Elder and Long Term Care Committee

Tuesday, March 28, 2006
11:00 AM – 12:00 PM
Reed Hall (102 HOB)

Meeting Packet

Allan Bense
Speaker

Hugh Gibson, III
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Elder & Long-Term Care Committee

Start Date and Time:	Tuesday, March 28, 2006 11:00 am
End Date and Time:	Tuesday, March 28, 2006 12:00 pm
Location:	Reed Hall (102 HOB)
Duration:	1.00 hrs

Consideration of the following bill(s):

HB 181 CS Administration of Medication by Hays
HB 227 CS Personal Needs Allowance by Bilirakis
HB 1417 Hospices by Sansom
HB 1503 Agency for Persons with Disabilities by Galvano

NOTICE FINALIZED on 03/24/2006 15:35 by MANNING.KAREN

House of Representatives

Elder and Long Term Care Committee

AGENDA

March 22, 2006
11:00 AM – 12:00 PM
Reed Hall (102 HOB)

I. Opening Remarks by the Chair

II. Consideration of the following bill(s):

HB 181 CS Administration of Medication by Hays

HB 227 CS Personal Needs Allowance by Bilirakis

HB 1417 Hospices by Sansom

HB 1503 Agency for Persons with Disabilities by Galvano

III. Closing Remarks by the Chair

IV. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 181 CS Administration of Medication
SPONSOR(S): Hays
TIED BILLS: **IDEN./SIM. BILLS:** SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	9 Y, 0 N, w/CS	Hamrick	Mitchell
2) Elder & Long-Term Care Committee		Walsh	Walsh
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

Committee Substitute for House Bill 181 allows a direct service provider, who is not licensed to administer medication, the ability to administer or supervise the self-administration of medication by a client with a developmental disability, who resides in a facility regulated under Chapter 393, F.S.

The CS provides that a 4-hour medication training course must be satisfactorily completed and the direct service provider must be found competent to administer or supervise the self-administration of medication in a safe and sanitary manner. The CS requires that a consent form must be signed by a legal guardian or a legal representative.

The CS also changes "day programs" to "day habilitation services" to reference existing definitions within Chapter 393, F.S, and provides the Agency for Persons with Disabilities (APD) the authority to promulgate rules.

This CS does not appear to have a fiscal impact on state or local governments.

This CS will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty --- Increases the options for facilities to provide care to the clients with developmental disabilities. The CS allows direct care providers, who are not licensed to administer medication, the ability to administer or to supervise the self-administration of medication, if they successfully complete a 4-hour training course in medication administration.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Developmental Disabilities and Chapter 393

Section 393.063, F.S., defines "developmental disability" as 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.

Section 393.063(12), F.S., provides a definition of a "direct service provider" or "caregiver" or "careaker" as a person 18 years of age or older who has direct contact with 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.

Chapter 393, F. S. regulates the following types of facilities:

- Comprehensive transitional education program centers
- Day habilitation facilities
- Developmental disabilities institutions
- Foster care facilities
- Group home facilities
- Intermediate Care Facilities for the Developmentally Disabled (ICF/DD)
- Residential facilities
- Residential habilitation centers

Types of Medications Administered to Persons with Developmental Disabilities

Currently, the administration of medication to persons with developmental disabilities in the comprehensive transitional educational program is performed by a nurse. In day programs and intermediate care facilities, unlicensed direct care staff may administer oral, transdermal, inhaled or topical prescription medications to persons with developmental disabilities.[1]

Training Requirements of Unlicensed Direct Care Staff

Currently, each facility, institution, or program under the purview of s. 393.506, F.S., must include in its policies and procedures a plan for training designated staff to ensure the safe handling, storage, and administration of prescription medication. These policies and procedures must be approved by APD before an unlicensed direct care staff assists with the administration of medication. The policies and procedures must include, at a minimum, the following provisions:

[1] See s. 393.506, F.S.

- An expressed and informed consent for each client;
- The director of the facility, program, or provider must maintain a copy of the written prescription, and that prescription must include the name of the medication, the dosage and administration schedule, the reason for the prescription, and the termination date; and
- Each prescribed medication must be kept in its original container and in a secure location.

The training required in s. 393.506, F.S., must be conducted by a registered nurse or a Florida-licensed medical physician or osteopathic physician.

Statutory Provisions for the Administration of Medication by Unlicensed Staff

Current law[2] provides authority, with specific guidelines, for unlicensed individuals to administer medication. Sections 400.488 and 400.4256, F.S., specify that assistance with self-administration does not include administration of rectal medications. These sections also limit the administration of medications by unlicensed care providers and prohibit the administration of medications where judgment or discretion is needed to determine the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration.

Statutory Provisions Related to Surrogate Families and Smaller Residential Settings

In smaller residential settings, properly trained persons or direct care staff may administer medications, as long as smaller residential settings function as a surrogate family. Under current law, incidental care may be provided to sick or non-institutionalized persons, as long as the care is performed by friends or members of the family, domestic servants, or a surrogate family.[3] This provision provides an exemption to the Nurse Practice Act, which allows an unlicensed caregiver to provide care to a surrogate family member without fear of prosecution for practicing nursing without a license.

In day programs, the director of a facility or program must designate in writing that an unlicensed direct care services staff is eligible to be trained in how to assist in the administration of medication or to administer medication directly.[4]

In an intermediate care facility, the director of a facility or program for the developmentally disabled may designate unlicensed staff that may provide medication assistance under the general supervision of a Florida-licensed registered nurse.[5]

Terminology for Day Programs and Day Habilitation Facilities

Section 393.506, F.S., refers to "day programs" as defined in s. 393.063, F.S., but s. 393.063, F.S., does not provide a definition for "day programs." Section 393.063(8), F.S., does define "day habilitation facility" and "day habilitation services."

- A "day habilitation facility" is any nonresidential facility which provides day habilitation services.

- A "day habilitation service" is a service that provides 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 focus on enabling the individual to attain or maintain his or her maximum functional level and are coordinated with any physical, occupational, or speech therapies listed in the plan of care.

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[2] Sections. 400.488, 400.4256, 400.9685, and 1006.062, F.S.
[3] *See* s. 464.022(1), F.S.
[4] *See* s. 393.506, F.S.
[5] *Ibid.*

PROPOSED CHANGES

The CS allows a direct service provider who is not licensed to administer medication to supervise self-administration or to administer medication to a client. The CS expands the existing provision (s. 393.506, F.S.) by allowing direct service providers to administer otic, ophthalmic and rectal prescription medications.

The CS provides that, in order to supervise self-administration of medication or to administer medications, a direct service provider must successfully complete a 4-hour training course in medication administration. The direct service provider is required to be assessed annually for competency in an onsite setting. A nurse or physician is required to observe and validate that the individual has met specified criteria such that the individual is able to administer medication to a client in a safe and sanitary manner.

The CS requires that a direct service provider must receive informed consent from the client, or the client's guardian, or legal representative, prior to supervising the self-administration of medication or administration of medication. The consent form must be accompanied with a description of the routes medication may be administered and the procedures that a direct service provider is authorized to supervise or administer.

The CS provides rule-making authority to APD so it may establish standards and procedures that a direct service provider must follow in order to supervise or administer medication to a client. The rules must include guidelines for such items as the labeling of medication, documentation and recordkeeping, storage and disposal of medication, and the training curriculum and validation procedures.

The CS removes the following provisions from s. 393.506, F.S.:

- The requirement that facilities, institutions or programs must include in its policies and procedures a plan for training designating the safe handling, storage, and administration of medications and requires that the policies and procedures be approved by the agency;
- The requirement that facilities maintain a copy of the written prescription, dosage and administration schedule, reason for the prescription, and termination date; and
- Reference to intermediate care facilities which are licensed by the Agency for Health Care Administration and are regulated pursuant to Chapter 400, F.S.

The CS changes "day programs" to "day habilitation services" to reference existing definitions within Chapter 393, F.S, and provides APD with the authority to promulgate rules.

C. SECTION DIRECTORY:

Section 1. Amends s. 393.506, F.S., to delete the requirements for unlicensed staff of direct care facilities to administer prescribed medications to persons with developmental disabilities; to authorize direct service providers to administer medication or supervise the self-administration of medication if they successfully complete a 4-hour training course on medication administration; to require APD to adopt rules to establish standards and procedures governing the supervision of direct care providers and their ability to administer mediation.

Section 2. Provides the CS will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Programs regulated by Chapter 393, F.S., may incur costs associated with the 4-hour training course on medication administration.

D. FISCAL COMMENTS:

There may be costs associated with rule promulgation by the Agency for Persons with Disabilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This CS does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This CS does not reduce the percentage of a state tax shared with counties or municipalities. This CS does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This CS provides the Agency for Persons with Disabilities the authority to adopt rules to facilitate implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DRAFTING ISSUES:

On lines 54 and 55, the CS references "unlicensed" direct service provider. By definition a direct service provider is unlicensed, so the reference to unlicensed is not necessary. Other references to "unlicensed" were removed in the strike-all amendment that was adopted in the Health Care Regulation Committee.

OTHER COMMENTS:

According to the Department of Health, the Board of Nursing has client safety concerns regarding the administration of medications by unlicensed personnel and feels that any authority to do so should mimic the requirements for education/training and supervision by a registered nurse as provided in chapter 400, F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Health Care Regulation Committee adopted a strike-all amendment offered by the bill's sponsor. The Committee Substitute differs from the original bill as filed in that it:

- Broadens the provisions of s. 393.506, F.S., and applies to all facilities that are regulated under chapter 393 such as: comprehensive transitional education programs, developmental disability institutions, foster care facilities, group home facilities, residential facilities, supported, living, etc. The original bill added a provision that was specific to comprehensive transitional education programs;
- Adds a 4-hour training course in medication administration;
- Removes the provision that medication may only be administered under the general supervision of a registered nurse; and
- Changes the term "unlicensed direct care staff" to "direct service provider" and consistently uses the term "direct service provider."

The bill, as amended, was reported favorably as a committee substitute. This analysis is drafted to the committee substitute.

CHAMBER ACTION

The Health Care Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the administration of medication; amending s. 393.506, F.S.; deleting requirements for unlicensed staff members of direct care service facilities to administer prescribed medications to persons with developmental disabilities; authorizing direct service providers to administer medication to clients or to supervise the self-administration of medication by clients; providing requirements for direct service providers to demonstrate competency regarding supervising the self-administration of medication by clients or administering medication to clients; requiring the Agency for Persons with Disabilities to adopt rules to establish standards and procedures governing the supervision of self-administered medications and the administration of medications by direct service providers; providing an effective date.

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

24
25 Section 1. Section 393.506, Florida Statutes, is amended
26 to read:
27 393.506 Administration of medication.--
28 (1) A ~~Notwithstanding the provisions of part I of chapter~~
29 ~~464, the Nurse Practice Act, unlicensed~~ direct service provider
30 who is not currently licensed to administer medication ~~care~~
31 ~~services staff providing services to persons with developmental~~
32 ~~disabilities~~ may supervise the self-administration of or may
33 administer oral, transdermal, ophthalmic, otic, rectal, inhaled,
34 or topical prescription medications to a client as provided in
35 this section.
36 (2) In order to supervise the self-administration of
37 medication or to administer medications as provided in
38 subsection (1), a direct service provider must satisfactorily
39 complete a medication administration training course of not less
40 than 4 hours in medication administration and be found competent
41 to supervise the self-administration of medication by a client
42 or to administer medication to a client in a safe and sanitary
43 manner. Competency must be assessed and validated at least
44 annually in an onsite setting and must include personally
45 observing that the direct service provider satisfactorily:
46 (a) Supervised the self-administration of medication by a
47 client.
48 (b) Administered medication to a client.
49 (3) A direct service provider may supervise the self-
50 administration of medication by a client or may administer
51 medication to a client only if the client, or the client's

52 guardian or legal representative, has given his or her informed
53 consent to self-administering medication under the supervision
54 of an unlicensed direct service provider or to receiving
55 medication administered by an unlicensed direct service
56 provider. Such informed consent must be based on a description
57 of the medication routes and procedures that the direct service
58 provider is authorized to supervise or administer. Only a direct
59 service provider who has received appropriate training and has
60 been validated as competent may supervise the self-
61 administration of medication by a client or may administer
62 medication to a client.
63 (4) The determination of competency and annual validation
64 required under this section shall be conducted by a registered
65 nurse licensed pursuant to chapter 464 or a physician licensed
66 pursuant to chapter 458 or chapter 459.
67 (5) The agency shall establish by rule standards and
68 procedures that a direct service provider must follow when
69 supervising the self-administration of medication by a client
70 and when administering medication to a client. Such rules must,
71 at a minimum, address requirements for labeling medication,
72 documentation and recordkeeping, the storage and disposal of
73 medication, instructions concerning the safe administration of
74 medication or supervision of self-administered medication,
75 informed-consent requirements and records, and the training
76 curriculum and validation procedures.
77 ~~(a) For day programs, as defined in s. 393.063, the~~
78 ~~director of the facility or program shall designate in writing~~
79 ~~unlicensed direct care services staff who are eligible to be~~

80 ~~trained to assist in the administration of or to administer~~
81 ~~medication.~~
82 ~~(b) For intermediate care facilities for the~~
83 ~~developmentally disabled licensed pursuant to part XI of chapter~~
84 ~~400, unlicensed staff designated by the director may provide~~
85 ~~medication assistance under the general supervision of a~~
86 ~~registered nurse licensed pursuant to chapter 464.~~
87 ~~(2) Each facility, institution, or program must include in~~
88 ~~its policies and procedures a plan for training designated staff~~
89 ~~to ensure the safe handling, storage, and administration of~~
90 ~~prescription medication. These policies and procedures must be~~
91 ~~approved by the agency before unlicensed direct care services~~
92 ~~staff assist with medication.~~
93 ~~(3) The policies and procedures must include, at a~~
94 ~~minimum, the following provisions:~~
95 ~~(a) An expressed and informed consent for each client.~~
96 ~~(b) The director of the facility, program, or provider~~
97 ~~must maintain a copy of the written prescription, and that~~
98 ~~prescription must include the name of the medication, the dosage~~
99 ~~and administration schedule, the reason for the prescription,~~
100 ~~and the termination date.~~
101 ~~(c) Each prescribed medication shall be kept in its~~
102 ~~original container and in a secure location.~~
103 ~~(4) The training required in this section shall be~~
104 ~~conducted by a registered nurse or a physician licensed pursuant~~
105 ~~to chapter 458 or chapter 459.~~
106 Section 2. This act shall take effect upon becoming a law.

HB 227 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 227 CS Optional Medicaid Payments
SPONSOR(S): Bilirakis
TIED BILLS: **IDEN./SIM. BILLS:** SB 930

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Appropriations Committee	15 Y, 0 N, w/CS	Speir	Massengale
2) Elder & Long-Term Care Committee		Walsh	Walsh
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

Federal law requires a personal needs allowance to be deducted from a recipient's income when determining the recipient's responsibility for the cost of care in an institutional setting (nursing homes, state mental hospitals and intermediate care facilities for the developmentally disabled). The federal law establishes a minimum monthly personal needs allowance of $30, but states may have a higher personal needs allowance.

Florida's current personal needs allowance is $35. House Bill 227 increases the monthly personal needs allowance granted to Medicaid recipients in institutional settings from $35 to $45.

The fiscal impact of this bill is $6 million. The bill will increase Medicaid spending by $5.4 million ($2.2 million in general revenue funds). The bill will increase the personal care allowance for Supplemental Security Income (SSI) recipients by $660,000 in general revenue funds.

This bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government — The bill increases the government's financial contribution to a Medicaid recipient's institutional services.

B. EFFECT OF PROPOSED CHANGES:

Federal law requires a personal needs allowance to be deducted from a recipient's income when determining the recipient's responsibility for the cost of care in an institutional setting (nursing homes, state mental hospitals and intermediate care facilities for the developmentally disabled. The federal law establishes a minimum monthly personal needs allowance of $30. States can have higher personal needs allowances.

Florida's current personal needs allowance is $35 pursuant to Florida Administrative Code 65A - 1.7141. Paragraph (a) of subsection (3) of section 409.904, Florida Statutes, states that the monthly personal allowance shall be based on appropriations. The personal needs allowance had been $35 since 1988.

This bill amends the statute to require a monthly personal needs allowance deduction of $45. This will allow institutionalized Medicaid recipients to keep $10 more of their income for personal needs. As a result the Medicaid program will have to pay $10 more per recipient each month. It estimated that this will cost the state $2.2 million. The bill provides an appropriation to the Agency for Health Care Administration (AHCA) for the additional Medicaid expenditures that will be incurred as a result of this bill.

It is estimated that the state will also incur additional costs in the personal care allowance category in the Department of Children and Families (DCF) budget as a result of this bill. Currently, about 5,500 institutionalized Medicaid recipients receive Supplemental Security Income (SSI) benefits from the Social Security Administration as their only income. SSI is a monthly cash assistance program for low income disabled or elderly individuals. SSI recipients are automatically Medicaid eligible in the State of Florida. When an SSI recipient is institutionalized, Social Security reduces the monthly SSI payment to $30. To ensure that institutionalized SSI recipients receive the standard $35 personal needs allowance, DCF issues a $5 warrant per month to each institutionalized SSI recipient whose only income is SSI. These supplemental payments come from the state's general revenue funds.

The state is not required to provide the funds to ensure nursing home residents receive the standard personal needs allowance. The state is only required to allow the individual a deduction equal to the standard allowance when determining how much the person owes the nursing home facility (or the institution).

The bill also provides an appropriation to DCF to increase the personal needs allowance for SSI recipients so that they receive the same benefit as non-SSI recipients.

C. SECTION DIRECTORY:

Section 1. Amends s. 409.904, F.S., requiring the deduction of $45 from a Medicaid recipient's income when determining the recipient's responsibility for the cost of care in an institutional setting.

Section 2. Appropriates $6,012,240 to fund the cost of this bill.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Federal financial participation in the Florida Medicaid Program for State Fiscal Year 2006-2007 is 58.77 percent; for every $1 the state spends, it earns $1.43 in federal funds.

2. Expenditures:

Recurring	2006-2007	2007-2008
Medicaid Expenditures		
General Revenue	$2,205,524	$2,205,524
Medical Care Trust Fund	$3,146,716	$3,146,716
Total	$5,352,240	$5,352,240
Personal Care Allowance		
General Revenue	$660,000	$660,000
Total	$660,000	$660,000
Total Recurring Expenditures	**$6,012,240**	**$6,012,240**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow Medicaid recipients in nursing homes, mental health hospitals and intermediate care facilities for the developmentally disabled to keep $10 more of their income for personal needs.

D. FISCAL COMMENTS:

The amount needed to increase the personal needs allowance is based upon the number of projected Medicaid recipients from the Social Services Estimating Conference on February 3, 2006.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to spend funds or to take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 17, 2006, the Health Care Appropriations Committee adopted an amendment offered by Representative Bilirakis which provided appropriations. As amended, the bill was reported favorably as a committee substitute. This analysis reflects the bill as amended.

CHAMBER ACTION

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1 The Health Care Appropriations Committee recommends the
2 following:
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4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to the personal needs allowance; amending
8 s. 409.904, F.S.; increasing the monthly personal
9 allowance for certain eligible persons; providing an
10 appropriation; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Paragraph (a) of subsection (3) of section
15 409.904, Florida Statutes, is amended to read:
16 409.904 Optional payments for eligible persons.--The
17 agency may make payments for medical assistance and related
18 services on behalf of the following persons who are determined
19 to be eligible subject to the income, assets, and categorical
20 eligibility tests set forth in federal and state law. Payment on
21 behalf of these Medicaid eligible persons is subject to the
22 availability of moneys and any limitations established by the
23 General Appropriations Act or chapter 216.

24 (3) A person who is in need of the services of a licensed
25 nursing facility, a licensed intermediate care facility for the
26 developmentally disabled, or a state mental hospital, whose
27 income does not exceed 300 percent of the SSI income standard,
28 and who meets the assets standards established under federal and
29 state law. In determining the person's responsibility for the
30 cost of care, the following amounts must be deducted from the
31 person's income:
32 (a) The monthly personal allowance for residents which
33 shall be $45 per month ~~as set based on appropriations~~.
34 Section 2. The sums of $2,205,524 from the General Revenue
35 Fund and $3,146,716 from the Medical Care Trust Fund are
36 appropriated to the Agency for Health Care Administration for
37 the 2006-2007 fiscal year for an increase in Medicaid
38 expenditures, and the sum of $660,000 is appropriated from the
39 General Revenue Fund to the Department of Children and Family
40 Services for the 2006-2007 fiscal year for an increase to the
41 personal care allowance.
42 Section 3. This act shall take effect July 1, 2006.

HB 1417

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1417 Hospices
SPONSOR(S): Sansom
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee		DePalma	Walsh
2) Health Care Appropriations Committee			
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1417 amends s. 400.602, F.S., to allow licensure of for-profit hospices in hospice service areas with a population of 750,000 or more, or in which a for-profit hospice is currently licensed to operate.

