

ENROLLED  
 HB 7075, Engrossed 1

2008 Legislature

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; providing an effective date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1. Subsection (1) of section 287.155, Florida  
 24   Statutes, is amended to read:

25           287.155 Motor vehicles; purchase by Department of Children  
 26   and Family Services, Agency for Persons with Disabilities,  
 27   Department of Health, Department of Juvenile Justice, and  
 28   Department of Corrections.--

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

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

43 393.063 Definitions.--For the purposes of this chapter,  
44 the term:

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

49 (31) "Retardation" means significantly subaverage general  
50 intellectual functioning existing concurrently with deficits in  
51 adaptive behavior that manifests before the age of 18 and can  
52 reasonably be expected to continue indefinitely. "Significantly  
53 subaverage general intellectual functioning," for the purpose of  
54 this definition, means performance which is two or more standard  
55 deviations from the mean score on a standardized intelligence  
56 test specified in the rules of the agency. "Adaptive behavior,"

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57 | for the purpose of this definition, means the effectiveness or  
58 | degree with which an individual meets the standards of personal  
59 | independence and social responsibility expected of his or her  
60 | age, cultural group, and community.

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

63 | 393.064 Prevention.--

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

68 | (a) Research into the etiology of developmental  
69 | disabilities.

70 | (b) Ensuring that new knowledge is rapidly disseminated  
71 | throughout the agency.

72 | (c) Diagnosis of unusual conditions and syndromes  
73 | associated with developmental disabilities in clients identified  
74 | throughout developmental disabilities programs.

75 | (d) Evaluation of families of clients with developmental  
76 | disabilities of genetic origin in order to provide them with  
77 | genetic counseling aimed at preventing the recurrence of the  
78 | disorder in other family members.

79 | (e) Ensuring that health professionals in the  
80 | developmental disabilities center ~~institution~~ at Gainesville  
81 | have access to information systems that will allow them to  
82 | remain updated on newer knowledge and maintain their  
83 | postgraduate education standards.

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84 (f) Enhancing staff training for professionals throughout  
85 the agency in the areas of genetics and developmental  
86 disabilities.

87 Section 4. Paragraph (f) of subsection (5) of section  
88 393.0651, Florida Statutes, is amended to read:

89 393.0651 Family or individual support plan.--The agency  
90 shall provide directly or contract for the development of a  
91 family support plan for children ages 3 to 18 years of age and  
92 an individual support plan for each client. The client, if  
93 competent, the client's parent or guardian, or, when  
94 appropriate, the client advocate, shall be consulted in the  
95 development of the plan and shall receive a copy of the plan.  
96 Each plan must include the most appropriate, least restrictive,  
97 and most cost-beneficial environment for accomplishment of the  
98 objectives for client progress and a specification of all  
99 services authorized. The plan must include provisions for the  
100 most appropriate level of care for the client. Within the  
101 specification of needs and services for each client, when  
102 residential care is necessary, the agency shall move toward  
103 placement of clients in residential facilities based within the  
104 client's community. The ultimate goal of each plan, whenever  
105 possible, shall be to enable the client to live a dignified life  
106 in the least restrictive setting, be that in the home or in the  
107 community. For children under 6 years of age, the family support  
108 plan shall be developed within the 45-day application period as  
109 specified in s. 393.065(1); for all applicants 6 years of age or  
110 older, the family or individual support plan shall be developed  
111 within the 60-day period as specified in that subsection.

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

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

122 Section 5. Section 393.0657, Florida Statutes, is amended  
 123 to read:

124 393.0657 Persons not required to be refingerprinted or  
 125 rescreened.--Persons who have undergone any portion of the  
 126 background screening required under s. 393.0655 within the last  
 127 12 months are not required to repeat such screening in order to  
 128 comply with the screening requirements if such persons have not  
 129 been unemployed for more than 90 consecutive days since that  
 130 screening occurred. Such persons are responsible for providing  
 131 documentation of the screening and shall undergo screening for  
 132 any remaining background screening requirements that have never  
 133 been conducted or have not been completed within the last 12  
 134 months.

