

CHAPTER 2023-273

Committee Substitute for Committee Substitute for House Bill No. 1517

An act relating to the Agency for Persons with Disabilities; creating a workgroup to provide a continuum of guidance and information for individuals with developmental disabilities and their families; specifying workgroup participants and duties; requiring the workgroup to submit certain reports to the Governor and Legislature by specified dates; amending s. 393.063, F.S.; revising and defining terms; amending s. 393.065, F.S.; requiring the Agency for Persons with Disabilities to make certain eligibility determinations within specified timeframes; providing eligibility requirements for applicants; requiring the agency to authorize admission to an intermediate care facility for certain individuals; removing a provision requiring the agency to perform specified assessments to determine level of need and medical necessity for intermediate care facilities; providing requirements for the developmental disabilities home and community-based services Medicaid waiver program; amending s. 393.0651, F.S.; revising the timeframe within which a family or an individual support plan must be developed; amending s. 393.0655, F.S.; revising background screening requirements for certain direct service providers; amending s. 393.067, F.S.; requiring the licensure of adult day training programs; conforming related application and licensure provisions to changes made by the act; providing for comprehensive emergency management plans of adult day training programs; providing for inspections of adult day training programs; requiring adult day training programs to adhere to specified rights; prohibiting the agency, beginning on a specified date, from authorizing funds or services to an unlicensed adult day training program; conforming provisions to changes made by the act; amending s. 393.0673, F.S.; revising provisions related to disciplinary action against certain licensees to include licensed adult day training programs; providing that for purposes of disciplinary action for certain violations, a licensee is ultimately responsible for the care and supervision of clients in its facility or participants of the program; providing construction; revising grounds for denial of a licensure application; defining the term “good moral character”; authorizing the agency to immediately suspend or revoke the license of adult day training programs under certain circumstances; authorizing the agency to impose an immediate moratorium on service authorizations to licensed facilities and adult day training programs under certain circumstances; amending s. 393.0678, F.S.; conforming provisions to changes made by the act; making a technical revision; amending s. 393.135, F.S.; conforming provisions to changes made by the act; repealing s. 393.18, F.S., relating to comprehensive transitional education programs; amending s. 394.875, F.S.; conforming a provision to changes made by the act; amending ss. 383.141, 400.063, and 1002.394, F.S.; conforming cross-references; providing an effective date.

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

Section 1. (1) The Agency for Persons with Disabilities shall convene an interagency workgroup to create a continuum of guidance and information for individuals with developmental disabilities and their families including guidance and information across the lifespan of such individuals related to education, workforce, daily living skills, and supportive services for greater independence.

(2) The workgroup shall include as participants, at a minimum, the Department of Children and Families, the Early Steps Program of the Department of Health, the Division of Vocational Rehabilitation of the Department of Education, at least three representatives from school district transition programs, Project 10, the Agency for Health Care Administration, the Department of Economic Opportunity's Unique Employer program, and the Florida Center for Students with Unique Abilities.

(3) The workgroup shall gather input from stakeholders and Florida families to identify gaps in information and communication across the lifespan of individuals with developmental disabilities and their families, determine why these gaps occur, and recommend ways to ensure that information on the availability of resources and supports across the state is more accessible, including, but not limited to, improving agency websites.

(4) The workgroup shall submit an interim report by November 1, 2023, and a final report by September 1, 2024, including its findings and recommendations, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 2. Subsections (11) through (25) of section 393.063, Florida Statutes, are renumbered as subsections (10) through (24), respectively, subsection (1) and present subsection (10) are amended, and a new subsection (25) is added to that section, to read:

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

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

(10) ~~“Comprehensive transitional education program” means the program established in s. 393.18.~~

(25) “Licensee” means an individual, a corporation, a partnership, a firm, an association, a governmental entity, or other entity that is issued a permit,

registration, certificate, or license by the agency. The licensee is legally responsible for all aspects of the provider operation.

Section 3. Section 393.065, Florida Statutes, is amended to read:

393.065 Application and eligibility determination.—

(1) Application for services shall be made in writing to the agency, in the region service area in which the applicant resides. The agency shall review each application and make an applicant for eligibility determination within 45 days after the date the application is signed for children under 6 years of age and within 60 days after receipt of the date the application is signed application for all other applicants. If, at the time of the application, an applicant is requesting enrollment in the home and community-based services Medicaid waiver program for individuals with developmental disabilities deemed to be in crisis, as described in paragraph (5)(a), the agency shall complete an eligibility determination within 45 days after receipt of the signed application.

(a) If the agency determines additional documentation is necessary to make an eligibility determination, the agency may request the additional documentation from the applicant.

(b) When necessary to definitively identify individual conditions or needs, the agency or its designee must shall provide a comprehensive assessment.

