

By Senator Garcia

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1 A bill to be entitled
2 An act relating to the Agency for Persons with
3 Disabilities; amending s. 393.063, F.S.; revising and
4 defining terms; amending s. 393.0655, F.S.; revising
5 background screening requirements for certain direct
6 service providers; amending s. 393.067, F.S.;
7 requiring the licensure of adult day training
8 programs; conforming related application and licensure
9 provisions to changes made by the act; providing for
10 comprehensive emergency management plans of adult day
11 training programs; providing for inspections of adult
12 day training programs; requiring adult day training
13 programs to adhere to specified rights; conforming
14 provisions to changes made by the act; amending s.
15 393.0673, F.S.; revising provisions related to
16 disciplinary action against certain licensees to
17 include licensed adult day training programs;
18 providing that for purposes of disciplinary action for
19 certain violations, a licensee is ultimately
20 responsible for the care and supervision of clients in
21 its facility or participants of the program; providing
22 construction; revising grounds for denial of a
23 licensure application; defining the term "good moral
24 character"; authorizing the agency to immediately
25 suspend or revoke the license of adult day training
26 programs under certain circumstances; authorizing the
27 agency to impose an immediate moratorium on service
28 authorizations to licensed facilities and adult day
29 training programs under certain circumstances;

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30 amending s. 393.0678, F.S.; conforming provisions to
 31 changes made by the act; making a technical
 32 correction; amending s. 393.135, F.S.; conforming
 33 provisions to changes made by the act; repealing s.
 34 393.18, F.S., relating to comprehensive transitional
 35 education programs; amending s. 394.875, F.S.;
 36 conforming a provision to changes made by the act;
 37 amending ss. 383.141, 400.063, and 1002.394, F.S.;
 38 conforming cross-references; providing an effective
 39 date.

40
 41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Subsections (1) and (10) of section 393.063,
 44 Florida Statutes, are amended, and a new subsection (25) is
 45 added to that section, to read:

46 393.063 Definitions.—For the purposes of this chapter, the
 47 term:

48 (1) "Adult day training" means a program of training
 49 services which takes that take place in a nonresidential
 50 setting, separate from the home or facility in which the client
 51 resides, and is are intended to support the participation of
 52 clients in ~~daily,~~ meaningful, and valued routines of the
 53 community. These services include, but are not limited to, the
 54 acquisition, retention, or improvement of self-help,
 55 socialization, and adaptive skills ~~Such training may be provided~~
 56 ~~in work-like settings that do not meet the definition of~~
 57 ~~supported employment.~~

58 ~~(10) "Comprehensive transitional education program" means~~

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59 ~~the program established in s. 393.18.~~

60 (25) "Licensee" means an individual, a corporation, a
61 partnership, a firm, an association, a governmental entity, or
62 other entity that is issued a permit, registration, certificate,
63 or license by the agency. The licensee is legally responsible
64 for all aspects of the provider operation.

65 Section 2. Subsection (1) of section 393.0655, Florida
66 Statutes, is amended to read:

67 393.0655 Screening of direct service providers.—

68 (1) MINIMUM STANDARDS.—The agency shall require level 2
69 employment screening pursuant to chapter 435 for direct service
70 providers who are unrelated to their clients, including support
71 coordinators, and managers and supervisors of residential
72 facilities or adult day training ~~comprehensive transitional~~
73 ~~education~~ programs licensed under this chapter and any other
74 person, including volunteers, who provide care or services, who
75 have access to a client's living areas, or who have access to a
76 client's funds or personal property. Background screening must
77 ~~shall~~ include employment history checks as provided in s.
78 435.03(1) and local criminal records checks through local law
79 enforcement agencies.

80 (a) A volunteer who assists on an intermittent basis for
81 less than 10 hours per month does not have to be screened if a
82 person who meets the screening requirement of this section is
83 always present and has the volunteer within his or her line of
84 sight.

85 (b) Licensed physicians, nurses, or other professionals
86 licensed and regulated by the Department of Health are not
87 subject to background screening pursuant to this section if they

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88 are providing a service that is within their scope of licensed
89 practice.

90 (c) A person selected by the family or the individual with
91 developmental disabilities and paid by the family or the
92 individual to provide supports or services is not required to
93 have a background screening under this section.

94 (d) Persons 12 years of age or older, including family
95 members, residing with a direct services provider who provides
96 services to clients in his or her own place of residence are
97 subject to background screening; however, such persons who are
98 12 to 18 years of age shall be screened for delinquency records
99 only.