The bill directs AHCA to submit, by January 1, 2008, a report to the President of the Senate and the Speaker of the House of Representatives analyzing the impact of for-profit hospices on the delivery of care to terminally-ill patients.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Hospice Care for Terminally ill Patients

Hospice care is an alternative approach to the traditional medical model for end-of-life care. Hospice programs specialize in providing basic medical care, palliation and pain management, and social, psychological, and spiritual support to terminally-ill[1] individuals and their families. In Fiscal Year 2004-05, Florida hospice programs provided care to more than 98,000 individuals with terminal illnesses.[2] Nationally, the number of individuals receiving hospice care has increased 300% in the last decade, from 340,000 hospice patients in 1994 to 1,060,000 patients in 2004.[3]

With one exception, s. 400.601(3), F.S., requires hospice programs to operate as not-for-profit corporations, as defined in chapter 617, F.S.[4] Section 400.602(5), F.S., authorizes a hospice that was incorporated on or before July 1, 1978 to be transferred to a for-profit or not-for-profit entity, while s. 400.602(6), F.S., further permits any entity entitled to licensure under s. 400.602(5), F.S., to obtain a license for up to two additional hospices.[5]

Two for-profit entities, Vitas Healthcare Corporation of Florida and Vitas Healthcare Corporation of Central Florida, each purchased a not-for-profit hospice established before July 1, 1978 in accordance with s. 400.602(5), F.S. Both Vitas Healthcare Corporation of Florida and Vitas Healthcare Corporation of Central Florida have obtained licenses for two additional hospices[6], as permitted in s. 400.602(6), F.S. There are only four remaining hospices that were incorporated on or before July 1, 1978, that could be sold to for-profit hospices pursuant to s. 400.602(5), F.S.:

- Hospice of the Florida Suncoast (Pinellas County)
- Hospice of St. Francis (Brevard County)
- Hospice of Palm Beach County (Palm Beach)
- Hospice of Gold Coast Home Health Services (Broward)

All entities desiring a license to provide hospice services in the state must first obtain a certificate of need (CON) from the Agency for Health Care Administration (AHCA). Under s. 408.043(2), F.S., the

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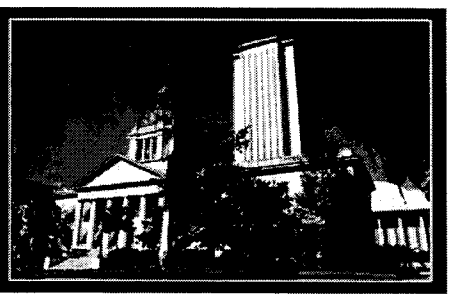
[1] To be eligible for hospice services in Florida, patients must receive a referral from their attending or primary physician for hospice care based on a diagnosis of a terminal illness with a life expectancy of one year or less, per s. 400.601(10), F.S.
[2] *Florida's Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting Is Important to Assess Hospice Quality,* Report 06-29, March 2006, Office of Program Policy Analysis and Government Accountability.
[3] *NHPCO's 2004 Facts and Figures*, accessed March 23, 2006, National Hospice and Palliative Care Organization, available at: http://www.nhpco.org/files/public/Facts_Figures_for2004data.pdf.
[4] A not-for-profit corporation is defined in s. 617.01401(5), F.S., as a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.
[5] Such entity may obtain a license for up to two additional hospices "in accordance with the other requirements of this part and upon receipt of any certificate of need that may be required under the provisions of ss. 408.031-408.045, F.S."
[6] On March 23, 2006, the license status of the hospice run by Vitas Healthcare Corporations of Florida in Boynton Beach, Florida (Palm Beach County) indicated that the facility had received a provisional license pending necessary background screening. Hospice licenses can be reviewed at http://facilitylocator.floridahealthstat.com/FacilityFind.aspx?pFaclType=22&pFaclName=&pFaclCity=&pFaclZip=&pCounty=ALL&pFaclInspectionRegion=ALL.

1 A bill to be entitled
2 An act relating to hospices; amending s. 400.602, F.S.;
3 providing for licensure of for-profit hospices; limiting
4 the location of for-profit hospices to defined service
5 areas; providing a definition; requiring a report to the
6 Legislature; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (6) of section 400.602, Florida
11 Statutes, is amended, and subsection (7) is added to that
12 section, to read:
13 400.602 Licensure required; prohibited acts; exemptions;
14 display, transferability of license.--
15 (6) Notwithstanding subsection (7) and s. 400.601(3), at
16 any time after July 1, 1995, any entity entitled to licensure
17 under subsection (5) may obtain a license for up to two
18 additional hospices in accordance with the other requirements of
19 this part and upon receipt of any certificate of need that may
20 be required under the provisions of ss. 408.031-408.045.
21 (7) Notwithstanding the provisions of s. 400.601(3), any
22 hospice that is organized as a for-profit corporation and
23 provides a continuum of palliative and supportive care for the
24 terminally ill patient and his or her family may obtain a
25 license in accordance with the other requirements of this part
26 and upon receipt of any certificate of need that may be required
27 under the provisions of ss. 408.031-408.045 to provide care in:

28 (a) A hospice service area with a population of 750,000 or
29 more, except that a for-profit hospice may not be located in any
30 of the counties in the service area that have a population of
31 50,000 or less; or
32 (b) A hospice service area in which a for-profit hospice
33 is currently licensed to operate under subsections (5) and (6).
34
35 For purposes of this subsection, the term "hospice service area"
36 means a geographic area as defined in rule 59C-1.0355, Florida
37 Administrative Code.
38 Section 2. No later than January 1, 2008, the Agency for
39 Health Care Administration shall submit to the President of the
40 Senate and the Speaker of the House of Representatives a report
41 analyzing the impact of for-profit hospices on the delivery of
42 care to terminally ill patients and include in the report a
43 review of the quality of care offered by for-profit hospices,
44 changes in the competitive marketplace in hospice service areas,
45 and any other information deemed pertinent by the agency.
46 Section 3. This act shall take effect July 1, 2006.

oppaga
OFFICE OF PROGRAM POLICY ANALYSIS
& GOVERNMENT ACCOUNTABILITY



March 2006 Report No. 06-29

Florida's Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting Is Important to Assess Hospice Quality

at a glance

Hospice care is an alternative to the traditional medical model for end-of-life care. Florida's hospice programs provide professional medical services to help patients die peacefully and painlessly. These services are available to any patient who meets certain diagnostic criteria, regardless of ability to pay. In 2004-05, the majority of patients served by Florida hospices were age 65 and older and more than one-third were diagnosed with cancer. Medicare and Medicaid reimbursed 93% of patient care costs, with another 4.5% paid by private health insurance and self-pay patients. The remaining 2.5% of patient care costs was covered by hospice programs as charity care.

Florida's method of regulating hospice programs differs from other states in two major ways. Florida is the only state that requires new hospice programs to operate as not-for-profit corporations, and is 1 of 12 states that comprehensively regulates the growth of hospice programs using a Certificate of Need process. Should the Legislature decide to allow new for-profit hospice programs to operate in Florida, it should continue to require that new programs be approved through the Certificate of Need process.

Scope

Pursuant to a legislative request, OPPAGA reviewed Florida's hospice care for terminally ill patients. This report addresses four questions.

- What types of services do Florida hospice programs provide?
- What types of clients are served by Florida's hospice programs?
- How are hospice programs in Florida financed?
- How does Florida's method for regulating hospice programs differ from other states?

Background

Hospice care is an alternative approach to the traditional medical model for end-of-life care. Hospice programs specialize in providing basic medical care, palliation and pain management, and social, psychological, and spiritual support to terminally ill individuals and their families.[1] Hospice care focuses on providing end-of-life care that allows patients to die with dignity and free of pain. It also provides support to patients' families in caring for their loved ones and in the grieving process.

[1] Palliation refers to care that relieves or soothes symptoms of disease.

Hospice care has evolved from a charitable service into a reimbursable service covered by Medicare, Medicaid, and most private health insurance plans. The concept of hospice care was introduced to this country in the 1960s by a British physician. While Congress considered federal legislation in 1974, Florida became the first state to officially recognize hospice care as a medical alternative for terminally ill individuals with the Florida Hospice Act in 1979. [2] This act served as the model for the federal government in developing Medicare and Medicaid hospice benefits. In 1986, Congress made hospice payments available to all Medicare clients and approved hospice services as an optional service for Medicaid. Nationally, approximately 1.1 million people used hospice services in 2004. Exhibit 1 shows the evolution of hospice care in Florida and nationally.

Exhibit 1
Hospice Care Has Evolved into a Medicare- and Medicaid-Reimbursable Benefit

Early 1960s
Idea of specialized care for the dying introduced in the United States at the Yale University School of Nursing.

1974
Congressional legislation was introduced to provide federal funds for hospice; it was not enacted.

1979
Florida recognizes hospice care with the enactment of the Florida Hospice Act. Many additional states follow Florida's lead and enact state-based hospice legislation.

1982
Congress initiates a provision to create a Medicare hospice benefit.

1986
Congress makes Medicare hospice benefits permanent and extends hospice benefits to Medicaid.

Source: National Hospice and Palliative Care Organization and Hospice Foundation of America.

[2] Chapter 79-186, *Laws of Florida.*

In Fiscal Year 2004-05, Florida hospice programs provided approximately 6.5 million days of patient care to more than 98,000 individuals with terminal illnesses for an estimated cost of $1.1 billion. [3] As of March 2006, 55 hospice programs operated in Florida's 27 hospice service areas. [4] Twelve of these areas are served by a single provider while the remaining 15 areas are served by multiple hospice programs. (See Appendix A.)

With one exception, Florida law requires hospice programs to operate as not-for-profit corporations. Hospice programs incorporated on or before July 1, 1978, may change their corporate status to a for-profit or not-for-profit entity and transfer licensure to that entity, while programs incorporated after this date must operate as not-for-profit organizations. [5] Per this provision, seven of the 55 hospice programs in Florida currently operate as for-profit entities; these seven programs are owned by a single corporation.

Both the Department of Elder Affairs (DOEA) and the Agency for Health Care Administration (AHCA) have responsibilities for Florida hospice programs. DOEA establishes rules in consultation with AHCA to guide provision of hospice care, and AHCA regulates hospice programs through a Certificate of Need (CON) process and licensure. [6, 7] Potential hospice programs generally apply for a CON to operate in Florida after AHCA determines that an unmet need exists. [8, 9] The CON process regulates the number of hospice programs that can operate in Florida and requires programs to demonstrate their expertise, financial capacity, and commitment to

[3] Florida hospice-specific data presented in this report was generated from an OPPAGA survey of Florida hospice programs regarding their 2004-05 fiscal year operation. Four hospice programs were not included in the survey because they had not been operating for a full year. Forty-six out of 51 hospice programs receiving the survey responded for a response rate of 90%. OPPAGA used regression based on survey responses to estimate total annual costs.

[4] This represents 55 separate programs operating under 43 licensed corporations.

[5] Section 400.602(5), *F.S.*

[6] Sections 400.605 and 408.032(3), *F.S.*

[7] Chapter 58A-2, *F.A.C.*

[8] A hospice program also may submit an application demonstrating a special need for hospice services, such as serving an underserved segment of the population even if AHCA has not projected unmet need.

[9] Hospice programs must also apply for and receive a Certificate of Need in order to build a freestanding hospice inpatient facility.

serve terminally ill individuals and their families as well as the communities in which they live.

After receiving a CON, hospice programs must apply for and receive state licensure as well as certification from Medicare and Medicaid which require that they meet minimum standards to ensure safety, staffing qualifications, and level of services. [10, 11, 12] AHCA conducts licensure inspections every year for the first three years and every two years thereafter if there are no deficiencies or problems. If AHCA finds deficiencies, the hospice program must develop a corrective action plan to correct the deficiency within a reasonable amount of time. AHCA conducts federal Medicare and Medicaid certification reviews at least once every six years.

Some hospice programs also may choose to become accredited. Several national organizations offer accreditation programs to the hospice industry. These include the Accreditation Commission for Health Care, Inc.; the Community Health Accreditation Program; and the Joint Commission on Accreditation of Healthcare Organizations. Based on our survey of hospice programs, 18 of Florida's programs were accredited in Fiscal Year 2004-05. [13]

[10] Although federal guidelines require minimum standards, Florida's licensure laws require more frequent inspections of hospice programs.

[11] It typically takes between 120 and 150 days for AHCA to issue a license after receiving a hospice application.

[12] AHCA licensure staff are responsible for conducting an unannounced inspection of every newly licensed hospice to ensure that the program meets required Medicare and Medicaid certification conditions.

Questions and Answers —

What types of services do Florida hospice programs provide?

Hospice programs in Florida provide a variety of services to meet the medical, social, psychological, and spiritual needs of terminally ill patients and their families. Both state and federal law mandate that hospice programs provide a set of core services including needed medical care, pain management and palliation, and bereavement care and counseling to help patients and families deal with the emotional aspects of dying. Exhibit 2 details these core services.

[13] One hospice program held accreditation by the Accreditation Commission for Health Care, 13 held accreditation by the Joint Commission on Accreditation of Healthcare Organizations, and 4 held accreditation by the Community Health Accreditation Program. Three other hospice programs are preparing for accreditation by the Community Health Accreditation Program.

Exhibit 2
Florida Law and Federal Medicare and Medicaid Regulations Require Florida Hospices to Deliver the Core Services Listed Below

Service	Requirements
Nursing Care	Care provided by or under the direction of a registered nurse
Medical Social Services	Services provided by a social worker under the direction of a physician
Physicians' Services	Medical care performed by a doctor of medicine or osteopathy
Counseling Services	Counseling provided to the patient and family members or others caring for the patient at home, including bereavement, dietary, and spiritual counseling
Short-Term Inpatient Care	Inpatient care provided in a participating hospice inpatient unit, hospital, or skilled nursing facility for pain management and symptom control or a means of providing respite for the patient's family or other persons caring for the patient at home
Medical Appliances and Supplies, Including Drugs and Biologicals	Medical supplies provided for the care of the patient, which may include durable medical equipment, medical supplies, and other self-help and personal comfort items, as well as drugs and biologicals if they are used primarily for the relief of pain and symptom control related to the illness
Home Health Aide Services	Home health aide, such as personal care and homemaker services, provided by qualified home health staff
Physical Therapy, Occupational Therapy, and Speech-Language Pathology Services	Therapies provided to enable the patient to maintain activities of daily living and basic functional skills

Source: Center for Medicare and Medicaid Services, Hospice Manual, Chapter 2, Coverage of Services; Section 400.609, *Florida Statutes*.

In addition to the core services, all Florida hospice programs offer ancillary services that the programs consider essential to patients' care although not reimbursable by Medicare, Medicaid, or private health insurance. These ancillary services can include programs that benefit patients and their families as well as community programs such as crisis intervention and school bereavement counseling. See Exhibit 3 for a list of the ancillary services commonly offered by Florida hospice programs.

Exhibit 3
Florida Hospice Programs Offer Ancillary Services to Patients, Families, and the Community

Commonly Offered Ancillary Services	Percentage of Programs Offering Service
Community Bereavement Programs	93%
Massage Therapy	63%
School Bereavement Programs	60%
Pet Therapy	58%
Community-Based Crisis Intervention	54%
Financial Assistance Programs	50%
Pre-Hospice Services	47%
Music Therapy	45%

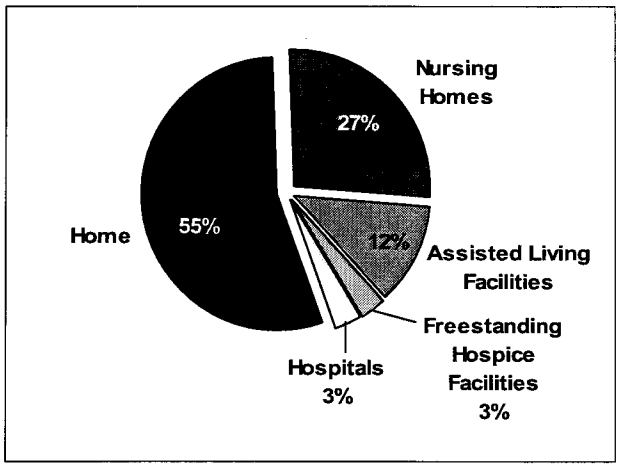
Source: OPPAGA hospice survey.

Hospice programs use an interdisciplinary team approach to provide services. This team is composed of a physician, registered nurse, social worker, chaplain, and volunteer. During the admission process a member of the team conducts a physical and psychosocial assessment of the patient's medical, physical, social, psychological, and spiritual needs. Based on this assessment, a hospice nurse develops a plan of care with the patient and his or her family and coordinates the delivery of services.

While most of the services provided to hospice patients are delivered by paid staff, some are delivered by volunteers. Medicare and Medicaid regulations require that hospice programs use volunteers to provide at least 5% of their patient care hours, and hospice administrators emphasize the importance of volunteers to their programs. Nearly 21,300 individuals volunteered over 1.7 million hours of service to hospice patients during Fiscal Year 2004-05 in the 46 programs that responded to our survey.

Hospice care is typically provided to patients in their own homes or residences such as nursing homes or assisted living facilities. As shown in Exhibit 4, almost all (94%) of Florida hospice care was provided in these settings during Fiscal Year 2004-05. Of the remaining 6%, 3% was provided in hospitals and 3% was provided in freestanding hospice facilities. Freestanding hospice facilities can be used for either residential or inpatient purposes. Freestanding residential hospice facilities provide a home-like setting for patients who do not wish to die in their own homes or provide patient care to give respite breaks for caregivers. Freestanding inpatient hospice facilities provide more intense medical care.[14] Twenty-three hospice programs in Florida operate one of these freestanding facilities.

Exhibit 4
Hospice Programs Primarily Provide Care in the Patient's Residence



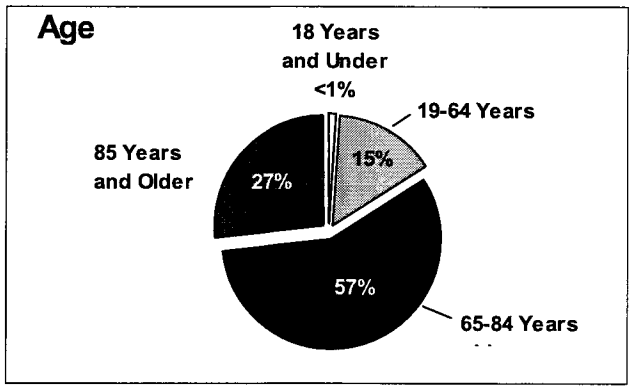
Source: OPPAGA hospice survey.

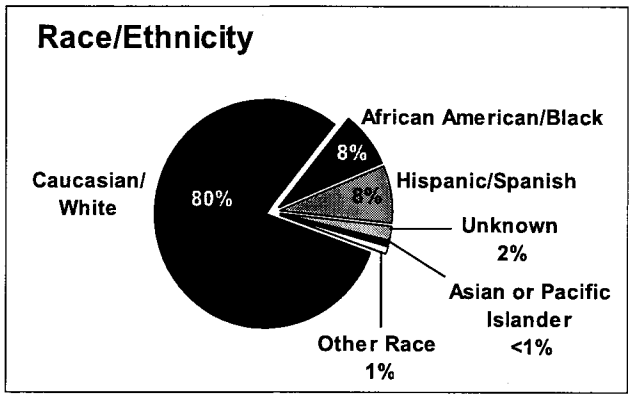
[14] Such care may be necessary to stabilize patients or adjust pain management. Short-term higher-level care also may be available through 24-hour continuous home care.

What types of clients are served by Florida's hospice programs?

Hospice programs serve patients who meet certain diagnostic criteria, regardless of their age or ability to pay. To be eligible for hospice services in Florida, patients must receive a referral from their attending or primary physician for hospice care based on a diagnosis of a terminal illness with a life expectancy of one year or less. [15] Patients also must elect to receive palliative rather than curative treatment. [16] In Fiscal Year 2004-05, most (84%) of the patients served by hospice programs were age 65 and older and 80% were Caucasian (see Exhibit 5). Slightly over half (53%) of the patients were women while 47% were men.

Exhibit 5
The Majority of Patients Served in Fiscal Year 2004-05 Were Age 65 or Older and Caucasian

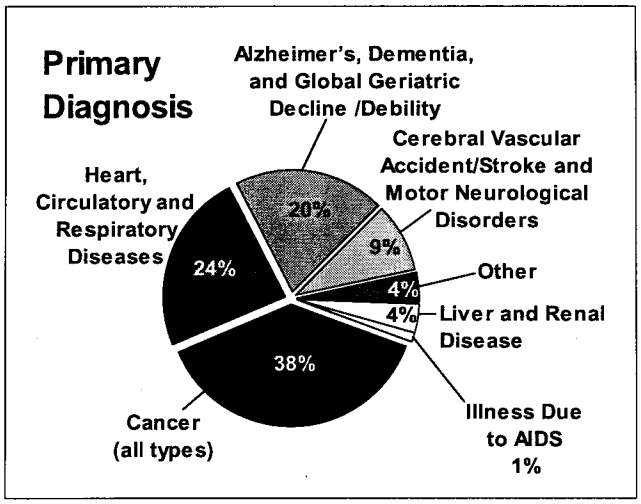




Source: OPPAGA hospice survey.

The majority of patients served by Florida hospices in Fiscal Year 2004-05 had primary diagnoses of cancer; heart or respiratory diseases; or conditions related to aging, such as Alzheimer's, dementia, or geriatric decline. (See Exhibit 6.) To a lesser extent, patients had primary diagnoses of stroke, neurological disorders, renal failure, or illness due to AIDS.

Exhibit 6
Patients with Cancer Accounted for the Largest Percentage of Those Served by Florida Hospice Programs in Fiscal Year 2004-05



Source: OPPAGA hospice survey.

Although Florida's hospice programs can serve patients who are terminally ill with a life expectancy of one year or less, they rarely do so, and most patients receive hospice services for less than three months. [17] This is because physicians typically do not refer patients to a hospice program until the very end of their illnesses, when they may have only weeks or days left to live. Exhibit 7 shows the average length of stay of Florida hospice patients, by diagnoses. [18]

[15] Section 400.601(10), *F.S.*

[16] Curative care provides treatment to cure or remedy an illness or disease while palliative care relieves or soothes the symptoms of an illness or disease without affecting a cure.

[17] While Florida law allows hospices to serve patients that have a life expectancy of one year or less, federal Medicare guidelines specify that hospice patients have a life expectancy of six months or less.

[18] The median length of stay (MLOS) for all diagnoses was 23 days. The MLOS is often a more accurate gauge in understanding the experience of typical hospice patients.

Exhibit 7
Most Hospice Patients Receive Less Than 90 Days of Care

Primary Diagnosis	Average Length of Stay (Days)
Alzheimer's, Dementia and Global Geriatric Decline/Debility	83
Heart, Circulatory and Respiratory Diseases	65
Cerebral Vascular Accident/Stroke and Motor Neurological Disorders	57
Cancer (all types)	50
Illness due to AIDS	46
Liver and Renal Disease	32
Other	27

Source: OPPAGA hospice survey.

How are hospice programs in Florida financed?