(c) If the agency requests additional documentation from the applicant or provides or arranges for a comprehensive assessment, the agency's eligibility determination must be completed within 90 days after receipt of the signed application Only applicants whose domicile is in Florida are eligible for services.

(2) In order to be eligible for services under this chapter, the agency must determine that the applicant has met all eligibility requirements in rule, including having a developmental disability and being domiciled in this state. Information accumulated by other agencies, including professional reports and collateral data, shall be considered in this process when available.

(2) In order to provide immediate services or crisis intervention to applicants, the agency shall arrange for emergency eligibility determination, with a full eligibility review to be accomplished within 45 days of the emergency eligibility determination.

(3) The agency or its designee shall notify each applicant, in writing, of its eligibility determination decision. Any applicant or client determined by the agency to be ineligible for services has the right to appeal this determination decision pursuant to ss. 120.569 and 120.57.

~~(4) Before admission to an intermediate care facility for individuals with intellectual disabilities and to ensure that the setting is the least restrictive to meet the individual's needs, the agency must authorize admission pursuant to this subsection. As part of the authorization, the agency or its designee must conduct a comprehensive assessment that includes medical necessity, level of care, and level of reimbursement shall assess the level of need and medical necessity for prospective residents of intermediate care facilities for the developmentally disabled. 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 be funded under Title XIX of the Social Security Act.~~

(5) Except as provided in subsections (6) and (7), if a client seeking enrollment in the developmental disabilities home and community-based services Medicaid waiver program meets the level of care requirement for an intermediate care facility for individuals with intellectual disabilities pursuant to 42 C.F.R. ss. 435.217(b)(1) and 440.150, the agency must shall assign the client to an appropriate preenrollment category pursuant to this subsection and must provide priority to clients waiting for waiver services in the following order:

(a) Category 1, which includes clients deemed to be in crisis as described in rule, must shall be given first priority in moving from the preenrollment categories waiting list to the waiver.

(b) Category 2, which includes clients in the preenrollment categories individuals on the waiting list who are:

1. From the child welfare system with an open case in the Department of Children and Families' statewide automated child welfare information system and who are either:

a. Transitioning out of the child welfare system into permanency at the finalization of an adoption, a reunification with family members, a permanent placement with a relative, or a guardianship with a nonrelative;
or

b. At least 18 years but not yet 22 years of age and who need both waiver services and extended foster care services; or

2. At least 18 years but not yet 22 years of age and who withdrew consent pursuant to s. 39.6251(5)(c) to remain in the extended foster care system.

For individuals who are at least 18 years but not yet 22 years of age and who are eligible under sub-subparagraph 1.b., the agency must shall provide waiver services, including residential habilitation, and the community-based care lead agency must shall fund room and board at the rate

established in s. 409.145(3) and provide case management and related services as defined in s. 409.986(3)(e). Individuals may receive both waiver services and services under s. 39.6251. Services may not duplicate services available through the Medicaid state plan.

(c) Category 3, which includes, but is not required to be limited to, clients:

- 1. Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;
- 2. At substantial risk of incarceration or court commitment without supports;
- 3. Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
- 4. Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available or whose caregiver is unable to provide the care needed.

(d) Category 4, which includes, but is not required to be limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available.

(e) Category 5, which includes, but is not required to be limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain a meaningful day activity, maintain competitive employment, or pursue an accredited program of postsecondary education to which they have been accepted.

(f) Category 6, which includes clients 21 years of age or older who do not meet the criteria for category 1, category 2, category 3, category 4, or category 5.

(g) Category 7, which includes clients younger than 21 years of age who do not meet the criteria for category 1, category 2, category 3, or category 4.

Within preenrollment categories 3, 4, 5, 6, and 7, the agency shall prioritize ~~maintain a waiting list of~~ clients placed in the order of the date that the client is determined eligible for waiver services.

(6) The agency must shall allow an individual who meets the eligibility requirements of subsection (2) ~~subsection (1)~~ to receive home and community-based services in this state if the individual’s parent or legal guardian is an active-duty military servicemember and if, at the time of the servicemember’s transfer to this state, the individual was receiving home and community-based services in another state.

(7) The agency must shall allow an individual with a diagnosis of Phelan-McDermid syndrome who meets the eligibility requirements of subsection (2) subsection (1) to receive home and community-based services.

(8) Only a client may be eligible for services under the developmental disabilities home and community-based services Medicaid waiver program. For a client to receive services under the developmental disabilities home and community-based services Medicaid waiver program, there must be available funding pursuant to s. 393.0662 or through a legislative appropriation and the client must meet all of the following:

(a) The eligibility requirements of subsection (2), which must be confirmed by the agency.

(b) The eligibility requirements for the Florida Medicaid program under Title XIX of the Social Security Act, as amended, or the Supplemental Security Income program.

