

## House Bill No. 7075

An act relating to developmental disabilities; amending s. 393.063, F.S.; revising definitions applicable to ch. 393, F.S., relating to persons with developmental disabilities; amending ss. 287.155, 393.064, 393.0651, 393.066, 393.135, 393.22, 393.23, 402.181, 402.22, 408.036, and 435.03, F.S.; conforming terminology to changes made by the act; amending s. 393.0657, F.S.; revising an exemption from certain requirements for refingerprinting and rescreening; amending s. 393.0673, F.S.; providing circumstances under which the Agency for Persons with Disabilities may deny, revoke, or suspend a license or impose a fine; amending s. 393.506, F.S.; authorizing direct service providers to administer a certain medication to clients with developmental disabilities; amending s. 400.063, F.S.; conforming a cross-reference; amending s. 916.301, F.S.; clarifying provisions relating to court appointment of certain qualified experts to evaluate a defendant's mental condition; providing an effective date.

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

Section 1. Subsection (1) of section 287.155, Florida Statutes, is amended to read:

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

(1) 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, subject to the approval of the Department of Management Services, purchase automobiles, trucks, tractors, and other automotive equipment for the use of institutions or developmental disabilities centers under the management of 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.

Section 2. Subsections (10) and (31) of section 393.063, Florida Statutes, are amended to read:

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

(10) “Developmental disabilities ~~center 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.

(31) “Retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that

manifests before the age of 18 and can reasonably be expected to continue indefinitely. “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.

Section 3. Subsection (4) of section 393.064, Florida Statutes, is amended to read:

393.064 Prevention.—

(4) There is created at the developmental disabilities ~~center 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 agency.
- (c) Diagnosis of unusual conditions and syndromes associated with developmental disabilities in clients identified throughout developmental disabilities 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 ~~center 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 4. Paragraph (f) of subsection (5) of 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 family support plan for children ages 3 to 18 years of age and an individual support plan for each client. The client, if competent, the client’s parent or guardian, 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 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 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.

(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 plan. The client, if competent, the client's parent or guardian, or, when appropriate, the client advocate, and the administrator of the 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:

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

Section 5. 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 not required to repeat such screening in order to comply with the screening requirements if such persons have not been unemployed for more than 90 consecutive days since that screening occurred. 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 6. Subsection (5) of section 393.066, Florida Statutes, is amended to read:

393.066 Community services and treatment.—

(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 ~~center~~ 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.

Section 7. Section 393.0673, Florida Statutes, is amended to read:

393.0673 Denial, suspension, or 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:

(a) ~~The applicant or licensee has:~~

1.(a) Has Falsely represented or omitted a material fact in its license application submitted under s. 393.067;

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

3.(c) Has Failed to comply with the applicable requirements of this chapter or rules applicable to the applicant or licensee; or

(b) The Department of Children and Family Services has verified that the licensee is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult.

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

(a) The applicant has:

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

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

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

4. Previously had a license to operate a residential facility revoked by the agency, the Department of Children and Family Services, or the Agency for Health Care Administration; or

(b) The Department of Children and Family Services has verified that the applicant is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult.

(3)(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.

(4)(3) The agency, as a part of any final order issued by it under 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.

(5)(4) 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.

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

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

Section 8. Paragraph (a) of subsection (2) of section 393.135, Florida Statutes, is amended to read:

393.135 Sexual misconduct prohibited; reporting required; penalties.—

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

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

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

Section 9. Section 393.22, Florida Statutes, is amended to read:

393.22 Financial commitment to community services programs.—In order to ensure that whenever a number of persons move from a center ~~an institution~~ serving persons with developmental disabilities which is sufficient to allow an entire residential unit within that center institution to be closed, no less than 80 percent of the direct costs of providing services to persons who had resided in that unit shall be reallocated for community services.

Section 10. Section 393.23, Florida Statutes, is amended to read:

393.23 Developmental disabilities centers 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 center institution, and moneys donated to the center 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 depository 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 ~~center 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 ~~center institutions~~ for the benefit of clients.

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

(4) All sales taxes collected by the ~~center 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 11. Subsection (1) of section 393.506, Florida Statutes, is amended to read:

393.506 Administration of medication.—

(1) A direct service provider who is not currently licensed to administer medication may supervise the self-administration of medication or may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a client as provided in this section.

Section 12. Subsection (1) of section 400.063, Florida Statutes, is amended to read:

400.063 Resident Protection Trust Fund.—

(1) A Resident Protection Trust Fund shall be established for the purpose of collecting and disbursing funds generated from the license fees and administrative fines as provided for in ss. 393.0673~~(4)(2)~~, 400.062(3), 400.121(2), and 400.23(8). Such funds shall be for the sole purpose of paying for the appropriate alternate placement, care, and treatment of residents who are removed from a facility licensed under this part or a facility specified in s. 393.0678(1) in which the agency determines that existing conditions or practices constitute an immediate danger to the health, safety, or

security of the residents. If the agency determines that it is in the best interest of the health, safety, or security of the residents to provide for an orderly removal of the residents from the facility, the agency may utilize such funds to maintain and care for the residents in the facility pending removal and alternative placement. The maintenance and care of the residents shall be under the direction and control of a receiver appointed pursuant to s. 393.0678(1) or s. 400.126(1). However, funds may be expended in an emergency upon a filing of a petition for a receiver, upon the declaration of a state of local emergency pursuant to s. 252.38(3)(a)5., or upon a duly authorized local order of evacuation of a facility by emergency personnel to protect the health and safety of the residents.

Section 13. Subsection (1) of 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 or developmental disabilities centers under the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, the Department of Corrections, or the Agency for Persons with Disabilities.

Section 14. Subsection (4) of 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.—

(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 shall include, but not be limited to, developmental disabilities ~~centers 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.

Section 15. Paragraph (t) of subsection (3) of section 408.036, Florida Statutes, is 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):

(t) For beds in state developmental disabilities centers ~~institutions~~ as defined in s. 393.063.

Section 16. 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 or chapter 429, and for employees and employers of developmental disabilities ~~centers~~ institutions as defined in s. 393.063, intermediate care facilities for the developmentally disabled as defined in s. 400.960, and mental health treatment facilities as defined in s. 394.455, meets the requirements of this chapter.

Section 17. Subsection (2) of section 916.301, Florida Statutes, is amended to read:

916.301 Appointment of experts.—

(2) If a defendant's suspected mental condition is retardation or autism, the court shall appoint the following:

(a) At least one, or at the request of any party, two experts to evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed; and.

(b) A psychologist selected by the agency who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism, and a social service professional, with experience in working with persons with retardation or autism.

1. The psychologist shall evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is incompetent to proceed due to retardation or autism.

2. The social service professional shall provide a social and developmental history of the defendant.

Section 18. This act shall take effect July 1, 2008.

Approved by the Governor June 30, 2008.

Filed in Office Secretary of State June 30, 2008.