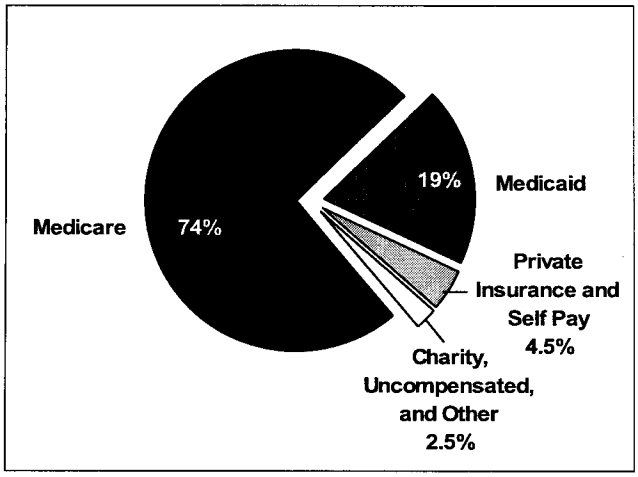
Hospice programs are financed through reimbursements for patient care; revenues from charitable contributions and fundraising; and other sources, such as investment income and grant funding. Hospice programs receive reimbursements for patient care from Medicare and Medicaid, private insurance, and self-pay patients. Hospice programs can hold community fundraisers or receive charitable contributions, such as contributions in the form of cash and property, donated services, memorial gifts, and planned or willed bequests. [19, 20] In Fiscal Year 2004-05, 93.4% of the revenues reported by the 36 hospice programs that responded to this section of our survey were from patient care reimbursement, 6.3% were from charitable contributions, and less than 1% were from other sources. These 36 programs received a total of $842.2 million in reimbursements, ranging from $651,600 to $97 million, and collected $57.1 million in contributions, ranging from $8,500 to $8.5 million.

[19] Some hospice programs establish foundations to organize fundraising efforts; manage, invest, and distribute charitable funds and donations; and support community activities. Balances for not-for-profit hospice foundations ranged from $1.4 to $25 million in 2004.

[20] Hospice programs typically use these monies to subsidize care for patients with no source of income or to provide ancillary services.

In Fiscal Year 2004-05, Florida hospice programs received reimbursement for most (97.5%) of the patient care they provided. Medicare and Medicaid paid for 93% of patient care, while private health insurance and self-paying patients paid for 4.5% of patient care. Hospice programs provided 2.5% of uncompensated or charity care. (See Exhibit 8.)

Exhibit 8
Medicare and Medicaid Reimbursed Hospice Programs for 93% of Patient Care in Fiscal Year 2004-05



Source: OPPAGA hospice survey.

Medicare and Medicaid, which reimbursed 93% of the patient care in Fiscal Year 2004-05, use per-diem rates that vary depending on the level of care provided. As shown in Exhibit 9, for each day of patient care, hospice programs currently receive one of four daily rates which range from $126.49 to $738.26, depending on the individual needs of patients and their families. The two lower rates are for routine hospice care provided at the patient's residence and for routine care provided at an inpatient facility such as a hospital or skilled nursing facility. Hospice programs bill the inpatient respite rate when a patient's caregiver needs a break from caring for the patient and the hospice assumes the responsibilities of the caregiver for up to five days. General inpatient care provided at a facility and continuous hospice care provided at the patient's residence are reimbursed at higher rates to pay for more intense medical care.

Exhibit 9
Medicare and Medicaid Per-Diem Rates for Hospice Services Range from $126.49 to $738.26

Payment Category	General Description	Rate Per Day [1]
Routine Hospice Care	A typical day of care provided by a hospice program	$126.49
Inpatient Respite Care	Inpatient care provided when the patient's primary caregiver requires relief and is limited to a maximum of five consecutive days per respite period	$130.85
General Inpatient Care	Inpatient care provided when a patient's symptoms cannot be treated in the residence	$562.69
Continuous Hospice Care	Continuous care provided in the home for at least 8 hours within a 24-hour period, which is primarily nursing care	$738.26 (or $30.76 per hour)

[1] The payment rate is adjusted by a wage index, which varies based on the patient's residence to account for geographic differences in wage costs.

Source: CMS Pub 100-4, Medicare Claims Processing, Transmittal 663, August 26, 2005 and GAO 05-42, Medicare Hospice Care: Modifications to Payment Methodology May Be Warranted, October 2004.

How does Florida's method for regulating hospice programs differ from other states?

Two major differences exist between how Florida and most other states regulate hospice programs. Florida is the only state that requires new hospice programs to operate as not-for-profit corporations and is 1 of 12 states that comprehensively regulates the growth of hospice programs using a Certificate of Need (CON) process. (See Appendix B.) We did not find conclusive evidence that hospice care in Florida or in other states is affected by ownership status. Should the Legislature decide to allow new for-profit hospice programs to operate in Florida, it should continue to require such programs be approved through the CON process to ensure only qualified programs enter the state. [21]

Ownership status does not appear to affect hospice care in Florida or in other states; however, information is limited. Hospice officials that we interviewed in other states, which authorize both not-for-profit and for-profit hospices to operate, reported that they had no evidence to indicate that ownership status affects hospice care, and these states had not experienced any problems with hospice care related to ownership status. [22] In addition, based on our review, we did not note any significant differences in Florida between for-profit and not-for-profit programs in the provision of hospice services, such as the types and delivery of services or the types of patients served.

However, information about ownership status and quality of hospice care in Florida and in other states is limited. The other states that we contacted had not analyzed quality of care by ownership status. In addition, we did not find a significant difference in the number of allegations received by AHCA between for-profit and not-for-profit programs in Florida; however, the total number of hospice allegations was small. [23] Although Florida hospices programs must annually report information to DOEA, such as patient days, reimbursement sources, and primary patient diagnoses, these data are not useful for assessing quality of care or for assessing differences in quality of care based on ownership status. In addition, while a few studies exist on hospice care and ownership status, results vary and are inconclusive. [24]

Because the use of hospice services will likely increase in Florida as the population continues to age, it will be increasingly important for the Legislature and other stakeholders to obtain information about the quality of care provided by the hospice programs. To ensure that such information is collected, the Legislature should direct AHCA and DOEA to work with Florida

[21] Section 400.602(5), *F.S.,* allows hospice programs that were operating and incorporated before July 1, 1978, to transfer their license to a for-profit or not-for-profit entity. Currently, seven hospice programs operate as for-profit corporations under this provision.

[22] The eight states contacted, Alabama, Illinois, Maryland, Virginia, Ohio, Tennessee, Texas, and California, are similar to Florida in size and/or elderly population.

[23] From August 2002 through July 2005, the agency received a total of 279 allegations, of which the agency confirmed only 9% (25) and required the hospice programs to take corrective action.

[24] For example, one study reported that for-profit hospice patients had longer lengths of stay and were admitted into hospice sooner than patients in not-for-profit hospices. However, the study was not conclusive as to why this occurred and did not address whether this difference affected quality of care.

hospice programs to develop standardized quality and outcome measures and a mechanism for collecting and maintaining this information. Such measures also will be useful in meeting proposed Medicare rules for quality assessment and performance improvement requirements.[25] In addition, Florida hospice programs should consider participating in national initiatives to benchmark quality such as those developed by the National Hospice and Palliative Care Organization.[26] Once data is collected, AHCA, DOEA, stakeholders, and the Legislature, can use this information to ensure that all Florida hospice programs provide high quality care and to assess whether differences in quality of hospice care exist based on ownership status or other variables of interest.

Florida's Certificate of Need process is important to ensure that only qualified hospice programs enter the state. Should the Legislature decide to allow new hospice programs to operate as for-profit entities in Florida, it should maintain the Certificate of Need (CON) process. This process ensures that new hospice programs have the expertise, financial resources, and commitment to meet the needs of their communities. In addition, this process ensures that new programs operate only in areas of the state where existing hospice programs are not meeting current needs. AHCA has reviewed and is currently modifying its methodology for identifying areas of the state where existing programs may not be meeting the need for hospice services.

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[25] Section 418.58, Quality assessment and performance improvement, of Part II, 42 CFR Part 418, Federal Register, Medicare and Medicaid Programs: Hospice Conditions of Participation; Proposed Rule, May 27, 2005. This rule, if promulgated, would require all hospice programs to implement an outcomes-based internal performance improvement program that measures individual patient outcomes in order to continually improve the quality of care provided to patients and their families.

[26] These initiatives include the Family Evaluation of Hospice Care survey, maintenance of a national data set, and development of end result outcome measures and are coordinated by the National Hospice and Palliative Care Organization (NHPCO), which represents hospice and palliative care programs and professionals in the United States. Of the 46 hospice programs that responded to our survey, 45 stated that they are members of NHPCO and 29 stated that they participate in one of the NHPCO quarterly surveys.

Appendix A

Florida Hospice Programs Deliver Care in 27 Service Areas Covering All 67 Counties

The map below shows Florida's 27 geographic service areas for allocation of hospice services. These service areas are established by local area health councils and may include one or more counties. As of March 2006, Florida had 55 hospice programs operating under 43 licensed corporations. Twelve of the service areas are served by a single hospice program, while the remaining areas are served by multiple programs. Hospice programs may only provide services to residents within the geographic boundaries of their service area. See Table A-1 on the following page for a list of the counties and hospice programs in each service area.

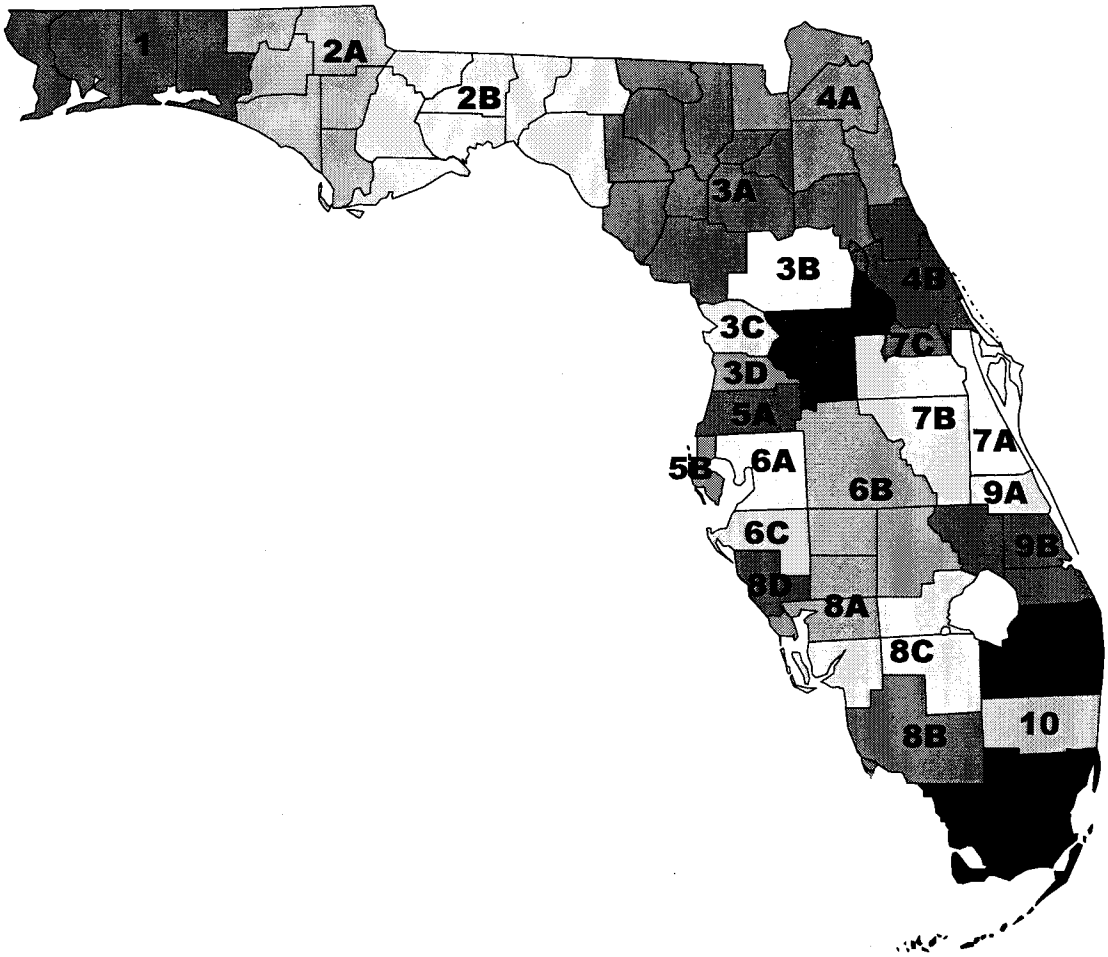


Table A-1
Fifty-Five Licensed Hospice Programs Serve 27 Geographic Service Areas in Florida

Area	County	Hospice Program
1	Escambia, Okaloosa, Santa Rosa, Walton	Covenant Hospice, Inc. Hospice of the Emerald Coast
2A	Bay, Calhoun, Gulf, Holmes, Jackson, Washington	Covenant Hospice, Inc. Hospice of the Emerald Coast
2B	Franklin, Gadsden, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla	Big Bend Hospice Covenant Hospice, Inc.
3A	Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, Union	Haven Hospice of North Central Florida
3B	Marion	Hospice of Marion County
3C	Citrus	Hernando-Pasco Hospice, Inc. Hospice of Citrus County
3D	Hernando	Hernando-Pasco Hospice, Inc.
3E	Lake, Sumter	Hospice of Lake and Sumter
4A	Baker, Clay, Duval, Nassau, St. Johns	Community Hospice of Northeast Florida, Inc. Hospice of North Central Florida
4B	Flagler, Volusia	Florida Hospital Memorial Hospice Care Halifax Hospice of Volusia-Flagler, Inc. Hospice of the Palm Coast VITAS Healthcare Corporation of Central Florida
5A	Pasco	Gulfside Regional Hospice Hernando-Pasco Hospice
5B	Pinellas	Hospice of the Florida Suncoast
6A	Hillsborough	LifePath Hospice and Palliative Care, Inc.
6B	Hardee, Highlands, Polk	Cornerstone Hospice LifePath Hospice and Palliative Care, Inc. (Doing business as Good Shepard Hospice)
6C	Manatee	Tidewell Hospice of Southwest Florida
7A	Brevard	Hospice of Health First Hospice of St. Francis VITAS Healthcare Corporation of Central Florida Wuesthoff Brevard Hospice and Palliative Care
7B	Orange, Osceola	Hospice of the Comforter Hospice of Lake and Sumter, Inc. Hospice of Orange-Osceola VITAS Healthcare Corporation of Central Florida
7C	Seminole	Hospice of the Comforter VITAS Healthcare of Central Florida
8A	Charlotte, DeSoto	Tidewell Hospice of Southwest Florida
8B	Collier	Hospice of Naples
8C	Glades, Hendry, Lee	HOPE Hospice and Palliative Care
8D	Sarasota	Tidewell Hospice of Southwest Florida
9A	Indian River	VNA Hospice of Indian River County
9B	Martin, Okeechobee, St. Lucie	Hospice of Okeechobee Treasure Coast Hospices
9C	Palm Beach	Hospice By The Sea Hospice of Palm Beach County VITAS Healthcare Corporation of Florida
10	Broward	Hospice Care of Southeast Florida Hospice By The Sea Hospice of Gold Coast Home Health Services VITAS Healthcare Corporation of Florida
11	Dade, Monroe	Catholic Hospice Douglas Gardens Hospice, Inc. Hospice Care of South Florida Hospice Care of Southeast Florida Hospice of the Florida Keys VITAS Healthcare Corporation of Florida

Source: Florida Agency for Health Care Administration.

Appendix B

States Vary in How They Regulate Hospice Care

Florida is the only state that currently requires new hospice programs to operate as not-for-profit corporations and 1 of only 12 states that comprehensively regulates the growth of hospice programs using a Certificate of Need (CON) process for both establishing a hospice program and building a freestanding hospice inpatient facility. Four states require CON only when hospice programs wish to build a freestanding hospice facility. In Fiscal Year 2004-05, most (84%) patients served by hospice programs were age 65 and older. Table B-1 shows each state's over-65 population in 2004 and current hospice care regulations related to corporate ownership and CON requirements.

Table B-1
Florida Is the Only State That Does Not Allow For-Profit Hospice Programs and 1 of 12 States Requires Comprehensive CON Regulations

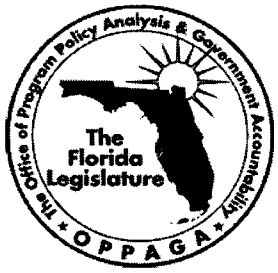
State	2004 Over 65 Population Estimate	Percentage Age 65 and Over	Allows For-Profit Hospice Programs	Requires CON
Alabama	597,959	13.2%	Yes	Yes[1]
Alaska	41,887	6.4%	Yes	No
Arizona	732,071	12.7%	Yes	No
Arkansas	381,106	13.8%	Yes	Yes
California	3,822,957	10.7%	Yes	No
Colorado	450,971	9.8%	Yes	No
Connecticut	473,693	13.5%	Yes	No
Delaware	108,961	13.1%	Yes	Yes[1]
Florida	2,927,583	16.8%	No	Yes
Georgia	847,082	9.6%	Yes	No
Hawaii	172,008	13.6%	Yes	Yes
Idaho	158,695	11.4%	Yes	No
Illinois	1,520,629	12.0%	Yes	No
Indiana	772,010	12.4%	Yes	No
Iowa	433,139	14.7%	Yes	No
Kansas	354,579	13.0%	Yes	No
Kentucky	519,327	12.5%	Yes	Yes
Louisiana	527,644	11.7%	Yes	No
Maine	189,751	14.4%	Yes	No
Maryland	634,743	11.4%	Yes	Yes
Massachusetts	854,343	13.3%	Yes	No
Michigan	1,246,595	12.3%	Yes	No
Minnesota	615,179	12.1%	Yes	No
Mississippi	352,867	12.2%	Yes	No
Missouri	765,692	13.3%	Yes	No
Montana	126,549	13.7%	Yes	No
Nebraska	231,803	13.3%	Yes	No
Nevada	262,079	11.2%	Yes	No
New Hampshire	156,672	12.1%	Yes	No
New Jersey	1,126,141	12.9%	Yes	No
New Mexico	229,474	12.1%	Yes	No
New York	2,492,816	13.0%	Yes	Yes
North Carolina	1,032,249	12.1%	Yes	Yes
North Dakota	93,171	14.7%	Yes	No
Ohio	1,524,916	13.3%	Yes	No
Oklahoma	464,440	13.2%	Yes	No
Oregon	459,821	12.8%	Yes	Yes[1]
Pennsylvania	1,896,503	15.3%	Yes	No
Rhode Island	150,587	13.9%	Yes	Yes
South Carolina	520,392	12.4%	Yes	Yes[1]
South Dakota	109,493	14.2%	Yes	No
Tennessee	738,053	12.5%	Yes	Yes
Texas	2,216,610	9.9%	Yes	No
Utah	207,711	8.7%	Yes	No
Vermont	80,762	13.0%	Yes	Yes
Virginia	846,921	11.4%	Yes	Yes[1]
Washington	703,145	11.3%	Yes	Yes
West Virginia	278,354	15.3%	Yes	Yes
Wisconsin	715,568	13.0%	Yes	No
Wyoming	61,113	12.1%	Yes	No

[1] Certificate of Need requirement only applies to building a freestanding hospice facility; CON not required to establish a hospice program.

Source: OPPAGA analysis of state hospice regulations and 2004 Population Estimates, U.S. Census Bureau.

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



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HB 1503

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1503 Agency for Persons with Disabilities
SPONSOR(S): Galvano
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee		DePalma	Walsh
2) Health Care Appropriations Committee			
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1503 proposes several substantive, conforming, and technical changes to statutes relating to persons with developmental disabilities and the Agency for Persons with Disabilities.

The Agency for Persons with Disabilities reports no fiscal impact associated with the bill.

It is anticipated that the bill sponsor will offer a strike-all amendment to the bill. See Part IV of the analysis for a discussion of the strike-all.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill provides substantive and technical amendments necessary to clearly reflect the Agency for Persons with Disabilities' 2004 creation, and clarify the agency's powers and responsibilities.

Empower Families – The bill clarifies that individuals have the right to be free from restraint or seclusion, and provides legislative intent to achieve an ongoing reduction in the use of restraint and seclusion.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

The Agency for Persons with Disabilities

In 2004 the developmental disability program in the Department of Children and Family Services (DCF or "department") was transferred to the newly created Agency for Persons with Disabilities (APD or "agency").[1] The agency is still located for administrative purposes within DCF, but is a separate budget entity and not subject to the control, supervision, or direction of the department. Although the powers, duties, assets, and liabilities of the former Developmental Disabilities (DD) Program Office of DCF were transferred to APD, various statutes relating to the DD Program Office were not amended and updated to reflect the creation of the agency and to clarify the jurisdiction of APD.

The agency is responsible for providing services for persons with developmental disabilities in Florida. The stated agency mission is to support persons with developmental disabilities in living, learning, and working in all aspects of community life.[2] The goals of the agency include increasing the number of persons with developmental disabilities who are employed in integrated settings, promoting consumer independence through increasing choice, reducing reliance on institutional settings, reducing the waiting list for services, and improving consumer outcomes and service quality.[3]

A developmental disability is defined as "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."[4] An individual is eligible for services if their domicile is in Florida, they have a developmental disability, and are three years of age or older.[5] Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.[6]

Services provided by the agency include an array of community services and supports, as well as a limited institutional program, and include employment and training services, environmental adaptive equipment, personal or family supports, residential habilitation, support coordination, therapeutic supports, and wellness management. There may be eligibility requirements specific to a particular

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[1] Chapter 2004-267, L.O.F.
[2] Agency for Persons with Disabilities, briefing materials, October 18, 2005.
[3] *Ibid.*
[4] S. 393.063(10), F.S.
[5] Children from birth to three years of age with developmental disabilities are served by Children's Medical Services in the Department of Health, s. 393.064, F.S.
[6] "High-risk child" is defined in s. 393.063(23) F.S.

service or support in addition to the general eligibility criteria for services from APD. The majority of services provided to clients of the agency are funded by Medicaid, authorized through a federal waiver.

