

1 A bill to be entitled
2 An act relating to vulnerable children and adults;
3 amending 382.002, F.S.; defining the term "certified
4 homeless youth" for purposes of provisions relating to
5 vital statistics; amending s. 382.0085, F.S.; conforming a
6 cross-reference; amending s. 382.025, F.S.; authorizing a
7 certified homeless youth or a minor who has had the
8 disabilities of nonage removed to obtain a birth
9 certificate; amending s. 393.067, F.S.; prohibiting
10 monitoring requirements that mandate pornographic
11 materials be available in residential facilities that
12 serve clients of the Agency for Persons with Disabilities;
13 amending s. 393.11, F.S.; requiring the court to order a
14 person involuntarily admitted to residential services to
15 be released to the agency for appropriate residential
16 services; prohibiting the court from ordering that such
17 person be released directly to a residential service
18 provider; authorizing the agency to transfer a person from
19 one residential setting to another; requiring the agency
20 to notify the committing court and the person's counsel of
21 the transfer within a specified time; amending s. 393.125,
22 F.S.; authorizing the agency to issue a final order;
23 amending s. 409.1671, F.S.; decreasing the limits of
24 liability and requisite insurance coverage for lead
25 community-based providers and subcontractors; providing
26 immunity from liability for the Department of Children and
27 Family Services for acts or omissions of a community-based
28 provider or subcontractor or the officers, agents, or

29 employees thereof; amending s. 916.1093, F.S.; requiring a
 30 sufficient number of civil facilities to provide
 31 community-based training for defendants charged with sex
 32 offenses; amending s. 916.3025, F.S.; requiring that the
 33 court order a person involuntarily admitted to residential
 34 services after criminal charges have been dismissed to be
 35 released to the agency for appropriate residential
 36 services; creating a task force to develop input for the
 37 creation of certain guidelines and procedures for
 38 providers of residential services; providing for
 39 membership of the task force; requiring the task force to
 40 seek input from certain pertinent entities; requiring the
 41 agency to provide administrative support to the task
 42 force; requiring the task force to submit its findings to
 43 the Legislature; providing an effective date.

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Subsections (3) through (16) of section
 48 382.002, Florida Statutes, are renumbered as subsections (4)
 49 through (17), respectively, and a new subsection (3) is added to
 50 that section to read:

51 382.002 Definitions.—As used in this chapter, the term:

52 (3) "Certified homeless youth" means a minor who is a
 53 homeless child or youth, including an unaccompanied youth, as
 54 those terms are defined in 42 U.S.C. s. 11434a and who has been
 55 certified as homeless or unaccompanied by:

56 (a) A school district homeless liaison;

57 (b) The director of an emergency shelter program funded by
 58 the United States Department of Housing and Urban Development or
 59 the director's designee; or

60 (c) The director of a runaway or homeless youth basic
 61 center or transitional living program funded by the United
 62 States Department of Health and Human Services or the director's
 63 designee.

64 Section 2. Subsection (9) of section 382.0085, Florida
 65 Statutes, is amended to read:

66 382.0085 Stillbirth registration.—

67 (9) This section or s. 382.002 (15) ~~(14)~~ may not be used to
 68 establish, bring, or support a civil cause of action seeking
 69 damages against any person or entity for bodily injury, personal
 70 injury, or wrongful death for a stillbirth.

71 Section 3. Paragraph (a) of subsection (1) of section
 72 382.025, Florida Statutes, is amended to read:

73 382.025 Certified copies of vital records;
 74 confidentiality; research.—

75 (1) BIRTH RECORDS.—Except for birth records over 100 years
 76 old which are not under seal pursuant to court order, all birth
 77 records of this state shall be confidential and are exempt from
 78 the provisions of s. 119.07(1).

79 (a) Certified copies of the original birth certificate or
 80 a new or amended certificate, or affidavits thereof, are
 81 confidential and exempt from the provisions of s. 119.07(1) and,
 82 upon receipt of a request and payment of the fee prescribed in
 83 s. 382.0255, shall be issued only as authorized by the
 84 department and in the form prescribed by the department, and

85 only:

86 1. To the registrant, if of legal age, or if the
 87 registrant is a certified homeless youth or a minor who has had
 88 the disabilities of nonage removed under s. 743.01 or s.
 89 743.015;

90 2. To the registrant's parent or guardian or other legal
 91 representative;

92 3. Upon receipt of the registrant's death certificate, to
 93 the registrant's spouse or to the registrant's child,
 94 grandchild, or sibling, if of legal age, or to the legal
 95 representative of any of such persons;

96 4. To any person if the birth record is over 100 years old
 97 and not under seal pursuant to court order;

98 5. To a law enforcement agency for official purposes;

99 6. To any agency of the state or the United States for
 100 official purposes upon approval of the department; or

101 7. Upon order of any court of competent jurisdiction.