100 Section 3. Section 393.067, Florida Statutes, is amended to
101 read:

102 393.067 Facility licensure.—

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

111 (2) The agency shall conduct annual inspections and reviews
112 of facilities and adult day training programs licensed under
113 this section.

114 (3) An application for a license under this section must be
115 made to the agency on a form furnished by it and shall be
116 accompanied by the appropriate license fee.

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117 (4) The application shall be under oath and shall contain
118 the following:

119 (a) The name and address of the applicant, if an applicant
120 is an individual; if the applicant is a firm, partnership, or
121 association, the name and address of each member thereof; if the
122 applicant is a corporation, its name and address and the name
123 and address of each director and each officer thereof; and the
124 name by which the facility or program is to be known.

125 (b) The location of the facility or adult day training
126 program for which a license is sought.

127 (c) The name of the person or persons under whose
128 management or supervision the facility or adult day training
129 program will be conducted.

130 (d) The number and type of residents or clients for which
131 maintenance, care, education, or treatment is to be provided by
132 the facility or adult day training program.

133 ~~(e) The number and location of the component centers or~~
134 ~~units which will compose the comprehensive transitional~~
135 ~~education program.~~

136 ~~(f)~~ A description of the types of services and treatment to
137 be provided by the facility or adult day training program.

138 ~~(f)(g)~~ Information relating to the number, experience, and
139 training of the employees of the facility or adult day training
140 program.

141 ~~(g)(h)~~ Certification that the staff of the facility or
142 adult day training program will receive training to detect,
143 report, and prevent sexual abuse, abuse, neglect, exploitation,
144 and abandonment, as defined in ss. 39.01 and 415.102, of
145 residents and clients.

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146 (h) ~~(i)~~ ~~Such other~~ Information as the agency determines is
147 necessary to carry out the provisions of this chapter.

148 (5) As a prerequisite for issuance of an initial or renewal
149 license, the applicant, and any manager, supervisor, and staff
150 member of the direct service provider of a facility or adult day
151 training program licensed under this section, must have
152 submitted to background screening as required under s. 393.0655.
153 A license may not be issued or renewed if the applicant or any
154 manager, supervisor, or staff member of the direct service
155 provider has a disqualifying offense revealed by ~~failed~~
156 background screenings as required under s. 393.0655. The agency
157 shall determine by rule the frequency of background screening.
158 The applicant shall submit with each initial or renewal
159 application a signed affidavit under penalty of perjury stating
160 that the applicant and any manager, supervisor, or staff member
161 of the direct service provider is in compliance with all
162 requirements for background screening.

163 (6) A facility or program ~~The~~ applicant shall furnish
164 satisfactory proof of financial ability to operate and conduct
165 the facility or program in accordance with the requirements of
166 this chapter and adopted rules.

167 (7) The agency shall adopt rules establishing minimum
168 standards for facilities and adult day training programs
169 licensed under this section, including rules requiring
170 facilities and adult day training programs to train staff to
171 detect, report, and prevent sexual abuse, abuse, neglect,
172 exploitation, and abandonment, as defined in ss. 39.01 and
173 415.102, of residents and clients, minimum standards of quality
174 and adequacy of client care, incident reporting requirements,

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175 and uniform firesafety standards established by the State Fire
176 Marshal which are appropriate to the size of the facility or
177 adult day training ~~of the component centers or units of the~~
178 program.

179 (8) The agency, after consultation with the Division of
180 Emergency Management, shall adopt rules for foster care
181 facilities, group home facilities, ~~and~~ residential habilitation
182 centers, and adult day training programs which establish minimum
183 standards for the preparation and annual update of a
184 comprehensive emergency management plan. At a minimum, the rules
185 must provide for plan components that address emergency
186 evacuation transportation; adequate sheltering arrangements;
187 postdisaster activities, including emergency power, food, and
188 water; postdisaster transportation; supplies; staffing;
189 emergency equipment; individual identification of residents and
190 transfer of records; and responding to family inquiries. The
191 comprehensive emergency management plan for all facilities and
192 adult day training ~~comprehensive transitional education~~ programs
193 ~~and for homes~~ serving individuals who have a complex medical
194 condition ~~conditions~~ is subject to review and approval by the
195 local emergency management agency. During its review, the local
196 emergency management agency shall ensure that the agency and the
197 Division of Emergency Management, at a minimum, are given the
198 opportunity to review the plan. Also, appropriate volunteer
199 organizations must be given the opportunity to review the plan.
200 The local emergency management agency shall complete its review
201 within 60 days and either approve the plan or advise the
202 facility or program of necessary revisions.