The Developmental Disabilities Home and Community-Based Services (DD-HCBS) waiver program is a Medicaid funded program and the largest source of funding for APD services. Services provided through the DD-HCBS waiver program enable children and adults to live in a family setting in their own home or in a licensed residential setting, thereby avoiding institutionalization. Clients receiving services through this program are also eligible for all services in the Medicaid state plan.

The Family and Supported Living (FSL) waiver makes services available to children and adults who live with their family or in their own home. Although fewer DD services are available under this waiver, clients are also eligible for all services in the Medicaid state plan.

The agency estimates that the total enrollment in both waiver programs for FY 2005/2006 will be 32,603 clients. The enrollment for all waiver and General Revenue funded services is projected by APD to be approximately 40,000 by the end of FY 2005/2006.[7]

The agency also provides fiscal and programmatic management of developmental disabilities institutions and those community-based services currently funded by general revenue. Statewide, there are three developmental disabilities institutions serving approximately 1100 residents.

In recent years, the developmental disabilities program has instituted a number of fiscal and programmatic management controls intended to address escalating costs and growing waiting lists for services. These include a standardized rate structure, prior service authorization, pre-payment billing review, and support coordination. In addition, the Legislature has significantly increased funding to the program, allowing the agency to greatly increase the number of clients served, while reducing the waiting list for services.

EFFECT OF PROPOSED CHANGES

HB 1503 proposes changes to several statutes relating to the Agency for Persons with Disabilities and individuals with disabilities. The bill provides for Senate confirmation of the agency director, updates several statutes to reflect the agency's establishment in 2004, authorizes trained direct service providers who are unlicensed to administer or supervise the self-administration of certain prescription medications, distinguishes between forensic services provided by DCF for persons with mental illness and forensic services provided by APD for persons with retardation or autism, and addresses the use of restraints and seclusion in mental health and developmental disability facilities and programs.

See also Part IV below.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.197, F.S., relating to Senate confirmation of the agency director.

Section 2. Amends s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect.

Section 3. Amends s. 39.502, F.S., relating to court parties with mental illnesses or developmental disabilities.

Section 4. Amends s. 287.155, F.S., relating to departmental purchase of motor vehicles.

Section 5. .Amends s. 383.14, F.S., relating to the Genetics and Newborn Screening Advisory Council.

[7] Agency for Persons with Disabilities, briefing materials.

Section 6. Repeals s. 393.061, F.S., providing a short title.

Section 7. Amends s. 393.062, F.S., providing legislative findings and a declaration of intent.

Section 8. Amends s. 393.063, F.S., providing definitions.

Section 9. Amends s. 393.064, F.S., relating to developmental disability prevention.

Section 10. Amends s. 393.0641, F.S., relating to a program for the prevention and treatment of severe self-injurious behavior.

Section 11. Amends s. 393.065, F.S., relating to application and eligibility determination for agency services.

Section 12. Amends s. 393.0651, F.S., relating to family support plans.

Section 13. Creates s. 393.0654, F.S., relating to direct service providers and private sector services.

Section 14. Amends s. 393.0655, F.S., relating to screening of direct service providers.

Section 15. Amends s. 393.0657, F.S., relating to persons not required to be re-fingerprinted or re-screened.

Section 16. Amends s. 393.066, F.S., relating to community services and treatment.

Section 17. Amends s. 393.067, F.S., relating to facility licensure.

Section 18. Amends s. 393.0673, F.S., relating to denial, suspension, and revocation of licenses.

Section 19. Amends s. 393.0674, F.S., relating to provider penalties.

Section 20. Amends s. 393.0675, F.S., relating to injunctive proceedings.

Section 21. Amends s. 393.0678, F.S., relating to receivership proceedings.

Section 22. Amends s. 393.068, F.S., relating to family care program.

Section 23. Amends s. 393.0695, F.S., relating to provision of in-home care.

Section 24. Amends s. 393.075, F.S., relating to general liability coverage.

Section 25. Amends s. 393.11, F.S., relating to involuntary admission to residential services.

Section 26. Amends s. 393.122, F.S., relating to applications for continued residential services.

Section 27. Amends s. 393.125, F.S., relating to hearing rights.

Section 28. Amends s. 393.13, F.S., relating to treatment of persons with developmental disabilities.

Section 29. Amends s. 393.135, F.S., relating to prohibited sexual misconduct and reporting requirements.

Section 30. Amends s. 393.15, F.S., relating to the Community Resources Development Loan Program and providing legislative intent.

Section 31. Amends s. 393.17, F.S., relating to certification of behavior analysts.

Section 32. Creates s. 393.18, F.S., relating to comprehensive transitional education programs.

Section 33. Creates s. 393.23, F.S., relating to developmental disabilities institutions and associated trust funds.

Section 34. Amends s. 393.501, F.S., relating to agency rulemaking.

Section 35. Creates s. 393.507, F.S., relating to Citizen support organization.

Section 36. Amends s. 397.405, F.S., relating to exemptions from licensure.

Section 37. Amends s. 400.419, F.S., relating to violations and imposition of administrative fines.

Section 38. Amends s. 400.960, F.S., providing definitions.

Section 39. Amends s. 400.963, F.S., relating to injunctive proceedings.

Section 40. Amends s. 400.964, F.S., relating to personnel screening requirements.

Section 41. Amends s. 400.967, F.S., relating to rules and classifications of deficiencies.

Section 42. Amends s. 402.115, F.S., relating to sharing confidential information or exempt information.

Section 43. Amends s. 402.17, F.S., relating to claims for care and maintenance and associated trust property.

Section 44. Amends s. 402.181, F.S., relating to the State Institutions Claims Program.

Section 45. Amends s. 402.20, F.S., relating to county contracts authorized for services and facilities.

Section 46. Amends s. 402.22, F.S., relating to education programs for students who reside in residential care facilities operated by the Department of Children and Family Services or the Agency for Persons with Disabilities.

Section 47. Amends s. 402.33, F.S., relating to departmental authority to charge fees for services provided.

Section 48. Amends s. 408.036, F.S., relating to projects subject to review.

Section 49. Amends s. 409.908, F.S., relating to reimbursement of Medicaid providers.

Section 50. Amends s. 409.9127, F.S., relating to Preauthorization and concurrent utilization review with direct-service organizations providing substance abuse, mental health, or related services to disabled persons.

Section 51. Amends s. 411.224, F.S., relating to the family support planning process.

Section 52. Amends s. 411.232, F.S., relating to the Children's Early Investment Program.

Section 53. Amends s. 415.102, F.S., providing a definition.

Section 54. Amends s. 415.1035, F.S., relating to a facility's duty to inform residents of their right to report abusive, neglectful, or exploitative practices.

Section 55. Amends s. 415.1055, F.S., relating to notification of administrative entities.

Section 56. Amends s. 415.107, F.S., relating to confidentiality of reports and records.

Section 57. Amends s. 419.001, F.S., relating to site selection of community residential homes.

Section 58. Amends s. 435.03, F.S, relating to Level 1 screening standards.

Section 59. Amends s. 490.014, F.S., relating to licensure exemptions.

Section 60. Amends s. 491.014, F.S., relating to licensure and registration exemptions.

Section 61. Amends s. 916.105, F.S., providing legislative intent.

Section 62. Amends s. 916.106, F.S., providing definitions.

Section 63. Amends s. 916.107, F.S., relating to rights of forensic clients.

Section 64. Amends s. 916.1075, F.S., relating to prohibited sexual misconduct.

Section 65. Amends s. 916.1081, F.S., relating to escape from programs.

Section 66. Amends s. 916.1085, F.S., relating to introduction or removal of certain unlawful articles.

Section 67. Amends s. 916.1091, F.S., relating to duties, functions, and powers of institutional security personnel.

Section 68. Amends s. 916.1093, F.S., relating to agency operation and administration.

Section 69. Amends s. 916.111, F.S., relating to training of mental health experts.

Section 70. Amends s. 916.115, F.S., relating to appointment of experts.

Section 71. Amends s. 916.12, F.S., relating to a defendant's mental competence to proceed.

Section 72. Amends s. 916.13, F.S., relating to involuntary commitment of a defendant adjudicated incompetent.

Section 73. Amends s. 916.15, F.S., relating to involuntary commitment of a defendant adjudicated not guilty by reason of insanity.

Section 74. Amends s. 916.16, F.S., relating to jurisdiction of a committing court.

Section 75. Amends s. 916.17, F.S., relating to an inmate's conditional release.

Section 76. Amends s. 916.301, F.S., relating to the appointment of experts.

Section 77. Amends s. 916.3012, F.S., relating to a defendant's mental competence to proceed.

Section 78. Amends s. 916.302, F.S., relating to the involuntary commitment of a defendant determined incompetent to proceed.

Section 79. Amends s. 916.3025, F.S., relating to jurisdiction of a committing court.

Section 80. Amends s. 916.303, F.S., relating to determination of incompetency due to mental retardation or autism.

Section 81. Amends s. 916.304, F.S., relating to an inmate's conditional release.

Section 82. Amends s. 921.137, F.S., relating to the prohibition of imposing the death sentence upon a defendant with mental retardation.

Section 83. Amends s. 944.602, F.S., relating to agency notification prior to release of inmates with mental retardation.

Section 84. Amends s. 945.025, F.S., relating to departmental jurisdiction.

Section 85. Amends s. 947.185, F.S., relating to application for mental retardation services as a condition of parole.

Section 86. Amends s. 985.223, F.S., relating to incompetency in juvenile delinquency cases.

Section 87. Amends s. 985.224, F.S., relating to medical, psychiatric, psychological, substance abuse, and educational examination and treatment.

Section 88. Amends s. 1003.58, F.S., relating to students in residential care facilities.

Section 89. Amends s. 17.61, F.S., relating to powers and duties in the investment of certain funds.

Section 90. Amends s. 39.001, F.S., relating to plans for comprehensive approach.

Section 91. Amends s. 287.057, F.S., relating to procurement of commodities or contractual services.

Section 92. Amends s. 381.0072, F.S., relating to licensure of certain food service establishments.

Section 93. Amends s. 400.464, F.S., relating to licensure of home health agencies.

Section 94. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 95. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history.

Section 96. Amends s. 984.22, F.S., powers of disposition.

Section 97. Creates s. 394.4592, F.S., relating to use of restraints or seclusion in behavioral health care.

Section 98. Provides the act is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Agency for Persons with Disabilities reports no fiscal impact associated with this legislation.

2. Expenditures:

   The Agency for Persons with Disabilities reports no fiscal impact associated with this legislation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the definitional changes proposed in this legislation result in a loss of service eligibility, individuals currently receiving services from the agency will have to seek services elsewhere.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not affect counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Agency for Persons with Disabilities with rulemaking authority to implement several of the provisions proposed in this legislation.

Additionally, the bill specifies that the Department of Health (DOH) is to adopt rules necessary to implement s. 411.232, F.S., relating to the Children's Early Investment Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Several advocacy entities have expressed concern over the proposed amendment to s. 39.407(5), F.S., which removes the authority of family court judges to order that services be provided to dependent children with developmental disabilities.

Similarly, various advocacy organizations are troubled that the legislation's definitional changes in s. 393.063, F.S., --- specifically the deletion of definitions of certain services in this section, and the deletion of the definition of "epilepsy" --- may result in the eventual elimination of such services and have the effect of excluding certain individuals presently receiving agency services from receiving such services in the future.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

It is anticipated that the bill sponsor will offer a strike-all amendment to HB 1503 at the March 28, 2006 meeting of the Elder and Long-Term Care Committee which will significantly alter the content of the bill, and substantially conform the bill to the Committee Substitute for Senate Bill 2012. The following is an analysis of the effect of the changes proposed in the strike-all amendment:

Throughout the strike-all the term "person who is developmentally disabled" has been changed to "person with a developmental disability." In addition, conforming changes to statute sections resulting from the strike-all are made throughout, along with corrections to agency names resulting from the 2004 reorganization (e.g., "Department of Children and Family Services" becomes "Agency for Persons with Disabilities" as appropriate.)

Senate Confirmation; Creation of Division of Budget and Planning and Division of Operations [Section 1]

The strike-all amends s. 20.197, F.S., and provides for Senate confirmation of the Governor's appointee to serve as director of the Agency for Persons with Disabilities (APD or "the agency"). The strike-all directs APD to include both a Division of Budget and Planning and a Division of Operations, and further provides that the director of APD may recommend establishing additional divisions, bureaus, sections and subsections of the agency as necessary to promote efficient and effective agency operation.

Access to Confidential Records and Reports [Section 3]

Currently, the Department of Health (DOH), the Agency for Health Care Administration (AHCA), and the Department of Elder Affairs (DOEA) have access to abuse records as provided in s. 39.202, F.S., and s. 415.107, F.S. Prior to 2004, when the developmental disability program was administered by DCF, the program had access to both child and adult abuse records and investigations. Access to these records provided information necessary for licensing facilities housing DD clients and provided managers with reports of abuse or neglect to clients in licensed facilities. These records are confidential pursuant to s. 39.202, F.S., and s. 415.107, F.S.,[8] and the agency is now unable to access reports that involve instances of alleged abuse that occur in facilities licensed by APD. As a result, since 2004, whenever DCF has had to remove a resident from an APD-licensed facility because of abuse or neglect in that facility, DCF has been unable to share any information about the abuse with the agency.

The strike-all inserts employees, authorized agents and contract providers of APD into the list of persons, officials and agencies granted access to certain child abuse and neglect records. Similar access to these records is granted to APD officials responsible for administration of the agency's child and adult protective services programs, for taking administrative action concerning an employee alleged to have perpetrated the abuse, abandonment or neglect of a child or the abuse, neglect or exploitation of a vulnerable adult, or for employment of agency personnel.

Court-ordered Developmental Disability Services [Section 4]

Pursuant to s. 39.407, F.S., a court may order a dependent child to be examined by a health care professional, psychiatrist, psychologist, or developmental disability evaluation team. The judge may also order the child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service provider. According to APD, the references to developmental disabilities in this section are inconsistent with other provisions in state and federal law and are creating confusion for clients, families, child welfare workers, and the courts. Although mental health services may be ordered by a court, eligibility for services for persons with disabilities, including children, are

[8] Section 39.202 (1), F.S., reads "[i]n order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in the possession of those entities granted access as set forth in this section." Section 415.107, F.S., reads, "[i]n order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113."

determined in accordance with ch. 393, F.S., which specifies the criteria for qualifying an individual for services.

Jurisdiction for challenges to APD actions regarding services and eligibility for services is governed by 42 USC 1396a, 42 CFR 431.200 et seq., and 65-2.042 F.A.C., through the fair hearings process. In the event APD denies or reduces a service, a client is entitled to a fair hearing. If APD prevails, the client can appeal to the appropriate District Court of Appeals. If the client prevails at a fair hearing, APD cannot appeal.

The agency maintains that, unlike DCF, APD is not a party to these proceedings. Some dependency courts, pursuant to s. 39.407(5), F.S., have ordered APD to provide services to children. The agency has challenged these court orders via Petitions for Writs of Prohibition, claiming a lack of jurisdiction, and prevailed at the appellate level.[9] The Florida Supreme Court is presently considering granting certiorari on two of these cases.

The strike-all amends s. 39.407(5), F.S., to delete references to developmental disabilities services.

Agency Purchase of Automotive Equipment; Licensure of Food Service Facilities [Sections 5, 6]

The strike-all amends s. 287.155, F.S., and inserts APD into the list of entities authorized to purchase certain automotive equipment. The strike-all also clarifies that APD is included among the entities licensing food service facilities which are exempt from certain licensure requirements in s. 381.0072(3)(a), F.S.

The Developmental Disabilities Prevention and Community Services Act [Sections 8, 9, 10]

The strike-all repeals s. 393.061, F.S., which previously specified that Chapter 393 was to be known as the "Developmental Disabilities Prevention and Community Services Act."

The strike-all clarifies certain legislative findings relating to treatment of individuals with developmental disabilities, and also proposes several definitional changes. The strike-all:

- deletes definitions for "day habilitation facility", "day habilitation service", "enclave", "epilepsy", "follow-along services", "job coach", "mobile work crew", "normalization principle", "reassessment", and "supported employee";
- moves the definition of "comprehensive transitional education program" presently found in s. 393.063(7), F.S., to newly-created s. 393.18, F.S., and notes that the primary goal of services offered through such programs is incorporating the principle of self-determination --- not normalization --- in establishing permanent residence for persons with maladaptive behaviors in facilities unassociated with the comprehensive transitional education program.
- moves the definition of "severe self-injurious behavior" presently found in s. 393.063(39), F.S., to s. 393.0641, F.S., creating a diagnostic, treatment, training, and research program for clients exhibiting such behavior;
- provides that "adult day training" refers to training services which take place in a nonresidential setting, separate from the home or facility in which the client resides, and which are intended to support the participation of clients in daily, meaningful and valued routines of the community, and which may include work-like settings that do not meet the definition of supported employment.
- deletes the definition of a "comprehensive transitional education program", and a reference to the program as established in s. 393.18, F.S., --- newly created by the strike-all --- is included;
- clarifies that a "developmental disability" must manifest itself before the age of 18;

[9] See generally *Agency for Persons with Disabilities v. F.G.*, 917 So. 2d 837 (Fla. 3rd DCA 2005) (holding that a trial court lacks constitutional or statutory authority to subpoena duces tecum officers of the state concerning a matter that is within their executive authority); *Agency for Persons with Disabilities v. R.N.*, 917 So. 2d 199 (Fla. 3rd DCA 2005).

- deletes cross-references to other definitions of "direct service provider" found in chapters 39 and 415, F.S., clarifies that such providers must have direct face-to-face contact with a client while providing services, and deletes the requirement that providers not be a relative of the client to whom they are providing services;
- clarifies that an "express and informed consent" occurs after an individual makes a "knowing" decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion;
- amends the definition for a "licensed care facility" to indicate that such facilities are to be licensed under chapter 393, F.S.;
- provides that a "group home facility" is to be licensed under chapter 393, F.S., and deletes a provision in this definition specifying that group home facilities shall not be considered commercial enterprises;
- provides that a "high risk child" is a child from 3 to 5 years of age[10] exhibiting certain characteristics;
- clarifies that the services contemplated under the definition of "medical/dental services" includes medically-necessary services provided or ordered for a client by a person licensed under chapters 458, 459, or 466, F.S.;
- clarifies that, among those services considered "personal care services", meal preparation is to be included; provides that personal care services are services that "are incidental to the care furnished and essential to the health, safety, and welfare of the client"; deletes that portion of the definition indicating that personal care services are not to be construed to mean the provision of medical, nursing, dental, or mental health services by the staff of a facility; also deletes the portion of the definition indicating that an emergency response device installed in the apartment or living area of a resident is not classified as a personal service.
- specifies that the retardation exhibited by an individual suffering from "Prader-Willi syndrome" is mild to moderate mental retardation;
- clarifies that "residential habilitation" means supervision and training with the acquisition, retention, or improvement in skills related to activities of daily living, such as personal hygiene skills, homemaking skills, and the social and adaptive skills necessary to enable the individual to reside in the community;
- deletes a provision found in the definition of "retardation" providing that significantly sub-average general intellectual functioning must manifest during the period from conception to age 18;
- creates a definition for "self-determination" as an individual's freedom to exercise the same rights as all other citizens, authority to exercise control over --- and prioritize use of --- funds needed for one's own support, 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; and
- deletes the portion of the definition of "supported employment" requiring that such employment must be provided in a normal employment setting which provides at least 20 hours employment per week.

Additionally, the strike-all supplies definitions for "restraint" and "seclusion."

- A "restraint" refers to a physical device, method, or drug used to control dangerous behavior. A physical restraint is any manual method or physical 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. 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. The strike-all specifies that physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint, and provides that restraint does not include physical devices,

[10] S. 393.063(23), F.S., currently provides that a "high-risk child" is a child from birth to 5 years of age exhibiting certain characteristics.

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; or 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.

- "Seclusion" refers to the involuntary isolation of a person in a room or area from which the person is prevented from leaving. Such 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. The strike-all specifies that seclusion does not refer to isolation due to the medical condition or symptoms of the individual.

Developmental Disabilities Prevention Services [Section 11]

Provision of developmental disabilities prevention services is split between APD and the Division of Children's Medical Services within the Department of Health (CMS). The strike-all amends s. 393.064, F.S., and clarifies that APD is to provide such services for children with developmental disabilities age 3 to 5 and their families, while CMS is responsible for providing these services for children with developmental disabilities from birth to age 3 and their families. The strike-all provides that such services may include individual evaluations or assessments necessary to diagnose a developmental disability or high-risk condition and to determine appropriate, individual family and support services.

Client Application Procedures and Eligibility Criteria [Section 13]

The strike-all provides that application for services shall be made in writing to the agency, in the "service area" --- and not the "district" --- in which the applicant resides, and specifies that applicant review is the responsibility of the agency, and not employees of the agency's developmental services program. Two additional provisions are also added to s. 393.065, F.S., in the strike-all. First, with the exception of clients deemed to be in crisis whom the agency shall serve as described in rule, the strike-all directs APD to 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. Also, the strike-all provides APD with rulemaking authority to specify application procedures and eligibility criteria for the above section.

Family and Individual Support Plans [Section 14]

The strike-all requires APD to provide, either directly or through contract, for the development of a family support plan for children ages birth to 18 years of age, and an individual support plan for each client. The strike-all also deletes a provision prohibiting the state from deducting residential costs for children from social security disability payments.[11] In addition to APD, the strike-all provides that a designated contractor may also submit the required annual report to the client required under s. 393.0651(7), F.S.

Dual Employment of Agency Employees [Section 15]

The strike-all creates s. 393.0654, F.S., relating to direct service providers. This section specifies that it is not a violation of s. 112.313(7), F.S.,[12] 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 under certain circumstances. These circumstances include: where the employee does not have any role in agency placement recommendations or the client decisionmaking process; where the provider's employment with the agency does not compromise the ability of the client to make a voluntary choice among private providers; where the employee's outside employment does not create a conflict with, or

[11] The agency maintains that they will continue to abide by court rulings that prohibit such deductions, but that they propose taking this language out of the statute in the event that there are later modifications to the ruling on which this provision is based.

[12] Relating to conflicting employment or contractual relationships.

impede the full and faithful discharge of, such employee's public duties; and where the provider discusses the dual employment or ownership status with the agency and all clients within the care of such provider.

