

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4037 Licensure of Facilities and Programs for Persons with Developmental Disabilities

SPONSOR(S): Rodrigues

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N	Tuszynski	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Agency for Persons with Disabilities (APD) is required, pursuant to s. 393.067, F.S., to license residential facilities, defined by s. 393.063(28) F.S., as a facility providing room and board and personal care for persons who have developmental disabilities. The residential facilities that APD licenses consist of foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs.

The 2015 General Appropriations Implementing Bill (SB 2502-A) amended s. 393.067, F.S., to remove a requirement that APD must contract for residential services with facilities licensed prior to October 1, 1989, if those facilities were in compliance with statute. This amendment was set to expire and revert on July 1, 2016.

SB 2502-A also amended s. 393.18, F.S., to ensure compliance with new federal requirements related to the provision of Medicaid Home and Community-Based Waiver services within residential settings and delete provisions requiring certain contract and licensure requirements. These amendments were also set to expire and revert on July 1, 2016.

HB 4037 repeals those expiration and reversion clauses, allowing the amended language of ss. 393.067 and 393.18, F.S., from SB 2502-A to remain law.

The bill has no fiscal impact on state or local government.

The bill provides for an effective date of June 30, 2016, or, if the act fails to become law until a later time, it shall take effect upon becoming law and operate retroactively to June 30, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) was created to serve Floridians with developmental disabilities. APD works in partnership with local communities and private providers to assist people who have developmental disabilities and their families. Examples of services provided by APD include adult day training, personal care services, and specialized therapies.¹ APD serves more than 50,000 individuals with autism, cerebral palsy, spina bifida, intellectual disabilities, Down syndrome, and Prader-Willi syndrome.²

Residential Facilities

Persons with developmental disabilities reside in various types of residential settings. Some individuals with developmental disabilities live with family, some live in their own homes, while others may live in community-based residential facilities.³ Pursuant to s. 393.067, F.S., APD is charged with licensing community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs.⁴

Prior to enactment of the 2015 General Appropriations Implementing Bill (SB 2502-A), in response to the Medicaid Home and Community-Based Waiver expansion,⁵ APD was statutorily required to contract for residential services with residential facilities licensed prior to October 1, 1989, if those facilities complied with all provisions of s. 393.067, F.S.⁶ Reversion to this language is set for July 1, 2016.

In order to implement Specific Appropriation 251 of the 2015-2016 General Appropriations Act, SB 2502-A amended s. 393.067, F.S. to remove this statutory procurement requirement with an expiration and reversion clause set for July 1, 2016.

Comprehensive Transitional Education Programs

A Comprehensive Transitional Education Program (CTEP) is a group of jointly operating centers or units that provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors.⁷

¹ S. 393.006 (3), F.S.

² Agency for Persons with Disabilities, *About Us*, accessible at: <http://apd.myflorida.com/about/> (last accessed 11/10/15).

³ S. 393.063(28) defines residential facility as a facility providing room and board and personal care for persons who have developmental disabilities.

⁴ Agency for Persons with Disabilities, *Planning Resources*, accessible at: <http://apd.myflorida.com/planning-resources/> (last accessed 11/11/15).

⁵ Email from Caleb Hawkes, Deputy Legislative Affairs Director, Agency for Persons with Disabilities, RE: Residential Facility Contracting Language (Nov. 13, 2015).

⁶ S. 393.067(15), F.S., (2014)

⁷ S. 393.18, F.S.

CTEPs serve individuals with developmental disabilities with the most intensive of behavioral needs.⁸ A CTEP is designed to provide services to such individuals with the ultimate objective of allowing them to return to other less intensive settings within their own communities.⁹ There are presently two CTEPs licensed in Florida, and both licenses are held by the same organization.¹⁰

Prior to SB 2502-A, APD, pursuant to s. 393.18, F.S., was required to contract with and license CTEPs that met specific conditions, including ownership requirements, zoning requirements, and certain service requirements to maximize federal revenue.¹¹ Based on these various statutory requirements, APD has been limited to contracting with and licensing two CTEPs, precluding APD from licensing and contracting with new CTEPs.¹² Reversion to this language is set for July 1, 2016.

In order to implement Specific Appropriation 251 of the 2015-2016 General Appropriations Act, SB 2502-A amended s. 393.18, F.S., to provide that the total number of residents being provided services at a CTEP shall not exceed the licensed capacity of 120, and that each residential unit within a CTEP may not exceed 15 residents, except those programs already authorized to operate residential units with more than 15 residents prior to July 1, 2015. This language ensures compliance with new federal requirements related to the provision of Medicaid Home and Community-Based Waiver services within residential settings.¹³ SB 2502-A also deleted provisions requiring certain contract and licensing requirements, as well as an expiration and reversion clause for these amendments set for July 1, 2016.

Effect of Proposed Changes

HB 4037 repeals ss. 24 and 26 of chapter 2015-222, Laws of Florida (2015 General Appropriations Implementing Bill) that set the expiration and reversion of amendments to ss. 393.067(15) and 393.18, F.S., for July 1, 2016.

The bill reenacts s. 393.067(15) as amended in s. 23 of chapter 2015-222, Laws of Florida, which deletes obsolete language, and specifies that the Agency for Persons with Disabilities is not required to contract with residential facilities it licenses under s. 393.067, F.S., including foster care facilities, group home facilities, residential habilitation centers, and CTEPs.

The bill reenacts s. 393.18(4) as amended in s. 25 of chapter 2015-222, Laws of Florida, which revises residency limits for comprehensive transitional education programs to a maximum of 120 total residents and that each unit within the component centers may not exceed 15 residents, unless authorized prior to July 1, 2015.

B. SECTION DIRECTORY:

- Section 1:** Repeals ss. 24 and 26 of chapter 2015-222, Laws of Florida.
- Section 2:** Reenacts s. 393.067(15), F.S., relating to facility licensure.
- Section 3:** Reenacts s. 393.18(4), F.S., relating to comprehensive transitional education programs.
- Section 4:** Provides an effective date of June 30, 2016, or upon becoming law after that date and operating retroactively to June 30, 2016.

⁸ Agency for Persons with Disabilities, *2016 Agency Legislative Bill Analysis for HB 4037*, November 9, 2015 (on file with Children, Families, and Seniors Subcommittee staff).

⁹ *Id.*

¹⁰ *Id.*

¹¹ S. 393.18(6)(b), F.S., (2014)

¹² Agency for Persons with Disabilities, *2016 Agency Legislative Bill Analysis for SB XXX*, October 8, 2015 (on file with Children, Families, and Seniors Subcommittee staff)

¹³ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

APD may contract with additional organizations besides the current licensed CTEPs for services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES