

House Bill No. 1503

An act relating to persons with disabilities; amending s. 20.197, F.S.; requiring the director of the Agency for Persons with Disabilities to be subject to confirmation by the Senate; requiring the agency to create a Division of Budget and Planning and a Division of Operations; authorizing the director to recommend creating additional subdivisions of the agency in order to promote efficient and effective operation of the agency; amending s. 39.001, F.S., relating to the development of a comprehensive state plan for children; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; amending s. 39.202, F.S.; providing for certain employees, agents, and contract providers of the agency to have access to records concerning cases of child abuse or neglect for specified purposes; amending s. 39.407, F.S.; deleting provisions authorizing the treatment of a child under ch. 393, F.S., if the child is alleged to be dependent; amending s. 287.155, F.S.; authorizing the agency to purchase vehicles under certain circumstances; amending ss. 381.0072 and 383.14, F.S., relating to food service licenses and the Genetics and Newborn Screening Advisory Council, respectively; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; repealing s. 393.061, F.S., relating to a short title; amending s. 393.062, F.S.; revising legislative findings and intent to conform to changes in terminology; amending s. 393.063, F.S.; revising the definitions applicable to ch. 393, F.S., relating to developmental disabilities; amending s. 393.064, F.S.; revising the duties of the Agency for Persons with Disabilities with respect to prevention services, evaluations and assessments, intervention services, and support services; amending s. 393.0641, F.S.; defining the term "severe self-injurious behavior" for purposes of a program of prevention and treatment for individuals exhibiting such behavior; amending s. 393.065, F.S., relating to application for services and the determination of eligibility for services; providing for children in the child welfare system to be placed at the top of the agency's wait list for waiver services; authorizing the agency to adopt rules; amending s. 393.0651, F.S., relating to support plans for families and individuals; revising the age at which support plans are developed for children; deleting a prohibition against assessing certain fees; creating s. 393.0654, F.S.; specifying circumstances under which an employee of the agency may own, operate, or work in a private facility under contract with the agency; amending s. 393.0655, F.S.; revising the screening requirements for direct service providers; providing a temporary exemption from screening requirements for certain providers; amending s. 393.0657, F.S.; revising an exemption from certain requirements for refingerprinting and rescreening; amending s. 393.066, F.S.; revising certain requirements for the services provided by the agency; requiring agency

approval for purchased services; revising the agency's rulemaking authority; amending s. 393.067, F.S.; revising requirements governing the agency's licensure procedures; revising the requirements for background screening of applicants for licensure and managers, supervisors, and staff members of service providers; requiring that the agency adopt rules governing the reporting of incidents; deleting certain responsibilities of the Agency for Health Care Administration with respect to the development and review of emergency management plans; amending s. 393.0673, F.S.; providing circumstances under which the agency may deny, revoke, or suspend a license or impose a fine; requiring the Agency for Persons with Disabilities to adopt rules for evaluating violations and determining the amount of fines; amending s. 393.0674, F.S.; providing a penalty for failure by a provider to comply with background screening requirements; amending s. 393.0675, F.S.; deleting certain obsolete provisions requiring that a provider be of good moral character; amending s. 393.0678, F.S.; deleting provisions governing receivership proceedings for an intermediate care facility for the developmentally disabled; amending s. 393.068, F.S.; requiring that the family care program emphasize self-determination; removing supported employment from the list of services available under the family care program; revising certain requirements for reimbursing a family care program provider; amending s. 393.0695, F.S., relating to in-home subsidies; requiring that the Agency for Persons with Disabilities adopt rules for such subsidies; amending s. 393.075, F.S., relating to liability coverage for facilities licensed by the agency; conforming terminology; amending s. 393.11, F.S.; revising provisions governing the involuntary admission of a person to residential services; clarifying provisions governing involuntary commitment; requiring that a person who is charged with a felony will have his or her competency determined under ch. 916, F.S.; conforming terminology; amending s. 393.122, F.S.; clarifying requirements governing applications for continued residential services; amending s. 393.13, F.S., relating to the Bill of Rights of Persons Who are Developmentally Disabled; deleting a provision protecting minimum wage compensation for certain programs; limiting the use of restraint and seclusion; requiring the agency to adopt rules governing the use of restraint or seclusion; revising requirements for client records; deleting certain requirements governing local advocacy councils; allowing the resident government to include disability advocates from the community; amending s. 393.135, F.S.; revising definitions; clarifying provisions making such misconduct a second-degree felony; amending s. 393.15, F.S.; establishing the Community Resources Development Loan Program to provide loans to foster homes, group homes, and supported employment programs; providing legislative intent; providing eligibility requirements; providing authorized uses of loan funds; requiring that the agency adopt rules governing the loan program; providing requirements for repaying loans; amending s. 393.17, F.S.; authorizing the agency to establish certification programs for persons providing services to clients; requiring that the agency establish a certification program for behavior analysts; requiring that the program be reviewed and validated; creating s.

393.18, F.S.; providing for a comprehensive transition education program for persons who have severe or moderate maladaptive behaviors; specifying the types of treatment and education centers providing services under the program; providing requirements for licensure; requiring individual education plans for persons receiving services; limiting the number of persons who may receive services in such a program; authorizing licensure of certain existing programs; creating s. 393.23, F.S.; requiring that receipts from operating canteens, vending machines, and other like activities in a developmental disabilities institution be deposited in a trust account in a bank, credit union, or savings and loan association; describing how the moneys earned may be expended; allowing for the investment of the funds; requiring that the accounting system at the institution account for the revenues and expenses of the activities; requiring that sales tax moneys be remitted to the Department of Revenue; amending s. 393.501, F.S.; revising the agency's rulemaking authority; providing requirements for rules governing alternative living centers and independent living education centers; amending s. 394.453, F.S.; declaring that the policy of the state is to achieve an ongoing reduction of the use of restraint and seclusion on persons with mental illness who are served by programs and facilities operated, licensed, or monitored by the agency; amending s. 394.455, F.S.; defining the terms "restraint" and "seclusion" for purposes of the Baker Act; amending s. 394.457, F.S.; requiring the Department of Children and Family Services to adopt rules for the use of restraint and seclusion for cases handled under the Baker Act; amending s. 394.879, F.S.; requiring that rules be adopted for the use of restraint and seclusion; amending s. 397.405, F.S.; clarifying an exemption from licensure provided to certain facilities licensed under ch. 393, F.S.; amending s. 400.419, F.S.; requiring that a list of facilities subject to sanctions or fines be disseminated to the Agency for Persons with Disabilities; amending s. 400.960, F.S.; revising definitions for purposes of part XI of ch. 400, F.S., relating to nursing homes and related facilities; amending 400.962, F.S.; requiring an applicant for a license to operate an intermediate care facility to agree to provide or arrange for active treatment services; providing rulemaking authority; amending s. 400.967, F.S., relating to rules and classification of deficiencies; conforming provisions to the transfer of duties from the Department of Children and Family Services to the Agency for Persons with Disabilities; requiring that rules be adopted for the use of restraint and seclusion; amending ss. 402.115, 402.17, 402.181, 402.20, 402.22, and 402.33, F.S.; including the Agency for Persons with Disabilities within provisions governing the sharing of information, claims for the care and maintenance of facility residents, county contracts for services for persons with developmental disabilities, education programs for students who reside in state facilities, and fees for services; conforming provisions to changes made by the act; correcting a cross-reference; amending s. 408.036, F.S., relating to projects that are exempt from obtaining a certificate of need; conforming terminology; amending s. 409.221, F.S., relating to the consumer directed care program; conforming

provisions to changes made by the act; amending ss. 409.908 and 409.9127, F.S., relating to the Medicaid program; conforming a cross-reference; deleting obsolete provisions; amending ss. 411.224 and 411.232, F.S.; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; amending ss. 415.102, 415.1035, 415.1055, and 415.107, F.S.; conforming terminology; including the Agency for Persons with Disabilities within provisions providing requirements that a facility inform residents of certain rights, notification requirements for administrative entities, and requirements for maintaining the confidentiality of reports and records; amending s. 435.03, F.S., relating to screening standards; conforming terminology and a cross-reference; amending ss. 490.014 and 491.014, F.S., relating to exemptions from licensure for psychologists and certain specified counselors, respectively; conforming provisions to changes made by the act; amending ss. 944.602, 945.025, 947.185, and 985.224, F.S., relating to the Department of Corrections, the Parole Commission, and petitions alleging delinquency; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; amending s. 1003.58, F.S.; including facilities operated by the Agency for Persons with Disabilities within provisions governing the residential care of students; amending ss. 17.61 and 400.464, F.S., relating to investment of certain funds and home health services for persons with disabilities, respectively; conforming provisions to changes made by the act; amending s. 744.704, F.S.; correcting a cross-reference; amending s. 984.22, F.S.; removing a provision that specifies fines be deposited into the Community Resources Development Trust Fund; creating part III of ch. 282, F.S.; requiring that the executive, legislative, and judicial branches of state government provide to individuals with disabilities access to and use of information and data that is comparable to the information and data provided to individuals who do not have disabilities; providing certain exceptions; providing definitions; requiring that each state agency use accessible electronic information and information technology that conforms with specified provisions of federal law; providing certain exceptions; requiring the Department of Management Services to adopt rules; providing an exception for electronic information and information technology involving military activities or criminal intelligence activities; specifying that the act applies to competitive solicitations; providing legislative intent; providing an effective date.

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

Section 1. Section 20.197, Florida Statutes, is amended to read:

20.197 Agency for Persons with Disabilities.—There is created the Agency for Persons with Disabilities, housed within the Department of Children and Family Services for administrative purposes only. The agency shall

be a separate budget entity not subject to control, supervision, or direction by the Department of Children and Family Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(1) The director of the agency shall be the agency head for all purposes and shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor. The director shall administer the affairs of the agency ~~and establish administrative units as needed~~ and may, within available resources, employ assistants, professional staff, and other employees as necessary to discharge the powers and duties of the agency.

(2) The agency shall include a Division of Budget and Planning and a Division of Operations. In addition, and in accordance with s. 20.04, the director of the agency may recommend establishing additional divisions, bureaus, sections, and subsections of the agency in order to promote efficient and effective operation of the agency.

~~(3)~~(2) The agency ~~is shall be~~ responsible for providing the provision of all services provided to persons with developmental disabilities under pursuant to chapter 393, including the operation of all state institutional programs and the programmatic management of Medicaid waivers established to provide services to persons with developmental disabilities.

~~(4)~~(3) The agency shall engage in such other administrative activities as are deemed necessary to effectively and efficiently address the needs of the agency's clients.

(5)(4) The agency shall enter into an interagency agreement that delineates the responsibilities of the Agency for Health Care Administration for the following:

(a) The terms and execution of contracts with Medicaid providers for the provision of services provided through Medicaid, including federally approved waiver programs.

(b) The billing, payment, and reconciliation of claims for Medicaid services reimbursed by the agency.

(c) The implementation of utilization management measures, including the prior authorization of services plans and the streamlining and consolidation of waivers services, to ensure the cost-effective provision of needed Medicaid services and to maximize the number of persons with access to such services.

(d) A system of approving each client's plan of care to ensure that the services on the plan of care are those that without which the client would require the services of an intermediate care facility for the developmentally disabled.

Section 2. Paragraph (b) of subsection (7) of section 39.001, Florida Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(7) PLAN FOR COMPREHENSIVE APPROACH.—

(b) The development of the comprehensive state plan shall be accomplished in the following manner:

1. The department shall establish an interprogram task force comprised of the Program Director for Family Safety, or a designee, a representative from the Child Care Services Program Office, a representative from the Family Safety Program Office, a representative from the Mental Health Program Office, a representative from the Substance Abuse Program Office, a representative from the Agency for Persons with Disabilities Developmental Disabilities Program Office, and a representative from the Division of Children's Medical Services Network Prevention and Intervention of the Department of Health. Representatives of the Department of Law Enforcement and of the Department of Education shall serve as ex officio members of the interprogram task force. The interprogram task force shall be responsible for:

a. Developing a plan of action for better coordination and integration of the goals, activities, and funding pertaining to the prevention of child abuse, abandonment, and neglect conducted by the department in order to maximize staff and resources at the state level. The plan of action shall be included in the state plan.

b. Providing a basic format to be utilized by the districts in the preparation of local plans of action in order to provide for uniformity in the district plans and to provide for greater ease in compiling information for the state plan.

c. Providing the districts with technical assistance in the development of local plans of action, if requested.

d. Examining the local plans to determine if all the requirements of the local plans have been met and, if they have not, informing the districts of the deficiencies and requesting the additional information needed.

e. Preparing the state plan for submission to the Legislature and the Governor. Such preparation shall include the collapsing of information obtained from the local plans, the cooperative plans with the Department of Education, and the plan of action for coordination and integration of departmental activities into one comprehensive plan. The comprehensive plan shall include a section reflecting general conditions and needs, an analysis of variations based on population or geographic areas, identified problems, and recommendations for change. In essence, the plan shall provide an analysis and summary of each element of the local plans to provide a state-wide perspective. The plan shall also include each separate local plan of action.

f. Working with the specified state agency in fulfilling the requirements of subparagraphs 2., 3., 4., and 5.

2. The department, the Department of Education, and the Department of Health shall work together in developing ways to inform and instruct parents of school children and appropriate district school personnel in all school districts in the detection of child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect, and in caring for a child's needs after a report is made. The plan for accomplishing this end shall be included in the state plan.

3. The department, the Department of Law Enforcement, and the Department of Health shall work together in developing ways to inform and instruct appropriate local law enforcement personnel in the detection of child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect.

4. Within existing appropriations, the department shall work with other appropriate public and private agencies to emphasize efforts to educate the general public about the problem of and ways to detect child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect. The plan for accomplishing this end shall be included in the state plan.

5. The department, the Department of Education, and the Department of Health shall work together on the enhancement or adaptation of curriculum materials to assist instructional personnel in providing instruction through a multidisciplinary approach on the identification, intervention, and prevention of child abuse, abandonment, and neglect. The curriculum materials shall be geared toward a sequential program of instruction at the four progressional levels, K-3, 4-6, 7-9, and 10-12. Strategies for encouraging all school districts to utilize the curriculum are to be included in the comprehensive state plan for the prevention of child abuse, abandonment, and neglect.

6. Each district of the department shall develop a plan for its specific geographical area. The plan developed at the district level shall be submitted to the interprogram task force for utilization in preparing the state plan. The district local plan of action shall be prepared with the involvement and assistance of the local agencies and organizations listed in paragraph (a), as well as representatives from those departmental district offices participating in the treatment and prevention of child abuse, abandonment, and neglect. In order to accomplish this, the district administrator in each district shall establish a task force on the prevention of child abuse, abandonment, and neglect. The district administrator shall appoint the members of the task force in accordance with the membership requirements of this section. In addition, the district administrator shall ensure that each subdistrict is represented on the task force; and, if the district does not have subdistricts, the district administrator shall ensure that both urban and rural areas are represented on the task force. The task force shall develop a written statement clearly identifying its operating procedures, purpose, overall responsibilities, and method of meeting responsibilities. The district plan of action to be prepared by the task force shall include, but shall not be limited to:

a. Documentation of the magnitude of the problems of child abuse, including sexual abuse, physical abuse, and emotional abuse, and child abandonment and neglect in its geographical area.

b. A description of programs currently serving abused, abandoned, and neglected children and their families and a description of programs for the prevention of child abuse, abandonment, and neglect, including information on the impact, cost-effectiveness, and sources of funding of such programs.

c. A continuum of programs and services necessary for a comprehensive approach to the prevention of all types of child abuse, abandonment, and neglect as well as a brief description of such programs and services.

d. A description, documentation, and priority ranking of local needs related to child abuse, abandonment, and neglect prevention based upon the continuum of programs and services.

e. A plan for steps to be taken in meeting identified needs, including the coordination and integration of services to avoid unnecessary duplication and cost, and for alternative funding strategies for meeting needs through the reallocation of existing resources, utilization of volunteers, contracting with local universities for services, and local government or private agency funding.

f. A description of barriers to the accomplishment of a comprehensive approach to the prevention of child abuse, abandonment, and neglect.

g. Recommendations for changes that can be accomplished only at the state program level or by legislative action.

Section 3. Paragraphs (a) and (h) of subsection (2) of section 39.202, Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, or county agencies responsible for carrying out:

1. Child or adult protective investigations;
2. Ongoing child or adult protective services;
3. Healthy Start services; or

4. Licensure or approval of adoptive homes, foster homes, ~~or~~ child care facilities, facilities licensed under chapter 393, or family day care homes or informal child care providers who receive subsidized child care funding, or other homes used to provide for the care and welfare of children.

5. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(h) Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;

2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or

3. Employing and continuing employment of personnel of the department or the agency.

Section 4. Subsection (5) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical or mental examination of parent or person requesting custody of child.—

(5) A judge may order a child in an out-of-home placement to be treated by a licensed health care professional based on evidence that the child should receive treatment. The judge may also order such child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service provider. Except as provided in subsection (6), if it is necessary to place the child in a residential facility for such services, the procedures and criteria established in s. 394.467 ~~or chapter 393~~ shall be used, ~~whichever is applicable~~. A child may be provided ~~developmental disabilities or~~ mental health services in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1) ~~or chapter 393, whichever is applicable~~. Nothing in this section confers jurisdiction on the court with regard to determining eligibility or ordering services under chapter 393.

Section 5. Section 287.155, Florida Statutes, is amended to read:

287.155 Motor vehicles; purchase by Division of Universities, Department of Children and Family Services, Agency for Persons with Disabilities, Department of Health, Department of Juvenile Justice, and Department of Corrections.—

(1) The Division of Universities of the Department of Education, the Department of Children and Family Services, the Agency for Persons with

Disabilities, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections ~~may~~ are hereby authorized, subject to the approval of the Department of Management Services, ~~to~~ purchase automobiles, trucks, tractors, and other automotive equipment for the use of institutions under the management of the Division of Universities, the Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, and the Department of Corrections, and for the use of residential facilities managed or contracted by the Department of Juvenile Justice.

(2) The Department of Corrections shall, prior to purchasing motor vehicles, seek to procure the motor vehicles from those vehicles renovated pursuant to correctional work programs of the Department of Corrections, and for the use of residential facilities managed or contracted by the Department of Juvenile Justice.

(3) The Department of Health is authorized, subject to the approval of the Department of Management Services, to purchase automobiles, trucks, and other automotive equipment for use by county health departments.

Section 6. Paragraph (a) of subsection (3) of section 381.0072, Florida Statutes, is amended to read:

381.0072 Food service protection.—It shall be the duty of the Department of Health to adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness. These rules shall provide the standards and requirements for the storage, preparation, serving, or display of food in food service establishments as defined in this section and which are not permitted or licensed under chapter 500 or chapter 509.

(3) LICENSES REQUIRED.—

(a) Licenses; annual renewals.—Each food service establishment regulated under this section shall obtain a license from the department annually. Food service establishment licenses shall expire annually and are ~~shall~~ not be transferable from one place or individual to another. However, those facilities licensed by the department's Office of Licensure and Certification, the Child Care Services Program Office, or the Agency for Persons with Developmental Disabilities Program Office are exempt from this subsection. It shall be a misdemeanor of the second degree, punishable as provided in s. 381.0061, s. 775.082, or s. 775.083, for such an establishment to operate without this license. The department may refuse a license, or a renewal thereof, to any establishment that is not constructed or maintained in accordance with law and with the rules of the department. Annual application for renewal is ~~shall~~ not be required.

