

**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 Children, Families, and Elder Affairs Committee

**BILL:** CS/SB 1372

**INTRODUCER:** Children, Families, and Elder Affairs Committee and Senator Storms

**SUBJECT:** Persons with Developmental Disabilities/Medication

**DATE:** March 29, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	<b>Fav/1 amendment</b>
2.	Daniell	Walsh	CF	<b>Fav/CS</b>
3.	_____	_____	BC	_____
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:**

This bill amends s. 393.506, F.S., to require a registered nurse or a physician to annually assess and validate the competency of a direct service provider, who is not licensed to administer prescription medication, in certain routes of medication administration, including oral, ophthalmic, rectal, inhaled, and enteral. The bill provides that topical, transdermal, and otic routes of medication administration do not require annual revalidation.

Additionally, the bill requires the Department of Children and Family Services (department) to submit a recommended order after the conclusion of an administrative hearing to the Agency for Persons with Disabilities (agency) and the agency must issue a final order after the recommendation is made. This amendment clarifies that the final order authority rests with the agency after a hearing is conducted by department on behalf of the agency.

This bill substantially amends sections 393.125 and 393.506, Florida Statutes.

## II. Present Situation:

### Agency for Persons with Disabilities

In October 2004, the Agency for Persons with Disabilities (APD) became an agency separate from the DCF and was specifically tasked with serving the needs of Floridians with developmental disabilities.<sup>1</sup> Prior to that time, it existed as the Developmental Disabilities Program.<sup>2</sup>

The primary purpose of 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.<sup>3</sup>

### Developmental Disabilities Institutions

Clients of APD may receive services through home or community settings, private intermediate care facilities, or state-run developmental services institutions. Developmental services institutions provide secure<sup>4</sup> 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.<sup>5</sup> There are currently two non-secure developmental services institutions which are staffed by state employees: Marianna Sunland and Tacachale.<sup>6</sup>

### Direct Service Providers

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.<sup>7</sup>

Currently, APD requires that each direct service provider submit to a Level 2 employment screening pursuant to s. 435.03, F.S.<sup>8</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> Agency for Persons with Disabilities, *About Us*, <http://apd.myflorida.com/about> (last visited Mar. 24, 2011).

<sup>3</sup> Office of Program Policy Analysis & Government Accountability, The Florida Legislature, *Agency for Persons with Disabilities*, <http://www.oppaga.state.fl.us/profiles/5060> (last visited Mar. 24, 2011).

<sup>4</sup> The only secure forensic facility under APD is the Mentally Retarded Defendant Program (MRDP) in Chattahoochee. *See* Agency for Persons with Disabilities, *Mentally Retarded Defendant Program*, <http://apd.myflorida.com/ddc/mrdp/> (last visited Mar. 24, 2011).

<sup>5</sup> Office of Program Policy Analysis & Government Accountability, *supra* note 3.

<sup>6</sup> Agency for Persons with Disabilities, *Statewide Developmental Disability Centers*, <http://apd.myflorida.com/ddc/> (last visited Mar. 24, 2011).

<sup>7</sup> Section 393.063(11), F.S.

<sup>8</sup> Section 393.0655, F.S.

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.<sup>9</sup>

### Administration of Medication

Section 393.506, F.S., provides 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:

- Oral,<sup>10</sup>
- Transdermal,<sup>11</sup>
- Ophthalmic,<sup>12</sup>
- Otic,<sup>13</sup>
- Rectal,<sup>14</sup>
- Inhaled,<sup>15</sup>
- Enteral,<sup>16</sup> or
- Topical.<sup>17</sup>

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 four 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.<sup>18</sup> 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 or ch. 459, F.S., in an onsite

<sup>9</sup> Section 402.3057, F.S.

<sup>10</sup> “Oral” means medication taken by mouth. Merriam-Webster, Medline Plus Medical Dictionary, *Oral*, <http://www.merriam-webster.com/medlineplus/Oral> (last visited Mar. 24, 2011).

