

Committee Substitute for Senate Bill No. 394

An act relating to social services; amending s. 216.181, F.S.; authorizing the Agency for Persons with Disabilities to submit an amendment to its original approved operating budget for certain purposes; providing for future repeal; amending s. 393.0661, F.S.; deleting provisions requiring the Agency for Health Care Administration to make certain adjustments with respect to home and community-based services; requiring that the Agency for Persons with Disabilities report quarterly to the Governor and Legislature the financial status of home and community-based services provided under a federally approved waiver; specifying contents of the reports; requiring that the agency, in consultation with the Agency for Health Care Administration, submit a plan to the Legislative Budget Commission for approval of adjustments to the rates for such services in order to remain within the amount appropriated; amending s. 409.221, F.S., relating to the consumer-directed care program; providing that the interagency cooperative agreements established by the Agency for Health Care Administration shall include the Agency for Persons with Disabilities; authorizing the Agency for Persons with Disabilities to adopt and enforce certain rules, review and assess implementation of the program, and submit a report to the Legislature; amending s. 440.02, F.S.; deleting provisions providing for the expiration of an exemption from coverage under workers' compensation law for certain clients enrolled in the Medicaid program who are served by Adult Day Training Services; providing an effective date.

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

Section 1. Paragraph (i) is added to subsection (2) of section 216.181, Florida Statutes, to read:

216.181 Approved budgets for operations and fixed capital outlay.—

(2) Amendments to the original approved operating budgets for operational and fixed capital outlay expenditures must comply with the following guidelines in order to be approved by the Governor and the Legislative Budget Commission for the executive branch and the Chief Justice and the Legislative Budget Commission for the judicial branch:

(i) Notwithstanding paragraph (f), the Agency for Persons with Disabilities is authorized to submit an amendment to adjust its full-time equivalent positions, salary rate, and related budget authority to provide sufficient infrastructure and administrative support. This paragraph expires July 1, 2007.

Section 2. Subsection (4) of section 393.0661, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

393.0661 Home and community-based services delivery system; comprehensive redesign.—The Legislature finds that the home and community-based services delivery system for persons with developmental disabilities and the availability of appropriated funds are two of the critical elements in making services available. Therefore, it is the intent of the Legislature that the Agency for Persons with Disabilities shall develop and implement a comprehensive redesign of the system.

(4) Nothing in this section or in any administrative rule shall be construed to prevent or limit the Agency for Health Care Administration, in consultation with the Agency for Persons with Disabilities, from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or from limiting enrollment, or making any other adjustment necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act. ~~If at any time, based upon an analysis by the Agency for Health Care Administration in consultation with the Agency for Persons with Disabilities, the cost of home and community-based waiver services are expected to exceed the appropriated amount, the Agency for Health Care Administration may implement any adjustment, including provider rate reductions, within 30 days in order to remain within the appropriation.~~

(5) The Agency for Persons with Disabilities shall submit quarterly status reports to the Executive Office of the Governor, the chair of the Senate Ways and Means Committee or its successor, and the chair of the House Fiscal Council or its successor regarding the financial status of home and community-based services, including the number of enrolled individuals who are receiving services through one or more programs; the number of individuals who have requested services who are not enrolled but who are receiving services through one or more programs, with a description indicating the programs from which the individual is receiving services; the number of individuals who have refused an offer of services but who choose to remain on the list of individuals waiting for services; the number of individuals who have requested services but who are receiving no services; a frequency distribution indicating the length of time individuals have been waiting for services; and information concerning the actual and projected costs compared to the amount of the appropriation available to the program and any projected surpluses or deficits. If at any time an analysis by the agency, in consultation with the Agency for Health Care Administration, indicates that the cost of services is expected to exceed the amount appropriated, the agency shall submit a plan in accordance with subsection (4) to the Executive Office of the Governor, the chair of Senate Ways and Means Committee or its successor, and the chair of the House Fiscal Council or its successor to remain within the amount appropriated.

Section 3. Paragraphs (a), (j), and (k) of subsection (4) of section 409.221, Florida Statutes, are amended to read:

409.221 Consumer-directed care program.—

(4) CONSUMER-DIRECTED CARE.—

(a) Program established.—The Agency for Health Care Administration shall establish the consumer-directed care program which shall be based on the principles of consumer choice and control. The agency shall implement the program upon federal approval. The agency shall establish interagency cooperative agreements with and shall work with the Departments of Elderly Affairs, Health, and Children and Family Services and the Agency for Persons with Disabilities to implement and administer the program. The program shall allow enrolled persons to choose the providers of services and to direct the delivery of services, to best meet their long-term care needs. The program must operate within the funds appropriated by the Legislature.

(j) Rules; federal waivers.—In order to implement this section:

1. The agency and the Departments of Elderly Affairs, Health, and Children and Family Services and the Agency for Persons with Disabilities are authorized to adopt and enforce rules.

2. The agency shall take all necessary action to ensure state compliance with federal regulations. The agency shall apply for any necessary federal waivers or waiver amendments needed to implement the program.

(k) Reviews and reports.—The agency and the Departments of Elderly Affairs, Health, and Children and Family Services and the Agency for Persons with Disabilities shall each, on an ongoing basis, review and assess the implementation of the consumer-directed care program. By January 15 of each year, the agency shall submit a written report to the Legislature that includes each department's review of the program and contains recommendations for improvements to the program.

Section 4. Paragraph (d) of subsection (15) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(15)

(d) "Employee" does not include:

1. An independent contractor who is not engaged in the construction industry.

a. In order to meet the definition of independent contractor, at least four of the following criteria must be met:

(I) The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;

(II) The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;

(III) The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;

(IV) The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;

(V) The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or

(VI) The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

b. If four of the criteria listed in sub-subparagraph a. do not exist, an individual may still be presumed to be an independent contractor and not an employee based on full consideration of the nature of the individual situation with regard to satisfying any of the following conditions:

(I) The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.

(II) The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.

(III) The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.

(IV) The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.

(V) The independent contractor may realize a profit or suffer a loss in connection with performing work or services.

(VI) The independent contractor has continuing or recurring business liabilities or obligations.

(VII) The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

c. Notwithstanding anything to the contrary in this subparagraph, an individual claiming to be an independent contractor has the burden of proving that he or she is an independent contractor for purposes of this chapter.

2. A real estate licensee, if that person agrees, in writing, to perform for remuneration solely by way of commission.

3. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, if a written contract evidencing an independent contractor relationship is entered into before the commencement of such entertainment.

4. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, if the owner-operator is required to furnish motor vehicle equipment as identified in the written contract and the principal costs incidental to the performance of the contract, including, but not limited to, fuel and repairs, provided a motor carrier's advance of costs to the owner-operator when a written contract evidences the owner-operator's obligation to reimburse such advance shall be treated as the owner-operator furnishing such cost and the owner-operator is not paid by the hour or on some other time-measured basis.

5. A person whose employment is both casual and not in the course of the trade, business, profession, or occupation of the employer.

6. A volunteer, except a volunteer worker for the state or a county, municipality, or other governmental entity. A person who does not receive monetary remuneration for services is presumed to be a volunteer unless there is substantial evidence that a valuable consideration was intended by both employer and employee. For purposes of this chapter, the term "volunteer" includes, but is not limited to:

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees in the same agency or, if such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the department; and

b. Volunteers participating in federal programs established under Pub. L. No. 93-113.

7. Unless otherwise prohibited by this chapter, any officer of a corporation who elects to be exempt from this chapter. Such officer is not an employee for any reason under this chapter until the notice of revocation of election filed pursuant to s. 440.05 is effective.

8. An officer of a corporation that is engaged in the construction industry who elects to be exempt from the provisions of this chapter, as otherwise permitted by this chapter. Such officer is not an employee for any reason until the notice of revocation of election filed pursuant to s. 440.05 is effective.

9. An exercise rider who does not work for a single horse farm or breeder, and who is compensated for riding on a case-by-case basis, provided a writ-

ten contract is entered into prior to the commencement of such activity which evidences that an employee/employer relationship does not exist.

10. A taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues.

11. A person who performs services as a sports official for an entity sponsoring an interscholastic sports event or for a public entity or private, nonprofit organization that sponsors an amateur sports event. For purposes of this subparagraph, such a person is an independent contractor. For purposes of this subparagraph, the term "sports official" means any person who is a neutral participant in a sports event, including, but not limited to, umpires, referees, judges, linespersons, scorekeepers, or timekeepers. This subparagraph does not apply to any person employed by a district school board who serves as a sports official as required by the employing school board or who serves as a sports official as part of his or her responsibilities during normal school hours.

12. Medicaid-enrolled clients under chapter 393 who are excluded from the definition of employment under s. 443.1216(4)(d) and served by Adult Day Training Services under the Home and Community-Based or the Family and Supported Living Medicaid Waiver program in a sheltered workshop setting licensed by the United States Department of Labor for the purpose of training and earning less than the federal hourly minimum wage.

13. Medicaid-enrolled clients under chapter 393 who are excluded from the definition of employment under s. 443.1216(4)(d) and served by Adult Day Training Services under the Family and Supported Living Medicaid Waiver program in a sheltered workshop setting licensed by the United States Department of Labor for the purpose of training and earning less than the federal hourly minimum wage. ~~This subparagraph expires July 1, 2006.~~

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor May 25, 2006.

Filed in Office Secretary of State May 25, 2006.