
 272 which is not necessary for immediate use. The interest earned
 273 and other increments derived from the investments of the money
 274 must be deposited into the trust account for the benefit of
 275 clients.

276 (3) The accounting system of the center ~~an institution~~
 277 must account separately for revenues and expenses for each
 278 activity. The center ~~institution~~ shall reconcile the trust

279 | account to the center's ~~institution's~~ accounting system and
 280 | check registers and to the accounting system of the Chief
 281 | Financial Officer.

282 | (4) All sales taxes collected by the center ~~institution~~ as
 283 | a result of sales shall be deposited into the trust account and
 284 | remitted to the Department of Revenue.

285 | (5) Funds shall be expended in accordance with
 286 | requirements and guidelines established by the Chief Financial
 287 | Officer.

288 | Section 11. Subsection (1) of section 393.506, Florida
 289 | Statutes, is amended to read:

290 | 393.506 Administration of medication.--

291 | (1) A direct service provider who is not currently
 292 | licensed to administer medication may supervise the self-
 293 | administration of medication or may administer oral,
 294 | transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
 295 | topical prescription medications to a client as provided in this
 296 | section.

297 | Section 12. Subsection (1) of section 400.063, Florida
 298 | Statutes, is amended to read:

299 | 400.063 Resident Protection Trust Fund.--

300 | (1) A Resident Protection Trust Fund shall be established
 301 | for the purpose of collecting and disbursing funds generated
 302 | from the license fees and administrative fines as provided for
 303 | in ss. 393.0673(4)(~~2~~), 400.062(3), 400.121(2), and 400.23(8).
 304 | Such funds shall be for the sole purpose of paying for the
 305 | appropriate alternate placement, care, and treatment of
 306 | residents who are removed from a facility licensed under this

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307 part or a facility specified in s. 393.0678(1) in which the
308 agency determines that existing conditions or practices
309 constitute an immediate danger to the health, safety, or
310 security of the residents. If the agency determines that it is
311 in the best interest of the health, safety, or security of the
312 residents to provide for an orderly removal of the residents
313 from the facility, the agency may utilize such funds to maintain
314 and care for the residents in the facility pending removal and
315 alternative placement. The maintenance and care of the residents
316 shall be under the direction and control of a receiver appointed
317 pursuant to s. 393.0678(1) or s. 400.126(1). However, funds may
318 be expended in an emergency upon a filing of a petition for a
319 receiver, upon the declaration of a state of local emergency
320 pursuant to s. 252.38(3)(a)5., or upon a duly authorized local
321 order of evacuation of a facility by emergency personnel to
322 protect the health and safety of the residents.

323 Section 13. Subsection (1) of section 402.181, Florida
324 Statutes, is amended to read:

325 402.181 State Institutions Claims Program.--

326 (1) There is created a State Institutions Claims Program,
327 for the purpose of making restitution for property damages and
328 direct medical expenses for injuries caused by shelter children
329 or foster children, or escapees, inmates, or patients of state
330 institutions or developmental disabilities centers under the
331 Department of Children and Family Services, the Department of
332 Health, the Department of Juvenile Justice, the Department of
333 Corrections, or the Agency for Persons with Disabilities.

334 Section 14. Subsection (4) of section 402.22, Florida
 335 Statutes, is amended to read:

336 402.22 Education program for students who reside in
 337 residential care facilities operated by the Department of
 338 Children and Family Services or the Agency for Persons with
 339 Disabilities.--

340 (4) Students age 18 and under who are under the
 341 residential care of the Department of Children and Family
 342 Services or the Agency for Persons with Disabilities and who
 343 receive an education program shall be calculated as full-time
 344 equivalent student membership in the appropriate cost factor as
 345 provided for in s. 1011.62(1)(c). Residential care facilities
 346 shall include, but not be limited to, developmental disabilities
 347 centers ~~institutions~~ and state mental health facilities. All
 348 students shall receive their education program from the district
 349 school system, and funding shall be allocated through the
 350 Florida Education Finance Program for the district school
 351 system.

352 Section 15. Paragraph (t) of subsection (3) of section
 353 408.036, Florida Statutes, is amended to read:

354 408.036 Projects subject to review; exemptions.--

355 (3) EXEMPTIONS.--Upon request, the following projects are
 356 subject to exemption from the provisions of subsection (1):

357 (t) For beds in state developmental disabilities centers
 358 ~~institutions~~ as defined in s. 393.063.

359 Section 16. Paragraph (a) of subsection (3) of section
 360 435.03, Florida Statutes, is amended to read:

361 435.03 Level 1 screening standards.--

362 (3) Standards must also ensure that the person:

363 (a) For employees and employers licensed or registered
 364 pursuant to chapter 400 or chapter 429, and for employees and
 365 employers of developmental disabilities centers ~~institutions~~ as
 366 defined in s. 393.063, intermediate care facilities for the
 367 developmentally disabled as defined in s. 400.960, and mental
 368 health treatment facilities as defined in s. 394.455, meets the
 369 requirements of this chapter.

370 Section 17. Subsection (2) of section 916.301, Florida
 371 Statutes, is amended to read:

372 916.301 Appointment of experts.--

373 (2) If a defendant's suspected mental condition is
 374 retardation or autism, the court shall appoint the following:

375 (a) At least one, or at the request of any party, two
 376 experts to evaluate whether the defendant meets the definition
 377 of retardation or autism and, if so, whether the defendant is
 378 competent to proceed; and ~~and~~—

379 (b) A psychologist selected by the agency who is licensed
 380 or authorized by law to practice in this state, with experience
 381 in evaluating persons suspected of having retardation or autism,
 382 and a social service professional, with experience in working
 383 with persons with retardation or autism.

384 1. The psychologist shall evaluate whether the defendant
 385 meets the definition of retardation or autism and, if so,
 386 whether the defendant is incompetent to proceed due to
 387 retardation or autism.

388 2. The social service professional shall provide a social
 389 and developmental history of the defendant.

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390 Section 18. Paragraph (a) of subsection (2) of section
391 916.302, Florida Statutes, is amended to read:

392 916.302 Involuntary commitment of defendant determined to
393 be incompetent to proceed.--

394 (2) ADMISSION TO A FACILITY.--

395 (a) A defendant who has been charged with a felony and who
396 is found to be incompetent to proceed due to retardation or
397 autism, and who meets the criteria for involuntary commitment to
398 the agency under the provisions of this chapter, shall be
399 committed to the agency, and the agency shall retain and provide
400 appropriate training for the defendant. No later than 6 months
401 after the date of admission or at the end of any period of
402 extended commitment or at any time the administrator or designee
403 shall have determined that the defendant has regained competency
404 to proceed or no longer meets the criteria for continued
405 commitment, the administrator or designee shall file a report
406 with the court pursuant to this chapter and the applicable
407 Florida Rules of Criminal Procedure. The sheriff shall transport
408 the defendant to the county jail within 15 days after the court
409 receives a report from the agency declaring that the defendant
410 is competent to proceed or no longer meets the criteria for
411 continued commitment. A competency hearing shall be held within
412 30 days after the court receives such report from the agency.

413 Section 19. This act shall take effect July 1, 2008.