Section 7. Subsection (5) of section 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(5) **ADVISORY COUNCIL.**—There is established a Genetics and Newborn Screening Advisory Council made up of 15 members appointed by the Secretary of Health. The council shall be composed of two consumer members, three practicing pediatricians, at least one of whom must be a pediatric hematologist, one representative from each of the four medical schools in the state, the Secretary of Health or his or her designee, one representative from the Department of Health representing Children's Medical Services, one representative from the Florida Hospital Association, one individual with experience in newborn screening programs, one individual representing audiologists, and one representative from the Agency for Persons with Disabilities Developmental Disabilities Program Office of the Department of Children and Family Services. All appointments shall be for a term of 4 years. The chairperson of the council shall be elected from the membership of the council and shall serve for a period of 2 years. The council shall meet at least semiannually or upon the call of the chairperson. The council may establish ad hoc or temporary technical advisory groups to assist the council with specific topics which come before the council. Council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members are entitled to be reimbursed for per diem and travel expenses. It is the purpose of the council to advise the department about:

(a) Conditions for which testing should be included under the screening program and the genetics program.

(b) Procedures for collection and transmission of specimens and recording of results.

(c) Methods whereby screening programs and genetics services for children now provided or proposed to be offered in the state may be more effectively evaluated, coordinated, and consolidated.

Section 8. Section 393.061, Florida Statutes, is repealed.

Section 9. Section 393.062, Florida Statutes, is amended to read:

393.062 Legislative findings and declaration of intent.—The Legislature finds and declares that existing state programs for the treatment of individuals with developmental disabilities ~~who are developmentally disabled~~, which often unnecessarily place clients in institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to many a great majority of clients. A redirection in state treatment programs for individuals with developmental disabilities ~~who are developmentally disabled~~ is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that ~~have the potential to prevent or reduce the severity of developmental disabilities~~. Further, the Legislature declares that greatest priority shall be given to the development and implementation of community-based ~~residential placements, services that, and treatment programs for individuals who are developmentally disabled~~ which will enable such individuals with developmental disabilities to achieve their greatest potential for independent and productive living, ~~which will~~ enable them to live in their own homes or in residences located in their own communities, and ~~which will~~ permit them

to be diverted or removed from unnecessary institutional placements. This goal ~~The Legislature finds that the eligibility criteria for intermediate-care facilities for the developmentally disabled which are specified in the Medicaid state plan in effect on the effective date of this act are essential to the system of residential services. The Legislature declares that the goal of this act, to improve the quality of life of all developmentally disabled persons by the development and implementation of community-based residential placements, services, and treatment, cannot be met without ensuring the availability of community residential opportunities for developmentally disabled persons in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who live in licensed community homes shall have a family living environment comparable to other Floridians and~~ and. ~~The Legislature intends that such residences shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home. The Legislature further~~ declares that, in developing community-based programs and services for individuals with developmental disabilities who are developmentally disabled, private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients in a cost-efficient manner shall be given preference in lieu of operation of programs directly by state agencies. Finally, it is the intent of the Legislature that all caretakers unrelated to individuals with developmental disabilities receiving care shall be of good moral character.

Section 10. Section 393.063, Florida Statutes, is amended to read:

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

(1) “Agency” means the Agency for Persons with Disabilities.

(2) “Adult day training” means training services which take place in a nonresidential setting, separate from the home or facility in which the client resides, are intended to support the participation of clients in daily, meaningful, and valued routines of the community, and may include work-like settings that do not meet the definition of supported employment.

~~(3)~~(2) “Autism” means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

~~(4)~~(3) “Cerebral palsy” means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

~~(5)~~(4) “Client” means any person determined eligible by the agency for services under this chapter.

(6)(5) “Client advocate” means a friend or relative of the client, or of the client’s immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.

(7)(6) “Comprehensive assessment” means the process used to determine eligibility for services under this chapter.

~~(8)(7) “Comprehensive transitional education program” means the program established in s. 393.18, a group of jointly operating centers or units, the collective purpose of which is to 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. However, nothing in this subsection shall require such programs to provide services only to persons with developmental disabilities. All such services shall be temporary in nature and delivered in a structured residential setting with the primary goal of incorporating the normalization principle to establish permanent residence for persons with maladaptive behaviors in facilities not associated with the comprehensive transitional education program. The staff shall include psychologists and teachers who shall be available to provide services in each component center or unit of the program. The psychologists shall be individuals who are licensed in this state and certified as behavior analysts in this state, or individuals who are certified as behavior analysts pursuant to s. 393.17.~~

~~(a) Comprehensive transitional education programs shall include a minimum of two component centers or units, one of which shall be either an intensive treatment and educational center or a transitional training and educational center, which provide services to persons with maladaptive behaviors in the following sequential order:~~

~~1.— Intensive treatment and educational center. This component is a self-contained residential unit providing intensive psychological and educational programming for persons with severe maladaptive behaviors, whose behaviors preclude placement in a less restrictive environment due to the threat of danger or injury to themselves or others.~~

~~2.— Transitional training and educational center. This component is a residential unit for persons with moderate maladaptive behaviors, providing concentrated psychological and educational programming emphasizing a transition toward a less restrictive environment.~~

~~3.— Community transition residence. This component is a residential center providing educational programs and such support services, training, and care as are needed to assist persons with maladaptive behaviors to avoid regression to more restrictive environments while preparing them for more independent living. Continuous-shift staff shall be required for this component.~~

~~4.— Alternative living center. This component is a residential unit providing an educational and family living environment for persons with maladaptive behaviors, in a moderately unrestricted setting. Residential staff shall be required for this component.~~

5.—Independent living education center. This component is a facility providing a family living environment for persons with maladaptive behaviors, in a largely unrestricted setting which includes education and monitoring appropriate to support the development of independent living skills.

(b)—Centers or units that are components of a comprehensive transitional education program are subject to the license issued to the comprehensive transitional education program and may be located on either single or multiple sites.

(c)—Comprehensive transitional education programs shall develop individual education plans for each person with maladaptive behaviors who receives services therein. Such individual education plans shall be developed in accordance with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.

(d)—In no instance shall the total number of persons with maladaptive behaviors being provided services in a comprehensive transitional education program exceed 120.

(e)—This subsection shall authorize licensure for comprehensive transitional education programs which by July 1, 1989:

1.—Are in actual operation; or

2.—Own a fee simple interest in real property for which a county or city government has approved zoning allowing for the placement of the facilities described in this subsection, and have registered an intent with the department to operate a comprehensive transitional education program. However, nothing shall prohibit the assignment by such a registrant to another entity at a different site within the state, so long as there is compliance with all criteria of the comprehensive transitional education program and local zoning requirements and provided that each residential facility within the component centers or units of the program authorized under this subparagraph shall not exceed a capacity of 15 persons.

(8)—“Day habilitation facility” means any nonresidential facility which provides day habilitation services.

(9)—“Day habilitation service” means assistance with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills which takes place in a nonresidential setting, separate from the home or facility in which the individual resides. Day habilitation services shall focus on enabling the individual to attain or maintain his or her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies listed in the plan of care.

(9)(10)—“Developmental disability” means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

~~(10)~~(11) “Developmental disabilities institution” means a state-owned and state-operated facility, formerly known as a “Sunland Center,” providing for the care, habilitation, and rehabilitation of clients with developmental disabilities.

~~(11)~~(12) “Direct service provider,” also known as “caregiver” in chapters 39 and 415 or “caretaker” in provisions relating to employment security checks, means a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client individuals with developmental disabilities, or has access to a client’s living areas or to a client’s funds or personal property, ~~and is not a relative of such individuals.~~

~~(12)~~(13) “Domicile” means the place where a client legally resides, which place is his or her permanent home. Domicile may be established as provided in s. 222.17. Domicile may not be established in Florida by a minor who has no parent domiciled in Florida, or by a minor who has no legal guardian domiciled in Florida, or by any alien not classified as a resident alien.

~~(14)~~ “Enclave” means a work station in public or private business or industry where a small group of persons with developmental disabilities is employed and receives training and support services or follow-along services among nonhandicapped workers.

~~(15)~~ “Epilepsy” means a chronic brain disorder of various causes which is characterized by recurrent seizures due to excessive discharge of cerebral neurons. When found concurrently with retardation, autism, or cerebral palsy, epilepsy is considered a secondary disability for which the client is eligible to receive services to ameliorate this condition pursuant to this chapter.

~~(13)~~(16) “Express and informed consent” means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make a knowing an ~~understanding and enlightened~~ decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

~~(14)~~(17) “Family care program” means the program established in s. 393.068.

~~(18)~~ “Follow-along services” means those support services provided to persons with developmental disabilities in all supported employment programs and may include, but are not limited to, family support, assistance in meeting transportation and medical needs, employer intervention, performance evaluation, advocacy, replacement, retraining or promotional assistance, or other similar support services.

~~(15)~~(19) “Foster care facility” means a residential facility licensed under this chapter which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility may ~~shall~~ not be more than three residents.

~~(16)~~(20) “Group home facility” means a residential facility licensed under this chapter which provides a family living environment including supervi-

sion and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 but not more than 15 residents. ~~For the purposes of this chapter, group home facilities shall not be considered commercial enterprises.~~

(17)(21) “Guardian advocate” means a person appointed by a written order of the court to represent a person with developmental disabilities under s. 393.12.

(18)(22) “Habilitation” means the process by which a client is assisted to acquire and maintain those life skills which enable the client to cope more effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. It includes, but is not limited to, programs of formal structured education and treatment.

(19)(23) “High-risk child” means, for the purposes of this chapter, a child from 3 ~~birth~~ to 5 years of age with one or more of the following characteristics:

(a) A developmental delay in cognition, language, or physical development.

(b) A child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated.

(c) A child with a parent or guardian with developmental disabilities who requires assistance in meeting the child’s developmental needs.

(d) A child who has a physical or genetic anomaly associated with developmental disability.

(20)(24) “Intermediate care facility for the developmentally disabled” or “ICF/DD” means a residential facility licensed and certified pursuant to part XI of chapter 400.

(25) ~~“Job coach” means a person who provides employment-related training at a worksite to individuals with developmental disabilities.~~

(21)(26) “Medical/dental services” means medically necessary ~~those~~ services which are provided or ordered for a client by a person licensed under ~~pursuant to the provisions of~~ chapter 458, chapter 459, or chapter 466. Such services may include, but are not limited to, prescription drugs, specialized therapies, nursing supervision, hospitalization, dietary services, prosthetic devices, surgery, specialized equipment and supplies, adaptive equipment, and other services as required to prevent or alleviate a medical or dental condition.

(27) ~~“Mobile work crew” means a group of workers employed by an agency that provides services outside the agency, usually under service contracts.~~

~~(28) “Normalization principle” means the principle of letting the client obtain an existence as close to the normal as possible, making available to the client patterns and conditions of everyday life which are as close as possible to the norm and patterns of the mainstream of society.~~

~~(22)(29) “Personal care services” means include, but are not limited to, such services as: individual assistance with or supervision of essential activities of daily living for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar services that are incidental to the care furnished and essential to the health, safety, and welfare of the client when there is no one else available to perform those services the agency may define by rule. “Personal services” shall not be construed to mean the provision of medical, nursing, dental, or mental health services by the staff of a facility, except as provided in this chapter. In addition, an emergency response device installed in the apartment or living area of a resident shall not be classified as a personal service.~~

~~(23)(30) “Prader-Willi syndrome” means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate mental retardation, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.~~

~~(31) “Reassessment” means a process which periodically develops, through annual review and revision of a client’s family or individual support plan, a knowledgeable statement of current needs and past development for each client.~~

~~(24)(32) “Relative” means an individual who is connected by affinity or consanguinity to the client and who is 18 years of age or older more.~~

~~(25)(33) “Resident” means any person with developmental disabilities who is developmentally disabled residing at a residential facility in the state, whether or not such person is a client of the agency.~~

~~(26)(34) “Residential facility” means a facility providing room and board and personal care for persons with developmental disabilities.~~

~~(27)(35) “Residential habilitation” means supervision and training assistance provided with the acquisition, retention, or improvement in skills related to activities of daily living, such as personal hygiene skills grooming and cleanliness, homemaking skills bedmaking and household chores, eating and the preparation of food, and the social and adaptive skills necessary to enable the individual to reside in the community a noninstitutional setting.~~

~~(28)(36) “Residential habilitation center” means a community residential facility licensed under this chapter which that provides residential habilitation services. The capacity of such a facility shall not be fewer than nine residents. After October 1, 1989, no new residential habilitation centers may not shall be licensed and the licensed capacity shall not be increased for any existing residential habilitation center may not be increased.~~

(29)(37) “Respite service” means appropriate, short-term, temporary care that is provided to a person with developmental disabilities to meet the planned or emergency needs of the person or the family or other direct service provider.

(30) “Restraint” means a physical device, method, or drug used to control dangerous behavior.

(a) A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual’s body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one’s body.

(b) A drug used as a restraint is a medication used to control the person’s behavior or to restrict his or her freedom of movement and is not a standard treatment for the person’s medical or psychiatric condition. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

(31)(38) “Retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior ~~and manifested during the period from conception to age 18.~~ “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency. “Adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

(32) “Seclusion” means the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For the purposes of this chapter, the term does not mean isolation due to the medical condition or symptoms of the person.

(33) “Self-determination” means an individual’s freedom to exercise the same rights as all other citizens, authority to exercise control over funds needed for one’s own support, including prioritizing these funds when necessary, responsibility for the wise use of public funds, and self advocacy to speak and advocate for oneself in order to gain independence and ensure that individuals with a developmental disability are treated equally.

~~(39) “Severe self-injurious behavior” means any chronic behavior that results in injury to the person’s own body, which includes, but is not limited to, self-hitting, head banging, self-biting, scratching, and the ingestion of harmful or potentially harmful nutritive or nonnutritive substances.~~

~~(34)~~(40) “Specialized therapies” means those treatments or activities prescribed by and provided by an appropriately trained, licensed, or certified professional or staff person and may include, but are not limited to, physical therapy, speech therapy, respiratory therapy, occupational therapy, behavior therapy, physical management services, and related specialized equipment and supplies.

~~(35)~~(41) “Spina bifida” means, for purposes of this chapter, a person with a medical diagnosis of spina bifida cystica or myelomeningocele.

~~(36)~~(42) “Support coordinator” means a person who is designated by the agency to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

~~(43) “Supported employee” means a person who requires and receives supported employment services in order to maintain community-based employment.~~

~~(37)~~(44) “Supported employment” means employment located or provided in a normal employment setting which provides at least 20 hours employment per week in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is needed for job maintenance.

~~(38)~~(45) “Supported living” means a category of individually determined services designed and coordinated in such a manner as to provide assistance to adult clients who require ongoing supports to live as independently as possible in their own homes, to be integrated into the community, and to participate in community life to the fullest extent possible.

~~(39)~~(46) “Training” means a planned approach to assisting a client to attain or maintain his or her maximum potential and includes services ranging from sensory stimulation to instruction in skills for independent living and employment.

~~(40)~~(47) “Treatment” means the prevention, amelioration, or cure of a client’s physical and mental disabilities or illnesses.

Section 11. Subsections (1), (2), and (4) of section 393.064, Florida Statutes, are amended to read:

393.064 Prevention.—

(1) The agency shall give priority to the development, planning, and implementation of programs which have the potential to prevent, correct, cure, or reduce the severity of developmental disabilities. The agency shall direct an interagency and interprogram effort for the continued development of a prevention plan and program. The agency shall identify, through demonstration projects, through program evaluation, and through monitoring of programs and projects conducted outside of the agency, any medical, social, economic, or educational methods, techniques, or procedures that have the potential to effectively ameliorate, correct, or cure developmental disabilities. The agency program shall determine the costs and benefits that would be associated with such prevention efforts and shall implement, or recommend the implementation of, those methods, techniques, or procedures which are found likely to be cost-beneficial.

(2) Prevention services provided by the agency shall developmental services program include services to high-risk and developmentally disabled children from 3 birth to 5 years of age, and their families, to meet the intent of chapter 411. Except for services for children from birth to age 3 years which Such services shall include individual evaluations or assessments necessary to diagnose a developmental disability or high-risk condition and to determine appropriate individual family and support services, unless evaluations or assessments are the responsibility of the Division of Children's Medical Services in the Department of Health Prevention and Intervention for children ages birth to 3 years eligible for services under this chapter or part H of the Individuals with Disabilities Education Act, such services and may include:

(a) Individual evaluations or assessments necessary to diagnose a developmental disability or high-risk condition and to determine appropriate, individual family and support services.

(b)(a) Early intervention services, including developmental training and specialized therapies. Early intervention services, which are the responsibility of the Division of Children's Medical Services Prevention and Intervention for children ages birth to 3 years who are eligible for services under this chapter or under part H of the Individuals with Disabilities Education Act, shall not be provided through the developmental services program unless funding is specifically appropriated to the developmental services program for this purpose.

(c)(b) Support services, such as respite care, parent education and training, parent-to-parent counseling, homemaker services, and other services which allow families to maintain and provide quality care to children in their homes. The Division of Children's Medical Services Prevention and Intervention is responsible for the provision of services to children from birth to 3 years who are eligible for services under this chapter.

(4) There is created at the developmental disabilities services institution in Gainesville a research and education unit. Such unit shall be named the Raymond C. Philips Research and Education Unit. The functions of such unit shall include:

- (a) Research into the etiology of developmental disabilities.
- (b) Ensuring that new knowledge is rapidly disseminated throughout the ~~developmental services program~~ of the agency.
- (c) Diagnosis of unusual conditions and syndromes associated with developmental disabilities in clients identified throughout ~~the developmental disabilities services~~ programs.
- (d) Evaluation of families of clients with developmental disabilities of genetic origin in order to provide them with genetic counseling aimed at preventing the recurrence of the disorder in other family members.
- (e) Ensuring that health professionals in the developmental disabilities services institution at Gainesville have access to information systems that will allow them to remain updated on newer knowledge and maintain their postgraduate education standards.
- (f) Enhancing staff training for professionals throughout the agency in the areas of genetics and developmental disabilities.

Section 12. Section 393.0641, Florida Statutes, is amended to read:

393.0641 Program for the prevention and treatment of severe self-injurious behavior.—

(1) Contingent upon specific appropriations, there is created a diagnostic, treatment, training, and research program for clients exhibiting severe self-injurious behavior. As used in this section, the term “severe self-injurious behavior” means any chronic behavior that results in injury to the person’s own body, including, but not limited to, self-hitting, head banging, self-biting, scratching, and the ingestion of harmful or potentially harmful nutritive or nonnutritive substances.

(2) ~~The~~ This program shall:

- (a) Serve as a resource center for information, training, and program development.
- (b) Research the diagnosis and treatment of severe self-injurious behavior, and related disorders, and develop methods of prevention and treatment of self-injurious behavior.
- (c) Identify individuals in critical need.
- (d) Develop treatment programs which are meaningful to individuals with developmental disabilities, in critical need, while safeguarding and respecting the legal and human rights of the individuals.
- (e) Disseminate research findings on the prevention and treatment of severe self-injurious behavior.
- (f) Collect data on the type, severity, incidence, and demographics of individuals with severe self-injurious behavior, and disseminate the data.