Background Screening of Direct Service Providers [Sections 16, 17]

The strike-all amends s. 393.0655(1)(d), F.S., relating to the screening of direct service providers, by clarifying that individuals 12 years of age or older, including family members, residing with a direct services provider providing services to clients in his or her own place of residence, are subject to background screening. The strike-all further provides that a direct service provider who is awaiting the completion of background screening is temporarily exempt from the screening requirements of s. 393.0655, F.S., if such provider is under the direct and constant visual supervision of persons who meet such screening requirements. This exemption expires 90 days after the 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. The strike-all also provides that an employer refusing to dismiss a manager, supervisor or direct care provider who has been found to be in noncompliance with the standards of s. 393.0655, F.S., shall result in automatic denial, termination, or revocation of that employer's license or certification, in addition to other remedies pursued by the agency.

The strike-all revises s. 393.0657, F.S., relating to individuals not required to be refingerprinted or rescreened[13], and specifies that individuals who have undergone any portion of the background screening required under s. 393.0655, F.S., within the last 12 months are not required to repeat such screening in order to comply with that portion of the screening requirements. Documentation of past background screening is required, and individuals shall be required to undergo screening for any remaining background screening requirements that have never been conducted, or have not been completed within the last 12 months.

Agency Purchase of Services [Section 18]

The strike-all provides that community-based services that are purchased instead of provided directly by the agency when determined to be more cost-efficient must be approved by APD, clarifies that the rulemaking authority given under this section is intended for the agency to provide definitions, eligibility criteria, and procedures for the purchase of services; and provides that adult day training and personal care services are among the community-based services that are medically necessary to prevent institutionalization.

Facility Licensure and Regulation [Section 19]

The strike-all amends s. 393.067, F.S., and provides the agency with rulemaking authority to provide application procedures, provider qualifications, facility and client care standards, requirements for client records, staff training requirements, and certain facility monitoring requirements. The strike-all also clarifies that the inspections and reviews of facilities and programs required to be conducted by the agency are to occur annually.

The strike-all deletes references to comprehensive transitional education programs and transfers them to newly-created s. 393.18, F.S.

The strike-all deletes various other provisions found in s. 393.067, F.S., including provisions regulating facility and provider background screening.

[13] Under current law, 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 attest to the completion of such fingerprinting or screening are not required to be refingerprinted or rescreened in order to comply with any direct service provider screening or fingerprinting requirements.

The strike-all amends s. 393.067, F.S., and specifies that, as a prerequisite for issuance of an initial license, or for renewal of an existing license, the applicant, manager, supervisor, and all staff members of a direct service provider must submit to background screening as required under s. 393.0655, F.S. A license will not be issued or renewed where the applicant and any of the managers, supervisors, or direct service providers of the facility or program have failed such background screening, and the strike-all provides that APD shall determine by rule the frequency of background screening. Applicants are required to submit --- with each initial or renewal application --- a signed affidavit stating that the applicant is in compliance with all background screening requirements. The strike-all further clarifies that among the rules to be adopted by the agency pursuant to s. 393.067(7), F.S., the agency is to adopt rules relating to incident-reporting requirements.

The strike-all removes a requirement in s. 393.067, F.S., that the Agency for Health Care Administration (AHCA) collaborate with APD and, in consultation with DCF, adopt rules governing facilities and the establishment of minimum standards for the preparation and annual update of a comprehensive emergency management plan. The strike-all clarifies that, during its review of the comprehensive emergency management plan, the local emergency management agency shall ensure that APD and the Department of Community Affairs are given a similar opportunity to review the plan.

The strike-all specifies the facilities subject to unannounced inspection by APD to determine compliance with chapter requirements and agency rules.

Fines and Penalties; Receivership Proceedings [Sections 20, 21, 23]

The strike-all amends s. 393.0673, F.S., and specifies that the agency may deny, revoke, or suspend a facility license or impose an administrative fine not exceeding $1,000 per violation per day if the applicant or licensee has falsely represented or omitted a material fact in its license application, has had prior action taken against it under the Medicaid or Medicare program, or has failed to comply with other requirements of chapter 393, F.S. APD is provided with rulemaking authority in s. 393.0673, F.S., to develop criteria for the purpose of evaluating the severity of violations of s. 393.0655, F.S., s. 393.067, F.S., or adopted rules, as well as for determining the amount of fines imposed. The strike-all also amends s. 393.0674, F.S., and clarifies that it is a first degree misdemeanor for any person to willfully, knowingly, or intentionally provide or attempt to provide supports or services with direct care providers who are not in compliance with the above background screening requirements.

The strike-all amends s. 393.0678, F.S., and clarifies that the agency is not authorized to petition for appointment of a receivership on behalf of an intermediate care facility for the developmentally disabled.

Family Care Program and In-Home Subsidies [Sections 24, 25]

The strike-all amends s. 393.064, F.S., and explicitly provides that services and support available to families and individuals with developmental disabilities through the family care program shall emphasize self-determination. The strike-all deletes "supported employment" from among the various services and support authorized under the family care program, and deletes language indicating that the in-home subsidies referred to in s. 393.068(2)(d), F.S., are not subject to any other payment method or rate schedule other than what is provided in s. 393.0695, F.S.

The strike-all also amends s. 393.0695, F.S., and requires APD to reassess the maximum amounts for provision of in-home subsidies quarterly, instead of annually, and provides the agency with rulemaking authority to administer the provision of in-home subsidies, including developing standards and procedures governing eligibility for services, selection of housing, selection of providers, planning for services, and requirements for ongoing monitoring.

Involuntary Admission to Residential Services [Section 27]

The strike-all amends s. 393.11, F.S., relating to involuntary admission to residential services, or civil commitment. The strike-all clarifies that the involuntary commitment of an individual with mental retardation or autism who is charged with a felony offense shall be determined in accordance with s. 916.302, F.S.,[14] relating to forensic treatment and training, and deletes related provisions regulating involuntary admission to residential services arising out of chapter 916.

The strike-all clarifies that the report filed by the agency following its evaluation of the person being considered for involuntary admission must contain a determination of whether such person is eligible for services. Similarly, the report submitted by the examining committee must include a determination of whether, using diagnostic capabilities established by the agency, the individual is eligible for agency services.

The strike-all amends s. 393.11(7), F.S., and changes the location of the involuntary admission hearing to the county in which the original petition is filed, instead of the county (or nearby county) in which the individual resides. The strike-all clarifies that the issue of the competency of a person with mental retardation or autism, for the purposes of assigning guardianship, is to be determined in a separate proceeding according to the procedures and requirements of chapter 744,[15] and 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. The strike-all further clarifies that, at any time and without notice, any person involuntarily admitted into residential care, or the person's parent or legal guardian on his or her behalf, is entitled to file a petition for a writ of habeus corpus to question the cause, legality, and appropriateness of the person's involuntary admission.

Use of Restraints and Seclusion [Section 29]

The strike-all conforms s. 393.13, F.S., to changes made in the definitions found in s. 393.063, F.S. It provides legislative intent that the development of community-based services that provide opportunities for inclusion in the community should continue. Legislative intent is also provided to achieve "an ongoing reduction in the use of restraint and seclusion in facilities and programs serving persons with developmental disabilities."

The strike-all changes a reference in s. 393.13(4)(c)(1), F.S. from "behavioral modification programming" to "behavioral-analysis services", and deletes a reference to minimum wage for clients engaged in work programs requiring compliance with federal wage and hour laws in s. 393.13(h), F.S.

The strike all clarifies that medication shall not be used as a substitute for behavioral analysis services. It also deletes the reference to minimum wage protection provided in s. 393.13, F.S., for clients engaged in work programs requiring compliance with federal wage and hour laws.

The strike-all clarifies that clients shall have the right to be free from restraint or seclusion,[16] and adds that restraints and seclusion should only be used in situations in which the client or others are at risk of injury. The strike-all requires any instance of the use of restraint or seclusion to be documented in the facility or program record of the client. The strike-all deletes a provision specifying that mechanical supports used in normative situations to achieve proper body position and balance are not considered restraints. The strike-all also deletes provisions covered by the definitions provided in s. 393.063, F.S.

APD is required to adopt rules for standards and procedures relating to the use of restraint and seclusion, and removes a requirement that APD post a copy of such rules, once adopted, in each living

[14] Chapter 916 relates to mentally deficient and mentally ill defendants.
[15] Chapter 744 relates to guardianship.
[16] According to the Advocacy Center for Persons with Disabilities in a letter dated March 12, 2006, based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida has the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005. Letter on file with the Committee.

unit of residential facilities. A copy of these rules is to be given to the client, parent, guardian or guardian advocate, and all staff members of licensed facilities, and is required to be made a part of all staff pre-service and in-service training programs.

The strike-all clarifies that the central record required to be maintained for each client shall be established by APD at the time such client is determined eligible for services and maintained by the client's support coordinator, and is required to contain information pertaining to admission, diagnosis and treatment history, present condition, and other such information as may be required. The strike-all specifies that this central client record is the property of APD. Also, the strike-all provides that, among the entities granted access to this otherwise-confidential record, a staff member of the facility where the client resides is provided with access when the facility administrator or APD director deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs. The strike-all deletes a provision specifying that all central records for each client in residential facilities are to be kept on uniform forms distributed by the APD and are to accurately summarize each client's history and present condition.

The strike-all specifies that the resident government required to be maintained at each residential facility may include, at the option of the resident government, representatives of advocacy groups for persons with developmental disabilities from the community. The strike-all deletes a provision specifying that a facility's resident government is to work closely with the Florida local advocacy council and the district administrator.

Prohibited Sexual Misconduct [Section 30]

The strike-all changes the definition found in s. 393.135, F.S., relating to prohibited sexual misconduct, from "employee" to "covered person." A covered person is any paid staff member, volunteer or intern of the agency, any person under contract with the agency, and any person providing care or support to a client on behalf of the agency or its providers. The strike-all redefines "sexual misconduct" as sexual activity between a covered person and a client to whom the covered person renders services, care, or support on behalf of the agency or its providers, or between the covered person and another client who lives in the same home as the client to whom the covered person is rendering the services, care, or support, regardless of the client's consent. It is a felony of the second degree for a covered person to engage in sexual misconduct with an individual with a developmental disability who resides in a residential facility and is eligible[17] to receive services from the agency under chapter 393, F.S.

The strike-all deletes a provision of s. 393.135(4), F.S. providing that the section does not apply to a covered person who has no reason to believe that the person with whom the employee engaged in sexual misconduct is a client receiving agency services. The strike-all also deletes a provision requiring APD's inspector general to immediately conduct an administrative investigation, upon receiving a report from a covered person who has witnessed sexual misconduct or who otherwise knows or has reasonable cause to suspect that a person engaged in sexual misconduct, and, if there is probable cause to believe that sexual misconduct has occurred, requiring the inspector general to notify the state attorney in the circuit in which the incident occurred.

The Community Resources Development Loan Program [Section 31]

The strike-all clarifies the Legislature's intent that APD develop and administer a loan program to provide support and encouragement in the establishment of community-based foster care, group home, and supported employment programs for persons with developmental disabilities. The strike-all deletes the Community Resources Development Trust Fund originally created in the State Treasury, and creates a Community Resources Development Loan Program in APD for the purpose of granting loans to eligible programs for the initial costs of development of the programs. The strike-all specifies that, in order to be eligible for the program, a foster home, group home, or supported employment program

[17] Under current law, s. 393.135(2), F.S., requires that the individual with a developmental disability "receives services from a family care program."

must serve persons with disabilities, be a non-profit corporation, partnership, or sole proprietorship, and must be in compliance with the zoning regulations of the local community.

The strike-all provides that loans may be made to pay for the costs of development and structural modification, the purchase of equipment and fire and safety devices, preoperational staff training, and the purchase of insurance. The strike-all specifies that repayment by a program on any loan granted by the agency shall be deposited into the agency's Administrative Trust Fund, and moneys repaid shall be used to fund new loans. A program operating as a non-profit corporation which seeks forgiveness on a loan shall submit to the agency an annual statement setting forth certain information. Upon approval of the annual statement, the agency may forgive up to 20% of the loan. Funds received by the agency from enforcement of a lien against a program are to be deposited in the agency's Administrative Trust Fund, and used to fund new loans.

Certification of Behavior Analysts [Section 32]

The strike-all amends s. 393.17, F.S., and provides that APD 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. Such procedures are to be established by rule, and must include criteria for scope of practice, certain qualifications for certification, and decertification procedures that may be used to determine whether an individual continues to meet the qualifications for certification and, if not, the procedures necessary to decertify an employee or service provider.

The strike-all further clarifies that APD may recognize the certification of behavior analysts awarded by a non-profit corporation if such corporation adheres to the national standards of boards setting professional credentials. 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.

Operation of Comprehensive Transitional Education Programs [Section 33]

The strike-all creates s. 393.18, F.S., relating to comprehensive transitional education programs. It requires that the staff of such centers include behavior analysts certified pursuant to s. 393.17, F.S., and provides that continuous shift staff are required to implement several of the component services. The bulk of this section is transferred from the definition section in s. 393.063, F.S.

Developmental Disabilities Institutions' Trust Accounts [Section 34]

The strike-all creates s. 393.23, F.S., relating to trust funds for developmental disabilities institutions, and provides that all receipts from the operation of canteens, vending machines, hobby shops, sheltered workshops, activity centers, faming projects, and other like activities operated in a developmental disabilities institution --- as well as 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 if the moneys are available on demand. The strike-all specifies that moneys in the trust account must be expended for the benefit, education, and welfare of clients (unless a donator provides a separate intent). Trust account money may not be used for the benefit of agency employees, or to pay the wages of such employees. The strike-all specifies that 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, maintenance, and operation of canteens, hobby shops, recreational or entertainment facilities, sheltered workshops, activity centers, faming projects, or other like facilities or programs established at the institutions for the benefit of clients.

A developmental disabilities institution may invest any money not necessary for immediate use in a trust account, and 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. The strike-all specifies that the accounting system of an institution must account separately for revenues and expenses for each activity, and the institution is required to reconcile the trust account to its accounting system and check

registers, and to the accounting system of the Chief Financial Officer. Sales tax collected by the institution as a result of sales is to be deposited into the trust account and remitted to the Department of Revenue, and funds are required to be expended in accordance with requirements and guidelines established by the Chief Financial Officer.

General Rule Authority [Section 35]

The mandatory rulemaking directive contained in s. 393.501(1), F.S., is made optional, and the strike-all deletes a requirement that the rules address, for intermediate care facilities for the mentally retarded, the rate and location of facility development and level of care. The strike-all transfers an exemption to the 1,000-foot-radius requirement of s. 419.001(2), F.S.,[18] for certain alternative living centers and independent living education centers from s. 393.067(4), F.S. to s. 393.501(2), F.S.

The Use of Restraints and Seclusion in Programs and Services for Persons with Mental Illnesses [Sections 36, 37, 38, 39]

The strike-all amends s. 394.453, F.S., relating to mental health, to add that it is the policy of the 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, and noting that the Legislature intends to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness. The strike-all also inserts identical definitions of "restraint" and "seclusion" proposed for inclusion in s. 393.063, F.S., into s. 394.455, F.S. The strike-all provides that rules adopted pursuant to s. 394.457(5)(b), F.S., must include provisions governing the use of restraint or 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.

The strike-all amends the rulemaking authority granted to the Department of Children and Family Services in s. 394.879, F.S., to include provisions governing the use of restraint or seclusion which satisfy the above criteria.

Intermediate Care Facilities for the Developmentally Disabled [Sections 42, 43]

The strike-all inserts the definitions of "restraint" and "seclusion" proposed for inclusion in s. 393.063, F.S., into s. 400.960, F.S., relating to intermediate care facilities for the developmentally disabled, and conforms other definitions to changes made in s. 393.063, F.S.

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[18] Section 419.001(2), F.S., specifies that "[h]omes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents. Such homes with six or fewer residents shall not be required to comply with the notification provisions of this section; provided, however, that the sponsoring agency or the department notifies the local government at the time of home occupancy that the home is licensed by the department."

The strike-all also amends s. 400.967, F.S., to provide that APD --- and not the Department of Children and Family Services (DCF) --- shall consult with the Agency for Health Care Administration (AHCA) in its adoption and enforcement of rules necessary to administer part XI of chapter 400, F.S. Also, APD is included in the list of agencies permitted to review the comprehensive emergency management plan, and DCF is subsequently removed from the list. The strike-all provides that rules relating to the use of restraint and seclusion in an intermediate care facility for the developmentally-disabled must:

- be 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;
- create 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;
- establish mandatory reporting, data-collection, and data-dissemination procedures and requirements; and
- require that any instance of the use of restraint or seclusion shall be documented in the facility's record of the client.

Sharing of Confidential Information; Claims Procedures [Sections 44, 45, 46]

The strike-all amends s. 402.115, F.S., and includes APD in the list of agencies authorized to 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. The strike-all also amends s. 402.17, F.S., and requires APD to protect the financial interest of the state with respect to claims that the state may have for the care and maintenance of clients of the agency.

The strike-all incorporates APD within the State Institutions Claims Program contained in s. 402.181, F.S., and also includes APD among the entities required to work with the Department of Legal Affairs to streamline the process of investigations, hearings, and determinations of certain claims to ensure that eligible claimants receive restitution within a reasonable time.

County Contracts Authorized for Services and Facilities for Mental Health and Developmental Disabilities [Section 47]

The strike-all amends s. 402.20, F.S., to provide that county commissioners providing monetary grants and facilities, or entering into renewable contracts for services and facilities, for persons with mental illness or developmental disabilities may make periodic inspections to assure that the services or facilities provided meet APD standards, in addition to DCF standards.

Consumer-Directed Care Programs [Section 51]

The strike-all amends s. 409.221, F.S., relating to consumer-directed care programs in Medicaid, by adding APD as an agency that can manage such programs. Currently, the Department of Elder Affairs is responsible for the administration of the consumer-directed care program, which permits agency clients to select and manage their Medicaid waiver services. While some of the persons served in the program are elderly, over 85 percent are clients of APD.

Family Support Planning Process [Section 54]

The strike-all clarifies the family support planning process detailed in s. 411.224, F.S., by specifying that children age 3 through 5 who are served by APD must be included. The strike-all further provides that such family support plans must replace individual habilitation plans for children from 3 through 5 years old who are served by APD.

Children's Early Investment Program [Section 55]

The strike-all clarifies that the Department of Health (DOH) is to adopt rules necessary to implement s. 411.232, F.S., relating to the Children's Early Investment Program.

Miscellaneous Provisions

The strike-all amends the definition of "facility" found in s. 415.102, F.S., by specifying that the term "facility" may include either a residential facility licensed under chapter 393, F.S., or an adult day training center. [Section 56]

The strike-all includes APD among the departments and agencies required by s. 415.1035, F.S., to work with DCF to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful, or exploitative practices. [Section 57]

Similarly, the strike-all inserts APD into s. 415.1055, F.S., and provides that, upon receipt of a report that alleges than an employee or agent of APD, acting in an official capacity, has committed an act of abuse, neglect, or exploitation, DCF shall notify the state attorney in whose circuit the abuse, neglect, or exploitation occurred. When a report has been received and DCF has reason to believe that a vulnerable adult resident of a facility licensed by APD has been the victim of abuse, neglect, or exploitation, DCF is required to provide a copy of its investigation to APD. [Section 58]

The strike-all inserts employees or agents of APD responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of certain nursing facilities into the list of entities authorized to access otherwise-confidential reports and records under. s. 415.107, F.S. The strike-all also provides access to these records and reports to any appropriate official of APD responsible for:

- 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
- taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution. [Section 59]

The strike-all amends certain definitions of s. 419.001, F.S. A requirement that a "community residential home" serve DCF clients is omitted, and the definition of "department" is expanded to include, in addition to DCF, both AHCA and APD. [Section 60]

The strike-all amends s. 944.602, F.S., by requiring the Department of Corrections (DOC) to notify APD --- and not DCF --- prior to the release of mentally-retarded inmates. In order that sufficient time be allowed to notify the inmate or the inmate's representative, written notification of available community services is required at least 7 days prior to the inmate's release. [Section 64]

The strike-all also inserts APD into s. 945.025, F.S., by requiring DCF and APD to cooperate to ensure the delivery of services to persons under custody or supervision of the Department of Corrections, and by specifying that, when it is the intent of DOC to transfer a mentally ill or retarded prisoner to either DCF or APD, an involuntary commitment hearing shall be held. The strike-all also deletes an obsolete provision in this section relating to redesignation of certain facilities as correctional facilities. [Section 65]

The strike-all amends s. 947.185, F.S., by providing that the Parole Commission may require as a condition of parole that any inmate who has been diagnosed as mentally retarded shall, upon release, apply for services from APD. [Section 66]

The strike-all clarifies that the developmental disability diagnostic and evaluation team referred to in ss. 984.19 and 985.224, F.S., organized for the purpose of evaluating a child alleged to be or adjudicated a child in need of services, is to be coordinated with the agency. The strike-all also specifies that, if a

child in need of services requires residential mental health treatment or residential care for a developmental disability, a court may refer the child to DCF or APD as appropriate. [Sections 67, 70]

The strike-all includes APD in s. 1003.58, F.S., relating to the provision of educational programs to students in residential care facilities. [Section 71]

In s. 17.61, F.S., the strike-all conforms the name of the trust fund as defined in the strike-all, and deletes a provision in s. 984.22, F.S., specifying that, in cases in which a child is placed in foster care with DCF, child support payments are to be deposited in the Community Resources Development Trust Fund. [Section 72]

The strike-all provides an effective date of July 1, 2006.