102 Section 4. Subsection (1) of section 393.067, Florida
 103 Statutes, is amended to read:

104 393.067 Facility licensure.—

105 (1) The agency shall provide through its licensing
 106 authority and by rule license application procedures, provider
 107 qualifications, facility and client care standards, requirements
 108 for client records, requirements for staff qualifications and
 109 training, and requirements for monitoring foster care
 110 facilities, group home facilities, residential habilitation
 111 centers, and comprehensive transitional education programs that
 112 serve agency clients. However, monitoring requirements for

CS/HB 7235

2011

113 foster care facilities, group home facilities, residential
114 habilitation centers, and comprehensive transitional education
115 programs may not mandate that pornographic materials be
116 available in residential facilities that serve the clients of
117 the agency.

118 Section 5. Present paragraph (e) of subsection (8) of
119 section 393.11, Florida Statutes, is redesignated as paragraph
120 (f) and amended, and a new paragraph (e) is added to that
121 subsection, to read:

122 393.11 Involuntary admission to residential services.—

123 (8) ORDER.—

124 (e) If an order of involuntary admission to residential
125 services provided by the agency is entered by the court, the
126 court shall order that the person be released to the agency for
127 receipt of appropriate residential services and may not order
128 the person to be released directly to a residential service
129 provider.

130 (f)~~(e)~~ Upon receiving the order, the agency shall, within
131 45 days, provide the court with a copy of the person's family or
132 individual support plan and copies of all examinations and
133 evaluations, outlining the treatment and rehabilitative
134 programs. The agency shall document that the person has been
135 placed in the most appropriate, least restrictive and cost-
136 beneficial residential setting. A copy of the family or
137 individual support plan and other examinations and evaluations
138 shall be served upon the person and the person's counsel at the
139 same time the documents are filed with the court. The agency may
140 transfer a person from one residential setting to another

141 residential setting and must notify the court and the person's
 142 counsel of the transfer within 30 days after the transfer is
 143 completed.

144 Section 6. Paragraph (a) of subsection (1) of section
 145 393.125, Florida Statutes, is amended to read:

146 393.125 Hearing rights.—

147 (1) REVIEW OF AGENCY DECISIONS.—

148 (a) For Medicaid programs administered by the agency, any
 149 developmental services applicant or client, or his or her
 150 parent, guardian advocate, or authorized representative, may
 151 request a hearing in accordance with federal law and rules
 152 applicable to Medicaid cases and has the right to request an
 153 administrative hearing pursuant to ss. 120.569 and 120.57. These
 154 hearings shall be provided by the Department of Children and
 155 Family Services pursuant to s. 409.285 and shall follow
 156 procedures consistent with federal law and rules applicable to
 157 Medicaid cases. At the conclusion of the hearing, the department
 158 shall submit its recommended order to the agency as provided in
 159 s. 120.57(1)(k) and the agency shall issue the final order as
 160 provided in s. 120.57(1)(l).

161 Section 7. Paragraphs (f), (h), (j), and (l) of subsection
 162 (1) and paragraph (a) of subsection (2) of section 409.1671,
 163 Florida Statutes, are amended to read:

164 409.1671 Foster care and related services; outsourcing.—

165 (1)

166 (f)1. The Legislature finds that the state has
 167 traditionally provided foster care services to children who have
 168 been the responsibility of the state. As such, foster children

169 have not had the right to recover for injuries beyond the
 170 limitations specified in s. 768.28. The Legislature has
 171 determined that foster care and related services need to be
 172 outsourced pursuant to this section and that the provision of
 173 such services is of paramount importance to the state. The
 174 purpose for such outsourcing is to increase the level of safety,
 175 security, and stability of children who are or become the
 176 responsibility of the state. One of the components necessary to
 177 secure a safe and stable environment for such children is that
 178 private providers maintain liability insurance. As such,
 179 insurance needs to be available and remain available to
 180 nongovernmental foster care and related services providers
 181 without the resources of such providers being significantly
 182 reduced by the cost of maintaining such insurance. To ensure
 183 that these resources are not significantly reduced, specified
 184 limits of liability are necessary for eligible lead community-
 185 based providers and subcontractors engaged in the provision of
 186 services previously performed by the department.