~~(3)(2)~~ The This program shall adhere to the provisions of s. 393.13.

~~(4)(3)~~ The agency may contract for the provision of any portion or all of the services required by the program.

~~(5)(4)~~ The agency ~~may~~ has the authority to license this program and shall adopt rules to ~~administer~~ implement the program.

Section 13. Subsections (1) and (4) of section 393.065, Florida Statutes, are amended, and subsections (5) and (6) are added to that section, to read:

393.065 Application and eligibility determination.—

(1) Application for services shall be made in writing to the agency, in the ~~service area district~~ in which the applicant resides. ~~The agency Employees of the agency's developmental services program~~ shall review each applicant for eligibility within 45 days after the date the application is signed for children under 6 years of age and within 60 days after the date the application is signed for all other applicants. When necessary to definitively identify individual conditions or needs, the agency shall provide a comprehensive assessment. Only applicants ~~individuals~~ whose domicile is in Florida are eligible for services. Information accumulated by other agencies, including professional reports and collateral data, shall be considered in this process when available.

(4) The agency shall assess the level of need and medical necessity for prospective residents of intermediate-care facilities for the developmentally disabled ~~after October 1, 1999~~. The agency may enter into an agreement with the Department of Elderly Affairs for its Comprehensive Assessment and Review for Long-Term-Care Services (CARES) program to conduct assessments to determine the level of need and medical necessity for long-term-care services under this chapter. To the extent permissible under federal law, the assessments shall ~~must~~ be funded under Title XIX of the Social Security Act.

(5) With the exception of clients deemed to be in crisis whom the agency shall serve as described in rule, the agency shall place at the top of its wait list for waiver services those children on the wait list who are from the child welfare system with an open case in the Department of Children and Family Services' statewide automated child welfare information system.

(6) The agency may adopt rules specifying application procedures and eligibility criteria as needed to administer this section.

Section 14. Section 393.0651, Florida Statutes, is amended to read:

393.0651 Family or individual support plan.—The agency shall provide directly or contract for the development of a ~~an appropriate~~ family support plan for children ages 3 ~~birth~~ to 18 years of age and an individual support plan for each client. ~~The parent or guardian of The client or, if competent, the client's parent or guardian~~ client, or, when appropriate, the client advocate, shall be consulted in the development of the plan and shall receive a copy of the plan. Each plan must ~~shall~~ include the most appropriate, least

restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized. The plan ~~must~~ shall include provisions for the most appropriate level of care for the client. Within the specification of needs and services for each client, when residential care is necessary, the agency shall move toward placement of clients in residential facilities based within the client's community. The ultimate goal of each plan, whenever possible, shall be to enable the client to live a dignified life in the least restrictive setting, be that in the home or in the community. For children under 6 years of age, the family support plan shall be developed within the 45-day application period as specified in s. 393.065(1); for all applicants 6 years of age or older, the family or individual support plan shall be developed within the 60-day period as specified in that subsection.

(1) The agency shall develop and specify by rule the core components of support plans ~~to be used by each district.~~

(2)(a) The family or individual support plan shall be integrated with the individual education plan (IEP) for all clients who are public school students entitled to a free appropriate public education under the Individuals with Disabilities Education Act, I.D.E.A., as amended. The family or individual support plan and IEP shall be implemented to maximize the attainment of educational and habilitation goals.

(a) If the IEP for a student enrolled in a public school program indicates placement in a public or private residential program is necessary to provide special education and related services to a client, the local education agency shall provide for the costs of that service in accordance with the requirements of the Individuals with Disabilities Education Act, I.D.E.A., as amended. This shall not preclude local education agencies and the agency from sharing the residential service costs of students who are clients and require residential placement. ~~Under no circumstances shall clients entitled to a public education or their parents be assessed a fee by the agency under s. 402.33 for placement in a residential program.~~

(b) For clients who are entering or exiting the school system, an interdepartmental staffing team composed of representatives of the agency and the local school system shall develop a written transitional living and training plan with the participation of the client or with the parent or guardian of the client, or the client advocate, as appropriate.

(3) Each family or individual support plan shall be facilitated through case management designed solely to advance the individual needs of the client.

(4) In the development of the family or individual support plan, a client advocate may be appointed by the support planning team for a client who is a minor or for a client who is not capable of express and informed consent when:

(a) The parent or guardian cannot be identified;

- (b) The whereabouts of the parent or guardian cannot be discovered; or
- (c) The state is the only legal representative of the client.

Such appointment shall not be construed to extend the powers of the client advocate to include any of those powers delegated by law to a legal guardian.

(5) The agency shall place a client in the most appropriate and least restrictive, and cost-beneficial, residential facility according to his or her individual support habilitation plan. ~~The parent or guardian of~~ The client ~~or, if competent, the client's parent or guardian~~ client, or, when appropriate, the client advocate, and the administrator of the residential facility to which placement is proposed shall be consulted in determining the appropriate placement for the client. Considerations for placement shall be made in the following order:

(a) Client's own home or the home of a family member or direct service provider.

(b) Foster care facility.

(c) Group home facility.

(d) Intermediate care facility for the developmentally disabled.

(e) Other facilities licensed by the agency which offer special programs for people with developmental disabilities.

(f) Developmental disabilities ~~services~~ institution.

(6) In developing a client's annual family or individual support plan, the individual or family with the assistance of the support planning team shall identify measurable objectives for client progress and shall specify a time period expected for achievement of each objective.

(7) The individual, family, and support coordinator shall review progress in achieving the objectives specified in each client's family or individual support plan, and shall revise the plan annually, following consultation with the client, if competent, or with the parent or guardian of the client, or, when appropriate, the client advocate. The agency or designated contractor shall annually report in writing to the client, if competent, or to the parent or guardian of the client, or to the client advocate, when appropriate, with respect to the client's habilitative and medical progress.

(8) Any client, or any parent of a minor client, or guardian, authorized guardian advocate, or client advocate for a client, who is substantially affected by the client's initial family or individual support plan, or the annual review thereof, shall have the right to file a notice to challenge the decision pursuant to ss. 120.569 and 120.57. Notice of such right to appeal shall be included in all support plans provided by the agency.

Section 15. Section 393.0654, Florida Statutes, is created to read.

393.0654 Direct service providers; private sector services.—It is not a violation of s. 112.313(7) for a direct service provider who is employed by the agency to own, operate, or work in a private facility that is a service provider under contract with the agency if:

(1) The employee does not have any role in the agency’s placement recommendations or the client’s decisionmaking process regarding placement;

(2) The direct service provider’s employment with the agency does not compromise the ability of the client to make a voluntary choice among private providers for services;

(3) The employee’s employment outside the agency does not create a conflict with the employee’s public duties and does not impede the full and faithful discharge of the employee’s duties as assigned by the agency; and

(4) The service provider discloses the dual employment or ownership status to the agency and all clients within the provider’s care. The disclosure must be given to the agency, the client, and the client’s guardian or guardian advocate, if appropriate.

Section 16. Section 393.0655, Florida Statutes, is amended to read:

393.0655 Screening of direct service providers.—

(1) MINIMUM STANDARDS.—The agency shall require level 2 employment screening pursuant to chapter 435 for direct service providers who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under this chapter ~~s. 393.067~~ and any other person, including volunteers, who provide care or services, who have access to a client’s living areas, or who have access to a client’s funds or personal property. Background screening shall include employment history checks as provided in s. 435.03(1) and local criminal records checks through local law enforcement agencies.

(a) A volunteer who assists on an intermittent basis for less than 40 hours per month does not have to be screened if the volunteer is under the direct and constant visual supervision of persons who meet the screening requirements of this section.

(b) Licensed physicians, nurses, or other professionals licensed and regulated by the Department of Health are not subject to background screening pursuant to this section if they are providing a service that is within their scope of licensed practice.

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

(d) Persons 12 years of age or older, including family members, residing with ~~a~~ the direct services provider who provides services to clients in his or her own place of residence, ~~including family members,~~ are subject to back-

ground screening; however, such persons who are 12 to 18 years of age shall be screened for delinquency records only.

(e) A direct service provider who is awaiting the completion of background screening is temporarily exempt from the screening requirements under this section if the provider is under the direct and constant visual supervision of persons who meet the screening requirements of this section. Such exemption expires 90 days after the direct service provider first provides care or services to clients, has access to a client's living areas, or has access to a client's funds or personal property.

(2) EXEMPTIONS FROM DISQUALIFICATION.—The agency may grant exemptions from disqualification from working with children or adults with developmental disabilities only as provided in s. 435.07.

(3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE CRIMINAL RECORDS CHECKS.—The costs of processing fingerprints and the state criminal records checks shall be borne by the employer or by the employee or individual who is being screened.

~~(4) TERMINATION EXCLUSION FROM OWNING, OPERATING, OR BEING EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY; HEARINGS PROVIDED.—~~

(a) The agency shall deny, suspend, terminate, or revoke a license, certification, rate agreement, purchase order, or contract, or pursue other remedies provided in s. 393.0673, s. 393.0675, or s. 393.0678 in addition to or in lieu of denial, suspension, termination, or revocation for failure to comply with this section.

(b) When the agency has reasonable cause to believe that grounds for denial or termination of employment exist, it shall notify, in writing, the employer and the person direct service provider affected, stating the specific record that ~~which~~ indicates noncompliance with the standards in this section.

(c) The procedures established for hearing under chapter 120 shall be available to the employer and the person affected direct service provider in order to present evidence relating either to the accuracy of the basis of exclusion or to the denial of an exemption from disqualification.

(d) Refusal on the part of an employer to dismiss a manager, supervisor, or direct service provider who has been found to be in noncompliance with standards of this section shall result in automatic denial, termination, or revocation of the license or, certification, rate agreement, purchase order, or contract, in addition to any other remedies pursued by the agency.

Section 17. Section 393.0657, Florida Statutes, is amended to read:

393.0657 Persons not required to be refingerprinted or rescreened.—Persons who have undergone any portion of the background screening required under s. 393.0655 within the last 12 months are ~~Any provision of law to the contrary notwithstanding, human resource personnel who have been~~

~~fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, and teachers who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6), shall not be required to repeat such screening be refingerprinted or rescreened in order to comply with the any direct service provider screening or fingerprinting requirements. Such persons are responsible for providing documentation of the screening and shall undergo screening for any remaining background screening requirements that have never been conducted or have not been completed within the last 12 months.~~

Section 18. Section 393.066, Florida Statutes, is amended to read:

~~393.066 Community services and treatment for persons who are developmentally disabled.—~~

(1) ~~The agency shall plan, develop, organize, and implement its programs of services and treatment for persons with developmental disabilities who are developmentally disabled to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible. All elements of community-based services shall be made available, and eligibility for these services shall be consistent across the state. In addition, all purchased services shall be approved by the agency.~~

(2) ~~All services needed shall be purchased instead of provided directly by the agency, when such arrangement is more cost-efficient than having those services provided directly. All purchased services must be approved by the agency.~~

(3) ~~Community-based services that are medically necessary to prevent institutionalization shall, to the extent of available resources, include:~~

~~(a) Adult day training habilitation services, including developmental training services.~~

~~(b) Family care services.~~

~~(c) Guardian advocate referral services.~~

~~(d) Medical/dental services, except that medical services shall not be provided to clients with spina bifida except as specifically appropriated by the Legislature.~~

~~(e) Parent training.~~

~~(f) Personal care services.~~

~~(g)(f) Recreation.~~

- ~~(h)(g)~~ Residential facility services.
- ~~(i)(h)~~ Respite services.
- ~~(j)(i)~~ Social services.
- ~~(k)(j)~~ Specialized therapies.
- ~~(l)(k)~~ Supported employment, ~~including enclave, job coach, mobile work crew, and follow-along services.~~
- ~~(m)(l)~~ Supported living.
- ~~(n)(m)~~ Training, including behavioral-analysis services ~~behavioral programming.~~
- ~~(o)(n)~~ Transportation.
- ~~(p)(o)~~ Other habilitative and rehabilitative services as needed.
- (4) The agency shall utilize the services of private businesses, not-for-profit organizations, and units of local government whenever such services are more cost-efficient than such services provided directly by the department, including arrangements for provision of residential facilities.
- (5) In order to improve the potential for utilization of more cost-effective, community-based residential facilities, the agency shall promote the state-wide development of day habilitation services for clients who live with a direct service provider in a community-based residential facility and who do not require 24-hour-a-day care in a hospital or other health care institution, but who may, in the absence of day habilitation services, require admission to a developmental disabilities institution. Each day service facility shall provide a protective physical environment for clients, ensure that direct service providers meet minimum screening standards as required in s. 393.0655, make available to all day habilitation service participants at least one meal on each day of operation, provide facilities to enable participants to obtain needed rest while attending the program, as appropriate, and provide social and educational activities designed to stimulate interest and provide socialization skills.
- (6) To promote independence and productivity, the agency shall provide supports and services, within available resources, to assist clients enrolled in Medicaid waivers who choose to pursue gainful employment.
- (7) For the purpose of making needed community-based residential facilities available at the least possible cost to the state, the agency is authorized to lease privately owned residential facilities under long-term rental agreements, if such rental agreements are projected to be less costly to the state over the useful life of the facility than state purchase or state construction of such a facility.
- (8) The agency may adopt rules providing definitions, eligibility criteria, and procedures for the purchase of services ~~to ensure compliance with fed-~~

eral laws or regulations that apply to services provided pursuant to this section.

Section 19. Section 393.067, Florida Statutes, is amended to read:

~~393.067 Facility licensure of residential facilities and comprehensive transitional education programs.—~~

(1) The agency shall provide through its licensing authority and by rule license application procedures, a system of provider qualifications, facility and client care standards, requirements for client records, requirements for staff qualifications and training criteria for meeting standards, and requirements for monitoring foster care for residential facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs that serve agency clients.

(2) The agency shall conduct annual inspections and reviews of residential facilities and comprehensive transitional education programs licensed under this section annually.

(3) An application for a license under this section must for a residential facility or a comprehensive transitional education program shall be made to the agency on a form furnished by it and shall be accompanied by the appropriate license fee.

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

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

(b) The location of the facility or program for which a license is sought.

(c) The name of the person or persons under whose management or supervision the facility or program will be conducted.

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

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

(f) A description of the types of services and treatment to be provided by the facility or program.

(g) Information relating to the number, experience, and training of the employees of the facility or program.

(h) Certification that the staff of the facility or program will receive training to detect and prevent sexual abuse of residents and clients.

(i) Such other information as the agency determines is necessary to carry out the provisions of this chapter.

~~(5) The applicant shall submit evidence which establishes the good moral character of the manager or supervisor of the facility or program and the direct service providers in the facility or program and its component centers or units. A license may be issued if all the screening materials have been timely submitted; however, a license may not be issued or renewed if any of the direct service providers have failed the screening required by s. 393.0655.~~

~~(a)1. A licensed residential facility or comprehensive transitional education program which applies for renewal of its license shall submit to the agency a list of direct service providers who have worked on a continuous basis at the applicant facility or program since submitting fingerprints to the agency or the Department of Children and Family Services, identifying those direct service providers for whom a written assurance of compliance was provided by the agency or department and identifying those direct service providers who have recently begun working at the facility or program and are awaiting the results of the required fingerprint check along with the date of the submission of those fingerprints for processing. The agency shall by rule determine the frequency of requests to the Department of Law Enforcement to run state criminal records checks for such direct service providers except for those direct service providers awaiting the results of initial fingerprint checks for employment at the applicant facility or program. The agency shall review the records of the direct service providers at the applicant facility or program with respect to the crimes specified in s. 393.0655 and shall notify the facility or program of its findings. When disposition information is missing on a criminal record, it is the responsibility of the person being screened, upon request of the agency, to obtain and supply within 30 days the missing disposition information to the agency. Failure to supply the missing information within 30 days or to show reasonable efforts to obtain such information shall result in automatic disqualification.~~

~~2. The applicant shall sign an affidavit under penalty of perjury stating that all new direct service providers have been fingerprinted and that the facility's or program's remaining direct service providers have worked at the applicant facility or program on a continuous basis since being initially screened at that facility or program or have a written assurance of compliance from the agency or department.~~

~~(5)(b) As a prerequisite for issuance of an the initial or renewal license, the applicant, and any manager, supervisor, and staff member of the direct service provider of a facility or program licensed under this section, must have submitted to background screening as required under s. 393.0655. A license may not be issued or renewed if the applicant or any manager, supervisor, or staff member of the direct service provider has failed background screenings as required under s. 393.0655. The agency shall determine by rule the frequency of background screening. The applicant shall submit with each initial or renewal application a signed affidavit under penalty of perjury stating that the applicant and any manager, supervisor, or staff member of the direct service provider is in compliance with all requirements for background screening. to a residential facility or comprehensive transitional education program:~~

~~1.—The applicant shall submit to the agency a complete set of fingerprints, taken by an authorized law enforcement agency or an employee of the agency who is trained to take fingerprints, for the manager, supervisor, or direct service providers of the facility or program;~~

~~2.—The agency shall submit the fingerprints to the Department of Law Enforcement for state processing and for federal processing by the Federal Bureau of Investigation; and~~

~~3.—The agency shall review the record of the manager or supervisor with respect to the crimes specified in s. 393.0655(1) and shall notify the applicant of its findings. When disposition information is missing on a criminal record, it is the responsibility of the manager or supervisor, upon request of the agency, to obtain and supply within 30 days the missing disposition information to the agency. Failure to supply the missing information within 30 days or to show reasonable efforts to obtain such information shall result in automatic disqualification.~~

~~(c) The agency or a residential facility or comprehensive transitional education program may not use the criminal records or juvenile records of a person obtained under this subsection for any purpose other than determining if that person meets the minimum standards for good moral character for a manager or supervisor of, or direct service provider in, such a facility or program. The criminal records or juvenile records obtained by the agency or a residential facility or comprehensive transitional education program for determining the moral character of a manager, supervisor, or direct service provider are exempt from s. 119.07(1).~~

~~(6) Each applicant for licensure as an intermediate care facility for the developmentally disabled must comply with the following requirements:~~

~~(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual who is responsible for the daily operation of the facility, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the center, including billings for resident care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).~~

~~(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.~~

~~(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).~~

~~(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the~~

standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

~~(e) Each applicant must submit to the agency, with its application, a description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interests under the Medicaid or Medicare programs shall be accepted in lieu of this submission.~~

~~(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.~~

~~(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

~~(6)(7) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the facility or program in accordance with the requirements of this chapter and adopted all rules promulgated hereunder.~~

~~(7)(8) The agency shall adopt rules establishing minimum standards for licensure of residential facilities and comprehensive transitional education programs licensed under this section, including rules requiring facilities and programs to train staff to detect and prevent sexual abuse of residents and clients, minimum standards of quality and adequacy of client care, incident-reporting requirements, and uniform firesafety standards established by the State Fire Marshal which are appropriate to the size of the facility or of the component centers or units of the program.~~

~~(8)(9) The agency and the Agency for Health Care Administration, after consultation with the Department of Community Affairs, shall adopt rules for foster care residential facilities, group home facilities, and residential habilitation centers which establish under the respective regulatory jurisdiction of each establishing minimum standards for the preparation and annual update of a comprehensive emergency management plan. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan for all comprehensive transitional education programs and for homes serving individuals who have complex medical conditions is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the agency and the Department of Community Affairs following agencies, at a minimum, are given the opportunity to review the plan: the Agency for Health Care Administration, the Agency for Persons with Disabilities, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.~~

~~(9)(10) The agency may conduct unannounced inspections to determine compliance by foster care residential facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs with the applicable provisions of this chapter and the rules adopted pursuant hereto, including the rules adopted for training staff of a facility or a program to detect and prevent sexual abuse of residents and clients. The facility or program shall make copies of inspection reports available to the public upon request.~~

~~(11) An alternative living center and an independent living education center, as defined in s. 393.063, shall be subject to the provisions of s. 419.001, except that such centers shall be exempt from the 1,000-foot radius requirement of s. 419.001(2) if:~~

~~(a) Such centers are located on a site zoned in a manner so that all the component centers of a comprehensive transition education center may be located thereon; or~~

~~(b) There are no more than three such centers within said radius of 1,000 feet.~~

~~(10)(12) Each residential facility or comprehensive transitional education program licensed under this section by the agency shall forward annually to the agency a true and accurate sworn statement of its costs of providing care to clients funded by the agency.~~

~~(11)(13) The agency may audit the records of any residential facility or comprehensive transitional education program that it has reason to believe may not be in full compliance with the provisions of this section; provided that, any financial audit of such facility or program shall be limited to the records of clients funded by the agency.~~

~~(12)(14) The agency shall establish, for the purpose of control of licensure costs, a uniform management information system and a uniform reporting system with uniform definitions and reporting categories.~~

~~(13)(15) Facilities and programs licensed pursuant to this section shall adhere to all rights specified in s. 393.13, including those enumerated in s. 393.13(4).~~

~~(14)(16) An No unlicensed residential facility or comprehensive transitional education program may not shall receive state funds. A license for the operation of a facility or program shall not be renewed if the licensee has any outstanding fines assessed pursuant to this chapter wherein final adjudication of such fines has been entered.~~

~~(15)(17) The agency is shall not be required to contract with new facilities licensed after October 1, 1989, pursuant to this chapter. Pursuant to chapter 287, the agency shall continue to contract within available resources for residential services with facilities licensed prior to October 1, 1989, if such facilities comply with the provisions of this chapter and all other applicable laws and regulations.~~

Section 20. Section 393.0673, Florida Statutes, is amended to read:

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

(1) The agency may deny, revoke, or suspend a license or impose an administrative fine, not to exceed \$1,000 per violation per day, if the applicant or licensee:

(a) Has falsely represented, or omitted a material fact in its license application submitted under s. 393.067.