Bill No. **1503**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Elder & Long-Term Care
2 Committee
3 Representative(s) Galvano offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 20.197, Florida Statutes, is amended to
8 read:
9 20.197 Agency for Persons with Disabilities.--There is
10 created the Agency for Persons with Disabilities, housed within
11 the Department of Children and Family Services for
12 administrative purposes only. The agency shall be a separate
13 budget entity not subject to control, supervision, or direction
14 by the Department of Children and Family Services in any manner,
15 including, but not limited to, personnel, purchasing,
16 transactions involving real or personal property, and budgetary
17 matters.
18 (1) The director of the agency shall be the agency head
19 for all purposes and shall be appointed by the Governor, subject
20 to confirmation by the Senate, and shall serve at the pleasure
21 of the Governor. The director shall administer the affairs of
22 the agency ~~and establish administrative units as needed~~ and may,

23 within available resources, employ assistants, professional
24 staff, and other employees as necessary to discharge the powers
25 and duties of the agency.
26 (2) The agency shall include a Division of Budget and
27 Planning and a Division of Operations. In addition, and in
28 accordance with s. 20.04, the director of the agency may
29 recommend establishing additional divisions, bureaus, sections,
30 and subsections of the agency in order to promote efficient and
31 effective operation of the agency.
32 (3) ~~(2)~~ The agency is ~~shall be~~ responsible for providing
33 ~~the provision of~~ all services provided to persons with
34 developmental disabilities under ~~pursuant to~~ chapter 393,
35 including the operation of all state institutional programs and
36 the programmatic management of Medicaid waivers established to
37 provide services to persons with developmental disabilities.
38 (4) ~~(3)~~ The agency shall engage in such other
39 administrative activities as are deemed necessary to effectively
40 and efficiently address the needs of the agency's clients.
41 (5) ~~(4)~~ The agency shall enter into an interagency
42 agreement that delineates the responsibilities of the Agency for
43 Health Care Administration for the following:
44 (a) The terms and execution of contracts with Medicaid
45 providers for the provision of services provided through
46 Medicaid, including federally approved waiver programs.
47 (b) The billing, payment, and reconciliation of claims for
48 Medicaid services reimbursed by the agency.
49 (c) The implementation of utilization management measures,
50 including the prior authorization of services plans and the
51 streamlining and consolidation of waivers services, to ensure
52 the cost-effective provision of needed Medicaid services and to
53 maximize the number of persons with access to such services.

54 (d) A system of approving each client's plan of care to
55 ensure that the services on the plan of care are those that
56 without which the client would require the services of an
57 intermediate care facility for the developmentally disabled.
58 Section 2. Paragraph (b) of subsection (7) of section
59 39.001, Florida Statutes, is amended to read:
60 39.001 Purposes and intent; personnel standards and
61 screening.--
62 (7) PLAN FOR COMPREHENSIVE APPROACH.--
63 (b) The development of the comprehensive state plan shall
64 be accomplished in the following manner:
65 1. The department shall establish an interprogram task
66 force comprised of the Program Director for Family Safety, or a
67 designee, a representative from the Child Care Services Program
68 Office, a representative from the Family Safety Program Office,
69 a representative from the Mental Health Program Office, a
70 representative from the Substance Abuse Program Office, a
71 representative from the Agency for Persons with Disabilities
72 ~~Developmental Disabilities Program Office~~, and a representative
73 from the Division of Children's Medical Services Network
74 ~~Prevention and Intervention~~ of the Department of Health.
75 Representatives of the Department of Law Enforcement and of the
76 Department of Education shall serve as ex officio members of the
77 interprogram task force. The interprogram task force shall be
78 responsible for:
79 a. Developing a plan of action for better coordination and
80 integration of the goals, activities, and funding pertaining to
81 the prevention of child abuse, abandonment, and neglect
82 conducted by the department in order to maximize staff and
83 resources at the state level. The plan of action shall be
84 included in the state plan.

85 b. Providing a basic format to be utilized by the
86 districts in the preparation of local plans of action in order
87 to provide for uniformity in the district plans and to provide
88 for greater ease in compiling information for the state plan.
89 c. Providing the districts with technical assistance in
90 the development of local plans of action, if requested.
91 d. Examining the local plans to determine if all the
92 requirements of the local plans have been met and, if they have
93 not, informing the districts of the deficiencies and requesting
94 the additional information needed.
95 e. Preparing the state plan for submission to the
96 Legislature and the Governor. Such preparation shall include the
97 collapsing of information obtained from the local plans, the
98 cooperative plans with the Department of Education, and the plan
99 of action for coordination and integration of departmental
100 activities into one comprehensive plan. The comprehensive plan
101 shall include a section reflecting general conditions and needs,
102 an analysis of variations based on population or geographic
103 areas, identified problems, and recommendations for change. In
104 essence, the plan shall provide an analysis and summary of each
105 element of the local plans to provide a statewide perspective.
106 The plan shall also include each separate local plan of action.
107 f. Working with the specified state agency in fulfilling
108 the requirements of subparagraphs 2., 3., 4., and 5.
109 2. The department, the Department of Education, and the
110 Department of Health shall work together in developing ways to
111 inform and instruct parents of school children and appropriate
112 district school personnel in all school districts in the
113 detection of child abuse, abandonment, and neglect and in the
114 proper action that should be taken in a suspected case of child
115 abuse, abandonment, or neglect, and in caring for a child's

116 needs after a report is made. The plan for accomplishing this
117 end shall be included in the state plan.
118 3. The department, the Department of Law Enforcement, and
119 the Department of Health shall work together in developing ways
120 to inform and instruct appropriate local law enforcement
121 personnel in the detection of child abuse, abandonment, and
122 neglect and in the proper action that should be taken in a
123 suspected case of child abuse, abandonment, or neglect.
124 4. Within existing appropriations, the department shall
125 work with other appropriate public and private agencies to
126 emphasize efforts to educate the general public about the
127 problem of and ways to detect child abuse, abandonment, and
128 neglect and in the proper action that should be taken in a
129 suspected case of child abuse, abandonment, or neglect. The
130 plan for accomplishing this end shall be included in the state
131 plan.
132 5. The department, the Department of Education, and the
133 Department of Health shall work together on the enhancement or
134 adaptation of curriculum materials to assist instructional
135 personnel in providing instruction through a multidisciplinary
136 approach on the identification, intervention, and prevention of
137 child abuse, abandonment, and neglect. The curriculum materials
138 shall be geared toward a sequential program of instruction at
139 the four progressional levels, K-3, 4-6, 7-9, and 10-12.
140 Strategies for encouraging all school districts to utilize the
141 curriculum are to be included in the comprehensive state plan
142 for the prevention of child abuse, abandonment, and neglect.
143 6. Each district of the department shall develop a plan
144 for its specific geographical area. The plan developed at the
145 district level shall be submitted to the interprogram task force
146 for utilization in preparing the state plan. The district local

147 plan of action shall be prepared with the involvement and
148 assistance of the local agencies and organizations listed in
149 paragraph (a), as well as representatives from those
150 departmental district offices participating in the treatment and
151 prevention of child abuse, abandonment, and neglect. In order to
152 accomplish this, the district administrator in each district
153 shall establish a task force on the prevention of child abuse,
154 abandonment, and neglect. The district administrator shall
155 appoint the members of the task force in accordance with the
156 membership requirements of this section. In addition, the
157 district administrator shall ensure that each subdistrict is
158 represented on the task force; and, if the district does not
159 have subdistricts, the district administrator shall ensure that
160 both urban and rural areas are represented on the task force.
161 The task force shall develop a written statement clearly
162 identifying its operating procedures, purpose, overall
163 responsibilities, and method of meeting responsibilities. The
164 district plan of action to be prepared by the task force shall
165 include, but shall not be limited to:
166 a. Documentation of the magnitude of the problems of child
167 abuse, including sexual abuse, physical abuse, and emotional
168 abuse, and child abandonment and neglect in its geographical
169 area.
170 b. A description of programs currently serving abused,
171 abandoned, and neglected children and their families and a
172 description of programs for the prevention of child abuse,
173 abandonment, and neglect, including information on the impact,
174 cost-effectiveness, and sources of funding of such programs.
175 c. A continuum of programs and services necessary for a
176 comprehensive approach to the prevention of all types of child

177 abuse, abandonment, and neglect as well as a brief description
178 of such programs and services.
179 d. A description, documentation, and priority ranking of
180 local needs related to child abuse, abandonment, and neglect
181 prevention based upon the continuum of programs and services.
182 e. A plan for steps to be taken in meeting identified
183 needs, including the coordination and integration of services to
184 avoid unnecessary duplication and cost, and for alternative
185 funding strategies for meeting needs through the reallocation of
186 existing resources, utilization of volunteers, contracting with
187 local universities for services, and local government or private
188 agency funding.
189 f. A description of barriers to the accomplishment of a
190 comprehensive approach to the prevention of child abuse,
191 abandonment, and neglect.
192 g. Recommendations for changes that can be accomplished
193 only at the state program level or by legislative action.
194 Section 3. Paragraphs (a) and (h) of subsection (2) of
195 section 39.202, Florida Statutes, are amended to read:
196 39.202 Confidentiality of reports and records in cases of
197 child abuse or neglect.--
198 (2) Except as provided in subsection (4), access to such
199 records, excluding the name of the reporter which shall be
200 released only as provided in subsection (5), shall be granted
201 only to the following persons, officials, and agencies:
202 (a) Employees, authorized agents, or contract providers of
203 the department, the Department of Health, <u>the Agency for Persons</u>
204 <u>with Disabilities,</u> or county agencies responsible for carrying
205 out:
206 1. Child or adult protective investigations;
207 2. Ongoing child or adult protective services;

208 3. Healthy Start services; or
209 4. Licensure or approval of adoptive homes, foster homes,
210 ~~or~~ child care facilities, facilities licensed under chapter 393,
211 or family day care homes or informal child care providers who
212 receive subsidized child care funding, or other homes used to
213 provide for the care and welfare of children.
214 5. Services for victims of domestic violence when provided
215 by certified domestic violence centers working at the
216 department's request as case consultants or with shared clients.
217
218 Also, employees or agents of the Department of Juvenile Justice
219 responsible for the provision of services to children, pursuant
220 to chapters 984 and 985.
221 (h) Any appropriate official of the department or the
222 Agency for Persons with Disabilities who is responsible for:
223 1. Administration or supervision of the department's
224 program for the prevention, investigation, or treatment of child
225 abuse, abandonment, or neglect, or abuse, neglect, or
226 exploitation of a vulnerable adult, when carrying out his or her
227 official function;
228 2. Taking appropriate administrative action concerning an
229 employee of the department or the agency who is alleged to have
230 perpetrated child abuse, abandonment, or neglect, or abuse,
231 neglect, or exploitation of a vulnerable adult; or
232 3. Employing and continuing employment of personnel of the
233 department or the agency.
234 Section 4. Subsection (5) of section 39.407, Florida
235 Statutes, is amended to read:
236 39.407 Medical, psychiatric, and psychological examination
237 and treatment of child; physical or mental examination of parent
238 or person requesting custody of child.--

239 (5) A judge may order a child in an out-of-home placement
240 to be treated by a licensed health care professional based on
241 evidence that the child should receive treatment. The judge may
242 also order such child to receive mental health ~~or developmental~~
243 ~~disabilities~~ services from a psychiatrist, psychologist, or
244 other appropriate service provider. Except as provided in
245 subsection (6), if it is necessary to place the child in a
246 residential facility for such services, the procedures and
247 criteria established in s. 394.467 ~~or chapter 393~~ shall be used~~,~~
248 ~~whichever is applicable~~. A child may be provided ~~developmental~~
249 ~~disabilities or~~ mental health services in emergency situations,
250 pursuant to the procedures and criteria contained in s.
251 394.463(1) ~~or chapter 393, whichever is applicable~~.
252 Section 5. Section 287.155, Florida Statutes, is amended
253 to read:
254 287.155 Motor vehicles; purchase by Division of
255 Universities, Department of Children and Family Services, Agency
256 for Persons with Disabilities, Department of Health, Department
257 of Juvenile Justice, and Department of Corrections.--
258 (1) The Division of Universities of the Department of
259 Education, the Department of Children and Family Services, the
260 Agency for Persons with Disabilities, the Department of Health,
261 the Department of Juvenile Justice, and the Department of
262 Corrections may ~~are hereby authorized~~, subject to the approval
263 of the Department of Management Services, ~~to~~ purchase
264 automobiles, trucks, tractors, and other automotive equipment
265 for the use of institutions under the management of the Division
266 of Universities, the Department of Children and Family Services,
267 the Agency for Persons with Disabilities, the Department of
268 Health, and the Department of Corrections, and for the use of

269 residential facilities managed or contracted by the Department
270 of Juvenile Justice.
271 (2) The Department of Corrections shall, prior to
272 purchasing motor vehicles, seek to procure the motor vehicles
273 from those vehicles renovated pursuant to correctional work
274 programs of the Department of Corrections, and for the use of
275 residential facilities managed or contracted by the Department
276 of Juvenile Justice.
277 (3) The Department of Health is authorized, subject to the
278 approval of the Department of Management Services, to purchase
279 automobiles, trucks, and other automotive equipment for use by
280 county health departments.
281 Section 6. Paragraph (a) of subsection (3) of section
282 381.0072, Florida Statutes, is amended to read:
283 381.0072 Food service protection.--It shall be the duty of
284 the Department of Health to adopt and enforce sanitation rules
285 consistent with law to ensure the protection of the public from
286 food-borne illness. These rules shall provide the standards and
287 requirements for the storage, preparation, serving, or display
288 of food in food service establishments as defined in this
289 section and which are not permitted or licensed under chapter
290 500 or chapter 509.
291 (3) LICENSES REQUIRED.--
292 (a) Licenses; annual renewals.--Each food service
293 establishment regulated under this section shall obtain a
294 license from the department annually. Food service establishment
295 licenses shall expire annually and <u>are</u> ~~shall~~ not ~~be~~ transferable
296 from one place or individual to another. However, those
297 facilities licensed by the department's Office of Licensure and
298 Certification, the Child Care Services Program Office, or the
299 <u>Agency for Persons with</u> ~~Developmental~~ Disabilities ~~Program~~

300 ~~Office~~ are exempt from this subsection. It shall be a
301 misdemeanor of the second degree, punishable as provided in s.
302 381.0061, s. 775.082, or s. 775.083, for such an establishment
303 to operate without this license. The department may refuse a
304 license, or a renewal thereof, to any establishment that is not
305 constructed or maintained in accordance with law and with the
306 rules of the department. Annual application for renewal is ~~shall~~
307 not ~~be~~ required.
308 Section 7. Subsection (5) of section 383.14, Florida
309 Statutes, is amended to read:
310 383.14 Screening for metabolic disorders, other hereditary
311 and congenital disorders, and environmental risk factors.--
312 (5) ADVISORY COUNCIL.--There is established a Genetics and
313 Newborn Screening Advisory Council made up of 15 members
314 appointed by the Secretary of Health. The council shall be
315 composed of two consumer members, three practicing
316 pediatricians, at least one of whom must be a pediatric
317 hematologist, one representative from each of the four medical
318 schools in the state, the Secretary of Health or his or her
319 designee, one representative from the Department of Health
320 representing Children's Medical Services, one representative
321 from the Florida Hospital Association, one individual with
322 experience in newborn screening programs, one individual
323 representing audiologists, and one representative from the
324 Agency for Persons with Disabilities ~~Developmental Disabilities~~
325 ~~Program Office of the Department of Children and Family~~
326 ~~Services~~. All appointments shall be for a term of 4 years. The
327 chairperson of the council shall be elected from the membership
328 of the council and shall serve for a period of 2 years. The
329 council shall meet at least semiannually or upon the call of the
330 chairperson. The council may establish ad hoc or temporary

331 technical advisory groups to assist the council with specific
332 topics which come before the council. Council members shall
333 serve without pay. Pursuant to the provisions of s. 112.061, the
334 council members are entitled to be reimbursed for per diem and
335 travel expenses. It is the purpose of the council to advise the
336 department about:
337 (a) Conditions for which testing should be included under
338 the screening program and the genetics program.
339 (b) Procedures for collection and transmission of
340 specimens and recording of results.
341 (c) Methods whereby screening programs and genetics
342 services for children now provided or proposed to be offered in
343 the state may be more effectively evaluated, coordinated, and
344 consolidated.
345 Section 8. Section 393.061, Florida Statutes, is repealed.
346 Section 9. Section 393.062, Florida Statutes, is amended
347 to read:
348 393.062 Legislative findings and declaration of
349 intent.--The Legislature finds and declares that existing state
350 programs for the treatment of individuals with developmental
351 disabilities ~~who are developmentally disabled~~, which often
352 unnecessarily place clients in institutions, are unreasonably
353 costly, are ineffective in bringing the individual client to his
354 or her maximum potential, and are in fact debilitating to many ~~a~~
355 ~~great majority of~~ clients. A redirection in state treatment
356 programs for individuals with developmental disabilities ~~who are~~
357 ~~developmentally disabled~~ is necessary if any significant
358 amelioration of the problems faced by such individuals is ever
359 to take place. Such redirection should place primary emphasis on
360 programs that ~~have the potential to~~ prevent or reduce the
361 severity of developmental disabilities. Further, the ~~Legislature~~

362 ~~declares that~~ greatest priority shall be given to the
363 development and implementation of community-based ~~residential~~
364 ~~placements,~~ services that~~, and treatment programs for~~
365 ~~individuals who are developmentally disabled which~~ will enable
366 ~~such~~ individuals with developmental disabilities to achieve
367 their greatest potential for independent and productive living,
368 ~~which will~~ enable them to live in their own homes or in
369 residences located in their own communities, and ~~which will~~
370 permit them to be diverted or removed from unnecessary
371 institutional placements. This goal ~~The Legislature finds that~~
372 ~~the eligibility criteria for intermediate-care facilities for~~
373 ~~the developmentally disabled which are specified in the Medicaid~~
374 ~~state plan in effect on the effective date of this act are~~
375 ~~essential to the system of residential services. The Legislature~~
376 ~~declares that the goal of this act, to improve the quality of~~
377 ~~life of all developmentally disabled persons by the development~~
378 ~~and implementation of community-based residential placements,~~
379 ~~services, and treatment,~~ cannot be met without ensuring the
380 availability of community residential opportunities ~~for~~
381 ~~developmentally disabled persons~~ in the residential areas of
382 this state. The Legislature, therefore, declares that all
383 persons with developmental disabilities who live in licensed
384 community homes shall have a family living environment
385 comparable to other Floridians and~~. The Legislature intends~~ that
386 such residences shall be considered and treated as a functional
387 equivalent of a family unit and not as an institution, business,
388 or boarding home. The Legislature further declares that, in
389 developing community-based programs and services for individuals
390 with developmental disabilities ~~who are developmentally~~
391 ~~disabled~~, private businesses, not-for-profit corporations, units
392 of local government, and other organizations capable of

393 providing needed services to clients in a cost-efficient manner
394 shall be given preference in lieu of operation of programs
395 directly by state agencies. Finally, it is the intent of the
396 Legislature that all caretakers unrelated to individuals with
397 developmental disabilities receiving care shall be of good moral
398 character.
399 Section 10. Section 393.063, Florida Statutes, is amended
400 to read:
401 393.063 Definitions.--For the purposes of this chapter,
402 the term:
403 (1) "Agency" means the Agency for Persons with
404 Disabilities.
405 (2) "Adult day training" means training services which
406 take place in a nonresidential setting, separate from the home
407 or facility in which the client resides, are intended to support
408 the participation of clients in daily, meaningful, and valued
409 routines of the community, and may include work-like settings
410 that do not meet the definition of supported employment.
411 (3) ~~(2)~~ "Autism" means a pervasive, neurologically based
412 developmental disability of extended duration which causes
413 severe learning, communication, and behavior disorders with age
414 of onset during infancy or childhood. Individuals with autism
415 exhibit impairment in reciprocal social interaction, impairment
416 in verbal and nonverbal communication and imaginative ability,
417 and a markedly restricted repertoire of activities and
418 interests.
419 (4) ~~(3)~~ "Cerebral palsy" means a group of disabling
420 symptoms of extended duration which results from damage to the
421 developing brain that may occur before, during, or after birth
422 and that results in the loss or impairment of control over
423 voluntary muscles. For the purposes of this definition, cerebral

424 palsy does not include those symptoms or impairments resulting
425 solely from a stroke.
426 (5) ~~(4)~~ "Client" means any person determined eligible by
427 the agency for services under this chapter.
428 (6) ~~(5)~~ "Client advocate" means a friend or relative of the
429 client, or of the client's immediate family, who advocates for
430 the best interests of the client in any proceedings under this
431 chapter in which the client or his or her family has the right
432 or duty to participate.
433 (7) ~~(6)~~ "Comprehensive assessment" means the process used
434 to determine eligibility for services under this chapter.
435 (8) ~~(7)~~ "Comprehensive transitional education program"
436 means the program established in s. 393.18. ~~a group of jointly~~
437 ~~operating centers or units, the collective purpose of which is~~
438 ~~to provide a sequential series of educational care, training,~~
439 ~~treatment, habilitation, and rehabilitation services to persons~~
440 ~~who have developmental disabilities and who have severe or~~
441 ~~moderate maladaptive behaviors. However, nothing in this~~
442 ~~subsection shall require such programs to provide services only~~
443 ~~to persons with developmental disabilities. All such services~~
444 ~~shall be temporary in nature and delivered in a structured~~
445 ~~residential setting with the primary goal of incorporating the~~
446 ~~normalization principle to establish permanent residence for~~
447 ~~persons with maladaptive behaviors in facilities not associated~~
448 ~~with the comprehensive transitional education program. The staff~~
449 ~~shall include psychologists and teachers who shall be available~~
450 ~~to provide services in each component center or unit of the~~
451 ~~program. The psychologists shall be individuals who are licensed~~
452 ~~in this state and certified as behavior analysts in this state,~~
453 ~~or individuals who are certified as behavior analysts pursuant~~
454 ~~to s. 393.17.~~

455 ~~(a) Comprehensive transitional education programs shall~~
456 ~~include a minimum of two component centers or units, one of~~
457 ~~which shall be either an intensive treatment and educational~~
458 ~~center or a transitional training and educational center, which~~
459 ~~provide services to persons with maladaptive behaviors in the~~
460 ~~following sequential order:~~
461 ~~1. Intensive treatment and educational center. This~~
462 ~~component is a self-contained residential unit providing~~
463 ~~intensive psychological and educational programming for persons~~
464 ~~with severe maladaptive behaviors, whose behaviors preclude~~
465 ~~placement in a less restrictive environment due to the threat of~~
466 ~~danger or injury to themselves or others.~~
467 ~~2. Transitional training and educational center. This~~
468 ~~component is a residential unit for persons with moderate~~
469 ~~maladaptive behaviors, providing concentrated psychological and~~
470 ~~educational programming emphasizing a transition toward a less~~
471 ~~restrictive environment.~~
472 ~~3. Community transition residence. This component is a~~
473 ~~residential center providing educational programs and such~~
474 ~~support services, training, and care as are needed to assist~~
475 ~~persons with maladaptive behaviors to avoid regression to more~~
476 ~~restrictive environments while preparing them for more~~
477 ~~independent living. Continuous-shift staff shall be required for~~
478 ~~this component.~~
479 ~~4. Alternative living center. This component is a~~
480 ~~residential unit providing an educational and family living~~
481 ~~environment for persons with maladaptive behaviors, in a~~
482 ~~moderately unrestricted setting. Residential staff shall be~~
483 ~~required for this component.~~
484 ~~5. Independent living education center. This component is~~
485 ~~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~~

516 ~~units of the program authorized under this subparagraph shall~~
517 ~~not exceed a capacity of 15 persons.~~
518 ~~(8) "Day habilitation facility" means any nonresidential~~
519 ~~facility which provides day habilitation services.~~
520 ~~(9) "Day habilitation service" means assistance with the~~
521 ~~acquisition, retention, or improvement in self-help,~~
522 ~~socialization, and adaptive skills which takes place in a~~
523 ~~nonresidential setting, separate from the home or facility in~~
524 ~~which the individual resides. Day habilitation services shall~~
525 ~~focus on enabling the individual to attain or maintain his or~~
526 ~~her maximum functional level and shall be coordinated with any~~
527 ~~physical, occupational, or speech therapies listed in the plan~~
528 ~~of care.~~
529 (9) ~~(10)~~ "Developmental disability" means a disorder or
530 syndrome that is attributable to retardation, cerebral palsy,
531 autism, spina bifida, or Prader-Willi syndrome; that manifests
532 before the age of 18; and that constitutes a substantial
533 handicap that can reasonably be expected to continue
534 indefinitely.
535 (10) ~~(11)~~ "Developmental disabilities institution" means a
536 state-owned and state-operated facility, formerly known as a
537 "Sunland Center," providing for the care, habilitation, and
538 rehabilitation of clients with developmental disabilities.
539 (11) ~~(12)~~ "Direct service provider~~,~~" ~~also known as~~
540 ~~"caregiver" in chapters 39 and 415 or "caretaker" in provisions~~
541 ~~relating to employment security checks,~~ means a person 18 years
542 of age or older who has direct face-to-face contact with a
543 client while providing services to the client ~~individuals with~~
544 ~~developmental disabilities~~, or has access to a client's living
545 areas or to a client's funds or personal property~~, and is not a~~
546 ~~relative of such individuals~~.

