

By Senator Storms

10-01708B-10

20102340\_\_

1                   A bill to be entitled  
2           An act relating to the Agency for Persons with  
3           Disabilities; amending s. 39.201, F.S.; authorizing  
4           the agency to use information in the Department of  
5           Children and Family Services' central abuse hotline  
6           for licensure purposes; amending s. 120.80, F.S.;  
7           authorizing the agency to conduct its own  
8           administrative hearings relating to programs for  
9           persons with disabilities; amending s. 393.067, F.S.;  
10          requiring facility staff to obtain training in  
11          detecting, reporting, and preventing abuse, neglect,  
12          exploitation, and sexual abuse; amending s. 393.0673,  
13          F.S.; revising the types of violations that may result  
14          in license denial, revocation, or suspension or the  
15          imposition of an administrative fine; amending s.  
16          393.13, F.S.; providing that persons with  
17          developmental disabilities have a right to be free  
18          from abuse, neglect, exploitation, and sexual abuse  
19          regardless of the setting; amending s. 393.506, F.S.;  
20          providing that competency in the administration of  
21          medication by certain routes can be assessed by  
22          simulation during training; amending s. 400.063, F.S.;  
23          conforming a cross-reference; providing an effective  
24          date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28           Section 1. Subsection (6) of section 39.201, Florida  
29           Statutes, is amended to read:

10-01708B-10

20102340

30 39.201 Mandatory reports of child abuse, abandonment, or  
31 neglect; mandatory reports of death; central abuse hotline.—

32 (6) Information in the central abuse hotline may not be  
33 used for employment screening, except as provided in s.  
34 39.202(2) (a) and (h). Information in the central abuse hotline  
35 and the department's automated abuse information system may be  
36 used by the department, its authorized agents or contract  
37 providers, the Department of Health, the Agency for Persons with  
38 Disabilities as part of the licensure process pursuant to s.  
39 393.067 or s. 393.0673, or county agencies as part of the  
40 licensure or registration process pursuant to ss. 402.301-  
41 402.319 and ss. 409.175-409.176.

42 Section 2. Subsection (17) is added to section 120.80,  
43 Florida Statutes, to read:

44 120.80 Exceptions and special requirements; agencies.—

45 (17) AGENCY FOR PERSONS WITH DISABILITIES.—Notwithstanding  
46 s. 120.57(1) (a), hearings relating to the execution of social  
47 and economic programs for persons with disabilities need not be  
48 conducted by an administrative law judge assigned by the  
49 division. These hearings shall be held in accordance with s.  
50 393.125 and 42 C.F.R. part 431, subpart E. The agency may  
51 contract with the Department of Children and Family Services to  
52 provide a hearing officer in these matters.

53 Section 3. Paragraph (h) of subsection (4) and subsections  
54 (7) and (9) of section 393.067, Florida Statutes, are amended to  
55 read:

56 393.067 Facility licensure.—

57 (4) The application shall be under oath and shall contain  
58 the following:

10-01708B-10

20102340\_\_

59 (h) Certification that the staff of the facility or program  
60 will receive training to detect, report, and prevent abuse,  
61 neglect, exploitation, and sexual abuse of residents and clients  
62 as those terms are defined in s. 39.01 or s. 415.102.

63 (7) The agency shall adopt rules establishing minimum  
64 standards for facilities and programs licensed under this  
65 section, including rules requiring facilities and programs to  
66 train staff to detect, report, and prevent abuse, neglect,  
67 exploitation, and sexual abuse of residents and clients as those  
68 terms are defined in s. 39.01 or s. 415.102, minimum standards  
69 of quality and adequacy of client care, incident reporting  
70 requirements, and uniform firesafety standards established by  
71 the State Fire Marshal which are appropriate to the size of the  
72 facility or of the component centers or units of the program.

73 (9) The agency may conduct unannounced inspections to  
74 determine compliance by foster care facilities, group home  
75 facilities, residential habilitation centers, and comprehensive  
76 transitional education programs with the applicable provisions  
77 of this chapter and the rules adopted pursuant hereto, including  
78 the rules adopted for training staff of a facility or a program  
79 to detect, report, and prevent abuse, neglect, exploitation, and  
80 sexual abuse of residents and clients as those terms are defined  
81 in s. 39.01 or s. 415.102. The facility or program shall make  
82 copies of inspection reports available to the public upon  
83 request.

84 Section 4. Subsections (1) and (2) of section 393.0673,  
85 Florida Statutes, are amended, and present subsections (3)  
86 through (7) of that section are redesignated as subsections (2)  
87 through (6), respectively, to read:

10-01708B-10

20102340\_\_

88 393.0673 Denial, suspension, or revocation of license;  
89 moratorium on admissions; administrative fines; procedures.—

90 (1) The agency may deny, revoke or suspend a license, or  
91 impose an administrative fine of up to, ~~not to exceed~~ \$1,000 per  
92 violation per day, if the agency determines that a license  
93 applicant or a licensee, as applicable, has committed one or  
94 more of the following violations:

95 ~~(a) The licensee has:~~

96 (a)1. Falsely represented or omitted a material fact in its  
97 license application submitted under s. 393.067.~~†~~

98 (b)2. Had prior action taken against it under the Medicaid  
99 or Medicare program.~~† or~~

100 (c)3. Failed to comply with the applicable requirements of  
101 this chapter or rules applicable to a license applicant or a ~~the~~  
102 licensee.~~† or~~

103 ~~(d)4.~~ Abused, neglected, or abandoned ~~The Department of~~  
104 ~~Children and Family Services has verified that the licensee is~~  
105 ~~responsible for the abuse, neglect, or abandonment of a child as~~ as  
106 those terms are defined in s. 39.01 or abused, neglected,  
107 exploited, or sexually abused ~~the abuse, neglect, or~~  
108 ~~exploitation of a vulnerable adult~~ as those terms are defined in  
109 s. 415.102.

110 (e) Knowingly submitted false or inaccurate information in  
111 order to obtain payment for services.

112 (f) Knowingly used the funds, property, or identity of a  
113 client for self-gain.

114 (g) Knowingly compromised the health, safety, or welfare of  
115 a client.

116 (h) Knowingly violated the rights of a client as provided

10-01708B-10

20102340\_\_

117 in s. 393.13(3).

118 (i) Denied a client's guardian, a minor's parent, a  
119 client's waiver support coordinator, an agency employee, or  
120 other authorized person access to a client.

121 ~~(2) The agency may deny an application for licensure~~  
122 ~~submitted under s. 393.067 if:~~

123 ~~(a) The applicant has:~~

124 ~~1. Falsely represented or omitted a material fact in its~~  
125 ~~license application submitted under s. 393.067;~~

126 ~~2. Had prior action taken against it under the Medicaid or~~  
127 ~~Medicare program;~~

128 ~~3. Failed to comply with the applicable requirements of~~  
129 ~~this chapter or rules applicable to the applicant; or~~

130 ~~4. Previously had a license to operate a residential~~  
131 ~~facility revoked by the agency, the Department of Children and~~  
132 ~~Family Services, or the Agency for Health Care Administration;~~  
133 ~~or~~

134 ~~(b) The Department of Children and Family Services has~~  
135 ~~verified that the applicant is responsible for the abuse,~~  
136 ~~neglect, or abandonment of a child or the abuse, neglect, or~~  
137 ~~exploitation of a vulnerable adult.~~

138 Section 5. Paragraph (a) of subsection (3) of section  
139 393.13, Florida Statutes, is amended to read:

140 393.13 Treatment of persons with developmental  
141 disabilities.—

142 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES.—  
143 The rights described in this subsection shall apply to all  
144 persons with developmental disabilities, whether or not such  
145 persons are clients of the agency.

10-01708B-10

20102340\_\_

146 (a) Persons with developmental disabilities shall have a  
147 right to dignity, privacy, and humane care, including the right  
148 to be free from abuse, neglect, exploitation, and sexual abuse  
149 as those terms are defined in s. 39.01 or s. 415.102 ~~in~~  
150 ~~residential facilities.~~

151 Section 6. Subsection (2) of section 393.506, Florida  
152 Statutes, is amended to read:

153 393.506 Administration of medication.—

154 (2) In order to supervise the self-administration of  
155 medication or to administer medications as provided in  
156 subsection (1), a direct service provider must satisfactorily  
157 complete a training course of at least ~~not less than~~ 4 hours in  
158 medication administration and be found competent to supervise  
159 the self-administration of medication by a client or to  
160 administer medication to a client in a safe and sanitary manner.  
161 Competency in the administration of topical, transdermal, and  
162 otic routes may be validated by simulation during the required  
163 training course. Competency in all other routes of medication  
164 administration must be assessed and validated at least annually  
165 in an onsite setting and must include personally observing the  
166 direct service provider satisfactorily:

167 (a) Supervising the self-administration of medication by a  
168 client; and

169 (b) Administering medication to a client.

170 Section 7. Subsection (1) of section 400.063, Florida  
171 Statutes, is amended to read:

172 400.063 Resident protection.—

173 (1) The Health Care Trust Fund shall be used for the  
174 purpose of collecting and disbursing funds generated from the

10-01708B-10

20102340\_\_

175 license fees and administrative fines as provided for in ss.  
176 393.0673(3) ~~393.0673(4)~~, 400.062(3), 400.121(2), and 400.23(8).  
177 Such funds shall be for the sole purpose of paying for the  
178 appropriate alternate placement, care, and treatment of  
179 residents who are removed from a facility licensed under this  
180 part or a facility specified in s. 393.0678(1) in which the  
181 agency determines that existing conditions or practices  
182 constitute an immediate danger to the health, safety, or  
183 security of the residents. If the agency determines that it is  
184 in the best interest of the health, safety, or security of the  
185 residents to provide for an orderly removal of the residents  
186 from the facility, the agency may use ~~utilize~~ such funds to  
187 maintain and care for the residents in the facility pending  
188 removal and alternative placement. The maintenance and care of  
189 the residents shall be under the direction and control of a  
190 receiver appointed pursuant to s. 393.0678(1) or s. 400.126(1).  
191 However, funds may be expended in an emergency upon a filing of  
192 a petition for a receiver, upon the declaration of a state of  
193 local emergency pursuant to s. 252.38(3)(a)5., or upon a duly  
194 authorized local order of evacuation of a facility by emergency  
195 personnel to protect the health and safety of the residents.

196 Section 8. This act shall take effect July 1, 2010.  
197