203 (9) The agency may conduct unannounced inspections to

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204 determine compliance by foster care facilities, group home
205 facilities, residential habilitation centers, and adult day
206 training ~~comprehensive transitional education~~ programs with the
207 applicable provisions of this chapter and the rules adopted
208 pursuant hereto, including the rules adopted for training staff
209 of a facility or an adult day training a program to detect,
210 report, and prevent sexual abuse, abuse, neglect, exploitation,
211 and abandonment, as defined in ss. 39.01 and 415.102, of
212 residents and clients. The facility or adult day training
213 program shall make copies of inspection reports available to the
214 public upon request.

215 (10) Each facility or program licensed under this section
216 shall forward annually to the agency a true and accurate sworn
217 statement of its costs of providing care to clients funded by
218 the agency.

219 (11) The agency may audit the records of any facility or
220 program that it has reason to believe may not be in full
221 compliance with ~~the provisions of~~ this section; provided that,
222 any financial audit of such facility or program is ~~shall be~~
223 limited to the records of clients funded by the agency.

224 (12) The agency shall establish, for the purpose of control
225 of licensure costs, a uniform management information system and
226 a uniform reporting system with uniform definitions and
227 reporting categories.

228 (13) Facilities and adult day training programs licensed
229 under ~~pursuant to~~ this section shall adhere to all rights
230 specified in s. 393.13, ~~including those enumerated in s.~~
231 ~~393.13(4).~~

232 (14) The agency may not authorize funds or services to an

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233 unlicensed facility or adult day training program that requires
234 a license under this section ~~may not receive state funds~~. A
235 license for the operation of a facility or an adult day training
236 program ~~may~~ ~~shall~~ not be renewed if the licensee has any
237 outstanding fines assessed pursuant to this chapter wherein
238 final adjudication of such fines has been entered.

239 (15) The agency is not required to contract with facilities
240 or adult day training programs licensed under ~~pursuant to~~ this
241 chapter.

242 Section 4. Section 393.0673, Florida Statutes, is amended
243 to read:

244 393.0673 Denial, suspension, or revocation of license;
245 moratorium on admissions; administrative fines; procedures.—

246 (1) The following constitute grounds for which the agency
247 may take disciplinary action, including revoking or suspending
248 ~~revoke or suspend~~ a license and imposing ~~or impose~~ an
249 administrative fine, not to exceed \$1,000 per violation per day,
250 ~~if~~:

251 (a) The licensee has:

252 1. Falsely represented or omitted a material fact in its
253 license application submitted under s. 393.067;

254 2. Had prior action taken against it under the Medicaid or
255 Medicare program; or

256 3. Failed to comply with the applicable requirements of
257 this chapter or rules applicable to the licensee; or

258 (b) The Department of Children and Families has verified
259 that the licensee is responsible for the abuse, neglect, or
260 abandonment of a child or the abuse, neglect, or exploitation of
261 a vulnerable adult.

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262 (2) For purposes of disciplinary action under this section
263 for verified findings of abuse, neglect, abandonment, or
264 exploitation of a child or vulnerable adult, the licensee is
265 responsible not only for administration of the facilities in
266 compliance with the standards set out by statute and
267 administrative rule, but is ultimately responsible for the care
268 and supervision of the clients in the facility or the
269 participants of the program.

270 (a) A licensee may not delegate to others the ultimate
271 responsibility for the safety of the clients in its care.

272 (b) A licensee is subject to disciplinary action for an
273 employee's lapse in care or supervision of the clients at the
274 facility or the participants of the program in which a verified
275 finding of abuse, neglect, abandonment, or exploitation
276 occurred.

277 (c) Remedial action taken by the licensee does not affect
278 the agency's ability to impose disciplinary action for the
279 underlying violation.