547 (12) ~~(13)~~ "Domicile" means the place where a client legally
548 resides, which place is his or her permanent home. Domicile may
549 be established as provided in s. 222.17. Domicile may not be
550 established in Florida by a minor who has no parent domiciled in
551 Florida, or by a minor who has no legal guardian domiciled in
552 Florida, or by any alien not classified as a resident alien.
553 ~~(14) "Enclave" means a work station in public or private~~
554 ~~business or industry where a small group of persons with~~
555 ~~developmental disabilities is employed and receives training and~~
556 ~~support services or follow-along services among nonhandicapped~~
557 ~~workers.~~
558 ~~(15) "Epilepsy" means a chronic brain disorder of various~~
559 ~~causes which is characterized by recurrent seizures due to~~
560 ~~excessive discharge of cerebral neurons. When found concurrently~~
561 ~~with retardation, autism, or cerebral palsy, epilepsy is~~
562 ~~considered a secondary disability for which the client is~~
563 ~~eligible to receive services to ameliorate this condition~~
564 ~~pursuant to this chapter.~~
565 (13) ~~(16)~~ "Express and informed consent" means consent
566 voluntarily given in writing with sufficient knowledge and
567 comprehension of the subject matter ~~involved~~ to enable the
568 person giving consent to make a knowing ~~an understanding and~~
569 ~~enlightened~~ decision without any element of force, fraud,
570 deceit, duress, or other form of constraint or coercion.
571 (14) ~~(17)~~ "Family care program" means the program
572 established in s. 393.068.
573 ~~(18) "Follow-along services" means those support services~~
574 ~~provided to persons with developmental disabilities in all~~
575 ~~supported employment programs and may include, but are not~~
576 ~~limited to, family support, assistance in meeting transportation~~
577 ~~and medical needs, employer intervention, performance~~

578 ~~evaluation, advocacy, replacement, retraining or promotional~~
579 ~~assistance, or other similar support services.~~
580 (15) ~~(19)~~ "Foster care facility" means a residential
581 facility licensed under this chapter which provides a family
582 living environment including supervision and care necessary to
583 meet the physical, emotional, and social needs of its residents.
584 The capacity of such a facility may ~~shall~~ not be more than three
585 residents.
586 (16) ~~(20)~~ "Group home facility" means a residential
587 facility licensed under this chapter which provides a family
588 living environment including supervision and care necessary to
589 meet the physical, emotional, and social needs of its residents.
590 The capacity of such a facility shall be at least 4 but not more
591 than 15 residents. ~~For the purposes of this chapter, group home~~
592 ~~facilities shall not be considered commercial enterprises.~~
593 (17) ~~(21)~~ "Guardian advocate" means a person appointed by a
594 written order of the court to represent a person with
595 developmental disabilities under s. 393.12.
596 (18) ~~(22)~~ "Habilitation" means the process by which a
597 client is assisted to acquire and maintain those life skills
598 which enable the client to cope more effectively with the
599 demands of his or her condition and environment and to raise the
600 level of his or her physical, mental, and social efficiency. It
601 includes, but is not limited to, programs of formal structured
602 education and treatment.
603 (19) ~~(23)~~ "High-risk child" means, for the purposes of this
604 chapter, a child from 3 ~~birth~~ to 5 years of age with one or more
605 of the following characteristics:
606 (a) A developmental delay in cognition, language, or
607 physical development.

608 (b) A child surviving a catastrophic infectious or
609 traumatic illness known to be associated with developmental
610 delay, when funds are specifically appropriated.
611 (c) A child with a parent or guardian with developmental
612 disabilities who requires assistance in meeting the child's
613 developmental needs.
614 (d) A child who has a physical or genetic anomaly
615 associated with developmental disability.
616 (20) ~~(24)~~ "Intermediate care facility for the
617 developmentally disabled" or "ICF/DD" means a residential
618 facility licensed and certified pursuant to part XI of chapter
619 400.
620 ~~(25) "Job coach" means a person who provides employment-~~
621 ~~related training at a worksite to individuals with developmental~~
622 ~~disabilities.~~
623 (21) ~~(26)~~ "Medical/dental services" means medically
624 necessary ~~those~~ services which are provided or ordered for a
625 client by a person licensed under ~~pursuant to the provisions of~~
626 chapter 458, chapter 459, or chapter 466. Such services may
627 include, but are not limited to, prescription drugs, specialized
628 therapies, nursing supervision, hospitalization, dietary
629 services, prosthetic devices, surgery, specialized equipment and
630 supplies, adaptive equipment, and other services as required to
631 prevent or alleviate a medical or dental condition.
632 ~~(27) "Mobile work crew" means a group of workers employed~~
633 ~~by an agency that provides services outside the agency, usually~~
634 ~~under service contracts.~~
635 ~~(28) "Normalization principle" means the principle of~~
636 ~~letting the client obtain an existence as close to the normal as~~
637 ~~possible, making available to the client patterns and conditions~~

638 ~~of everyday life which are as close as possible to the norm and~~
639 ~~patterns of the mainstream of society.~~
640 (22) ~~(29)~~ "Personal care services" means ~~include, but are~~
641 ~~not limited to, such services as:~~ individual assistance with or
642 supervision of essential activities of daily living for self-
643 care, including ambulation, bathing, dressing, eating, grooming,
644 and toileting, and other similar services that are incidental to
645 the care furnished and essential to the health, safety, and
646 welfare of the client when there is no one else available to
647 perform those services ~~the agency may define by rule~~. ~~"Personal~~
648 ~~services" shall not be construed to mean the provision of~~
649 ~~medical, nursing, dental, or mental health services by the staff~~
650 ~~of a facility, except as provided in this chapter. In addition,~~
651 ~~an emergency response device installed in the apartment or~~
652 ~~living area of a resident shall not be classified as a personal~~
653 ~~service.~~
654 (23) ~~(30)~~ "Prader-Willi syndrome" means an inherited
655 condition typified by neonatal hypotonia with failure to thrive,
656 hyperphagia or an excessive drive to eat which leads to obesity
657 usually at 18 to 36 months of age, mild to moderate mental
658 retardation, hypogonadism, short stature, mild facial
659 dysmorphism, and a characteristic neurobehavior.
660 ~~(31) "Reassessment" means a process which periodically~~
661 ~~develops, through annual review and revision of a client's~~
662 ~~family or individual support plan, a knowledgeable statement of~~
663 ~~current needs and past development for each client.~~
664 (24) ~~(32)~~ "Relative" means an individual who is connected
665 by affinity or consanguinity to the client and who is 18 years
666 of age or older ~~more~~.
667 (25) ~~(33)~~ "Resident" means any person with developmental
668 disabilities ~~who is developmentally disabled~~ residing at a

669 residential facility ~~in the state~~, whether or not such person is
670 a client of the agency.
671 (26) ~~(34)~~ "Residential facility" means a facility providing
672 room and board and personal care for persons with developmental
673 disabilities.
674 (27) ~~(35)~~ "Residential habilitation" means supervision and
675 training ~~assistance provided~~ with the acquisition, retention, or
676 improvement in skills related to activities of daily living,
677 such as personal hygiene skills ~~grooming and cleanliness~~,
678 homemaking skills ~~bedmaking and household chores, eating and the~~
679 ~~preparation of food~~, and the social and adaptive skills
680 necessary to enable the individual to reside in the community ~~a~~
681 ~~noninstitutional setting~~.
682 (28) ~~(36)~~ "Residential habilitation center" means a
683 community residential facility licensed under this chapter which
684 ~~that~~ provides ~~residential~~ habilitation services. The capacity of
685 such a facility shall not be fewer than nine residents. After
686 October 1, 1989, ~~no~~ new residential habilitation centers may not
687 ~~shall~~ be licensed and the licensed capacity ~~shall not be~~
688 ~~increased~~ for any existing residential habilitation center may
689 not be increased.
690 (29) ~~(37)~~ "Respite service" means appropriate, short-term,
691 temporary care that is provided to a person with developmental
692 disabilities to meet the planned or emergency needs of the
693 person or the family or other direct service provider.
694 (30) "Restraint" means a physical device, method, or drug
695 used to control dangerous behavior.
696 (a) A physical restraint is any manual method or physical
697 or mechanical device, material, or equipment attached or
698 adjacent to the individual's body so that he or she cannot

699 easily remove the restraint and which restricts freedom of
700 movement or normal access to one's body.
701 (b) A drug used as a restraint is a medication used to
702 control the person's behavior or to restrict his or her freedom
703 of movement and is not a standard treatment for the person's
704 medical or psychiatric condition. Physically holding a person
705 during a procedure to forcibly administer psychotropic
706 medication is a physical restraint.
707 (c) Restraint does not include physical devices, such as
708 orthopedically prescribed appliances, surgical dressings and
709 bandages, supportive body bands, or other physical holding when
710 necessary for routine physical examinations and tests; for
711 purposes of orthopedic, surgical, or other similar medical
712 treatment; when used to provide support for the achievement of
713 functional body position or proper balance; or when used to
714 protect a person from falling out of bed.
715 (31) ~~(38)~~ "Retardation" means significantly subaverage
716 general intellectual functioning existing concurrently with
717 deficits in adaptive behavior ~~and manifested during the period~~
718 ~~from conception to age 18~~. "Significantly subaverage general
719 intellectual functioning," for the purpose of this definition,
720 means performance which is two or more standard deviations from
721 the mean score on a standardized intelligence test specified in
722 the rules of the agency. "Adaptive behavior," for the purpose of
723 this definition, means the effectiveness or degree with which an
724 individual meets the standards of personal independence and
725 social responsibility expected of his or her age, cultural
726 group, and community.
727 (32) "Seclusion" means the involuntary isolation of a
728 person in a room or area from which the person is prevented from
729 leaving. The prevention may be by physical barrier or by a staff

730 member who is acting in a manner, or who is physically situated,
731 so as to prevent the person from leaving the room or area. For
732 the purposes of this chapter, the term does not mean isolation
733 due to the medical condition or symptoms of the person.
734 (33) "Self-determination" means an individual's freedom to
735 exercise the same rights as all other citizens, authority to
736 exercise control over funds needed for one's own support,
737 including prioritizing these funds when necessary,
738 responsibility for the wise use of public funds, and self
739 advocacy to speak and advocate for oneself in order to gain
740 independence and ensure that individuals with a developmental
741 disability are treated equally.
742 ~~(39) "Severe self-injurious behavior" means any chronic~~
743 ~~behavior that results in injury to the person's own body, which~~
744 ~~includes, but is not limited to, self-hitting, head banging,~~
745 ~~self-biting, scratching, and the ingestion of harmful or~~
746 ~~potentially harmful nutritive or nonnutritive substances.~~
747 (34)~~(40)~~ "Specialized therapies" means those treatments or
748 activities prescribed by and provided by an appropriately
749 trained, licensed, or certified professional or staff person and
750 may include, but are not limited to, physical therapy, speech
751 therapy, respiratory therapy, occupational therapy, behavior
752 therapy, physical management services, and related specialized
753 equipment and supplies.
754 (35)~~(41)~~ "Spina bifida" means, for purposes of this
755 chapter, a person with a medical diagnosis of spina bifida
756 cystica or myelomeningocele.
757 (36)~~(42)~~ "Support coordinator" means a person who is
758 designated by the agency to assist individuals and families in
759 identifying their capacities, needs, and resources, as well as
760 finding and gaining access to necessary supports and services;

761 coordinating the delivery of supports and services; advocating
762 on behalf of the individual and family; maintaining relevant
763 records; and monitoring and evaluating the delivery of supports
764 and services to determine the extent to which they meet the
765 needs and expectations identified by the individual, family, and
766 others who participated in the development of the support plan.
767 ~~(43) "Supported employee" means a person who requires and~~
768 ~~receives supported employment services in order to maintain~~
769 ~~community-based employment.~~
770 (37) ~~(44)~~ "Supported employment" means employment located
771 or provided in ~~a normal employment setting which provides at~~
772 ~~least 20 hours employment per week in~~ an integrated work
773 setting, with earnings paid on a commensurate wage basis, and
774 for which continued support is needed for job maintenance.
775 (38) ~~(45)~~ "Supported living" means a category of
776 individually determined services designed and coordinated in
777 such a manner as to provide assistance to adult clients who
778 require ongoing supports to live as independently as possible in
779 their own homes, to be integrated into the community, and to
780 participate in community life to the fullest extent possible.
781 (39) ~~(46)~~ "Training" means a planned approach to assisting
782 a client to attain or maintain his or her maximum potential and
783 includes services ranging from sensory stimulation to
784 instruction in skills for independent living and employment.
785 (40) ~~(47)~~ "Treatment" means the prevention, amelioration,
786 or cure of a client's physical and mental disabilities or
787 illnesses.
788 Section 11. Subsections (1), (2), and (4) of section
789 393.064, Florida Statutes, are amended to read:
790 393.064 Prevention.--

791 (1) The agency shall give priority to the development,
792 planning, and implementation of programs which have the
793 potential to prevent, correct, cure, or reduce the severity of
794 developmental disabilities. The agency shall direct an
795 interagency and interprogram effort for the continued
796 development of a prevention plan and program. The agency shall
797 identify, through demonstration projects, through program
798 evaluation, and through monitoring of programs and projects
799 conducted outside of the agency, any medical, social, economic,
800 or educational methods, techniques, or procedures that have the
801 potential to effectively ameliorate, correct, or cure
802 developmental disabilities. The agency ~~program~~ shall determine
803 the costs and benefits that would be associated with such
804 prevention efforts and shall implement, or recommend the
805 implementation of, those methods, techniques, or procedures
806 which are found likely to be cost-beneficial.
807 (2) Prevention services provided by the agency shall
808 ~~developmental services program~~ include services to high-risk ~~and~~
809 ~~developmentally disabled~~ children from 3 ~~birth~~ to 5 years of
810 age, and their families, to meet the intent of chapter 411.
811 Except for services for children from birth to age 3 years which
812 ~~Such services shall include individual evaluations or~~
813 ~~assessments necessary to diagnose a developmental disability or~~
814 ~~high-risk condition and to determine appropriate individual~~
815 ~~family and support services, unless evaluations or assessments~~
816 are the responsibility of the Division of Children's Medical
817 Services in the Department of Health ~~Prevention and Intervention~~
818 ~~for children ages birth to 3 years eligible for services under~~
819 ~~this chapter~~ or part H of the Individuals with Disabilities
820 Education Act, such services ~~and~~ may include:

821 (a) Individual evaluations or assessments necessary to
822 diagnose a developmental disability or high-risk condition and
823 to determine appropriate, individual family and support
824 services.
825 (b) ~~(a)~~ Early intervention services, including
826 developmental training and specialized therapies. ~~Early~~
827 ~~intervention services, which are the responsibility of the~~
828 ~~Division of Children's Medical Services Prevention and~~
829 ~~Intervention for children ages birth to 3 years who are eligible~~
830 ~~for services under this chapter or under part H of the~~
831 ~~Individuals with Disabilities Education Act, shall not be~~
832 ~~provided through the developmental services program unless~~
833 ~~funding is specifically appropriated to the developmental~~
834 ~~services program for this purpose.~~
835 (c) ~~(b)~~ Support services, such as respite care, parent
836 education and training, parent-to-parent counseling, homemaker
837 services, and other services which allow families to maintain
838 and provide quality care to children in their homes. ~~The~~
839 ~~Division of Children's Medical Services Prevention and~~
840 ~~Intervention is responsible for the provision of services to~~
841 ~~children from birth to 3 years who are eligible for services~~
842 ~~under this chapter.~~
843 (4) There is created at the developmental disabilities
844 ~~services~~ institution in Gainesville a research and education
845 unit. Such unit shall be named the Raymond C. Philips Research
846 and Education Unit. The functions of such unit shall include:
847 (a) Research into the etiology of developmental
848 disabilities.
849 (b) Ensuring that new knowledge is rapidly disseminated
850 throughout ~~the developmental services program of~~ the agency.

851 (c) Diagnosis of unusual conditions and syndromes
852 associated with developmental disabilities in clients identified
853 throughout ~~the~~ developmental disabilities ~~services~~ programs.
854 (d) Evaluation of families of clients with developmental
855 disabilities of genetic origin in order to provide them with
856 genetic counseling aimed at preventing the recurrence of the
857 disorder in other family members.
858 (e) Ensuring that health professionals in the
859 developmental disabilities ~~services~~ institution at Gainesville
860 have access to information systems that will allow them to
861 remain updated on newer knowledge and maintain their
862 postgraduate education standards.
863 (f) Enhancing staff training for professionals throughout
864 the agency in the areas of genetics and developmental
865 disabilities.
866 Section 12. Section 393.0641, Florida Statutes, is amended
867 to read:
868 393.0641 Program for the prevention and treatment of
869 severe self-injurious behavior.--
870 (1) Contingent upon specific appropriations, there is
871 created a diagnostic, treatment, training, and research program
872 for clients exhibiting severe self-injurious behavior. As used
873 in this section, the term "severe self-injurious behavior" means
874 any chronic behavior that results in injury to the person's own
875 body, including, but not limited to, self-hitting, head banging,
876 self-biting, scratching, and the ingestion of harmful or
877 potentially harmful nutritive or nonnutritive substances.
878 (2) The ~~This~~ program shall:
879 (a) Serve as a resource center for information, training,
880 and program development.