<sup>11</sup> “Transdermal” means relating to, being, or supplying a medication in a form for absorption through the skin into the bloodstream. Merriam-Webster, Medline Plus Medical Dictionary, *Transdermal*, <http://www.merriam-webster.com/medlineplus/Transdermal> (last visited Mar. 24, 2011).

<sup>12</sup> “Ophthalmic” means of, relating to, or situated near the eye (meaning administration of medicine to the eye). Merriam-Webster, Medline Plus Medical Dictionary, *Ophthalmic*, <http://www.merriam-webster.com/medlineplus/Ophthalmic> (last visited Mar. 24, 2011).

<sup>13</sup> “Otic” means of, relating to, or located in the region of the ear (meaning the administration of medicine to the ear). Merriam-Webster, Medline Plus Medical Dictionary, *Otic*, <http://www.merriam-webster.com/medlineplus/otic> (last visited Mar. 24, 2011).

<sup>14</sup> “Rectal” means relating to, affecting, or being near the rectum (meaning the administration of medicine to the rectum). Merriam-Webster, Medline Plus Medical Dictionary, *Rectal*, <http://www.merriam-webster.com/medlineplus/rectal> (last visited Mar. 24, 2011).

<sup>15</sup> “Inhaled” means medicine that is administered by being breathed in. Merriam-Webster, Medline Plus Medical Dictionary, *Inhaled*, <http://www.merriam-webster.com/medlineplus/Inhaled> (last visited Mar. 24, 2011).

<sup>16</sup> “Enteral” or “enteric” means being or possessing a coating designed to pass through the stomach unaltered and to disintegrate in the intestines (meaning medication is administered usually by tube in order to pass through the stomach and into the intestines). Merriam-Webster, Medline Plus Medical Dictionary, *Enteric*, <http://www.merriam-webster.com/medlineplus/enteric> (last visited Mar. 24, 2011).

<sup>17</sup> “Topical” means designed for or involving application to or action on the surface of a part of the body (meaning the application of medicine on the surface of the body). Merriam-Webster, Medline Plus Medical Dictionary, *Topical*, <http://www.merriam-webster.com/medlineplus/topical> (last visited Mar. 24, 2011).

<sup>18</sup> Section 393.506(2), F.S.

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.<sup>19</sup>

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.<sup>20</sup>

### **Medicaid: Review of Agency Decisions**

Medicaid provides health care options for low-income families and individuals. In Florida, the Agency for Health Care Administration (AHCA) is responsible for Medicaid and the Department of Children and Family Services (DCF) helps AHCA by enrolling eligible persons into the Medicaid program.<sup>21</sup> The AHCA also contracts with other state entities and private organizations to provide services. Medicaid serves approximately 2.97 million people in Florida and the estimated expenditure for fiscal year 2010-2011 is \$20.2 billion.<sup>22</sup>

The Home and Community-Based Services waivers administered by the Agency for Persons with Disabilities (APD) offer 28 supports and services to assist individuals with developmental disabilities to live in their community.<sup>23</sup> If APD takes an action that substantially affects a person using one of these services, the person has a right to an administrative hearing. When APD seeks to deny, reduce, terminate, or suspend Medicaid Waiver services, the hearings are conducted by the Office of Appeal Hearings within DCF.<sup>24</sup> Any other developmental services applicant who has any substantial interest determined by APD may request an administrative hearing pursuant to ch. 120, F.S., the Administrative Procedures Act.<sup>25</sup>

If APD notifies a person that it intends to reduce, terminate, or suspend Medicaid Waiver services, the person may file a hearing request with the following information:

- The name, address, and telephone number of the person for whom the hearing is being requested, as well as the name, address, and telephone number of the person's counsel or representative designated to receive pleadings and other official papers;
- A statement that the person is requesting the hearing and whether the person disputes the facts alleged by APD; and
- A reference to, or copy of, APD's decision and the date on which it was received.<sup>26</sup>

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<sup>19</sup> See ss. 393.506(2) and (4), F.S.

