

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	12 Y, 0 N	Clark	Pridgeon
3) Health & Human Services Committee	12 Y, 0 N	Tuszynski	Calamas

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.

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.

The 2015 General Appropriations Act Implementing Bill (Chapter 2015-222, Laws of Florida) 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. The amendment to this statute will expire and revert to the original language on July 1, 2016.

Chapter 2015-222, Laws of Florida, also amended s. 393.18, F.S., to delete paragraphs detailing the licensing requirements that has restricted APD's ability to license new CTEP providers, and moved the 15 resident cap for residential units within a CTEP to s. 393.18(4), F.S. The amendment to this statute will expire and revert to the original language 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 Chapter 2015-222, Laws of Florida, 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

In addition to its regulatory duties, APD contracts with licensed community-based residential facilities to provide services under the Medicaid Home and Community-Based Waiver (waiver). Prior to enactment of the 2015 General Appropriations Act Implementing Bill (Chapter 2015-222, Laws of Florida), 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.^{5,6} This requirement was placed in statute as a response to residential facilities that were concerned about their continued business with APD after the waiver was enacted.⁷

In order to implement Specific Appropriation 251 of the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, 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.⁸

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 S. 393.067(15), F.S., (2014)

⁶ Ch. 89-308, Laws of Fla.

⁷ Email from Caleb Hawkes, Deputy Legislative Affairs Director, Agency for Persons with Disabilities, RE: Residential Facility Contracting Language (Nov. 13, 2015)(on file with Health and Human Services Committee staff).

⁸ S. 393.18, F.S.

CTEPs serve individuals with developmental disabilities with the most intensive of behavioral needs.⁹ 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.¹⁰ There are presently two CTEPs licensed in Florida, and both licenses are held by the same organization, Advoserv Inc., which operates the Carlton Palms Educational Center in Lake County.^{11,12}

Previously, pursuant to s. 393.18, F.S., APD was authorized to license CTEPs that were already in operation by July 1, 1989, or owned real property zoned and registered with APD to operate a CTEP by July 1, 1989. Each residential unit within the CTEP could not exceed a capacity of 15 persons. The statute also authorized licensure of facilities that provided residential services for children if those children had developmental disabilities needing special behavioral services, and the residential facility served children with an open case in the child welfare system as of July 1, 2010. APD has interpreted this as a prohibition against licensing newer facilities.

In order to implement Specific Appropriation 251 of the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, amended s. 393.18, F.S., to delete the paragraphs detailing the licensing requirements that has restricted APD's ability to license new CTEP providers, and moved the 15 resident cap for residential units within a CTEP to s. 393.18(4), F.S. The amendment also includes 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, to include the requirement that each unit within the component centers may not exceed 15 residents, unless authorized prior to July 1, 2015.

The bill provides for an effective date of June 30, 2016, or upon becoming law after that date and operating retroactively to June 30, 2016.

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.

⁹ 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).

¹⁰ *Id.*

¹¹ *Id.*

¹² Carlton Palms has an extensive history of complaints and regulatory action. APD has filed 4 administrative complaints against the facility since 2011, detailing inadequate training of staff, physical violence, inadequate care, and inadequate supervision of residents while in the care and custody of Carlton Palms. APD has twice sought moratoria on new admissions to the facility, once in 2012 and most recently in September of 2014. In this most recent administrative complaint, DOAH Case No: 14-004853, APD sought the maximum fine allowed by law, \$10,000, as well as a moratorium on new admissions. APD has settled each of these administrative complaints without the imposition of a moratorium. Due to the inability to license other providers, APD has no licensed facilities to place persons requiring this level of care if a moratorium were imposed or transfer residents if the facility were closed.

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