(b) Has had prior action taken against it under the Medicaid or Medicare program.

(c) Has failed to comply with the applicable requirements of this chapter or rules applicable to the applicant or licensee for a violation of any provision of s. 393.0655 or s. 393.067 or rules adopted pursuant thereto.

(2) All hearings shall be held within the county in which the licensee or applicant operates or applies for a license to operate a facility as defined herein.

~~(3)(2)~~ The agency, as a part of any final order issued by it under the provisions of this chapter, may impose such fine as it deems proper, except that such fine may not exceed \$1,000 for each violation. Each day a violation of this chapter occurs constitutes a separate violation and is subject to a separate fine, but in no event may the aggregate amount of any fine exceed \$10,000. Fines paid by any facility licensee under the provisions of this subsection shall be deposited in the Resident Protection Trust Fund and expended as provided in s. 400.063.

~~(4)(3)~~ The agency may issue an order immediately suspending or revoking a license when it determines that any condition in the facility presents a danger to the health, safety, or welfare of the residents in the facility.

~~(5)(4)~~ The agency may impose an immediate moratorium on admissions to any facility when the department determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility.

(6) The agency shall establish by rule criteria for evaluating the severity of violations and for determining the amount of fines imposed.

Section 21. Subsection (1) of section 393.0674, Florida Statutes, is amended to read:

393.0674 Penalties.—

(1) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

(a) Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications to be a direct service provider;

(b) Provide or attempt to provide supports or services with direct service providers who are not in compliance ~~noncompliance~~ with the background screening requirements ~~minimum standards for good moral character as contained in this chapter~~; or

(c) Use information from the criminal records or central abuse hotline obtained under s. 393.0655, s. 393.066, or s. 393.067 for any purpose other than screening that person for employment as specified in those sections or release such information to any other person for any purpose other than screening for employment as specified in those sections.

Section 22. Subsection (3) of section 393.0675, Florida Statutes, is amended to read:

393.0675 Injunctive proceedings authorized.—

(3) The agency may institute proceedings for an injunction in a court of competent jurisdiction to terminate the operation of a provider of supports or services if such provider has willfully and knowingly refused to comply with the screening requirement for direct service providers or has refused to terminate direct service providers found not to be in compliance with such ~~the requirements for good moral character.~~

Section 23. Subsection (1) of section 393.0678, Florida Statutes, is amended to read:

393.0678 Receivership proceedings.—

(1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for ~~an intermediate care facility for the developmentally disabled~~, a residential habilitation center, or a group home facility owned and operated by a corporation or partnership when any of the following conditions exist:

(a) Any person is operating a facility without a license and refuses to make application for a license as required by s. 393.067 ~~or, in the case of an intermediate care facility for the developmentally disabled, as required by ss. 393.067 and 400.062.~~

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

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

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

Section 24. Subsections (1), (2), (3), (5), and (7) of section 393.068, Florida Statutes, are amended to read:

393.068 Family care program.—

(1) The family care program is established for the purpose of providing services and support to families and individuals with developmental disabilities in order to maintain the individual in the home environment and avoid costly out-of-home residential placement. Services and support available to families and individuals with developmental disabilities shall emphasize community living and self-determination and enable individuals with developmental disabilities to enjoy typical lifestyles. One way to accomplish this is to recognize that families are the greatest resource available to individuals who have developmental disabilities and must be supported in their role as primary care givers.

(2) Services and support authorized under ~~the family care~~ this program shall, to the extent of available resources, include the services listed under s. 393.066 and, in addition, shall include, but not be limited to:

- (a) Attendant care.
- (b) Barrier-free modifications to the home.
- (c) Home visitation by agency workers.
- (d) In-home subsidies.
- (e) Low-interest loans.
- (f) Modifications for vehicles used to transport the individual with a developmental disability.
- (g) Facilitated communication.
- (h) Family counseling.
- (i) Equipment and supplies.
- (j) Self-advocacy training.
- (k) Roommate services.
- (l) Integrated community activities.
- (m) Emergency services.
- (n) Support coordination.
- ~~(o) Supported employment.~~
- (o)(p) Other support services as identified by the family or individual.

(3) When it is determined by the agency to be more cost-effective and in the best interest of the client to maintain such client in the home of a direct service provider, the parent or guardian of the client or, if competent, the client may enroll the client in the family care program. The direct service provider of a client enrolled in the family care program shall be reimbursed

according to a rate schedule set by the agency, ~~except that~~ in-home subsidies ~~cited in paragraph (2)(d)~~ shall be provided in accordance with ~~according to s. 393.0695 and are not subject to any other payment method or rate schedule provided for in this section.~~

(5) The agency may contract for the provision of any portion of the services required by the program, except for in-home subsidies ~~cited in paragraph (2)(d)~~, which shall be provided pursuant to s. 393.0695. ~~Otherwise, purchase of service contracts shall be used~~ whenever the services so provided are more cost-efficient than those provided by the agency.

(7) To provide a range of personal care services for the client, the use of volunteers shall be maximized. The agency shall assure appropriate insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments under the program.

Section 25. Subsection (3) of section 393.0695, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

393.0695 Provision of in-home subsidies.—

(3) In-home subsidies must be based on an individual determination of need and must not exceed maximum amounts set by the agency and reassessed by the agency quarterly ~~annually~~.

(5) The agency shall adopt rules to administer this section, including standards and procedures governing eligibility for services, selection of housing, selection of providers, and planning for services, and requirements for ongoing monitoring.

Section 26. Subsection (2) of section 393.075, Florida Statutes, is amended to read:

393.075 General liability coverage.—

(2) The Division of Risk Management of the Department of Financial Services shall provide coverage through the agency to any person who owns or operates a foster care facility or group home facility solely for the agency, who cares for children placed by ~~developmental services staff of the agency,~~ and who is licensed pursuant to s. 393.067 to provide such supervision and care in his or her place of residence. The coverage shall be provided from the general liability account of the State Risk Management Trust Fund. The coverage is limited to general liability claims arising from the provision of supervision and care of children in a foster care facility or group home facility pursuant to an agreement with the agency and pursuant to guidelines established through policy, rule, or statute. Coverage shall be subject to the limits provided in ss. 284.38 and 284.385, and the exclusions set forth therein, together with other exclusions as may be set forth in the certificate of coverage issued by the trust fund. A person covered under the general liability account pursuant to this subsection shall immediately notify the Division of Risk Management of the Department of Financial Services of any potential or actual claim.

Section 27. Section 393.11, Florida Statutes, is amended to read:

393.11 Involuntary admission to residential services.—

(1) JURISDICTION.—When a person is mentally retarded and requires involuntary admission to residential services provided by the agency, the circuit court of the county in which the person resides shall have jurisdiction to conduct a hearing and enter an order involuntarily admitting the person in order that the person may receive the care, treatment, habilitation, and rehabilitation which the person needs. For the purpose of identifying mental retardation, diagnostic capability shall be established by the agency. Except as otherwise specified, the proceedings under this section shall be governed by the Florida Rules of Civil Procedure.

(2) PETITION.—

(a) A petition for involuntary admission to residential services may be executed by a petitioning commission. ~~For proposed involuntary admission to residential services arising out of chapter 916, the petition may be filed by a petitioning commission, the agency, the state attorney of the circuit from which the defendant was committed, or the defendant's attorney.~~

(b) The petitioning commission shall consist of three persons. One of these persons shall be a physician licensed and practicing under chapter 458 or chapter 459.

(c) The petition shall be verified and shall:

1. State the name, age, and present address of the commissioners and their relationship to the person with mental retardation or autism;

2. State the name, age, county of residence, and present address of the person with mental retardation or autism;

3. Allege that the commission believes that the person needs involuntary residential services and specify the factual information on which the ~~such~~ belief is based;

4. Allege that the person lacks sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to provide for the person's well-being or is likely to physically injure others if allowed to remain at liberty; and

5. State which residential setting is the least restrictive and most appropriate alternative and specify the factual information on which the ~~such~~ belief is based.

(d) The petition shall be filed in the circuit court of the county in which the person with mental retardation or autism resides.

(3) NOTICE.—

(a) Notice of the filing of the petition shall be given to the individual and his or her legal guardian. The notice shall be given both verbally and in

writing in the language of the client, or in other modes of communication of the client, and in English. Notice shall also be given to such other persons as the court may direct. The petition for involuntary admission to residential services shall be served with the notice.

(b) Whenever a motion or petition has been filed pursuant to s. 916.303 to dismiss criminal charges against a defendant with retardation or autism, and a petition is filed to involuntarily admit the defendant to residential services under this section, the notice of the filing of the petition shall also be given to the defendant's attorney, ~~and to the state attorney of the circuit from which the defendant was committed,~~ and the agency.

(c) The notice shall state that a hearing shall be set to inquire into the need of the person with mental retardation or autism for involuntary residential services. The notice shall also state the date of the hearing on the petition.

(d) The notice shall state that the individual with mental retardation or autism has the right to be represented by counsel of his or her own choice and that, if the person cannot afford an attorney, the court shall appoint one.

(4) ~~AGENCY DEVELOPMENTAL SERVICES PARTICIPATION.—~~

(a) Upon receiving the petition, the court shall immediately order the developmental services program of the agency to examine the person being considered for involuntary admission to residential services.

(b) ~~Following examination, the agency shall file~~ After the developmental services program examines the person, a written report shall be filed with the court not less than 10 working days before the date of the hearing. The report ~~must~~ shall be served on the petitioner, the person with mental retardation, and the person's attorney at the time the report is filed with the court.

(c) The report ~~must~~ shall contain the findings of the ~~agency's developmental services program~~ agency's development evaluation, ~~and any recommendations deemed appropriate,~~ and a determination of whether the person is eligible for services under this chapter.

(5) EXAMINING COMMITTEE.—

(a) Upon receiving the petition, the court shall immediately appoint an examining committee to examine the person being considered for involuntary admission to residential services ~~provided by of the developmental services program~~ provided by of the ~~developmental services program~~ of the agency.

(b) The court shall appoint no fewer than three disinterested experts who have demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons with mental retardation. The committee ~~shall~~ must include at least one licensed and qualified physician, one licensed and qualified psychologist, and one qualified professional with a minimum of a masters degree in social work, special education, or vocational rehabilitation counseling, to examine the person and to testify at the hearing on the involuntary admission to residential services.

(c) Counsel for the person who is being considered for involuntary admission to residential services and counsel for the petition commission has shall ~~have~~ the right to challenge the qualifications of those appointed to the examining committee.

(d) Members of the committee may shall not be employees of the agency or be associated with each other in practice or in employer-employee relationships. Members of the committee may shall not have served as members of the petitioning commission. Members of the committee may shall not be employees of the members of the petitioning commission or be associated in practice with members of the commission.

(e) The committee shall prepare a written report for the court. The report must shall explicitly document the extent that the person meets the criteria for involuntary admission. The report, and expert testimony, must shall include, but not be limited to:

1. The degree of the person's mental retardation and whether, using diagnostic capabilities established by the agency, the person is eligible for agency services;

2. Whether, because of the person's degree of mental retardation, the person:

a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065;

b. Lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and if not provided would result in a real and present threat of substantial harm to the person's well-being; or

c. Is likely to physically injure others if allowed to remain at liberty.

3. The purpose to be served by residential care;

4. A recommendation on the type of residential placement which would be the most appropriate and least restrictive for the person; and

5. The appropriate care, habilitation, and treatment.

(f) The committee shall file the report with the court not less than 10 working days before the date of the hearing. The report shall be served on the petitioner, the person with mental retardation, and the person's attorney at the time the report is filed with the court, and the agency.

(g) Members of the examining committee shall receive a reasonable fee to be determined by the court. The fees are to be paid from the general revenue fund of the county in which the person with mental retardation resided when the petition was filed.

(h) The agency shall develop and prescribe by rule one or more standard forms to be used as a guide for members of the examining committee.

(6) COUNSEL; GUARDIAN AD LITEM.—

(a) The person with mental retardation shall be represented by counsel at all stages of the judicial proceeding. In the event the person is indigent and cannot afford counsel, the court shall appoint a public defender not less than 20 working days before the scheduled hearing. The person's counsel shall have full access to the records of the service provider and the agency. In all cases, the attorney shall represent the rights and legal interests of the person with mental retardation, regardless of who may initiate the proceedings or pay the attorney's fee.

(b) If the attorney, during the course of his or her representation, reasonably believes that the person with mental retardation cannot adequately act in his or her own interest, the attorney may seek the appointment of a guardian ad litem. A prior finding of incompetency is not required before a guardian ad litem is appointed pursuant to this section.

(7) HEARING.—

(a) The hearing for involuntary admission shall be conducted, and the order shall be entered, in the county in which the petition is filed ~~person is residing or be as convenient to the person as may be consistent with orderly procedure~~. The hearing shall be conducted in a physical setting not likely to be injurious to the person's condition.

(b) A hearing on the petition ~~must~~ shall be held as soon as practicable after the petition is filed, but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted.

(c) The court may appoint a general or special magistrate to preside. Except as otherwise specified, the magistrate's proceeding shall be governed by the rule 1.490, Florida Rules of Civil Procedure.

(d) The person with mental retardation shall be physically present throughout the entire proceeding. If the person's attorney believes that the person's presence at the hearing is not in the person's best interest, the person's presence may be waived once the court has seen the person and the hearing has commenced.

(e) The person has ~~shall have~~ the right to present evidence and to cross-examine all witnesses and other evidence alleging the appropriateness of the person's admission to residential care. Other relevant and material evidence regarding the appropriateness of the person's admission to residential services; the most appropriate, least restrictive residential placement; and the appropriate care, treatment, and habilitation of the person, including written or oral reports, may be introduced at the hearing by any interested person.

(f) The petitioning commission may be represented by counsel at the hearing. The petitioning commission shall have the right to call witnesses, present evidence, cross-examine witnesses, and present argument on behalf of the petitioning commission.

(g) All evidence shall be presented according to chapter 90. The burden of proof shall be on the party alleging the appropriateness of the person's admission to residential services. The burden of proof shall be by clear and convincing evidence.

(h) All stages of each proceeding shall be stenographically reported.

(8) ORDER.—

(a) In all cases, the court shall issue written findings of fact and conclusions of law to support its decision. The order must ~~shall~~ state the basis for the ~~such~~ findings of fact.

(b) An order of involuntary admission to residential services may ~~shall~~ not be entered unless the court finds that:

1. The person is mentally retarded or autistic;

2. Placement in a residential setting is the least restrictive and most appropriate alternative to meet the person's needs; and

3. Because of the person's degree of mental retardation or autism, the person:

a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065 and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to the person's well-being; or

b. Is likely to physically injure others if allowed to remain at liberty.

(c) If the evidence presented to the court is not sufficient to warrant involuntary admission to residential services, but the court feels that residential services would be beneficial, the court may recommend that the person seek voluntary admission.

(d) If an order of involuntary admission to residential services provided by the ~~developmental services program of the~~ agency is entered by the court, a copy of the written order shall be served upon the person, the person's counsel, the agency, and the state attorney and the person's defense counsel, if applicable. The order of involuntary admission sent to the agency shall also be accompanied by a copy of the examining committee's report and other reports contained in the court file.

(e) Upon receiving the order, the agency shall, within 45 days, provide the court with a copy of the person's family or individual support plan and copies of all examinations and evaluations, outlining the treatment and rehabilitative programs. The agency shall document that the person has been placed in the most appropriate, least restrictive and cost-beneficial residential setting ~~facility~~. A copy of the family or individual support plan and other examinations and evaluations shall be served upon the person and the person's counsel at the same time the documents are filed with the court.

(9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO RESIDENTIAL SERVICES.—

(a) ~~In no case shall~~ An order authorizing an admission to residential care ~~may not~~ be considered an adjudication of mental incompetency. ~~A No person is not shall be~~ presumed incompetent solely by reason of the person's involuntary admission to residential services. ~~A No person may not shall be~~ denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States.

(b) Any minor involuntarily admitted to residential services shall, upon reaching majority, be given a hearing to determine the continued appropriateness of his or her involuntary admission.

(10) COMPETENCY.—

(a) The issue of competency shall be separate and distinct from a determination of the appropriateness of involuntary admission to residential services for a condition of mental retardation.

(b) The issue of the competency of a person with mental retardation for purposes of assigning guardianship shall be determined in a separate proceeding according to the procedures and requirements of chapter 744 ~~and the Florida Probate Rules~~. The issue of the competency of a person with mental retardation or autism for purposes of determining whether the person is competent to proceed in a criminal trial shall be determined in accordance with chapter 916.