187 2. The Legislature further finds that, by requiring the
 188 following minimum levels of insurance, children in outsourced
 189 foster care and related services will gain increased protection
 190 ~~and rights of recovery in the event of injury than provided for~~
 191 ~~in s. 768.28.~~

192 (h) Other than an entity to which s. 768.28 applies, any
 193 eligible lead community-based provider, as defined in paragraph
 194 (e), or its employees or officers, except as otherwise provided
 195 in paragraph (i), must, as a part of its contract, obtain
 196 general liability coverage for a minimum of \$500,000 ~~\$1 million~~

197 | per occurrence or claim with a policy limit aggregate of \$2
 198 | ~~claim/\$3 million per incident~~ in general liability insurance
 199 | coverage. The eligible lead community-based provider must also
 200 | require that staff who transport client children and families in
 201 | their personal automobiles in order to carry out their job
 202 | responsibilities obtain minimum bodily injury liability
 203 | insurance in the amount of \$100,000 per person claim, \$300,000
 204 | per accident ~~incident~~, on their personal automobiles. In lieu of
 205 | personal motor vehicle insurance, the lead community-based
 206 | provider's casualty, liability, or motor vehicle insurance
 207 | carrier may provide nonowned automobile liability coverage. This
 208 | insurance provides liability insurance for automobiles that the
 209 | provider uses in connection with the provider's business but
 210 | does not own, lease, rent, or borrow. This coverage includes
 211 | automobiles owned by the employees of the provider or a member
 212 | of the employee's household but only while the automobiles are
 213 | used in connection with the provider's business. The nonowned
 214 | automobile coverage for the provider applies as excess coverage
 215 | over any other collectible insurance. The personal automobile
 216 | policy for the employee of the provider shall be primary
 217 | insurance, and the nonowned automobile coverage of the provider
 218 | acts as excess insurance to the primary insurance. The provider
 219 | shall provide a minimum limit of \$1 million per occurrence and
 220 | \$2 million in the aggregate for ~~in~~ nonowned automobile coverage.
 221 | In any tort action brought against such an eligible lead
 222 | community-based provider or employee, net economic damages shall
 223 | be limited to \$500,000 ~~\$1 million~~ per occurrence and \$1 million
 224 | in the aggregate, ~~liability claim~~ and \$100,000 per automobile

225 claim, including, but not limited to, past and future medical
 226 expenses, wage loss, and loss of earning capacity, offset by any
 227 collateral source payment paid or payable. In any tort action
 228 for economic damages, the total amount recoverable by all
 229 claimants shall be limited to no more than \$2 million against
 230 the department, lead community-based providers, and all
 231 subcontractors involved in the same incident or occurrence, when
 232 totalled together. In any tort action brought against such an
 233 eligible lead community-based provider, noneconomic damages
 234 shall be limited to \$200,000 per occurrence and \$500,000 in the
 235 aggregate. In any tort action for noneconomic damages, the total
 236 amount recoverable by all claimants shall be limited to no more
 237 than \$1 million against the department, lead community-based
 238 providers, and all subcontractors involved in the same incident
 239 or occurrence, when totalled together ~~claim~~. A claims bill may be
 240 brought on behalf of a claimant pursuant to s. 768.28 for any
 241 amount exceeding the limits specified in this paragraph. Any
 242 offset of collateral source payments made as of the date of the
 243 settlement or judgment shall be in accordance with s. 768.76.
 244 The lead community-based provider is ~~shall~~ not ~~be~~ liable in tort
 245 for the acts or omissions of its subcontractors or the officers,
 246 agents, or employees of its subcontractors.