<sup>20</sup> Section 393.506(3), F.S.

<sup>21</sup> Agency for Health Care Admin., *Welcome to Medicaid!*, <http://www.fdhc.state.fl.us/Medicaid/index.shtml> (last visited Mar. 29, 2011).

<sup>22</sup> *Id.*

<sup>23</sup> Agency for Persons with Disabilities, *HCBS Waiver Services*, <http://apd.myflorida.com/brochures/supports-and-services-brochure.pdf> (last visited Mar. 29, 2011).

<sup>24</sup> Agency for Persons with Disabilities, *Guide to Administrative Hearings on Medicaid Programs* (Oct. 2010), available at <http://apd.myflorida.com/brochures/administrative-hearings-guide.pdf> (last visited Mar. 29, 2011); see also s. 393.125(1)(a), F.S.

<sup>25</sup> Section 393.125(1)(b), F.S. Specifically, the hearing shall be pursuant to ss. 120.569 and 120.57, F.S.

<sup>26</sup> *Guide to Administrative Hearings on Medicaid Programs*, *supra* note 24.

Once APD determines that the hearing request was filed on time and is complete, it will forward the request to DCF, where a hearing officer will be assigned to the case.<sup>27</sup>

### **III. Effect of Proposed Changes:**

This bill amends s. 393.506, F.S., to require a registered nurse licensed under ch. 464, F.S., or a physician licensed under chs. 458 or 459, F.S., to annually assess and validate the competency of a direct service provider in the administration of oral, ophthalmic, rectal, inhaled and enteral prescription medications, in an onsite setting with an actual client. For topical, transdermal, and otic routes of medication administration, a direct service provider's competency may be validated by simulation during a training course required under s. 393.506(2), F.S.,<sup>28</sup> and do not require annual revalidation.

Additionally, the bill requires the Department of Children and Family Services (department) to submit a recommended order after the conclusion of a Medicaid administrative hearing to the Agency for Persons with Disabilities (agency) and the agency must issue a final order after the recommendation is made. This amendment clarifies that the final order authority rests with the agency after a hearing is conducted by department on behalf of the agency.

The bill provides that it shall take effect on July 1, 2011.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>27</sup> *Id.*

<sup>28</sup> A direct service provider who is not licensed to administer medication 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.

**B. Private Sector Impact:**

Direct service providers may save money as they will no longer be required to have a registered nurse licensed under ch. 464, F.S., or a physician licensed under ch. 458 or ch. 459, F.S., perform an annual validation of the administration of certain medicines by the unlicensed direct service provider.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

There may be an inconsistency in subsection (4) of this bill and subsection (2) in s. 393.506, F.S. This bill exempts an annual revalidation for the topical, transdermal, and otic routes of administration. However, subsection (2) requires that the competency of a direct service provider be assessed and validated at least annually in an onsite setting and must include personally observing the direct service provider satisfactorily supervising the self-administration of medication by a client and administering medication to a client.

**VII. Related Issues:**

Disability Rights Florida suggests providing the hearing officer for the Department of Children and Family Services the authority to issue the final order because an appeal will be able to move forward faster and it will provide more credibility to the system if an independent hearing officer issues the final order rather than the agency that is also seeking the action.<sup>29</sup>

**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 28, 2011:**

The committee substitute requires the Department of Children and Family Services (department) to submit a recommended order after the conclusion of an administrative hearing to the Agency for Persons with Disabilities (agency) and the agency must issue a final order after the recommendation is made. This amendment clarifies that the final order authority rests with the agency after a hearing is conducted by department on behalf of the agency.

**B. Amendments:**

None.

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<sup>29</sup> E-mail from Sylvia Smith, Disability Rights Florida, to professional staff of the Senate Committee on Children, Families, and Elder Affairs (Mar. 29, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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