(11) CONTINUING JURISDICTION.—The court which issues the initial order for involuntary admission to residential services under this section ~~has shall have~~ continuing jurisdiction to enter further orders to ensure that the person is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behavioral programming. Upon request, the court may transfer the continuing jurisdiction to the court where a client resides if it is different from where the original involuntary admission order was issued. ~~A No person may not~~ be released from an order for involuntary admission to residential services except by the order of the court.

(12) APPEAL.—

(a) Any party to the proceeding who is affected by an order of the court, including the agency, may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure.

(b) The filing of an appeal by the person with mental retardation shall stay admission of the person into residential care. The stay shall remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues.

(13) HABEAS CORPUS.—At any time and without notice, any person involuntarily admitted into residential care ~~to the developmental services~~

program of the agency, or the person's parent or legal guardian in his or her behalf, is entitled to file a petition for a writ of habeas corpus to question the cause, legality, and appropriateness of the person's involuntary admission. Each person, or the person's parent or legal guardian, shall receive specific written notice of the right to petition for a writ of habeas corpus at the time of his or her involuntary placement.

Section 28. Section 393.122, Florida Statutes, is amended to read:

393.122 Applications for continued residential services.—

(1) If a client is discharged from residential services under the provisions of s. 393.115 ~~this section~~, application for needed services shall be encouraged.

(2) ~~A~~ No client receiving services from a state agency may not the department as of July 1, 1977, shall be denied continued services due to any change in eligibility requirements by chapter 77-335, Laws of Florida.

Section 29. Section 393.13, Florida Statutes, is amended to read:

393.13 ~~Personal~~ Treatment of persons with developmental disabilities who are developmentally disabled.—

(1) SHORT TITLE.—This section ~~aet~~ shall be known as “The Bill of Rights of Persons with Developmental Disabilities ~~Who are Developmentally Disabled.~~”

(2) LEGISLATIVE INTENT.—

(a) The Legislature finds and declares that the system of care provided to individuals with developmental disabilities ~~who are developmentally disabled~~ must be designed to meet the needs of the clients as well as protect the integrity of their legal and human rights.

(b) The Legislature further finds and declares that the design and delivery of treatment and services to persons with developmental disabilities ~~who are developmentally disabled~~ should be directed by the principles of self-determination ~~normalization~~ and therefore should:

1. Abate the use of large institutions.

2. Continue the development of community-based services ~~that which~~ provide reasonable alternatives to institutionalization in settings that are least restrictive to the client and that provide opportunities for inclusion in the community.

3. Provide training and education ~~that to individuals who are developmentally disabled which~~ will maximize their potential to lead independent and productive lives and ~~that which~~ will afford opportunities for outward mobility from institutions.

4. Reduce the use of sheltered workshops and other noncompetitive employment day activities and promote opportunities for those gainful employ-

ment for persons with developmental disabilities who choose to seek such employment.

(c) It is the intent of the Legislature that duplicative and unnecessary administrative procedures and practices shall be eliminated, and areas of responsibility shall be clearly defined and consolidated in order to economically utilize present resources. Furthermore, personnel providing services should be sufficiently qualified and experienced to meet the needs of the clients, and they must be sufficient in number to provide treatment in a manner which is beneficial to the clients.

(d) It is the intent of the Legislature:

1. To articulate the existing legal and human rights of persons with developmental disabilities ~~who are developmentally disabled~~ so that they may be exercised and protected. Persons with developmental disabilities shall have all the rights enjoyed by citizens of the state and the United States.

2. To provide a mechanism for the identification, evaluation, and treatment of persons with developmental disabilities.

3. To divert those individuals from institutional commitment who, by virtue of comprehensive assessment, can be placed in less costly, more effective community environments and programs.

4. To fund improvements in the program in accordance with the availability of state resources and yearly priorities determined by the Legislature.

5. To ensure that persons with developmental disabilities receive treatment and habilitation which fosters the developmental potential of the individual.

6. To provide programs for the proper habilitation and treatment of persons with developmental disabilities which shall include, but not be limited to, comprehensive medical/dental care, education, recreation, specialized therapies, training, social services, transportation, guardianship, family care programs, day habilitation services, and habilitative and rehabilitative services suited to the needs of the individual regardless of age, degree of disability, or handicapping condition. It is the intent of the Legislature that no person with developmental disabilities shall be deprived of these enumerated services by reason of inability to pay.

7. To fully effectuate the principles of self-determination normalization principle through the establishment of community services for persons with developmental disabilities as a viable and practical alternative to institutional care at each stage of individual life development and to promote opportunities for community inclusion. If care in a residential facility becomes necessary, it shall be in the least restrictive setting.

8. To minimize and achieve an ongoing reduction in the use of restraint and seclusion in facilities and programs serving persons with developmental disabilities.

(e) It is the clear, unequivocal intent of this act to guarantee individual dignity, liberty, pursuit of happiness, and protection of the civil and legal rights of persons with developmental disabilities.

(3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES.—The rights described in this subsection shall apply to all persons with developmental disabilities, whether or not such persons are clients of the agency.

(a) Persons with developmental disabilities shall have a right to dignity, privacy, and humane care, including the right to be free from sexual abuse in residential facilities.

(b) Persons with developmental disabilities shall have the right to religious freedom and practice. Nothing shall restrict or infringe on a person's right to religious preference and practice.

(c) Persons with developmental disabilities shall receive services, within available sources, which protect the personal liberty of the individual and which are provided in the least restrictive conditions necessary to achieve the purpose of treatment.

(d) Persons with developmental disabilities ~~who are developmentally disabled~~ shall have a right to participate in an appropriate program of quality education and training services, within available resources, regardless of chronological age or degree of disability. Such persons may be provided with instruction in sex education, marriage, and family planning.

(e) Persons with developmental disabilities ~~who are developmentally disabled~~ shall have a right to social interaction and to participate in community activities.

(f) Persons with developmental disabilities ~~who are developmentally disabled~~ shall have a right to physical exercise and recreational opportunities.

(g) Persons with developmental disabilities ~~who are developmentally disabled~~ shall have a right to be free from harm, including unnecessary physical, chemical, or mechanical restraint, isolation, excessive medication, abuse, or neglect.

(h) Persons with developmental disabilities ~~who are developmentally disabled~~ shall have a right to consent to or refuse treatment, subject to the provisions of s. 393.12(2)(a) or chapter 744.

(i) No otherwise qualified person shall, by reason of having a developmental disability, be excluded from participation in, or be denied the benefits of, or be subject to discrimination under, any program or activity which receives public funds, and all prohibitions set forth under any other statute shall be actionable under this statute.

(j) No otherwise qualified person shall, by reason of having a developmental disability, be denied the right to vote in public elections.

(4) CLIENT RIGHTS.—For purposes of this subsection, the term “client,” as defined in s. 393.063, shall also include any person served in a facility licensed under pursuant to s. 393.067.

(a) Clients shall have an unrestricted right to communication:

1. Each client ~~is shall be~~ allowed to receive, send, and mail sealed, unopened correspondence. ~~A~~ No client’s incoming or outgoing correspondence may not shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable examination of such mail and regulate the disposition of such items or substances.

2. Clients in residential facilities shall be afforded reasonable opportunities for telephone communication, to make and receive confidential calls, unless there is reason to believe that the content of the telephone communication may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable observation and monitoring to the telephone communication.

3. Clients ~~shall~~ have an unrestricted right to visitation subject to reasonable rules of the facility. However, ~~nothing in~~ this provision may not shall be construed to permit infringement upon other clients’ rights to privacy.

(b) Each client has the right to the possession and use of his or her own clothing and personal effects, except in those specific instances where the use of some of these items as reinforcers is essential for training the client as part of an appropriately approved behavioral program. The chief administrator of the facility may take temporary custody of such effects when it is essential to do so for medical or safety reasons. Custody of such personal effects shall be promptly recorded in the client’s record, and a receipt for such effects shall be immediately given to the client, if competent, or the client’s parent or legal guardian.

1. All money belonging to a client held by the agency shall be held in compliance with s. 402.17(2).

2. All interest on money received and held for the personal use and benefit of a client shall be the property of that client and may shall not accrue to the general welfare of all clients or be used to defray the cost of residential care. Interest so accrued shall be used or conserved for the personal use or benefit of the individual client as provided in s. 402.17(2).

3. Upon the discharge or death of a client, a final accounting shall be made of all personal effects and money belonging to the client held by the agency. All ~~such~~ personal effects and money, including interest, shall be promptly turned over to the client or his or her heirs.

(c) Each client shall receive prompt and appropriate medical treatment and care for physical and mental ailments and for the prevention of any illness or disability. Medical treatment shall be consistent with the accepted standards of medical practice in the community.

1. Medication shall be administered only at the written order of a physician. Medication shall not be used as punishment, for the convenience of staff, as a substitute for implementation of an individual or family support plan or behavior-analysis services ~~behavior modification programming~~, or in unnecessary or excessive quantities.

2. Daily notation of medication received by each client in a residential facility shall be kept in the client's record.

3. Periodically, but no less frequently than every 6 months, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. All prescriptions shall have a termination date.

4. When pharmacy services are provided at any residential facility, such services shall be directed or supervised by a professionally competent pharmacist licensed according to the provisions of chapter 465.

5. Pharmacy services shall be delivered in accordance with the provisions of chapter 465.

6. Prior to instituting a plan of experimental medical treatment or carrying out any necessary surgical procedure, express and informed consent shall be obtained from the client, if competent, or the client's parent or legal guardian. Information upon which the client shall make necessary treatment and surgery decisions shall include, but not be limited to:

- a. The nature and consequences of such procedures.
- b. The risks, benefits, and purposes of such procedures.
- c. Alternate procedures available.

7. When the parent or legal guardian of the client is unknown or unlocatable and the physician is unwilling to perform surgery based solely on the client's consent, a court of competent jurisdiction shall hold a hearing to determine the appropriateness of the surgical procedure. The client shall be physically present, unless the client's medical condition precludes such presence, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the appropriateness of such procedure. In such proceedings, the burden of proof by clear and convincing evidence shall be on the party alleging the appropriateness of such procedures. The express and informed consent of a person described in subparagraph 6. may be withdrawn at any time, with or without cause, prior to treatment or surgery.

8. The absence of express and informed consent notwithstanding, a licensed and qualified physician may render emergency medical care or treatment to any client who has been injured or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the client.

(d) Each client shall have access to individual storage space for his or her private use.

(e) Each client shall be provided with appropriate physical exercise as prescribed in the client's individual or family support plan. Indoor and outdoor facilities and equipment for such physical exercise shall be provided.

(f) Each client shall receive humane discipline.

(g) ~~A No client may not shall~~ be subjected to a treatment program to eliminate problematic ~~bizarre~~ or unusual behaviors without first being examined by a physician who in his or her best judgment determines that such behaviors are not organically caused.

1. Treatment programs involving the use of noxious or painful stimuli are shall be prohibited.

2. All alleged violations of this paragraph shall be reported immediately to the chief administrator ~~administrative officer~~ of the facility and ~~or the district administrator, the agency head, and the Florida local advocacy council~~. A thorough investigation of each incident shall be conducted and a written report of the finding and results of ~~the such~~ investigation shall be submitted to the chief administrator ~~administrative officer~~ of the facility ~~or the district administrator~~ and to the agency head within 24 hours after ~~of~~ the occurrence or discovery of the incident.

3. The agency shall adopt by rule a system for the oversight of behavioral programs. ~~The Such~~ system shall establish guidelines and procedures governing the design, approval, implementation, and monitoring of all behavioral programs involving clients. The system shall ensure statewide and local review by committees of professionals certified as behavior analysts pursuant to s. 393.17. No behavioral program shall be implemented unless reviewed according to the rules established by the agency under this section. ~~Nothing stated in this section shall prohibit the review of programs by the Florida statewide or local advocacy councils.~~

~~(h) Each client engaged in work programs which require compliance with federal wage and hour laws shall be provided with minimum wage protection and fair compensation for labor in accordance with the federal wage-per-hour regulations.~~

~~(h)(i) Clients shall have the right to be free from the unnecessary use of restraint or seclusion physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to protect the client or others from imminent injury to himself or herself or others. Restraints may shall not be employed as punishment, for the convenience of staff, or as a substitute for a support habilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.~~

~~1. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints, but shall be~~

prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation, and allowance for change of position.

2. ~~Totally enclosed cribs and barred enclosures shall be considered restraints.~~

~~1.3. Daily reports on the employment of restraint or seclusion physical, chemical, or mechanical restraints by those specialists authorized in the use of such restraints shall be made to the appropriate chief administrator of the facility or program licensed under this chapter, and a monthly compilation summary of such reports shall be relayed to the agency's local area office district administrator and the Florida local advocacy council. The monthly reports shall summarize all such cases of restraints, the type used, the duration of usage, and the reasons therefor. The area offices Districts shall submit monthly summaries of these districtwide quarterly reports of these summaries to the agency's central office state Developmental Disabilities Program Office.~~

2.4. ~~The agency shall adopt by rule standards and procedures relating to the use of restraint and seclusion post a copy of the rules adopted under this section in each living unit of residential facilities. Such rules must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion, including individualized plans for the use of restraints or seclusion in emergency situations; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; establish requirements for facility data collection and reporting relating to the use of restraint and seclusion; and establish procedures relating to the documentation of the use of restraint or seclusion in the client's facility or program record. A copy of the rules adopted under this subparagraph section shall be given to the client, parent, guardian or guardian advocate, and all staff members of licensed facilities and programs licensed under this chapter and made a part of all staff preservice and inservice training programs.~~

~~(i)(j)1. Each client shall have a central record. The central record shall be established by the agency at the time that an individual is determined eligible for services, shall be maintained by the client's support coordinator, and must contain information include data pertaining to admission, diagnosis and treatment history, present condition, and such other information as may be required under rules of the agency. The central record is the property of the agency.~~

1.2. Unless waived by the client, if competent, or the client's parent or legal guardian if the client is incompetent, the client's central record shall be confidential and exempt from the provisions of s. 119.07(1), and no part of it shall be released except:

a. The record may be released to physicians, attorneys, and government agencies having need of the record to aid the client, as designated by the client, if competent, or the client's parent or legal guardian, if the client is incompetent.

b. The record shall be produced in response to a subpoena or released to persons authorized by order of court, excluding matters privileged by other provisions of law.

c. The record or any part thereof may be disclosed to a qualified researcher, a staff member of the facility where the client resides, or an employee of the agency when the administrator of the facility or the director of the agency deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

d. Information from the records may be used for statistical and research purposes if the information is abstracted in such a way to protect the identity of individuals.

~~3. All central records for each client in residential facilities shall be kept on uniform forms distributed by the agency. The central record shall accurately summarize each client's history and present condition.~~

2.4. The client, if competent, or the client's parent or legal guardian if the client is incompetent, shall be supplied with a copy of the client's central record upon request.

~~(j)(k)~~ Each client residing in a residential facility who is eligible to vote in public elections according to the laws of the state has ~~shall have~~ the right to vote. Facilities operators shall arrange the means to exercise the client's right to vote.

(5) **LIABILITY FOR VIOLATIONS.**—Any person who violates or abuses any rights or privileges of persons with developmental disabilities ~~who are developmentally disabled~~ provided by this chapter is act ~~shall be~~ liable for damages as determined by law. Any person who acts in good faith compliance with the provisions of this chapter is act ~~shall be~~ immune from civil or criminal liability for actions in connection with evaluation, admission, habilitative programming, education, treatment, or discharge of a client. However, this section does ~~shall~~ not relieve any person from liability if the ~~such~~ person is guilty of negligence, misfeasance, nonfeasance, or malfeasance.

(6) **NOTICE OF RIGHTS.**—Each person with developmental disabilities, if competent, or parent or legal guardian of such person if the person is incompetent, shall promptly receive from the agency or the Department of Education a written copy of this act. Each person with developmental disabilities able to comprehend shall be promptly informed, in the language or other mode of communication which such person understands, of the above legal rights of persons with developmental disabilities.

(7) **RESIDENT GOVERNMENT.**—Each residential facility providing services to clients who are desirous and capable of participating shall initiate and develop a program of resident government to hear the views and

represent the interests of all clients served by the facility. The resident government shall be composed of residents elected by other residents, staff advisers skilled in the administration of community organizations, and, at the option of the resident government, representatives of advocacy groups for persons with developmental disabilities from the community ~~a representative of the Florida local advocacy council. The resident government shall work closely with the Florida local advocacy council and the district administrator to promote the interests and welfare of all residents in the facility.~~

Section 30. Subsections (1), (2), (3), (4), and (5) of section 393.135, Florida Statutes, are amended to read:

393.135 Sexual misconduct prohibited; reporting required; penalties.—

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

(a) “Covered person” ~~“Employee”~~ includes any employee, paid staff member, volunteer, or intern of the agency ~~or the department~~; any person under contract with the agency ~~or the department~~; and any person providing care or support to a client on behalf of the agency ~~department~~ or its providers.

(b) “Sexual activity” means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

(c) “Sexual misconduct” means any sexual activity between a covered person ~~an employee~~ and a client to whom a covered person renders services, care, or support on behalf of the agency or its providers, or between a covered person and another client who lives in the same home as the client to whom a covered person is rendering the services, care, or support, regardless of the consent of the client. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by a covered person ~~an employee~~.

(2) A covered person ~~An employee~~ who engages in sexual misconduct with an individual with a developmental disability who:

(a) ~~Is in the custody of the department;~~

(a)(b) ~~Resides in a residential facility, including any comprehensive transitional education program, developmental disabilities services institution, foster care facility, group home facility, intermediate care facility for the developmentally disabled, or residential habilitation center; or~~

(b)(e) Is eligible to receive ~~Receives services from the agency under this chapter~~ a family care program,

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A covered person ~~An employee~~ may be found guilty of violating this subsection without having committed the crime of sexual battery.

(3) The consent of the client to sexual activity is not a defense to prosecution under this section.

(4) This section does not apply to a covered person ~~an employee~~ who:

(a) ~~is legally married to the client; or~~

(b) ~~Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a client receiving services as described in subsection (2).~~

(5) A covered person ~~An employee~~ who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the ~~department's~~ central abuse hotline of the Department of Children and Family Services and to the appropriate local law enforcement agency. The covered person ~~Such employee~~ shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The covered person ~~employee~~ shall deliver the report to the supervisor or program director, who is responsible for providing copies to the agency's local office and the agency's ~~department's~~ inspector general. ~~The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.~~

Section 31. Section 393.15, Florida Statutes, is amended to read:

393.15 Legislative intent; Community Resources Development Loan Program Trust Fund.—

(1) The Legislature finds and declares that the development of community-based treatment facilities for persons with developmental disabilities ~~who are developmentally disabled~~ is desirable and recommended and should

be encouraged and fostered by the state. The Legislature further recognizes that the development of such facilities is financially difficult for private individuals, due to initial expenditures required to adapt existing structures to the special needs of such persons who are developmentally disabled who may be served in community-based foster care, group home, ~~developmental training~~, and supported employment programs. Therefore, it is the intent of the Legislature intends that the agency by this act to develop and administer a loan program trust fund to provide support and encouragement in the establishment of community-based foster care, group home, ~~developmental training~~, and supported employment programs for persons with developmental disabilities who are developmentally disabled.

~~(2) As used in this section, a foster care, group home, developmental training, or supported employment program may not be a for-profit corporation, but may be a nonprofit corporation, partnership, or sole proprietorship.~~

~~(2)(3)~~ There is created a Community Resources Development Loan Program in Trust Fund in the State Treasury to be used by the agency for the purpose of granting loans to eligible programs for the initial costs of development of the programs. In order to be eligible for the program, a foster home, group home, or supported employment program must:

- (a) Serve persons with developmental disabilities;
- (b) Be a nonprofit corporation, partnership, or sole proprietorship; and
- (c) Be Loans shall be made only to those facilities which are in compliance with the zoning regulations of the local community.

~~(3)~~ Loans may be made to pay for the costs of development and may include structural modification, the purchase of equipment and fire and safety devices, preoperational staff training, and the purchase of insurance. Such costs may shall not include the actual construction of a facility and may not be in lieu of payment for maintenance, client services, or care provided.

~~(4)~~ The agency may grant to an eligible program a lump-sum loan in one payment not to exceed the cost ~~to the program~~ of providing 2 months' services, care, or maintenance to each person ~~with developmental disabilities who is developmentally disabled~~ to be placed in the program by the agency, or the actual cost of firesafety renovations to a facility required by the state, whichever is greater. ~~Loans granted to programs shall not be in lieu of payment for maintenance, services, or care provided, but shall stand separate and distinct.~~

~~(5)~~ The agency shall adopt rules, ~~as provided in chapter 120~~, to determine the criteria standards under which a program shall be eligible to receive a loan ~~as provided in this section~~ and the methodology criteria for the equitable allocation of loan ~~trust funds~~ when eligible applications exceed the funds available.

~~(6)(5)~~ Any loan granted by the agency under this section shall be repaid by the program within 5 years and the amount paid shall be deposited into the agency's Administrative Trust Fund. Moneys repaid shall be used to

fund new loans. A program that operates as a nonprofit corporation meeting the requirements of s. 501(c)(3) of the Internal Revenue Code, and that seeks forgiveness of its loan shall submit to the agency an annual a statement setting forth the service it has provided during the year together with such other information as the agency by rule shall require, and, upon approval of each such annual statement, the agency ~~may shall~~ forgive up to 20 percent of the principal of any such loan granted ~~after June 30, 1975.~~

(7)(6) If any program that has received a loan under this section ceases to accept, or provide care, services, or maintenance to persons placed in the program by the department, or if such program files papers of bankruptcy, at that point in time the loan shall become an interest-bearing loan at the rate of 5 percent per annum on the entire amount of the initial loan which shall be repaid within a 1-year period from the date on which the program ceases to provide care, services, or maintenance, or files papers in bankruptcy, and the amount of the loan due plus interest shall constitute a lien in favor of the state against all real and personal property of the program. The lien shall be perfected by the appropriate officer of the agency by executing and acknowledging a statement of the name of the program and the amount due on the loan and a copy of the promissory note, which shall be recorded by the agency with the clerk of the circuit court in the county wherein the program is located. If the program has filed a petition for bankruptcy, the agency shall file and enforce the lien in the bankruptcy proceedings. Otherwise, the lien shall be enforced in the manner provided in s. 85.011. All funds received by the agency from the enforcement of the lien shall be deposited in the agency's Administrative Community Resources Development Trust Fund ~~and used to fund new loans.~~

Section 32. Section 393.17, Florida Statutes, is amended to read:

393.17 Behavioral programs; certification of behavior analysts.—

(1) The agency may establish a certification process for behavior analysts in order to ensure that only qualified employees and service providers provide behavioral analysis services to clients. The procedures must be established by rule and must include criteria for scope of practice, qualifications for certification, including training and testing requirements, continuing education requirements for ongoing certification, and standards of performance. The procedures must also include decertification procedures that may be used to determine whether an individual continues to meet the qualifications for certification or the professional performance standards and, if not, the procedures necessary to decertify an employee or service provider.

(2) The agency shall may recognize the certification of behavior analysts awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services and whose work has the support of the Association for Behavior Analysis International. The certification procedure recognized by the agency must undergo regular psychometric review and validation, pursuant to a job analysis survey of the profession and standards established by content experts in the field.

Section 33. Section 393.18, Florida Statutes, is created to read:

393.18 Comprehensive transitional education program.—A comprehensive transition education program is a group of jointly operating centers or units, the collective purpose of which is to 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. However, this section does not require such programs to provide services only to persons with developmental disabilities. All such services shall be temporary in nature and delivered in a structured residential setting, having the primary goal of incorporating the principle of self-determination in establishing permanent residence for persons with maladaptive behaviors in facilities that are not associated with the comprehensive transitional education program. The staff shall include behavior analysts and teachers, as appropriate, who shall be available to provide services in each component center or unit of the program. A behavior analyst must be certified pursuant to s. 393.17.

(1) Comprehensive transitional education programs shall include a minimum of two component centers or units, one of which shall be an intensive treatment and educational center or a transitional training and educational center, which provides services to persons with maladaptive behaviors in the following sequential order:

(a) Intensive treatment and educational center.—This component is a self-contained residential unit providing intensive behavioral and educational programming for persons with severe maladaptive behaviors whose behaviors preclude placement in a less-restrictive environment due to the threat of danger or injury to themselves or others. Continuous-shift staff shall be required for this component.

(b) Transitional training and educational center.—This component is a residential unit for persons with moderate maladaptive behaviors providing concentrated psychological and educational programming that emphasizes a transition toward a less-restrictive environment. Continuous-shift staff shall be required for this component.

(c) Community transition residence.—This component is a residential center providing educational programs and any support services, training, and care that are needed to assist persons with maladaptive behaviors to avoid regression to more restrictive environments while preparing them for more independent living. Continuous-shift staff shall be required for this component.

(d) Alternative living center.—This component is a residential unit providing an educational and family living environment for persons with maladaptive behaviors in a moderately unrestricted setting. Residential staff shall be required for this component.

(e) Independent living education center.—This component is a facility providing a family living environment for persons with maladaptive behaviors in a largely unrestricted setting and includes education and monitoring that is appropriate to support the development of independent living skills.

(2) Components of a comprehensive transitional education program are subject to the license issued under s. 393.067 to a comprehensive transitional education program and may be located on a single site or multiple sites.

(3) Comprehensive transitional education programs shall develop individual education plans for each person with maladaptive behaviors who receives services from the program. Each individual education plan shall be developed in accordance with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.

(4) The total number of persons with maladaptive behaviors who are being provided with services in a comprehensive transitional education program may not in any instance exceed 120 residents.

(5) This section shall authorize licensure for comprehensive transitional education programs which by July 1, 1989:

(a) Were in actual operation; or

(b) Owned a fee simple interest in real property for which a county or city government has approved zoning allowing for the placement of the facilities described in this subsection, and have registered an intent with the agency to operate a comprehensive transitional education program. However, nothing shall prohibit the assignment by such a registrant to another entity at a different site within the state, so long as there is compliance with all criteria of this program and local zoning requirements and provided that each residential facility within the component centers or units of the program authorized under this subparagraph does not exceed a capacity of 15 persons.

Section 34. Section 393.23, Florida Statutes, is created to read:

393.23 Developmental disabilities institutions; trust accounts.—All receipts from the operation of canteens, vending machines, hobby shops, sheltered workshops, activity centers, farming projects, and other like activities operated in a developmental disabilities institution, and moneys donated to the institution, must be deposited in a trust account in any bank, credit union, or savings and loan association authorized by the State Treasury as a qualified depositor to do business in this state, if the moneys are available on demand.

(1) Moneys in the trust account must be expended for the benefit, education, and welfare of clients. However, if specified, moneys that are donated to the institution must be expended in accordance with the intentions of the donor. Trust account money may not be used for the benefit of employees of the agency, or to pay the wages of such employees. The welfare of the clients includes the expenditure of funds for the purchase of items for resale at canteens or vending machines, and for the establishment of, maintenance of, and operation of canteens, hobby shops, recreational or entertainment facilities, sheltered workshops, activity centers, farming projects, or other like facilities or programs established at the institutions for the benefit of clients.

(2) The institution may invest, in the manner authorized by law for fiduciaries, any money in a trust account which is not necessary for immediate use. The interest earned and other increments derived from the investments of the money must be deposited into the trust account for the benefit of clients.

(3) The accounting system of an institution must account separately for revenues and expenses for each activity. The institution shall reconcile the trust account to the institution's accounting system and check registers and to the accounting system of the Chief Financial Officer.

(4) All sales taxes collected by the institution as a result of sales shall be deposited into the trust account and remitted to the Department of Revenue.

(5) Funds shall be expended in accordance with requirements and guidelines established by the Chief Financial Officer.

Section 35. Section 393.501, Florida Statutes, is amended to read:

393.501 Rulemaking.—

(1) The agency may shall adopt rules pursuant to ss. 120.536(1) and 120.54 to carry out its statutory duties ~~the provisions of this chapter.~~

(2) Such rules shall address the number of facilities on a single lot parcel or on adjacent lots parcels of land, and in addition, for ICF/MR, the rate and location of facility development and level of care. In adopting rules, an alternative living center and an independent living education center, as described in s. 393.18, shall be subject to the provisions of s. 419.001, except that such centers shall be exempt from the 1,000-foot-radius requirement of s. 419.001(2) if:

(a) The centers are located on a site zoned in a manner that permits all the components of a comprehensive transition education center to be located on the site; or

(b) There are no more than three such centers within a radius of 1,000 feet.

Section 36. Section 394.453, Florida Statutes, is amended to read:

394.453 Legislative intent.—It is the intent of the Legislature to authorize and direct the Department of Children and Family Services to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders. It is the intent of the Legislature that treatment programs for such disorders shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that such persons be provided with emergency service and temporary detention for evaluation when required; that they be admitted to treatment facilities on a voluntary basis when extended

or continuing care is needed and unavailable in the community; that involuntary placement be provided only when expert evaluation determines that it is necessary; that any involuntary treatment or examination be accomplished in a setting which is clinically appropriate and most likely to facilitate the person's return to the community as soon as possible; and that individual dignity and human rights be guaranteed to all persons who are admitted to mental health facilities or who are being held under s. 394.463. It is the further intent of the Legislature that the least restrictive means of intervention be employed based on the individual needs of each person, within the scope of available services. It is the policy of this state that the use of restraint and seclusion on clients is justified only as an emergency safety measure to be used in response to imminent danger to the client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness.

Section 37. Present subsections (28) through (33) of section 394.455, Florida Statutes, are redesignated as subsections (30) through (35), respectively, and new subsections (28) and (29) are added to that section, to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(28)(a) "Restraint" means a physical device, method, or drug used to control behavior. A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body.

(b) A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement and is not part of the standard treatment regimen of a person with a diagnosed mental illness who is a client of the department. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

(29) "Seclusion" means the physical segregation of a person in any fashion or involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to a person's medical condition or symptoms.

Section 38. Paragraph (b) of subsection (5) of section 394.457, Florida Statutes, is amended to read:

394.457 Operation and administration.—

(5) RULES.—

(b) The department shall adopt rules necessary for the implementation and administration of the provisions of this part, and a program subject to the provisions of this part shall not be permitted to operate unless rules designed to ensure the protection of the health, safety, and welfare of the patients treated through such program have been adopted. Rules adopted under this subsection must include provisions governing the use of restraint and seclusion which are consistent with recognized best practices and professional judgment; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; and establish mandatory reporting, data collection, and data dissemination procedures and requirements. Rules adopted under this subsection must require that each instance of the use of restraint or seclusion be documented in the record of the patient.

Section 39. Paragraph (g) is added to subsection (1) of section 394.879, Florida Statutes, to read:

394.879 Rules; enforcement.—

(1) The department, in consultation with the agency, shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including, at a minimum, rules providing standards to ensure that:

(g) The use of restraint and seclusion is consistent with recognized best practices and professional judgment; that inherently dangerous restraint or seclusion procedures are prohibited; that limitations are established on the use and duration of restraint and seclusion; that measures are established to ensure the safety of program participants and staff during an incident of restraint or seclusion; that procedures are created for staff to follow before, during, and after incidents of restraint or seclusion; that professional qualifications and training are established for staff who may order or be engaged in the use of restraint or seclusion; and that mandatory reporting, data collection, and data dissemination procedures and requirements are instituted. Rules adopted under this section must require that any instance of the use of restraint or seclusion shall be documented in the record of the client.

Section 40. Subsection (9) of section 397.405, Florida Statutes, is amended to read:

397.405 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(9) Facilities licensed under chapter 393 ~~which s. 393.063 that~~, in addition to providing services to persons with developmental disabilities ~~who are developmentally disabled as defined therein~~, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a psychotherapist licensed under chapter 491 who provides substance abuse treatment, so long as the physician, psychologist, or psychotherapist does not represent to the public that he or she is a licensed service provider and does not provide services to clients pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 41. Subsection (13) of section 400.419, Florida Statutes, is amended to read:

400.419 Violations; imposition of administrative fines; grounds.—

(13) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined \$5,000 or more for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Family Services, the Agency for Persons with Disabilities, the area agencies on aging, the Florida Statewide Advocacy Council, and the state and local ombudsman councils. The Department of Children and Family Services shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list.

Section 42. Section 400.960, Florida Statutes, is amended to read:

400.960 Definitions.—As used in this part, the term:

(1) “Active treatment” means the provision of services by an interdisciplinary team which are necessary to maximize a client’s individual independence or prevent regression or loss of functional status.

(2) “Agency” means the Agency for Health Care Administration.

(3) “Autism” ~~has the same meaning as in s. 393.063.~~ means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal

~~communication and imaginative ability, and a markedly restricted repertoire of activities and interests.~~

~~(4) “Cerebral palsy” has the same meaning as in s. 393.063, means a group of disabling symptoms of extended duration which results from damage to the developing brain occurring before, during, or after birth and resulting in the loss or impairment of control over voluntary muscles. The term does not include those symptoms or impairments resulting solely from a stroke.~~

~~(5) “Client” means any person determined by the Agency for Persons with Disabilities department to be eligible for developmental services.~~

~~(6) “Client advocate” means a friend or relative of the client, or of the client’s immediate family, who advocates for the best interests of the client in any proceedings under this part in which the client or his or her family has the right or duty to participate.~~

~~(7) “Department” means the Department of Children and Family Services.~~

~~(6)(8) “Developmental disability” has the same meaning as in s. 393.063 means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.~~

~~(7)(9) “Direct service provider” means a person 18 years of age or older who has direct contact with individuals with developmental disabilities and who is unrelated to the individuals with developmental disabilities.~~

~~(10) “Epilepsy” means a chronic brain disorder of various causes which is characterized by recurrent seizures due to excessive discharge of cerebral neurons. When found concurrently with retardation, autism, or cerebral palsy, epilepsy is considered a secondary disability for which the client is eligible to receive services to ameliorate this condition according to the provisions of this part.~~

~~(11) “Guardian advocate” means a person appointed by the circuit court to represent a person with developmental disabilities in any proceedings brought pursuant to s. 393.12, and is distinct from a guardian advocate for mentally ill persons under chapter 394.~~

~~(8)(12) “Intermediate care facility for the developmentally disabled” means a residential facility licensed and certified in accordance with state law, and certified by the Federal Government, pursuant to the Social Security Act, as a provider of Medicaid services to persons with developmental disabilities who are developmentally disabled.~~

~~(9)(13) “Prader-Willi syndrome” has the same meaning as in s. 393.063, means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia, or an excessive drive to eat which leads to obesity, usually at 18 to 36 months of age, mild to moderate retardation, hypogona-~~

dism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

(10)(a) “Restraint” means a physical device, method, or drug used to control behavior. A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual’s body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one’s body.

(b) A drug used as a restraint is a medication used to control the person’s behavior or to restrict his or her freedom of movement. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

~~(11)(14) “Retardation” has the same meaning as in s. 393.063. means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in rules of the department. “Deficits in adaptive behavior,” for the purpose of this definition, means deficits in the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.~~

(12) “Seclusion” means the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this part, the term does not mean isolation due to a person’s medical condition or symptoms.

~~(13)(15) “Spina bifida” has the same meaning as in s. 393.063 means a medical diagnosis of spina bifida cystica or myelomeningocele.~~

Section 43. Subsection (12) is added to section 400.962, Florida Statutes, to read:

400.962 License required; license application.—

(12) The applicant must agree to provide or arrange for active treatment services by an interdisciplinary team to maximize individual independence or prevent regression or loss of functional status. Standards for active treatment shall be adopted by the Agency for Health Care Administration by rule

pursuant to ss. 120.536(1) and 120.54. Active treatment services shall be provided in accordance with the individual support plan and shall be reimbursed as part of the per diem rate as paid under the Medicaid program.

Section 44. Subsection (2) of section 400.967, Florida Statutes, is amended to read:

400.967 Rules and classification of deficiencies.—

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Agency for Persons with Disabilities ~~Department of Children and Family Services~~ and the Department of Elderly Affairs, shall adopt and enforce rules to administer this part, which shall include reasonable and fair criteria governing:

(a) The location and construction of the facility; including fire and life safety, plumbing, heating, cooling, lighting, ventilation, and other housing conditions that will ensure the health, safety, and comfort of residents. The agency shall establish standards for facilities and equipment to increase the extent to which new facilities and a new wing or floor added to an existing facility after July 1, 2000, are structurally capable of serving as shelters only for residents, staff, and families of residents and staff, and equipped to be self-supporting during and immediately following disasters. The Agency for Health Care Administration shall work with facilities licensed under this part and report to the Governor and the Legislature by April 1, 2000, its recommendations for cost-effective renovation standards to be applied to existing facilities. In making such rules, the agency shall be guided by criteria recommended by nationally recognized, reputable professional groups and associations having knowledge concerning such subject matters. The agency shall update or revise such criteria as the need arises. All facilities must comply with those lifesafety code requirements and building code standards applicable at the time of approval of their construction plans. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. The agency shall adopt fair and reasonable rules setting forth conditions under which existing facilities undergoing additions, alterations, conversions, renovations, or repairs are required to comply with the most recent updated or revised standards.

(b) The number and qualifications of all personnel, including management, medical nursing, and other personnel, having responsibility for any part of the care given to residents.

(c) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, which will ensure the health and comfort of residents.

(d) The equipment essential to the health and welfare of the residents.

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and measurement of the quality and adequacy thereof.

(g) The preparation and annual update of a comprehensive emergency management plan. The agency shall adopt rules establishing minimum criteria for the plan after consultation with the Department of Community Affairs. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Agency for Persons with Disabilities ~~Department of Children and Family Services~~, the Agency for Health Care Administration, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

(h) The posting of licenses. Each licensee shall post its license in a prominent place that is in clear and unobstructed public view at or near the place where residents are being admitted to the facility.

(i) The use of restraint and seclusion. Such rules must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion, including individualized plans for the use of restraints or seclusion in emergency situations; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; establish requirements for facility data collection and reporting relating to the use of restraint and seclusion; and establish procedures relating to the documentation of the use of restraint or seclusion in the client's facility or program record.

Section 45. Section 402.115, Florida Statutes, is amended to read:

402.115 Sharing confidential or exempt information.—Notwithstanding any other provision of law to the contrary, the Department of Health, ~~and the Department of Children and Family Services, and the Agency for Persons with Disabilities~~ may share confidential information or information exempt from disclosure under chapter 119 on any individual who is or has been the subject of a program within the jurisdiction of each agency. Information so exchanged remains confidential or exempt as provided by law.

Section 46. Section 402.17, Florida Statutes, is amended to read:

402.17 Claims for care and maintenance; trust property.—The Department of Children and Family Services and the Agency for Persons with Disabilities shall protect the financial interest of the state with respect to

claims ~~that which~~ the state may have for the care and maintenance of clients of the department ~~or agency~~. The department ~~or agency~~ shall, as trustee, hold in trust and administer money ~~of clients~~ and property designated for the personal benefit of clients. The department ~~or agency~~ shall act as trustee of clients' money and property entrusted to it in accordance with the usual fiduciary standards applicable generally to trustees, and shall act to protect both the short-term and long-term interests of the clients for whose benefit it is holding such money and property.

(1) CLAIMS FOR CARE AND MAINTENANCE.—

(a) The department ~~or agency~~ shall perform the following acts:

1. Receive and supervise the collection of sums due the state.
2. Bring any court action necessary to collect any claim the state may have against any client, former client, guardian of any client or former client, executor or administrator of the client's estate, or any person against whom any client or former client may have a claim.
3. Obtain a copy of any inventory or appraisal of the client's property filed with any court.
4. Obtain from the department's Economic Self-Sufficiency Services Program Office a financial status report on any client or former client, including the ability of third parties responsible for such client to pay all or part of the cost of the client's care and maintenance.
5. Petition the court for appointment of a guardian or administrator for an otherwise unrepresented client or former client should the financial status report or other information indicate the need for such action. The cost of any such action shall be charged against the assets or estate of the client.
6. Represent the interest of the state in any litigation in which a client or former client is a party.
7. File claims with any person, firm, or corporation or with any federal, state, county, district, or municipal agency on behalf of an unrepresented client.
8. Represent the state in the settlement of the estates of deceased clients or in the settlement of estates in which a client or a former client against whom the state may have a claim has a financial interest.
9. Establish procedures by rule for the use of amounts held in trust for the client to pay for the cost of care and maintenance, if such amounts would otherwise cause the client to become ineligible for services which are in the client's best interests.

(b) The department ~~or agency of Children and Family Services~~ may charge off accounts if it certifies that the accounts are uncollectible after diligent efforts have been made to collect them. If the department certifies an account to the Department of Financial Services, setting forth the circumstances upon which it predicates the uncollectibility, and if, pursuant

to s. 17.04, the Department of Financial Services concurs, the account shall be charged off.

(2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE OR BENEFIT OF ANY CLIENT.—The department or agency shall perform the following acts:

(a) Accept and administer in trust, as a trustee having a fiduciary responsibility to a client ~~of the department~~, any money or other property received for personal use or benefit of that client. In the case of children in the legal custody of the department, following the termination of the parental rights ~~as to that client~~, until the child such client leaves the legal custody of the department due to ~~the client's adoption or attaining~~ because the client attains the age of 18 or, in the case of children who are otherwise in the custody of the department, the court having jurisdiction over such child client shall have jurisdiction, upon application of the department or other interested party, to review or approve any extraordinary action of the department acting as trustee as to the child's client's money or other property. When directed by a court of competent jurisdiction, the department may further hold money or property of a child person under the age of 18 who has been in the care, custody, or control of the department and who is the subject of a court proceeding during the pendency of that proceeding.

(b) Deposit the money in banks qualified as state depositories, or in any bank, credit union, or savings and loan association authorized to do business in this state, provided moneys so deposited or held by such institutions are fully insured by a federal depository or share insurance program, or an approved state depository or share insurance program, and are available on demand.

(c) Withdraw the money and use it to meet current needs of clients. For purposes of this paragraph, “current needs” includes payment of fees assessed under s. 402.33. The amount of money withdrawn ~~by the department to meet current needs of a client~~ shall take into account the need of the department or agency, as the trustee of a client’s money and property, to provide for the long-term needs of a client, including, but not limited to, ensuring that to provide for the need of a client under the age of 18 will to have sufficient financial resources available to be able to function as an adult upon reaching the age of 18, meeting or to meet the special needs of a client who has a disability and whose special needs cannot otherwise be met by any form of public assistance or family resources, or maintaining to maintain the client’s eligibility for public assistance, including medical assistance, under state or federal law.

(d) As trustee, invest in the manner authorized by law for fiduciaries money not used for current needs of clients. Such investments may include, but shall not be limited to, investments in savings share accounts of any credit union chartered under the laws of the United States and doing business in this state, and savings share accounts of any credit union chartered under the laws of this state, provided the credit union is insured under the federal share insurance program or an approved state share insurance program.

(3) DEPOSIT OF FUNDS RECEIVED.—Funds received by the Department of Children and Family Services in accordance with s. 402.33 shall be deposited into a trust fund for the operation of the department.

(4) DISPOSITION OF UNCLAIMED TRUST FUNDS.—Upon the death of any client affected by the provisions of this section, any unclaimed money held in trust by the department, the agency, or by the Chief Financial Officer for the child ~~him or her~~ shall be applied first to the payment of any unpaid claim of the state against the client, and any balance remaining unclaimed for a period of 1 year shall escheat to the state as unclaimed funds held by fiduciaries.

(5) LEGAL REPRESENTATION.—To the extent that the budget will permit, the Department of Legal Affairs shall furnish the legal services to carry out the provisions of this section. Upon the request of the department ~~or agency of Children and Family Services~~, the various state and county attorneys shall assist in litigation within their jurisdiction. ~~The~~ Such department ~~or agency~~ may retain legal counsel for necessary legal services which cannot be furnished by the Department of Legal Affairs and the various state and county attorneys.

(6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.—

(a) The department ~~or agency of Children and Family Services~~ may deposit any funds of clients in its possession in any bank in the state or may invest or reinvest such funds in bonds or obligations of the United States for the payment of which the full faith and credit of the United States is pledged. For purposes of deposit only, the funds of any client may be mingled with the funds of any other clients.

(b) The interest or increment accruing on such funds shall be the property of the clients and shall be used or conserved for the personal use or benefit of the ~~individual~~ client, in accordance with the department's ~~or agency's~~ fiduciary responsibility as a trustee for the money and property of the client ~~held by the department~~. Such interest shall not accrue to the general welfare of all clients. Whenever any proposed action of the department ~~or agency~~, acting in its own interest, may conflict with the department's ~~or agency's~~ obligation ~~as a trustee with a~~ fiduciary responsibility to the client, the department ~~or agency~~ shall promptly present the matter to a court of competent jurisdiction for the court's determination as to what action the department ~~or agency~~ may take. The department ~~or agency~~ shall establish ~~rules governing~~ reasonable fees by rule for the cost of administering such accounts and for establishing the minimum balance eligible to earn interest.

(7) DISPOSITION OF MONEY AND PROPERTY OF CLIENTS UPON ATTAINING AGE 18 OR DISCHARGE FROM CARE, CUSTODY, CONTROL, OR SERVICES OF THE DEPARTMENT.—

(a) Whenever a client of the department for whom the department is holding money or property as a trustee attains the age of 18, and thereby will no longer be in the legal custody of the department, the department

shall promptly disburse such money and property ~~of the client the department has held as a trustee~~ to that client, or as that client directs, as soon as practicable ~~once the client attains the age of 18.~~

(b) Whenever a client of the department over the age of 18 for whom the department is holding money or property as a trustee no longer requires the care, custody, control, or services of the department, the department shall promptly disburse such money and property ~~of the client the department has held as a trustee~~ to that client, or as that client or a court directs, as soon as practicable.

(c) When a client under the age of 18 who has been in the legal custody, care, or control of the department and for whom the department is holding money or property as a trustee attains the age of 18 and has a physical or mental disability, or is otherwise incapacitated or incompetent to handle that client's own financial affairs, the department shall apply for a court order from a court of competent jurisdiction to establish a trust on behalf of that client. Where there is no willing relative of the client acceptable to the court available to serve as trustee of such proposed trust, the court may enter an order authorizing the department to serve as trustee of a separate trust under such terms and conditions as the court determines appropriate to the circumstances.

(d) When a client under the age of 18 who has been in the legal custody, care, or control of the department and for whom the department is holding money or property as a trustee leaves the care, custody, and control of the department due to adoption or placement of the client with a relative, or as otherwise directed by a court of competent jurisdiction, the department shall notify that court of the existence of the money and property ~~in the possession of the department~~ either prior to, or promptly after, receiving knowledge of the change of custody, care, or control. The department shall apply for an order from the court exercising jurisdiction over the client to direct the disposition of the money and property belonging to that client. The court order may establish a trust in which the money and property of the client will be deposited, appoint a guardian of a property as to the money or property of the client, or direct the creation of a Uniform Transfers Gifts to Minors Act account on behalf of that client, ~~as the court finds appropriate and~~ under the terms and conditions the court determines appropriate to the circumstances.

Section 47. Section 402.181, Florida Statutes, is amended to read:

402.181 State Institutions Claims Program.—

(1) There is created a State Institutions Claims Program, for the purpose of making restitution for property damages and direct medical expenses for injuries caused by shelter children or foster children, or escapees, inmates, or patients of state institutions under the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, ~~or the Department of Corrections, or the Agency for Persons with Disabilities.~~

(2) Claims for restitution may be filed with the Department of Legal Affairs at its office in accordance with regulations prescribed by the Department of Legal Affairs. The Department of Legal Affairs shall have full power and authority to hear, investigate, and determine all questions in respect to such claims and is authorized, within the limits of current appropriations, to pay individual claims up to \$1,000 or, with respect to children in foster care and their families, individual claims up to \$1,500. Claims in excess of these amounts shall continue to require legislative approval.

(3)(a) The Department of Legal Affairs shall make or cause to be made such investigations as it considers necessary in respect to such claims. Hearings shall be held in accordance with chapter 120.

(b) The Department of Legal Affairs shall work with the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections, and the Agency for Persons with Disabilities to streamline the process of investigations, hearings, and determinations with respect to claims under this section, to ensure that eligible claimants receive restitution within a reasonable time.

Section 48. Section 402.20, Florida Statutes, is amended to read:

402.20 County contracts authorized for services and facilities for in mental health and developmental disabilities ~~retardation~~ areas.—The boards of county commissioners are authorized to provide monetary grants and facilities, and to enter into renewable contracts, for services and facilities, for a period not to exceed 2 years, with public and private hospitals, clinics, and laboratories; other state agencies, departments, or divisions; the state colleges and universities; the community colleges; private colleges and universities; counties; municipalities; towns; townships; and any other governmental unit or nonprofit organization which provides needed facilities for persons with mental illness or developmental disabilities ~~the mentally ill or retarded~~. These services are hereby declared to be for a public and county purpose. The county commissioners may make periodic inspections to assure that the services or facilities provided under this chapter meet the standards of the Department of Children and Family Services and the Agency for Persons with Disabilities.

Section 49. Section 402.22, Florida Statutes, is amended to read:

402.22 Education program for students who reside in residential care facilities operated by the Department of Children and Family Services or the Agency for Persons with Disabilities.—

(1)(a) The Legislature recognizes that the Department of Children and Family Services and the Agency for Persons with Disabilities ~~have under their~~ ~~has under its~~ residential care students with critical problems of physical impairment, emotional disturbance, mental impairment, and learning impairment.

(b) The Legislature recognizes the vital role of education in the rehabilitation of such students. It is the intent of the Legislature that all such students benefit from educational services and receive such services.

(c) It is the intent of the Legislature that educational services be coordinated with appropriate and existing diagnostic and evaluative, social, follow-up, and other therapeutic services of the department and agency of Children and Family Services so that the effect of the total rehabilitation process is maximized.

(d) It is the intent of the Legislature that, as educational programs for students in residential care facilities are implemented by the district school board, educational personnel in the ~~Department of Children and Family Services~~ residential care facilities who meet the qualifications for employees of the district school board be employed by the district school board.

(2) District school boards shall establish educational programs for all students ages 5 through 18 under the residential care of the Department of Children and Family Services and the Agency for Persons with Disabilities, and may provide for students below age 3 as provided for in s. 1003.21(1)(e). Funding of such programs shall be pursuant to s. 1011.62.

(3) Notwithstanding any provisions of chapters 39, 393, 394, and 397 to the contrary, the services of the Department of Children and Family Services and the Agency for Persons with Disabilities and those of the Department of Education and district school boards shall be mutually supportive and complementary of each other. The education programs provided by the district school board shall meet the standards prescribed by the State Board of Education and the district school board. Decisions regarding the design and delivery of department or agency of Children and Family Services treatment or habilitative services shall be made by interdisciplinary teams of professional and paraprofessional staff of which appropriate district school system administrative and instructional personnel shall be invited to be participating members. The requirements for maintenance of confidentiality as prescribed in chapters 39, 393, 394, and 397 shall be applied to information used by such interdisciplinary teams, and such information shall be exempt from the provisions of ss. 119.07(1) and 286.011.

(4) Students age 18 and under who are under the residential care of the Department of Children and Family Services or the Agency for Persons with Disabilities and who receive an education program shall be calculated as full-time equivalent student membership in the appropriate cost factor as provided for in s. 1011.62(1)(c). Residential care facilities ~~of the Department of Children and Family Services~~ shall include, but not be limited to, developmental disabilities services institutions and state mental health facilities. All students shall receive their education program from the district school system, and funding shall be allocated through the Florida Education Finance Program for the district school system.

(5) Instructional and special educational services ~~that which~~ are provided to ~~mental health and retardation~~ clients with mental illness or developmental disabilities of the department's or agency's in the Department of Children and Family Services residential care facilities by local school districts shall not be less than 180 days or 900 hours; however, the 900 hours may be distributed over a 12-month period, unless otherwise stated in rules developed by the State Board of Education, with the concurrence of the

department or agency and adopted of Children and Family Services promulgated pursuant to subsection (6).

(6) The State Board of Education, and the Department of Children and Family Services, and the Agency for Persons with Disabilities may adopt shall have the authority to promulgate rules to which shall assist in the orderly transfer of the instruction of students from department or agency Department of Children and Family Services residential care facilities to the district school system or to the public education agency and which shall assist in implementing the specific intent as stated in this act.

(7) Notwithstanding the provisions of s. 1001.42(4)(n), the educational program at the Marianna Sunland Center in Jackson County shall be operated by the Department of Education, either directly or through grants or contractual agreements with other public educational agencies. The annual state allocation to any such agency shall be computed pursuant to s. 1011.62(1), (2), and (5) and allocated in the amount that would have been provided the local school district in which the residential facility is located.

Section 50. Paragraph (c) of subsection (1) and subsection (2) of section 402.33, Florida Statutes, are amended to read:

402.33 Department authority to charge fees for services provided.—

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

(c) “Department” means the Department of Children and Family Services, and the Department of Health, and the Agency for Persons with Disabilities.

(2) The department, in accordance with rules established by it, shall either charge, assess, or collect, or cause to be charged, assessed, or collected, fees for any service it provides to its clients either directly or through its agencies or contractors, except for:

(a) Diagnosis and evaluation procedures necessary to determine the client’s eligibility and need for services provided by the department;

(b) Customary and routine information and referral services;

(c) Educational services provided in lieu of public education;

(d) Specific services exempted by law from fee assessment;

(e) Emergency shelter or emergency detention care and custody prior to a detention hearing under chapter 39;

(f) Specific classes or types of services provided in programs funded by grants, donations, or contracts that prohibit charging fees;

(g) Developmental disability services provided under chapter 393 to any person who is determined to be eligible for such services ~~by the department~~ and whose earned income falls below the federal Health and Human Services Poverty Guidelines, unless such fees are collected from third-party benefits and benefit payments; or

(h) Any type of service for which the department determines that the net estimated revenue from such fees after deducting any loss of funds from federal grants occasioned by such fees will be less than the estimated cost to charge and collect such fees.

Fees, other than third-party benefits and benefit payments, may not be charged for services provided to indigents whose only sources of income are from state and federal aid. In addition, fees may not be charged parents of a minor client for services requested by the minor without parental consent or for services provided a minor client who has been permanently committed to the care and custody of the department with parental rights permanently severed. However, lack of parental consent does not preclude the charging of fees established under chapter 39. ~~The department may not require~~ A client who is receiving wages that ~~which~~ are below the minimum wage under the federal Fair Labor Standards Act ~~may not be required~~ to pay fees from such wages. Voluntary payments for services must be encouraged.

Section 51. Paragraphs (r) and (s) of subsection (3) of section 408.036, Florida Statutes, are amended to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(r) For beds in state mental health treatment facilities operated under s. 394.455(32)(30) and state mental health forensic facilities operated under s. 916.106(8).

(s) For beds in state developmental disabilities services institutions as defined in s. 393.063.

Section 52. 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 53. Paragraph (a) of subsection (2) and subsection (8) of section 409.908, Florida Statutes, are amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(2)(a)1. Reimbursement to nursing homes licensed under part II of chapter 400 and state-owned-and-operated intermediate care facilities for the developmentally disabled licensed under part XI of chapter 400 ~~chapter 393~~ must be made prospectively.

2. Unless otherwise limited or directed in the General Appropriations Act, reimbursement to hospitals licensed under part I of chapter 395 for the provision of swing-bed nursing home services must be made on the basis of the average statewide nursing home payment, and reimbursement to a hospital licensed under part I of chapter 395 for the provision of skilled nursing services must be made on the basis of the average nursing home payment for those services in the county in which the hospital is located. When a hospital is located in a county that does not have any community

nursing homes, reimbursement ~~shall~~ must be determined by averaging the nursing home payments, in counties that surround the county in which the hospital is located. Reimbursement to hospitals, including Medicaid payment of Medicare copayments, for skilled nursing services shall be limited to 30 days, unless a prior authorization has been obtained from the agency. Medicaid reimbursement may be extended by the agency beyond 30 days, and approval must be based upon verification by the patient's physician that the patient requires short-term rehabilitative and recuperative services only, in which case an extension of no more than 15 days may be approved. Reimbursement to a hospital licensed under part I of chapter 395 for the temporary provision of skilled nursing services to nursing home residents who have been displaced as the result of a natural disaster or other emergency may not exceed the average county nursing home payment for those services in the county in which the hospital is located and is limited to the period of time which the agency considers necessary for continued placement of the nursing home residents in the hospital.

(8) A provider of home-based or community-based services rendered pursuant to a federally approved waiver shall be reimbursed based on an established or negotiated rate for each service. These rates shall be established according to an analysis of the expenditure history and prospective budget developed by each contract provider participating in the waiver program, or under any other methodology adopted by the agency and approved by the Federal Government in accordance with the waiver. ~~Effective July 1, 1996,~~ Privately owned and operated community-based residential facilities which meet agency requirements and which formerly received Medicaid reimbursement for the optional intermediate care facility for the mentally retarded service may participate in the developmental services waiver as part of a home-and-community-based continuum of care for Medicaid recipients who receive waiver services.

Section 54. Subsection (3) of section 409.9127, Florida Statutes, is amended to read:

409.9127 Preauthorization and concurrent utilization review; conflict-of-interest standards.—

(3) The agency shall help the Agency for Persons with Disabilities Department of Children and Family Services meet the requirements of s. 393.065(4). Only admissions approved pursuant to such assessments are eligible for reimbursement under this chapter.