247 (j) Any subcontractor of an eligible lead community-based
 248 provider, as defined in paragraph (e), which is a direct
 249 provider of foster care and related services to children and
 250 families, and its employees or officers, except as otherwise
 251 provided in paragraph (i), must, as a part of its contract,
 252 obtain general liability insurance coverage for a minimum of

CS/HB 7235

2011

253 \$500,000 ~~\$1 million~~ per occurrence or claim with a policy limit
254 aggregate of \$2 ~~claim/\$3 million per incident~~ in general
255 liability insurance coverage. The subcontractor of an eligible
256 lead community-based provider must also require that staff who
257 transport client children and families in their personal
258 automobiles in order to carry out their job responsibilities
259 obtain minimum bodily injury liability insurance in the amount
260 of \$100,000 per person ~~claim~~, \$300,000 per accident ~~incident~~, on
261 their personal automobiles. In lieu of personal motor vehicle
262 insurance, the subcontractor's casualty, liability, or motor
263 vehicle insurance carrier may provide nonowned automobile
264 liability coverage. This insurance provides liability insurance
265 for automobiles that the subcontractor uses in connection with
266 the subcontractor's business but does not own, lease, rent, or
267 borrow. This coverage includes automobiles owned by the
268 employees of the subcontractor or a member of the employee's
269 household but only while the automobiles are used in connection
270 with the subcontractor's business. The nonowned automobile
271 coverage for the subcontractor applies as excess coverage over
272 any other collectible insurance. The personal automobile policy
273 for the employee of the subcontractor shall be primary
274 insurance, and the nonowned automobile coverage of the
275 subcontractor acts as excess insurance to the primary insurance.
276 The subcontractor shall provide a minimum limit of \$1 million
277 per occurrence and \$2 million in the aggregate for ~~in~~ nonowned
278 automobile coverage. In any tort action brought against such
279 subcontractor or employee, net economic damages shall be limited
280 to \$500,000 ~~\$1 million~~ per occurrence, \$1 million in the

CS/HB 7235

2011

281 aggregate, liability claim and \$100,000 per automobile claim,
282 including, but not limited to, past and future medical expenses,
283 wage loss, and loss of earning capacity, offset by any
284 collateral source payment paid or payable. In any tort action
285 for economic damages, the total amount recoverable by all
286 claimants shall be limited to no more than \$2 million against
287 the department, lead community-based providers, and all
288 subcontractors involved in the same incident or occurrence, when
289 totaled together. In any tort action brought against such
290 subcontractor, noneconomic damages shall be limited to \$200,000
291 per claim and \$500,000 per incident. In any tort action for
292 noneconomic damages, the total amount recoverable by all
293 claimants shall be limited to no more than \$1 million against
294 the department, lead community-based providers, and all
295 subcontractors involved in the same incident or occurrence, when
296 totaled together. A claims bill may be brought on behalf of a
297 claimant pursuant to s. 768.28 for any amount exceeding the
298 limits specified in this paragraph. Any offset of collateral
299 source payments made as of the date of the settlement or
300 judgment shall be in accordance with s. 768.76.

301 ~~(1) The Legislature is cognizant of the increasing costs~~
302 ~~of goods and services each year and recognizes that fixing a set~~
303 ~~amount of compensation actually has the effect of a reduction in~~
304 ~~compensation each year. Accordingly, the conditional limitations~~
305 ~~on damages in this section shall be increased at the rate of 5~~
306 ~~percent each year, prorated from the effective date of this~~
307 ~~paragraph to the date at which damages subject to such~~
308 ~~limitations are awarded by final judgment or settlement.~~

CS/HB 7235

2011

309 (2) (a) The department may contract for the delivery,
310 administration, or management of protective services, the
311 services specified in subsection (1) relating to foster care,
312 and other related services or programs, as appropriate. The
313 department shall use diligent efforts to ensure that ~~retain~~
314 ~~responsibility for the quality of~~ contracted services and
315 programs ~~and shall ensure that services~~ are of high quality and
316 delivered in accordance with applicable federal and state
317 statutes and regulations. However, the department is not liable
318 in tort for the acts or omissions of an eligible lead community-
319 based provider or the officers, agents, or employees of the
320 provider, nor is the department liable in tort for the acts or
321 omissions of the subcontractors of eligible lead community-based
322 providers or the officers, agents, or employees of its
323 subcontractors. The department may not require an eligible lead
324 community-based provider or its subcontractors to indemnify the
325 department for the department's own acts or omissions, nor may
326 the department require an eligible lead community-based provider
327 or its subcontractors to include the department as an additional
328 insured on any insurance policy. A lead community-based provider
329 may not require its subcontractors to add the lead community-
330 based provider as an additional insured on any liability policy.
331 The department must adopt written policies and procedures for
332 monitoring the contract for delivery of services by lead
333 community-based providers. These policies and procedures must,
334 at a minimum, address the evaluation of fiscal accountability
335 and program operations, including provider achievement of
336 performance standards, provider monitoring of subcontractors,

337 and timely followup of corrective actions for significant
 338 monitoring findings related to providers and subcontractors.
 339 These policies and procedures must also include provisions for
 340 reducing the duplication of the department's program monitoring
 341 activities both internally and with other agencies, to the
 342 extent possible. The department's written procedures must ensure
 343 that the written findings, conclusions, and recommendations from
 344 monitoring the contract for services of lead community-based
 345 providers are communicated to the director of the provider
 346 agency as expeditiously as possible.