280 (3) The agency may deny an application for licensure
281 submitted under s. 393.067 if:

282 (a) The applicant has:

283 1. Falsely represented or omitted a material fact in its
284 license application submitted under s. 393.067;

285 2. Had prior action taken against it under the Medicaid or
286 Medicare program;

287 3. Failed to comply with the applicable requirements of
288 this chapter or rules applicable to the applicant; or

289 4. Previously had a license to operate a residential
290 facility or adult day training program revoked by the agency,

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291 the Department of Children and Families, or the Agency for
292 Health Care Administration; ~~or~~

293 (b) The Department of Children and Families has verified
294 that the applicant is responsible for the abuse, neglect, or
295 abandonment of a child or the abuse, neglect, or exploitation of
296 a vulnerable adult; or

297 (c) The agency has determined that there is clear and
298 convincing evidence that the applicant is unqualified for a
299 license because of a lack of good moral character. For purposes
300 of this paragraph, the term "good moral character" means a
301 personal history of honesty, fairness, and respect for the
302 rights of others and for the laws of this state and the Federal
303 Government.

304 (4)~~(3)~~ All hearings must ~~shall~~ be held within the county in
305 which the licensee or applicant operates or applies for a
306 license to operate a facility or adult day training program as
307 defined herein.

308 (5)~~(4)~~ The agency, as a part of any final order issued by
309 it under this chapter, may impose such fine as it deems proper,
310 except that such fine may not exceed \$1,000 for each violation.
311 Each day a violation of this chapter occurs constitutes a
312 separate violation and is subject to a separate fine, but in no
313 event may the aggregate amount of any fine exceed \$10,000. Fines
314 paid by any facility licensee under ~~the provisions of~~ this
315 subsection shall be deposited in the Health Care Trust Fund and
316 expended as provided in s. 400.063.

317 (6)~~(5)~~ The agency may issue an order immediately suspending
318 or revoking a license when it determines that any condition of
319 ~~in~~ the facility or adult day training program presents a danger

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320 to the health, safety, or welfare of the residents in the
321 facility or the program participants.

322 (7)~~(6)~~ The agency may impose an immediate moratorium on
323 admissions to any facility or service authorizations to a
324 facility or adult day training program when the agency
325 determines that any condition of in the facility or adult day
326 training program presents a threat to the health, safety, or
327 welfare of the residents in the facility or the program
328 participants.

329 (8)~~(7)~~ The agency shall establish by rule criteria for
330 evaluating the severity of violations and for determining the
331 amount of fines imposed.

332 Section 5. Subsection (1) of section 393.0678, Florida
333 Statutes, is amended to read:

334 393.0678 Receivership proceedings.—

335 (1) The agency may petition a court of competent
336 jurisdiction for the appointment of a receiver for ~~a~~
337 ~~comprehensive transitional education program~~, a residential
338 habilitation center~~,~~ or a group home facility owned and operated
339 by a corporation or partnership when any of the following
340 conditions exist:

341 (a) Any person is operating a facility without a license
342 and refuses to make application for a license as required by s.
343 393.067.

344 (b) The licensee is closing the facility or has informed
345 the agency ~~department~~ that it intends to close the facility; and
346 adequate arrangements have not been made for relocation of the
347 residents within 7 days, exclusive of weekends and holidays, of
348 the closing of the facility.

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349 (c) The agency determines that conditions exist in the
350 facility which present an imminent danger to the health, safety,
351 or welfare of the residents of the facility or which present a
352 substantial probability that death or serious physical harm
353 would result therefrom. Whenever possible, the agency shall
354 facilitate the continued operation of the program.

355 (d) The licensee cannot meet its financial obligations to
356 provide food, shelter, care, and utilities. Evidence such as the
357 issuance of bad checks or the accumulation of delinquent bills
358 for such items as personnel salaries, food, drugs, or utilities
359 constitutes prima facie evidence that the ownership of the
360 facility lacks the financial ability to operate the home in
361 accordance with the requirements of this chapter and all rules
362 adopted ~~promulgated~~ thereunder.

363 Section 6. Subsection (2) of section 393.135, Florida
364 Statutes, is amended to read:

365 393.135 Sexual misconduct prohibited; reporting required;
366 penalties.—

367 (2) A covered person who engages in sexual misconduct with
368 an individual with a developmental disability who:

369 (a) Resides in a residential facility, including any
370 ~~comprehensive transitional education program,~~ developmental
371 disabilities center, foster care facility, group home facility,
372 intermediate care facility for the developmentally disabled, or
373 residential habilitation center; or

374 (b) Is eligible to receive services from the agency under
375 this chapter,

376
377 commits a felony of the second degree, punishable as provided in

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378 s. 775.082, s. 775.083, or s. 775.084. A covered person may be
 379 found guilty of violating this subsection without having
 380 committed the crime of sexual battery.