(c) The level of care requirements for an intermediate care facility for individuals with developmental disabilities pursuant to 42 C.F.R. ss. 435.217(b)(1) and 440.150.

(d) The requirements provided in the approved federal waiver authorized pursuant to s. 1915(c) of the Social Security Act and 42 C.F.R. s. 441.302.

(9)(8) Agency action that selects individuals to receive waiver services pursuant to this section does not establish a right to a hearing or an administrative proceeding under chapter 120 for individuals remaining in the preenrollment categories on the waiting list.

(10)(9) The client, the client's guardian, or the client's family must ensure that accurate, up-to-date contact information is provided to the agency at all times. Notwithstanding s. 393.0651, the agency must shall send an annual letter requesting updated information from the client, the client's guardian, or the client's family. The agency must shall remove from the preenrollment categories waiting list any individual who cannot be located using the contact information provided to the agency, fails to meet eligibility requirements, or becomes domiciled outside the state.

(11)(a)(10)(a) The agency must shall provide the following information to all applicants or their parents, legal guardians, or family members:

1. A brief overview of the vocational rehabilitation services offered through the Division of Vocational Rehabilitation of the Department of Education, including a hyperlink or website address that provides access to the application for such services;

2. A brief overview of the Florida ABLE program as established under s. 1009.986, including a hyperlink or website address that provides access to

the application for establishing an ABLE account as defined in s. 1009.986(2);

3. A brief overview of the supplemental security income benefits and social security disability income benefits available under Title XVI of the Social Security Act, as amended, including a hyperlink or website address that provides access to the application for such benefits;

4. A statement indicating that the applicant’s local public school district may provide specialized instructional services, including transition programs, for students with special education needs;

5. A brief overview of programs and services funded through the Florida Center for Students with Unique Abilities, including contact information for each state-approved Florida Postsecondary Comprehensive Transition Program;

6. A brief overview of decisionmaking options for individuals with disabilities, guardianship under chapter 744, and alternatives to guardianship as defined in s. 744.334(1), which may include contact information for organizations that the agency believes would be helpful in assisting with such decisions;

7. A brief overview of the referral tools made available through the agency, including a hyperlink or website address that provides access to such tools; and

8. A statement indicating that some waiver providers may serve private-pay individuals.

(b) The agency must provide the information required in paragraph (a) in writing to an applicant or his or her parent, legal guardian, or family member along with a written disclosure statement in substantially the following form:

DISCLOSURE STATEMENT

Each program and service has its own eligibility requirements. By providing the information specified in section ~~393.065(11)(a)~~ 393.065(10)(a), Florida Statutes, the agency does not guarantee an applicant’s eligibility for or enrollment in any program or service.

(c) The agency ~~must shall~~ also publish the information required in paragraph (a) and the disclosure statement in paragraph (b) on its website, and ~~must shall~~ provide that information and statement annually to each ~~client applicant placed in the preenrollment categories on the waiting list or~~ to the parent, legal guardian, or family member of such ~~client applicant~~.

(12)(11) The agency and the Agency for Health Care Administration may adopt rules specifying application procedures, criteria associated with the preenrollment waiting list categories, procedures for administering the preenrollment waiting list, including tools for prioritizing waiver enrollment within preenrollment categories, and eligibility requirements ~~criteria~~ as needed to administer this section.

Section 4. 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 or individual support plan must shall be developed within 60 days after the agency determines the client eligible pursuant to s. 393.065(3) 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.

(2) 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 must ~~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 must ~~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 does ~~shall~~ not preclude local education agencies and the agency from sharing the residential service costs of students who are clients and require residential placement.

(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 ~~may~~ 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 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:

- (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 center.

(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 5. Subsection (1) of 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 ~~adult day training comprehensive transitional education~~ programs licensed under this chapter 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 must ~~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 10 hours per month does not have to be screened if a person who meets the screening requirement of this section is always present and has the volunteer within his or her line of sight.

(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 direct services provider who provides services to clients in his or her own place of residence are subject to background screening; however, such

persons who are 12 to 18 years of age shall be screened for delinquency records only.

Section 6. Section 393.067, Florida Statutes, is amended to read:

393.067 Facility licensure.—

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

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

(3) An application for a license under this section must 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 adult day training program for which a license is sought.

(c) The name of the person or persons under whose management or supervision the facility or adult day training 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 adult day training 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 adult day training program.

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

(~~g~~)(~~h~~) Certification that the staff of the facility or adult day training program will receive training to detect, report, and prevent sexual abuse,

abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients.

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

(5) As a prerequisite for issuance of an initial or renewal license, the applicant, and any manager, supervisor, and staff member of the direct service provider of a facility or adult day training 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 a disqualifying offense revealed by 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.