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

137 393.066 Community services and treatment.--

138 (5) In order to improve the potential for utilization of  
 139 more cost-effective, community-based residential facilities, the

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

155 Section 7. Section 393.0673, Florida Statutes, is amended  
 156 to read:

157 393.0673 Denial, suspension, or revocation of license;  
 158 moratorium on admissions; administrative fines; procedures.--

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

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

163 1. ~~(a)~~ ~~Has~~ Falsely represented or omitted a material fact  
 164 in its license application submitted under s. 393.067i:-

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

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167        3.~~(e)~~ ~~Has~~ Failed to comply with the applicable  
 168 requirements of this chapter or rules applicable to the  
 169 ~~applicant or licensee; or-~~  
 170        (b) The Department of Children and Family Services has  
 171 verified that the licensee is responsible for the abuse,  
 172 neglect, or abandonment of a child or the abuse, neglect, or  
 173 exploitation of a vulnerable adult.  
 174        (2) The agency may deny an application for licensure  
 175 submitted under s. 393.067 if:  
 176        (a) The applicant has:  
 177        1. Falsely represented or omitted a material fact in its  
 178 license application submitted under s. 393.067;  
 179        2. Had prior action taken against it under the Medicaid or  
 180 Medicare program;  
 181        3. Failed to comply with the applicable requirements of  
 182 this chapter or rules applicable to the applicant; or  
 183        4. Previously had a license to operate a residential  
 184 facility revoked by the agency, the Department of Children and  
 185 Family Services, or the Agency for Health Care Administration;  
 186 or  
 187        (b) The Department of Children and Family Services has  
 188 verified that the applicant is responsible for the abuse,  
 189 neglect, or abandonment of a child or the abuse, neglect, or  
 190 exploitation of a vulnerable adult.  
 191        (3)~~(2)~~ All hearings shall be held within the county in  
 192 which the licensee or applicant operates or applies for a  
 193 license to operate a facility as defined herein.

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194        (4)~~(3)~~ The agency, as a part of any final order issued by  
 195 it under this chapter, may impose such fine as it deems proper,  
 196 except that such fine may not exceed \$1,000 for each violation.  
 197 Each day a violation of this chapter occurs constitutes a  
 198 separate violation and is subject to a separate fine, but in no  
 199 event may the aggregate amount of any fine exceed \$10,000. Fines  
 200 paid by any facility licensee under the provisions of this  
 201 subsection shall be deposited in the Resident Protection Trust  
 202 Fund and expended as provided in s. 400.063.

203        (5)~~(4)~~ The agency may issue an order immediately  
 204 suspending or revoking a license when it determines that any  
 205 condition in the facility presents a danger to the health,  
 206 safety, or welfare of the residents in the facility.

207        (6)~~(5)~~ The agency may impose an immediate moratorium on  
 208 admissions to any facility when the agency ~~department~~ determines  
 209 that any condition in the facility presents a threat to the  
 210 health, safety, or welfare of the residents in the facility.

211        (7)~~(6)~~ The agency shall establish by rule criteria for  
 212 evaluating the severity of violations and for determining the  
 213 amount of fines imposed.

214        Section 8. Paragraph (a) of subsection (2) of section  
 215 393.135, Florida Statutes, is amended to read:

216        393.135 Sexual misconduct prohibited; reporting required;  
 217 penalties.--

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

220        (a) Resides in a residential facility, including any  
 221 comprehensive transitional education program, developmental



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222 disabilities center ~~institution~~, foster care facility, group  
 223 home facility, intermediate care facility for the  
 224 developmentally disabled, or residential habilitation center; or  
 225  
 226 commits a felony of the second degree, punishable as provided in  
 227 s. 775.082, s. 775.083, or s. 775.084. A covered person may be  
 228 found guilty of violating this subsection without having  
 229 committed the crime of sexual battery.

230 Section 9. Section 393.22, Florida Statutes, is amended to  
 231 read:

232 393.22 Financial commitment to community services  
 233 programs.--In order to ensure that whenever a number of persons  
 234 move from a center ~~an institution~~ serving persons with  
 235 developmental disabilities which is sufficient to allow an  
 236 entire residential unit within that center ~~institution~~ to be  
 237 closed, no less than 80 percent of the direct costs of providing  
 238 services to persons who had resided in that unit shall be  
 239 reallocated for community services.