381 Section 7. Section 393.18, Florida Statutes, is repealed.

382 Section 8. Paragraph (c) of subsection (3) of section
 383 394.875, Florida Statutes, is amended to read:

384 394.875 Crisis stabilization units, residential treatment
 385 facilities, and residential treatment centers for children and
 386 adolescents; authorized services; license required.-

387 (3) The following are exempt from licensure as required in
 388 ss. 394.455-394.903:

389 ~~(c) Comprehensive transitional education programs licensed~~
 390 ~~under s. 393.067.~~

391 Section 9. Paragraph (b) of subsection (1) of section
 392 383.141, Florida Statutes, is amended to read:

393 383.141 Prenatally diagnosed conditions; patient to be
 394 provided information; definitions; information clearinghouse;
 395 advisory council.-

396 (1) As used in this section, the term:

397 (b) "Developmental disability" includes Down syndrome and
 398 other developmental disabilities defined by s. 393.063 ~~s.~~
 399 ~~393.063(12)~~.

400 Section 10. Subsection (1) of section 400.063, Florida
 401 Statutes, is amended to read:

402 400.063 Resident protection.-

403 (1) The Health Care Trust Fund shall be used for the
 404 purpose of collecting and disbursing funds generated from the
 405 license fees and administrative fines as provided for in ss.
 406 393.0673(5) ~~ss. 393.0673(4)~~, 400.062(3), 400.121(2), and

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407 400.23(8). Such funds shall be for the sole purpose of paying
408 for the appropriate alternate placement, care, and treatment of
409 residents who are removed from a facility licensed under this
410 part or a facility specified in s. 393.0678(1) in which the
411 agency determines that existing conditions or practices
412 constitute an immediate danger to the health, safety, or
413 security of the residents. If the agency determines that it is
414 in the best interest of the health, safety, or security of the
415 residents to provide for an orderly removal of the residents
416 from the facility, the agency may utilize such funds to maintain
417 and care for the residents in the facility pending removal and
418 alternative placement. The maintenance and care of the residents
419 shall be under the direction and control of a receiver appointed
420 pursuant to s. 393.0678(1) or s. 400.126(1). However, funds may
421 be expended in an emergency upon a filing of a petition for a
422 receiver, upon the declaration of a state of local emergency
423 pursuant to s. 252.38(3)(a)5., or upon a duly authorized local
424 order of evacuation of a facility by emergency personnel to
425 protect the health and safety of the residents.

426 Section 11. Paragraph (d) of subsection (2) of section
427 1002.394, Florida Statutes, is amended to read:

428 1002.394 The Family Empowerment Scholarship Program.—

429 (2) DEFINITIONS.—As used in this section, the term:

430 (d) "Disability" means, for a 3- or 4-year-old child or for
431 a student in kindergarten to grade 12, autism spectrum disorder,
432 as defined in the Diagnostic and Statistical Manual of Mental
433 Disorders, Fifth Edition, published by the American Psychiatric
434 Association; cerebral palsy, as defined in s. 393.063; Down
435 syndrome, as defined in s. 393.063; an intellectual disability,

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436 as defined in s. 393.063; a speech impairment; a language
437 impairment; an orthopedic impairment; any ~~an~~ other health
438 impairment; an emotional or a behavioral disability; a specific
439 learning disability, including, but not limited to, dyslexia,
440 dyscalculia, or developmental aphasia; Phelan-McDermid syndrome,
441 as defined in s. 393.063; Prader-Willi syndrome, as defined in
442 s. 393.063; spina bifida, as defined in s. 393.063; being a
443 high-risk child, as defined in s. 393.063(22)(a) ~~s.~~
444 ~~393.063(23)(a)~~; muscular dystrophy; Williams syndrome; rare
445 diseases which affect patient populations of fewer than 200,000
446 individuals in the United States, as defined by the National
447 Organization for Rare Disorders; anaphylaxis; a hearing
448 impairment, including deafness; a visual impairment, including
449 blindness; traumatic brain injury; hospital or homebound; or
450 identification as dual sensory impaired, as defined by rules of
451 the State Board of Education and evidenced by reports from local
452 school districts. The term "hospital or homebound" includes a
453 student who has a medically diagnosed physical or psychiatric
454 condition or illness, as defined by the state board in rule, and
455 who is confined to the home or hospital for more than 6 months.
456 Section 12. This act shall take effect October 1, 2024.