(6) A facility or program 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 rules.

(7) The agency shall adopt rules establishing minimum standards for facilities and adult day training programs licensed under this section, including rules requiring facilities and adult day training programs to train staff to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, 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 adult day training ~~of the component centers or units of the program.~~

(8) The agency, after consultation with the Division of Emergency Management, shall adopt rules for foster care facilities, group home facilities, and residential habilitation centers, and adult day training programs which establish 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; post-disaster 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 facilities and adult day training ~~comprehensive transitional education programs and for homes~~ serving individuals who have a complex medical condition ~~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 Division of Emergency

Management, at a minimum, are given the opportunity to review the plan. 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 or program of necessary revisions.

(9) The agency may conduct unannounced inspections to determine compliance by foster care facilities, group home facilities, residential habilitation centers, and adult day training ~~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 an adult day training a program to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients. The facility or adult day training program shall make copies of inspection reports available to the public upon request.

(10) Each facility or program licensed under this section 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) The agency may audit the records of any facility or 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 is shall be limited to the records of clients funded by the agency.

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

(14) The agency may not authorize funds or services to an unlicensed facility or, beginning October 1, 2024, an adult day training program that requires a license under this section may not receive state funds. A license for the operation of a facility or an adult day training program may 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) The agency is not required to contract with facilities or adult day training programs licensed under pursuant to this chapter.

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 following constitute grounds for which the agency may take disciplinary action, including revoking or suspending ~~revoke or suspend~~ a

license and imposing or impose an administrative fine, not to exceed \$1,000 per violation per day, ~~if~~:

(a) The licensee 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; or

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

(b) The Department of Children and Families 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) For purposes of disciplinary action under this section for verified findings of abuse, neglect, abandonment, or exploitation of a child or vulnerable adult, the licensee is responsible not only for administration of the facilities in compliance with the standards provided by statute and administrative rule, but is ultimately responsible for the care and supervision of the clients in the facility or the participants of the program.

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

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

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

(3) 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 or adult day training program revoked by the agency, the Department of Children and Families, or the Agency for Health Care Administration; ~~or~~

(b) The Department of Children and Families 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; or

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

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

~~(5)(4)~~ 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 Health Care Trust Fund and expended as provided in s. 400.063.

~~(6)(5)~~ The agency may issue an order immediately suspending or revoking a license when it determines that any condition of ~~in~~ the facility or adult day training program presents a danger to the health, safety, or welfare of the residents in the facility or the program participants.

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

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

Section 8. 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 ~~a comprehensive transitional education program~~, 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.

(b) The licensee is closing the facility or has informed the agency 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 adopted promulgated thereunder.

Section 9. 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, foster care facility, group home facility, intermediate care facility for the developmentally disabled, or residential habilitation center; or

(b) Is eligible to receive services from the agency under this chapter, 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 10. Section 393.18, Florida Statutes, is repealed.

Section 11. Paragraph (c) of subsection (3) of section 394.875, Florida Statutes, is amended to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

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

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

Section 12. Paragraph (b) of subsection (1) of section 383.141, Florida Statutes, is amended to read:

383.141 Prenatally diagnosed conditions; patient to be provided information; definitions; information clearinghouse; advisory council.—

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

(b) “Developmental disability” includes Down syndrome and other developmental disabilities defined by s. 393.063 ~~s. 393.063(12)~~.

Section 13. Subsection (1) of section 400.063, Florida Statutes, is amended to read:

400.063 Resident protection.—

(1) The Health Care Trust Fund shall be used for the purpose of collecting and disbursing funds generated from the license fees and administrative fines as provided for in ss. 393.0673(5) ~~ss. 393.0673(4)~~, 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 14. Paragraph (d) of subsection (2) of section 1002.394, Florida Statutes, is amended to read:

1002.394 The Family Empowerment Scholarship Program.—

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

(d) “Disability” means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy, as defined in s. 393.063; Down syndrome, as defined in s. 393.063; an intellectual disability, as defined in s. 393.063; a speech impairment; a language impairment; an orthopedic impairment; any ~~an~~ other health impairment; an emotional or a behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; Phelan-McDermid syndrome, as defined in s. 393.063; Prader-Willi syndrome, as defined in s. 393.063; spina bifida, as defined in s. 393.063; being a high-risk child, as defined in s. 393.063(22)(a) ~~s. 393.063(23)(a)~~; muscular dystrophy; Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; a hearing impairment, including deafness; a visual impairment, including blindness; traumatic brain injury; hospital or homebound; or identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts. The term “hospital or homebound” includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months.

Section 15. This act shall take effect July 1, 2023.

Approved by the Governor June 20, 2023.

Filed in Office Secretary of State June 20, 2023.