Section 55. Paragraph (c) of subsection (2) and subsection (5) of section 411.224, Florida Statutes, are amended to read:

411.224 Family support planning process.—The Legislature establishes a family support planning process to be used by the Department of Children and Family Services as the service planning process for targeted individuals, children, and families under its purview.

(2) To the extent possible within existing resources, the following populations must be included in the family support planning process:

(c) Children from age 3 birth through age 5 who are served by the Agency for Persons with Disabilities Developmental Disabilities Program Office of the Department of Children and Family Services.

(5) There must be only a single-family support plan to address the problems of the various family members unless the family requests that an individual family support plan be developed for different members of that family. The family support plan must replace individual habilitation plans for children from 3 birth through 5 years old who are served by the Agency for Persons with Disabilities Developmental Disabilities Program Office of the Department of Children and Family Services. ~~To the extent possible, the family support plan must replace other case-planning forms used by the Department of Children and Family Services.~~

Section 56. Subsection (4) of section 411.232, Florida Statutes, is amended to read:

411.232 Children's Early Investment Program.—

(4) RULES FOR IMPLEMENTATION.—The Department of Health ~~and Rehabilitative Services~~ shall adopt rules necessary to implement this section.

Section 57. Subsection (8) of section 415.102, Florida Statutes, is amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(8) "Facility" means any location providing day or residential care or treatment for vulnerable adults. The term "facility" may include, but is not limited to, any hospital, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, residential facility licensed under chapter 393, adult day training center, group home, or mental health treatment center.

Section 58. Section 415.1035, Florida Statutes, is amended to read:

415.1035 Facility's duty to inform residents of their right to report abusive, neglectful, or exploitive practices.—The department shall work cooperatively with the Agency for Health Care Administration, the Agency for Persons with Disabilities, and the Department of Elderly Affairs to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful, or exploitive practices. Each facility must establish appropriate policies and procedures to facilitate such reporting.

Section 59. Subsections (1) and (10) of section 415.1055, Florida Statutes, are amended to read:

415.1055 Notification to administrative entities.—

(1) Upon receipt of a report that alleges that an employee or agent of the department, the Agency for Persons with Disabilities, or the Department of Elderly Affairs, acting in an official capacity, has committed an act of abuse,

neglect, or exploitation, the department shall notify the state attorney in whose circuit the abuse, neglect, or exploitation occurred. This notification may be oral or written.

(10) When a report has been received and the department has reason to believe that a vulnerable adult resident of a facility licensed by the Agency for Health Care Administration or the Agency for Persons with Disabilities has been the victim of abuse, neglect, or exploitation, the department shall provide a copy of its investigation to the appropriate agency. If the investigation determines that a health professional licensed or certified under the Department of Health may have abused, neglected, or exploited a vulnerable adult, the department shall also provide a copy to the Department of Health.

Section 60. Paragraphs (a) and (h) of subsection (3) of section 415.107, Florida Statutes, are amended to read:

415.107 Confidentiality of reports and records.—

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(a) Employees or agents of the department, the Agency for Persons with Disabilities, ~~of the Agency for Health Care Administration~~, or ~~of the Department of Elderly Affairs~~ who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, residential facilities licensed under chapter 393, or other facilities used for the placement of vulnerable adults.

(h) Any appropriate official of the department, the Agency for Persons with Disabilities, ~~of the Agency for Health Care Administration~~, or ~~of the Department of Elderly Affairs~~ who is responsible for:

1. Administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or

2. Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution.

Section 61. Paragraph (a) of subsection (3) of section 435.03, Florida Statutes, is amended to read:

435.03 Level 1 screening standards.—

(3) Standards must also ensure that the person:

(a) For employees and employers licensed or registered pursuant to chapter 400, and for employees and employers of developmental disabilities services institutions as defined in s. 393.063, intermediate care facilities for the developmentally disabled as defined in s. 400.960 ~~s. 393.063~~, and mental

health treatment facilities as defined in s. 394.455, meets the requirements of this chapter.

Section 62. Paragraph (a) of subsection (2) of section 490.014, Florida Statutes, is amended to read:

490.014 Exemptions.—

(2) No person shall be required to be licensed or provisionally licensed under this chapter who:

(a) Is a salaried employee of a government agency; developmental disability facility or services program, mental health, alcohol, or drug abuse facility operating under pursuant to chapter 393, chapter 394, or chapter 397; subsidized child care program, subsidized child care case management program, or child care resource and referral program operating pursuant to chapter 402; child-placing or child-caring agency licensed pursuant to chapter 409; domestic violence center certified pursuant to chapter 39; accredited academic institution; or research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a psychologist pursuant to s. 490.012(1)(a).

Section 63. Paragraph (a) of subsection (4) of section 491.014, Florida Statutes, is amended to read:

491.014 Exemptions.—

(4) No person shall be required to be licensed, provisionally licensed, registered, or certified under this chapter who:

(a) Is a salaried employee of a government agency; developmental disability facility or services program, mental health, alcohol, or drug abuse facility operating under pursuant to chapter 393, chapter 394, or chapter 397; subsidized child care program, subsidized child care case management program, or child care resource and referral program operating pursuant to chapter 402; child-placing or child-caring agency licensed pursuant to chapter 409; domestic violence center certified pursuant to chapter 39; accredited academic institution; or research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a clinical social worker, mental health counselor, or marriage and family therapist.

Section 64. Section 944.602, Florida Statutes, is amended to read:

944.602 Agency notification of Department of Children and Family Services before release of mentally retarded inmates.—Before the release by parole, release by reason of gain-time allowances provided for in s. 944.291, or expiration of sentence of any inmate who has been diagnosed as mentally retarded as defined in s. 393.063, the Department of Corrections shall notify the Agency for Persons with Disabilities ~~Department of Children and Family Services~~ in order that sufficient time be allowed to notify the inmate or

the inmate's representative, in writing, at least 7 days prior to the inmate's release, of available community services.

Section 65. Subsections (2) and (3) of section 945.025, Florida Statutes, are amended to read:

945.025 Jurisdiction of department.—

(2) In establishing, operating, and utilizing these facilities, the department shall attempt, whenever possible, to avoid the placement of non-dangerous offenders who have potential for rehabilitation with repeat offenders or dangerous offenders. Medical, mental, and psychological problems shall be diagnosed and treated whenever possible. The Department of Children and Family Services and the Agency for Persons with Disabilities shall cooperate to ensure the delivery of services to persons under the custody or supervision of the department. When it is the intent of the department to transfer a mentally ill or retarded prisoner to the Department of Children and Family Services or the Agency for Persons with Disabilities, an involuntary commitment hearing shall be held according to the provisions of chapter 393 or chapter 394.

(3) There shall be other correctional facilities, including detention facilities of varying levels of security, work-release facilities, and community correctional facilities, halfway houses, and other approved community residential and nonresidential facilities and programs; however, no adult correctional facility may be established by changing the use and purpose of any mental health facility or mental health institution under the jurisdiction of any state agency or department without authorization in the General Appropriation Act or other approval by the Legislature. ~~Any facility the purpose and use of which was changed subsequent to January 1, 1975, shall be returned to its original use and purpose by July 1, 1977. However, the G. Pierce Wood Memorial Hospital located at Arcadia, DeSoto County, may not be converted into a correctional facility as long as such hospital is in use as a state mental health hospital.~~ Any community residential facility may be deemed a part of the state correctional system for purposes of maintaining custody of offenders, and for this purpose the department may contract for and purchase the services of such facilities.

Section 66. Section 947.185, Florida Statutes, is amended to read:

947.185 Application for mental retardation services as condition of parole.—The Parole Commission may require as a condition of parole that any inmate who has been diagnosed as mentally retarded as defined in s. 393.063 shall, upon release, apply for ~~retardation services from the~~ Agency for Persons with Disabilities ~~Department of Children and Family Services.~~

Section 67. Subsection (1) of section 985.224, Florida Statutes, is amended to read:

985.224 Medical, psychiatric, psychological, substance abuse, and educational examination and treatment.—

(1) After a detention petition or a petition for delinquency has been filed, the court may order the child named in the petition to be examined by a

physician. The court may also order the child to be evaluated by a psychiatrist or a psychologist, by a district school board educational needs assessment team, or, if a developmental disability is suspected or alleged, by ~~a the~~ developmental disabilities diagnostic and evaluation team with of the Agency for Persons with Disabilities Department of Children and Family Services. If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedures established in chapter 393, chapter 394, or chapter 397, whichever is applicable, shall be used.

Section 68. Section 1003.58, Florida Statutes, is amended to read:

1003.58 Students in residential care facilities.—Each district school board shall provide educational programs according to rules of the State Board of Education to students who reside in residential care facilities operated by the Department of Children and Family Services or the Agency for Persons with Disabilities.

(1) The district school board shall not be charged any rent, maintenance, utilities, or overhead on such facilities. Maintenance, repairs, and remodeling of existing facilities shall be provided by the Department of Children and Family Services or the Agency for Persons with Disabilities, as appropriate.

(2) If additional facilities are required, the district school board and the Department of Children and Family Services or the Agency for Persons with Disabilities, as appropriate, shall agree on the appropriate site based on the instructional needs of the students. When the most appropriate site for instruction is on district school board property, a special capital outlay request shall be made by the commissioner in accordance with s. 1013.60. When the most appropriate site is on state property, state capital outlay funds shall be requested by the department or agency in accordance with chapter 216 of Children and Family Services as provided by s. 216.043 and shall be submitted as specified by s. 216.023. Any instructional facility to be built on state property shall have educational specifications jointly developed by the school district and the department or agency of Children and Family Services and approved by the Department of Education. The size of space and occupant design capacity criteria as provided by state board rules shall be used for remodeling or new construction whether facilities are provided on state property or district school board property. The planning of such additional facilities shall incorporate current state Department of Children and Family Services deinstitutionalization goals and plans.

(3) The district school board shall have full and complete authority in the matter of the assignment and placement of such students in educational programs. The parent of an exceptional student shall have the same due process rights as are provided under s. 1003.57(5).

(4) The district school board shall have a written agreement with the Department of Children and Family Services and the Agency for Persons with Disabilities outlining the respective duties and responsibilities of each party.

Notwithstanding the provisions herein, the educational program at the Marianna Sunland Center in Jackson County shall be operated by the De-

partment of Education, either directly or through grants or contractual agreements with other public or duly accredited educational agencies approved by the Department of Education.

Section 69. Paragraph (c) of subsection (3) of section 17.61, Florida Statutes, is amended to read:

17.61 Chief Financial Officer; powers and duties in the investment of certain funds.—

(3)

(c) Except as provided in this paragraph and except for moneys described in paragraph (d), the following agencies shall not invest trust fund moneys as provided in this section, but shall retain such moneys in their respective trust funds for investment, with interest appropriated to the General Revenue Fund, pursuant to s. 17.57:

1. The Agency for Health Care Administration, except for the Tobacco Settlement Trust Fund.

2. The Agency for Persons with Disabilities, except for:

a. The Federal Grants Trust Fund.

b. The Tobacco Settlement Trust Fund.

~~3.2.~~ The Department of Children and Family Services, except for:

a. The Alcohol, Drug Abuse, and Mental Health Trust Fund.

b. The Community Resources Development Trust Fund.

c. The Refugee Assistance Trust Fund.

d. The Social Services Block Grant Trust Fund.

e. The Tobacco Settlement Trust Fund.

f. The Working Capital Trust Fund.

~~4.3.~~ The Department of Community Affairs, only for the Operating Trust Fund.

~~5.4.~~ The Department of Corrections.

~~6.5.~~ The Department of Elderly Affairs, except for:

a. The Federal Grants Trust Fund.

b. The Tobacco Settlement Trust Fund.

~~7.6.~~ The Department of Health, except for:

a. The Federal Grants Trust Fund.

- b. The Grants and Donations Trust Fund.
- c. The Maternal and Child Health Block Grant Trust Fund.
- d. The Tobacco Settlement Trust Fund.
- ~~8.7.~~ The Department of Highway Safety and Motor Vehicles, only for:
 - a. The DUI Programs Coordination Trust Fund.
 - b. The Security Deposits Trust Fund.
- ~~9.8.~~ The Department of Juvenile Justice.
- ~~10.9.~~ The Department of Law Enforcement.
- ~~11.10.~~ The Department of Legal Affairs.
- ~~12.11.~~ The Department of State, only for:
 - a. The Grants and Donations Trust Fund.
 - b. The Records Management Trust Fund.
- ~~13.12.~~ The Executive Office of the Governor, only for:
 - a. The Economic Development Transportation Trust Fund.
 - b. The Economic Development Trust Fund.
- ~~14.13.~~ The Florida Public Service Commission, only for the Florida Public Service Regulatory Trust Fund.
- ~~15.14.~~ The Justice Administrative Commission.
- ~~16.15.~~ The state courts system.

Section 70. Paragraph (b) of subsection (5) of section 400.464, Florida Statutes, is amended to read:

400.464 Home health agencies to be licensed; expiration of license; exemptions; unlawful acts; penalties.—

(5) The following are exempt from the licensure requirements of this part:

(b) Home health services provided by a state agency, either directly or through a contractor with:

1. The Department of Elderly Affairs.
2. The Department of Health, a community health center, or a rural health network that furnishes home visits for the purpose of providing environmental assessments, case management, health education, personal care services, family planning, or followup treatment, or for the purpose of monitoring and tracking disease.

3. Services provided to persons ~~with who~~ have developmental disabilities, as defined in s. 393.063.

4. Companion and sitter organizations that were registered under s. 400.509(1) on January 1, 1999, and were authorized to provide personal services ~~under s. 393.063(33)~~ under a developmental services provider certificate on January 1, 1999, may continue to provide such services to past, present, and future clients of the organization who need such services, notwithstanding the provisions of this act.

5. The Department of Children and Family Services.

Section 71. Subsection (7) of section 744.704, Florida Statutes, is amended to read:

744.704 Powers and duties.—

(7) A public guardian shall not commit a ward to a mental health treatment facility, as defined in s. 394.455(32)(30), without an involuntary placement proceeding as provided by law.

Section 72. Subsection (4) of section 984.22, Florida Statutes, is amended to read:

984.22 Powers of disposition.—

(4) All payments of fees made to the department under pursuant to this chapter, or child support payments made to the department pursuant to subsection (3), shall be deposited in the General Revenue Fund. ~~In cases in which the child is placed in foster care with the Department of Children and Family Services, such child support payments shall be deposited in the Community Resources Development Trust Fund.~~

Section 73. Part III of chapter 282, Florida Statutes, consisting of sections 282.601, 282.602, 282.603, 282.604, 282.605, and 282.606, is created to read:

PART III

ACCESSIBILITY OF INFORMATION AND TECHNOLOGY

282.601 Accessibility of electronic information and information technology.—

(1) In order to improve the accessibility of electronic information and information technology and increase the successful education, employment, access to governmental information and services, and involvement in community life, the executive, legislative, and judicial branches of state government shall, when developing, competitively procuring, maintaining, or using electronic information or information technology acquired on or after July 1, 2006, ensure that state employees with disabilities have access to and are provided with information and data comparable to the access and use by state employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency.

(2) Individuals with disabilities who are members of the public seeking information or services from state agencies that are subject to this part shall be provided with access to and use of information and data comparable to that provided to the public who are not individuals with disabilities, unless an undue burden would be imposed on the agency.

282.602 Definitions.—As used in this part, the term:

(1) “Accessible electronic information and information technology” means electronic information and information technology that conforms to the standards for accessible electronic information and information technology as set forth by s. 508 of the Rehabilitation Act of 1973, as amended, and 29 U.S.C. s. 794(d), including the regulations set forth under 36 C.F.R. part 1194.

(2) “Alternate methods” means a different means of providing information to people with disabilities, including product documentation. The term includes, but is not limited to, voice, facsimile, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

(3) “Electronic information and information technology” includes information technology and any equipment or interconnected system or subsystem of equipment that is used in creating, converting, or duplicating data or information. The term includes, but is not limited to, telecommunications products such as telephones, information kiosks and transaction machines, Internet websites, multimedia systems, and office equipment such as copiers and facsimile machines. The term does not include any equipment that contains embedded information technology that is an integral part of the product if the principal function of the technology is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(4) “Information technology” means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term includes computers, ancillary equipment, software, firmware and similar procedures, services, and support services, and related resources.

(5) “Undue burden” means significant difficulty or expense. In determining whether an action would result in an undue burden, a state agency shall consider all agency resources that are available to the program or component for which the product is being developed, procured, maintained, or used.

(6) “State agency” means any agency of the executive, legislative, or judicial branch of state government.

282.603 Access to electronic and information technology for persons with disabilities; undue burden; limitations.—

(1) Each state agency shall develop, procure, maintain, and use accessible electronic information and information technology acquired on or after

July 1, 2006, that conforms to the applicable provisions set forth by s. 508 of the Rehabilitation Act of 1973, as amended, and 29 U.S.C. s. 794(d), including the regulations set forth under 36 C.F.R. part 1194, except when compliance with this section imposes an undue burden; however, in such instance, a state agency must provide individuals with disabilities with the information and data involved by an alternative method of access that allows the individual to use the information and data.

(2) This section does not require a state agency to install specific accessibility-related software or attach an assistive-technology device at a work station of a state employee who is not an individual with a disability.

(3) This section does not require a state agency, when providing the public with access to information or data through electronic information technology, to make products owned by the state agency available for access and use by individuals with disabilities at a location other than the location at which the electronic information and information technology are normally provided to the public. This section does not require a state agency to purchase products for access and use by individuals with disabilities at a location other than at the location where the electronic information and information technology are normally provided to the public.

282.604 Adoption of rules.—The Department of Management Services shall, with input from stakeholders, adopt rules pursuant to ss. 120.536(1) and 120.54 for the development, procurement, maintenance, and use of accessible electronic information technology by governmental units.

282.605 Exceptions.—

(1) This part does not apply to electronic information and information technology of the Department of Military Affairs or the Florida National Guard if the function, operation, or use of the information or technology involves intelligence activities or cryptologic activities related to national security, the command and control of military forces, equipment that is an integral part of a weapon or weapons system, or systems that are critical to the direct fulfillment of military or intelligence missions. Systems that are critical to the direct fulfillment of military or intelligence missions do not include a system that is used for routine administrative and business applications, including, but not limited to, payroll, finance, logistics, and personnel-management applications.

(2) This part does not apply to electronic information and information technology of a state agency if the function, operation, or use of the information or technology involves criminal intelligence activities. Such activities do not include information or technology that is used for routine administrative and business applications, including, but not limited to, payroll, finance, logistics, and personnel-management applications.

(3) This part does not apply to electronic information and information technology that is acquired by a contractor and that is incidental to the contract.

(4) This part applies to competitive solicitations issued or new systems developed by a state agency on or after July 1, 2006.

282.606 Intent.—It is the intent of the Legislature that, in construing this part, due consideration and great weight be given to the interpretations of the federal courts relating to comparable provisions of s. 508 of the Rehabilitation Act of 1973, as amended, and 29 U.S.C. s. 794(d), including the regulations set forth under 36 C.F.R. part 1194, as of July 1, 2006.

Section 74. This act shall take effect July 1, 2006.

Approved by the Governor June 15, 2006.

Filed in Office Secretary of State June 15, 2006.