240 Section 10. Section 393.23, Florida Statutes, is amended  
 241 to read:

242 393.23 Developmental disabilities centers ~~institutions~~;  
 243 trust accounts.--All receipts from the operation of canteens,  
 244 vending machines, hobby shops, sheltered workshops, activity  
 245 centers, farming projects, and other like activities operated in  
 246 a developmental disabilities center ~~institution~~, and moneys  
 247 donated to the center ~~institution~~, must be deposited in a trust  
 248 account in any bank, credit union, or savings and loan  
 249 association authorized by the State Treasury as a qualified

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250 depository to do business in this state, if the moneys are  
 251 available on demand.

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

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

271 (3) The accounting system of the center ~~an institution~~  
 272 must account separately for revenues and expenses for each  
 273 activity. The center ~~institution~~ shall reconcile the trust  
 274 account to the center's ~~institution's~~ accounting system and  
 275 check registers and to the accounting system of the Chief  
 276 Financial Officer.

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

280 (5) Funds shall be expended in accordance with  
 281 requirements and guidelines established by the Chief Financial  
 282 Officer.

283 Section 11. Subsection (1) of section 393.506, Florida  
 284 Statutes, is amended to read:

285 393.506 Administration of medication.--

286 (1) A direct service provider who is not currently  
 287 licensed to administer medication may supervise the self-  
 288 administration of medication or may administer oral,  
 289 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or  
 290 topical prescription medications to a client as provided in this  
 291 section.

292 Section 12. Subsection (1) of section 400.063, Florida  
 293 Statutes, is amended to read:

294 400.063 Resident Protection Trust Fund.--

295 (1) A Resident Protection Trust Fund shall be established  
 296 for the purpose of collecting and disbursing funds generated  
 297 from the license fees and administrative fines as provided for  
 298 in ss. 393.0673(4)(~~2~~), 400.062(3), 400.121(2), and 400.23(8).  
 299 Such funds shall be for the sole purpose of paying for the  
 300 appropriate alternate placement, care, and treatment of  
 301 residents who are removed from a facility licensed under this  
 302 part or a facility specified in s. 393.0678(1) in which the  
 303 agency determines that existing conditions or practices  
 304 constitute an immediate danger to the health, safety, or

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

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

320 402.181 State Institutions Claims Program.--

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

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

331 402.22 Education program for students who reside in  
 332 residential care facilities operated by the Department of

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333 Children and Family Services or the Agency for Persons with  
 334 Disabilities.--

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

347 Section 15. Paragraph (t) of subsection (3) of section  
 348 408.036, Florida Statutes, is amended to read:

349 408.036 Projects subject to review; exemptions.--

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

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

354 Section 16. Paragraph (a) of subsection (3) of section  
 355 435.03, Florida Statutes, is amended to read:

356 435.03 Level 1 screening standards.--

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

358 (a) For employees and employers licensed or registered  
 359 pursuant to chapter 400 or chapter 429, and for employees and  
 360 employers of developmental disabilities centers ~~institutions~~ as

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361 defined in s. 393.063, intermediate care facilities for the  
 362 developmentally disabled as defined in s. 400.960, and mental  
 363 health treatment facilities as defined in s. 394.455, meets the  
 364 requirements of this chapter.

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

367 916.301 Appointment of experts.--

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

370 (a) At least one, or at the request of any party, two  
 371 experts to evaluate whether the defendant meets the definition  
 372 of retardation or autism and, if so, whether the defendant is  
 373 competent to proceed; and—

374 (b) A psychologist selected by the agency who is licensed  
 375 or authorized by law to practice in this state, with experience  
 376 in evaluating persons suspected of having retardation or autism,  
 377 and a social service professional, with experience in working  
 378 with persons with retardation or autism.

379 1. The psychologist shall evaluate whether the defendant  
 380 meets the definition of retardation or autism and, if so,  
 381 whether the defendant is incompetent to proceed due to  
 382 retardation or autism.

383 2. The social service professional shall provide a social  
 384 and developmental history of the defendant.

385 Section 18. This act shall take effect July 1, 2008.