347 Section 8. Present subsection (2) of section 916.1093,
 348 Florida Statutes, is renumbered as subsection (3), and a new
 349 subsection (2) is added to that section to read:

350 916.1093 Operation and administration; rules.—

351 (2) The agency shall ensure that there is a sufficient
 352 number of civil facilities to provide community-based training
 353 for defendants charged with sex offenses so that alternative
 354 placement options are available. If the agency determines that
 355 there are two or fewer facilities available to provide
 356 community-based training for defendants charged with sex
 357 offenses, the agency shall immediately procure additional
 358 facilities.

359 Section 9. Subsection (3) of section 916.3025, Florida
 360 Statutes, is amended to read:

361 916.3025 Jurisdiction of committing court.—

362 (3) The committing court shall consider a petition to
 363 involuntarily admit a defendant whose charges have been
 364 dismissed to residential services provided by the agency and,

CS/HB 7235

2011

365 when applicable, to continue secure placement of such person as
366 provided in s. 916.303. If a defendant whose criminal charges
367 have been dismissed is involuntarily committed to residential
368 services provided by the agency, the committing court shall
369 order that the defendant be released to the agency for receipt
370 of appropriate residential services and may not order that the
371 defendant be released directly to a residential service
372 provider. The committing court shall retain jurisdiction over
373 such person so long as he or she remains in secure placement or
374 is on conditional release as provided in s. 916.304. However,
375 upon request, the court may transfer continuing jurisdiction to
376 the court in the circuit where the defendant resides. The
377 defendant may not be released from an order for secure placement
378 except by order of the court.

379 Section 10. Task force for the protection of persons with
380 developmental disabilities.—The Legislature recognizes the
381 rights of individuals who are developmentally disabled to lead
382 full and rewarding lives. The Legislature also recognizes the
383 state's obligation to protect vulnerable adults from sexual
384 abuse.

385 (1) In recognition of the social, legal, and environmental
386 complexities associated with this issue, the Agency for Persons
387 with Disabilities shall establish a task force to gather input
388 for the creation of guidelines and procedures for providers of
389 residential services relating to sexual activity among the
390 residents of its facilities.

391 (2) The task force shall be composed of the following
392 members:

- 393 (a) The director of the Agency for Persons with
- 394 Disabilities or his or her designee.
- 395 (b) The director of the adult protective services program
- 396 within the Department of Children and Family Services.
- 397 (c) The executive director of The Arc of Florida.
- 398 (d) A family board member of The Arc of Florida appointed
- 399 by the executive director of The Arc of Florida.
- 400 (e) The chair of the Family Care Council Florida.
- 401 (f) A parent representative from the Family Care Council
- 402 Florida appointed by the chair of the Family Care Council
- 403 Florida.
- 404 (g) A representative from the Developmental Disabilities
- 405 Council.
- 406 (h) A representative from Disability Rights Florida.
- 407 (i) A representative from the Florida courts.
- 408 (j) A representative from the Florida Prosecuting
- 409 Attorneys Association.
- 410 (k) A representative from the Florida Public Defender
- 411 Association.
- 412 (l) A staff member of the University Centers for
- 413 Excellence in Developmental Disabilities at the University of
- 414 South Florida, the Florida Center for Inclusive Communities.
- 415 (m) A self-advocate.
- 416 (n) A representative from an intensive behavior
- 417 residential habilitation provider.
- 418 (3) The task force shall seek input from self-advocates,
- 419 family members, universities and colleges, and other pertinent
- 420 entities.

CS/HB 7235

2011

421 (4) The agency shall provide administrative support to the
422 task force.

423 (5) Members of the task force shall serve without
424 compensation.

425 (6) The task force shall submit a report of its findings
426 to the President of the Senate and the Speaker of the House of
427 Representatives by November 1, 2011.

428 Section 11. This act shall take effect July 1, 2011.