881 (b) Research the diagnosis and treatment of severe self-
882 injurious behavior, and related disorders, and develop methods
883 of prevention and treatment of self-injurious behavior.
884 (c) Identify individuals in critical need.
885 (d) Develop treatment programs which are meaningful to
886 individuals with developmental disabilities, in critical need,
887 while safeguarding and respecting the legal and human rights of
888 the individuals.
889 (e) Disseminate research findings on the prevention and
890 treatment of severe self-injurious behavior.
891 (f) Collect data on the type, severity, incidence, and
892 demographics of individuals with severe self-injurious behavior,
893 and disseminate the data.
894 (3) ~~(2)~~ The ~~This~~ program shall adhere to the provisions of
895 s. 393.13.
896 (4) ~~(3)~~ The agency may contract for the provision of any
897 portion or all of the services required by the program.
898 (5) ~~(4)~~ The agency may ~~has the authority to~~ license this
899 program and ~~shall~~ adopt rules to administer ~~implement~~ the
900 program.
901 Section 13. Subsections (1) and (4) of section 393.065,
902 Florida Statutes, are amended, and subsections (5) and (6) are
903 added to that section, to read:
904 393.065 Application and eligibility determination.--
905 (1) Application for services shall be made in writing to
906 the agency, in the service area ~~district~~ in which the applicant
907 resides. The agency ~~Employees of the agency's developmental~~
908 ~~services program~~ shall review each applicant for eligibility
909 within 45 days after the date the application is signed for
910 children under 6 years of age and within 60 days after the date
911 the application is signed for all other applicants. When

912 necessary to definitively identify individual conditions or
913 needs, the agency shall provide a comprehensive assessment. Only
914 applicants ~~individuals~~ whose domicile is in Florida are eligible
915 for services. Information accumulated by other agencies,
916 including professional reports and collateral data, shall be
917 considered in this process when available.
918 (4) The agency shall assess the level of need and medical
919 necessity for prospective residents of intermediate-care
920 facilities for the developmentally disabled ~~after October 1,~~
921 ~~1999~~. The agency may enter into an agreement with the Department
922 of Elderly Affairs for its Comprehensive Assessment and Review
923 for Long-Term-Care Services (CARES) program to conduct
924 assessments to determine the level of need and medical necessity
925 for long-term-care services under this chapter. To the extent
926 permissible under federal law, the assessments shall ~~must~~ be
927 funded under Title XIX of the Social Security Act.
928 (5) With the exception of clients deemed to be in crisis
929 whom the agency shall serve as described in rule, the agency
930 shall place at the top of its wait list for waiver services
931 those children on the wait list who are from the child welfare
932 system with an open case in the Department of Children and
933 Family Services' statewide automated child welfare information
934 system.
935 (6) The agency may adopt rules specifying application
936 procedures and eligibility criteria as needed to administer this
937 section.
938 Section 14. Section 393.0651, Florida Statutes, is amended
939 to read:
940 393.0651 Family or individual support plan.--The agency
941 shall provide directly or contract for the development of a ~~an~~
942 ~~appropriate~~ family support plan for children ages 3 ~~birth~~ to 18

943 years of age and an individual support plan for each client. ~~The~~
944 ~~parent or guardian of~~ The client ~~or~~, if competent, the client's
945 parent or guardian ~~client~~, or, when appropriate, the client
946 advocate, shall be consulted in the development of the plan and
947 shall receive a copy of the plan. Each plan must ~~shall~~ include
948 the most appropriate, least restrictive, and most cost-
949 beneficial environment for accomplishment of the objectives for
950 client progress and a specification of all services authorized.
951 The plan must ~~shall~~ include provisions for the most appropriate
952 level of care for the client. Within the specification of needs
953 and services for each client, when residential care is
954 necessary, the agency shall move toward placement of clients in
955 residential facilities based within the client's community. The
956 ultimate goal of each plan, whenever possible, shall be to
957 enable the client to live a dignified life in the least
958 restrictive setting, be that in the home or in the community.
959 For children under 6 years of age, the family support plan shall
960 be developed within the 45-day application period as specified
961 in s. 393.065(1); for all applicants 6 years of age or older,
962 the family or individual support plan shall be developed within
963 the 60-day period as specified in that subsection.
964 (1) The agency shall develop and specify by rule the core
965 components of support plans ~~to be used by each district~~.
966 (2)~~(a)~~ The family or individual support plan shall be
967 integrated with the individual education plan (IEP) for all
968 clients who are public school students entitled to a free
969 appropriate public education under the Individuals with
970 Disabilities Education Act, I.D.E.A., as amended. The family or
971 individual support plan and IEP shall be implemented to maximize
972 the attainment of educational and habilitation goals.

973 (a) If the IEP for a student enrolled in a public school
974 program indicates placement in a public or private residential
975 program is necessary to provide special education and related
976 services to a client, the local education agency shall provide
977 for the costs of that service in accordance with the
978 requirements of the Individuals with Disabilities Education Act,
979 I.D.E.A., as amended. This shall not preclude local education
980 agencies and the agency from sharing the residential service
981 costs of students who are clients and require residential
982 placement. ~~Under no circumstances shall clients entitled to a~~
983 ~~public education or their parents be assessed a fee by the~~
984 ~~agency under s. 402.33 for placement in a residential program.~~
985 (b) For clients who are entering or exiting the school
986 system, an interdepartmental staffing team composed of
987 representatives of the agency and the local school system shall
988 develop a written transitional living and training plan with the
989 participation of the client or with the parent or guardian of
990 the client, or the client advocate, as appropriate.
991 (3) Each family or individual support plan shall be
992 facilitated through case management designed solely to advance
993 the individual needs of the client.
994 (4) In the development of the family or individual support
995 plan, a client advocate may be appointed by the support planning
996 team for a client who is a minor or for a client who is not
997 capable of express and informed consent when:
998 (a) The parent or guardian cannot be identified;
999 (b) The whereabouts of the parent or guardian cannot be
1000 discovered; or
1001 (c) The state is the only legal representative of the
1002 client.
1003

1004 Such appointment shall not be construed to extend the powers of
1005 the client advocate to include any of those powers delegated by
1006 law to a legal guardian.
1007 (5) The agency shall place a client in the most
1008 appropriate and least restrictive, and cost-beneficial,
1009 residential facility according to his or her individual support
1010 ~~habilitation~~ plan. ~~The parent or guardian of~~ The client ~~or~~, if
1011 competent, the client's parent or guardian ~~client~~, or, when
1012 appropriate, the client advocate, and the administrator of the
1013 ~~residential~~ facility to which placement is proposed shall be
1014 consulted in determining the appropriate placement for the
1015 client. Considerations for placement shall be made in the
1016 following order:
1017 (a) Client's own home or the home of a family member or
1018 direct service provider.
1019 (b) Foster care facility.
1020 (c) Group home facility.
1021 (d) Intermediate care facility for the developmentally
1022 disabled.
1023 (e) Other facilities licensed by the agency which offer
1024 special programs for people with developmental disabilities.
1025 (f) Developmental disabilities ~~services~~ institution.
1026 (6) In developing a client's annual family or individual
1027 support plan, the individual or family with the assistance of
1028 the support planning team shall identify measurable objectives
1029 for client progress and shall specify a time period expected for
1030 achievement of each objective.
1031 (7) The individual, family, and support coordinator shall
1032 review progress in achieving the objectives specified in each
1033 client's family or individual support plan, and shall revise the
1034 plan annually, following consultation with the client, if

1035 competent, or with the parent or guardian of the client, or,
1036 when appropriate, the client advocate. The agency or designated
1037 contractor shall annually report in writing to the client, if
1038 competent, or to the parent or guardian of the client, or to the
1039 client advocate, when appropriate, with respect to the client's
1040 habilitative and medical progress.
1041 (8) Any client, or any parent of a minor client, or
1042 guardian, authorized guardian advocate, or client advocate for a
1043 client, who is substantially affected by the client's initial
1044 family or individual support plan, or the annual review thereof,
1045 shall have the right to file a notice to challenge the decision
1046 pursuant to ss. 120.569 and 120.57. Notice of such right to
1047 appeal shall be included in all support plans provided by the
1048 agency.
1049 Section 15. Section 393.0654, Florida Statutes, is created
1050 to read.
1051 393.0654 Direct service providers; private sector
1052 services.--It is not a violation of s. 112.313(7) for a direct
1053 service provider who is employed by the agency to own, operate,
1054 or work in a private facility that is a service provider under
1055 contract with the agency if:
1056 (1) The employee does not have any role in the agency's
1057 placement recommendations or the client's decisionmaking process
1058 regarding placement;
1059 (2) The direct service provider's employment with the
1060 agency does not compromise the ability of the client to make a
1061 voluntary choice among private providers for services;
1062 (3) The employee's employment outside the agency does not
1063 create a conflict with the employee's public duties and does not
1064 impede the full and faithful discharge of the employee's duties
1065 as assigned by the agency; and

1066 (4) The service provider discloses the dual employment or
1067 ownership status to the agency and all clients within the
1068 provider's care. The disclosure must be given to the agency, the
1069 client, and the client's guardian or guardian advocate, if
1070 appropriate.
1071 Section 16. Section 393.0655, Florida Statutes, is amended
1072 to read:
1073 393.0655 Screening of direct service providers.--
1074 (1) MINIMUM STANDARDS.--The agency shall require level 2
1075 employment screening pursuant to chapter 435 for direct service
1076 providers who are unrelated to their clients, including support
1077 coordinators, and managers and supervisors of residential
1078 facilities or comprehensive transitional education programs
1079 licensed under this chapter ~~s. 393.067~~ and any other person,
1080 including volunteers, who provide care or services, who have
1081 access to a client's living areas, or who have access to a
1082 client's funds or personal property. Background screening shall
1083 include employment history checks as provided in s. 435.03(1)
1084 and local criminal records checks through local law enforcement
1085 agencies.
1086 (a) A volunteer who assists on an intermittent basis for
1087 less than 40 hours per month does not have to be screened if the
1088 volunteer is under the direct and constant visual supervision of
1089 persons who meet the screening requirements of this section.
1090 (b) Licensed physicians, nurses, or other professionals
1091 licensed and regulated by the Department of Health are not
1092 subject to background screening pursuant to this section if they
1093 are providing a service that is within their scope of licensed
1094 practice.
1095 (c) A person selected by the family or the individual with
1096 developmental disabilities and paid by the family or the

1097 individual to provide supports or services is not required to
1098 have a background screening under this section.
1099 (d) Persons 12 years of age or older, including family
1100 members, residing with a ~~the~~ direct services provider who
1101 provides services to clients in his or her own place of
1102 residence~~, including family members,~~ are subject to background
1103 screening; however, such persons who are 12 to 18 years of age
1104 shall be screened for delinquency records only.
1105 (e) A direct service provider who is awaiting the
1106 completion of background screening is temporarily exempt from
1107 the screening requirements under this section if the provider is
1108 under the direct and constant visual supervision of persons who
1109 meet the screening requirements of this section. Such exemption
1110 expires 90 days after the direct service provider first provides
1111 care or services to clients, has access to a client's living
1112 areas, or has access to a client's funds or personal property.
1113 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency may
1114 grant exemptions from disqualification from working with
1115 children or adults with developmental disabilities only as
1116 provided in s. 435.07.
1117 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE
1118 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints
1119 and the state criminal records checks shall be borne by the
1120 employer or by the employee or individual who is being screened.
1121 (4) TERMINATION ~~EXCLUSION FROM OWNING, OPERATING, OR BEING~~
1122 ~~EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY~~;
1123 HEARINGS PROVIDED.--
1124 (a) The agency shall deny, suspend, terminate, or revoke a
1125 license, certification, rate agreement, purchase order, or
1126 contract, or pursue other remedies provided in s. 393.0673, s.
1127 393.0675, or s. 393.0678 in addition to or in lieu of denial,

1128 suspension, termination, or revocation for failure to comply
1129 with this section.
1130 (b) When the agency has reasonable cause to believe that
1131 grounds for denial or termination of employment exist, it shall
1132 notify, in writing, the employer and the person ~~direct service~~
1133 ~~provider~~ affected, stating the specific record that ~~which~~
1134 indicates noncompliance with the standards in this section.
1135 (c) The procedures established for hearing under chapter
1136 120 shall be available to the employer and the person affected
1137 ~~direct service provider~~ in order to present evidence relating
1138 either to the accuracy of the basis of exclusion or to the
1139 denial of an exemption from disqualification.
1140 (d) Refusal on the part of an employer to dismiss a
1141 manager, supervisor, or direct service provider who has been
1142 found to be in noncompliance with standards of this section
1143 shall result in automatic denial, termination, or revocation of
1144 the license or~~,~~ certification, rate agreement, purchase order,
1145 or contract, in addition to any other remedies pursued by the
1146 agency.
1147 Section 17. Section 393.0657, Florida Statutes, is amended
1148 to read:
1149 393.0657 Persons not required to be refingerprinted or
1150 rescreened.--Persons who have undergone any portion of the
1151 background screening required under s. 393.0655 within the last
1152 12 months are ~~Any provision of law to the contrary~~
1153 ~~notwithstanding, human resource personnel who have been~~
1154 ~~fingerprinted or screened pursuant to chapters 393, 394, 397,~~
1155 ~~402, and 409, and teachers who have been fingerprinted pursuant~~
1156 ~~to chapter 1012, who have not been unemployed for more than 90~~
1157 ~~days thereafter, and who under the penalty of perjury attest to~~
1158 ~~the completion of such fingerprinting or screening and to~~

1159 ~~compliance with the provisions of this section and the standards~~
1160 ~~for good moral character as contained in such provisions as ss.~~
1161 ~~110.1127(3), 393.0655(1), 394.457(6), 397.451, 402.305(2), and~~
1162 ~~409.175(6), shall~~ not ~~be~~ required to repeat such screening ~~be~~
1163 ~~refingerprinted or rescreened~~ in order to comply with the ~~any~~
1164 ~~direct service provider~~ screening ~~or fingerprinting~~
1165 requirements. Such persons are responsible for providing
1166 documentation of the screening and shall undergo screening for
1167 any remaining background screening requirements that have never
1168 been conducted or have not been completed within the last 12
1169 months.
1170 Section 18. Section 393.066, Florida Statutes, is amended
1171 to read:
1172 393.066 Community services and treatment ~~for persons who~~
1173 ~~are developmentally disabled~~.--
1174 (1) The agency shall plan, develop, organize, and
1175 implement its programs of services and treatment for persons
1176 with developmental disabilities ~~who are developmentally disabled~~
1177 to allow clients to live as independently as possible in their
1178 own homes or communities and to achieve productive lives as
1179 close to normal as possible. All elements of community-based
1180 services shall be made available, and eligibility for these
1181 services shall be consistent across the state. ~~In addition, all~~
1182 ~~purchased services shall be approved by the agency.~~
1183 (2) All services needed shall be purchased instead of
1184 provided directly by the agency, when such arrangement is more
1185 cost-efficient than having those services provided directly. All
1186 purchased services must be approved by the agency.
1187 (3) Community-based services that are medically necessary
1188 to prevent institutionalization shall, to the extent of
1189 available resources, include:

1190 (a) Adult day training ~~habilitation~~ services~~, including~~
1191 ~~developmental training services~~.
1192 (b) Family care services.
1193 (c) Guardian advocate referral services.
1194 (d) Medical/dental services, except that medical services
1195 shall not be provided to clients with spina bifida except as
1196 specifically appropriated by the Legislature.
1197 (e) Parent training.
1198 (f) Personal care services.
1199 (g) ~~(f)~~ Recreation.
1200 (h) ~~(g)~~ Residential facility services.
1201 (i) ~~(h)~~ Respite services.
1202 (j) ~~(i)~~ Social services.
1203 (k) ~~(j)~~ Specialized therapies.
1204 (l) ~~(k)~~ Supported employment~~, including enclave, job coach,~~
1205 ~~mobile work crew, and follow-along services~~.
1206 (m) ~~(l)~~ Supported living.
1207 (n) ~~(m)~~ Training, including behavioral-analysis services
1208 ~~behavioral programming~~.
1209 (o) ~~(n)~~ Transportation.
1210 (p) ~~(o)~~ Other habilitative and rehabilitative services as
1211 needed.
1212 (4) The agency shall utilize the services of private
1213 businesses, not-for-profit organizations, and units of local
1214 government whenever such services are more cost-efficient than
1215 such services provided directly by the department, including
1216 arrangements for provision of residential facilities.
1217 (5) In order to improve the potential for utilization of
1218 more cost-effective, community-based residential facilities, the
1219 agency shall promote the statewide development of day
1220 habilitation services for clients who live with a direct service

1221 provider in a community-based residential facility and who do
1222 not require 24-hour-a-day care in a hospital or other health
1223 care institution, but who may, in the absence of day
1224 habilitation services, require admission to a developmental
1225 disabilities institution. Each day service facility shall
1226 provide a protective physical environment for clients, ensure
1227 that direct service providers meet minimum screening standards
1228 as required in s. 393.0655, make available to all day
1229 habilitation service participants at least one meal on each day
1230 of operation, provide facilities to enable participants to
1231 obtain needed rest while attending the program, as appropriate,
1232 and provide social and educational activities designed to
1233 stimulate interest and provide socialization skills.
1234 (6) To promote independence and productivity, the agency
1235 shall provide supports and services, within available resources,
1236 to assist clients enrolled in Medicaid waivers who choose to
1237 pursue gainful employment.
1238 (7) For the purpose of making needed community-based
1239 residential facilities available at the least possible cost to
1240 the state, the agency is authorized to lease privately owned
1241 residential facilities under long-term rental agreements, if
1242 such rental agreements are projected to be less costly to the
1243 state over the useful life of the facility than state purchase
1244 or state construction of such a facility.
1245 (8) The agency may adopt rules providing definitions,
1246 eligibility criteria, and procedures for the purchase of
1247 services ~~to ensure compliance with federal laws or regulations~~
1248 ~~that apply to services~~ provided pursuant to this section.
1249 Section 19. Section 393.067, Florida Statutes, is amended
1250 to read:

1251 393.067 Facility licensure ~~of residential facilities and~~
1252 ~~comprehensive transitional education programs~~.--
1253 (1) The agency shall provide through its licensing
1254 authority and by rule license application procedures, ~~a system~~
1255 ~~of~~ provider qualifications, facility and client care standards,
1256 requirements for client records, requirements for staff
1257 qualifications and training ~~criteria for meeting standards~~, and
1258 requirements for monitoring foster care ~~for residential~~
1259 facilities, group home facilities, residential habilitation
1260 centers, and comprehensive transitional education programs that
1261 serve agency clients.
1262 (2) The agency shall conduct annual inspections and
1263 reviews of ~~residential~~ facilities and ~~comprehensive transitional~~
1264 ~~education~~ programs licensed under this section ~~annually~~.
1265 (3) An application for a license under this section must
1266 ~~for a residential facility or a comprehensive transitional~~
1267 ~~education program shall~~ be made to the agency on a form
1268 furnished by it and shall be accompanied by the appropriate
1269 license fee.
1270 (4) The application shall be under oath and shall contain
1271 the following:
1272 (a) The name and address of the applicant, if an applicant
1273 is an individual; if the applicant is a firm, partnership, or
1274 association, the name and address of each member thereof; if the
1275 applicant is a corporation, its name and address and the name
1276 and address of each director and each officer thereof; and the
1277 name by which the facility or program is to be known.
1278 (b) The location of the facility or program for which a
1279 license is sought.

1280 (c) The name of the person or persons under whose
1281 management or supervision the facility or program will be
1282 conducted.
1283 (d) The number and type of residents or clients for which
1284 maintenance, care, education, or treatment is to be provided by
1285 the facility or program.
1286 (e) The number and location of the component centers or
1287 units which will compose the comprehensive transitional
1288 education program.
1289 (f) A description of the types of services and treatment
1290 to be provided by the facility or program.
1291 (g) Information relating to the number, experience, and
1292 training of the employees of the facility or program.
1293 (h) Certification that the staff of the facility or
1294 program will receive training to detect and prevent sexual abuse
1295 of residents and clients.
1296 (i) Such other information as the agency determines is
1297 necessary to carry out the provisions of this chapter.
1298 ~~(5) The applicant shall submit evidence which establishes~~
1299 ~~the good moral character of the manager or supervisor of the~~
1300 ~~facility or program and the direct service providers in the~~
1301 ~~facility or program and its component centers or units. A~~
1302 ~~license may be issued if all the screening materials have been~~
1303 ~~timely submitted; however, a license may not be issued or~~
1304 ~~renewed if any of the direct service providers have failed the~~
1305 ~~screening required by s. 393.0655.~~
1306 ~~(a)1. A licensed residential facility or comprehensive~~
1307 ~~transitional education program which applies for renewal of its~~
1308 ~~license shall submit to the agency a list of direct service~~
1309 ~~providers who have worked on a continuous basis at the applicant~~
1310 ~~facility or program since submitting fingerprints to the agency~~

1311 ~~or the Department of Children and Family Services, identifying~~
1312 ~~those direct service providers for whom a written assurance of~~
1313 ~~compliance was provided by the agency or department and~~
1314 ~~identifying those direct service providers who have recently~~
1315 ~~begun working at the facility or program and are awaiting the~~
1316 ~~results of the required fingerprint check along with the date of~~
1317 ~~the submission of those fingerprints for processing. The agency~~
1318 ~~shall by rule determine the frequency of requests to the~~
1319 ~~Department of Law Enforcement to run state criminal records~~
1320 ~~checks for such direct service providers except for those direct~~
1321 ~~service providers awaiting the results of initial fingerprint~~
1322 ~~checks for employment at the applicant facility or program. The~~
1323 ~~agency shall review the records of the direct service providers~~
1324 ~~at the applicant facility or program with respect to the crimes~~
1325 ~~specified in s. 393.0655 and shall notify the facility or~~
1326 ~~program of its findings. When disposition information is missing~~
1327 ~~on a criminal record, it is the responsibility of the person~~
1328 ~~being screened, upon request of the agency, to obtain and supply~~
1329 ~~within 30 days the missing disposition information to the~~
1330 ~~agency. Failure to supply the missing information within 30 days~~
1331 ~~or to show reasonable efforts to obtain such information shall~~
1332 ~~result in automatic disqualification.~~
1333 ~~2. The applicant shall sign an affidavit under penalty of~~
1334 ~~perjury stating that all new direct service providers have been~~
1335 ~~fingerprinted and that the facility's or program's remaining~~
1336 ~~direct service providers have worked at the applicant facility~~
1337 ~~or program on a continuous basis since being initially screened~~
1338 ~~at that facility or program or have a written assurance of~~
1339 ~~compliance from the agency or department.~~
1340 (5) ~~(b)~~ As a prerequisite for issuance of an ~~the~~ initial or
1341 renewal license, the applicant, and any manager, supervisor, and

1342 staff member of the direct service provider of a facility or
1343 program licensed under this section, must have submitted to
1344 background screening as required under s. 393.0655. A license
1345 may not be issued or renewed if the applicant or any manager,
1346 supervisor, or staff member of the direct service provider has
1347 failed background screenings as required under s. 393.0655. The
1348 agency shall determine by rule the frequency of background
1349 screening. The applicant shall submit with each initial or
1350 renewal application a signed affidavit under penalty of perjury
1351 stating that the applicant and any manager, supervisor, or staff
1352 member of the direct service provider is in compliance with all
1353 requirements for background screening. ~~to a residential facility~~
1354 ~~or comprehensive transitional education program:~~
1355 ~~1. The applicant shall submit to the agency a complete set~~
1356 ~~of fingerprints, taken by an authorized law enforcement agency~~
1357 ~~or an employee of the agency who is trained to take~~
1358 ~~fingerprints, for the manager, supervisor, or direct service~~
1359 ~~providers of the facility or program;~~
1360 ~~2. The agency shall submit the fingerprints to the~~
1361 ~~Department of Law Enforcement for state processing and for~~
1362 ~~federal processing by the Federal Bureau of Investigation; and~~
1363 ~~3. The agency shall review the record of the manager or~~
1364 ~~supervisor with respect to the crimes specified in s.~~
1365 ~~393.0655(1) and shall notify the applicant of its findings. When~~
1366 ~~disposition information is missing on a criminal record, it is~~
1367 ~~the responsibility of the manager or supervisor, upon request of~~
1368 ~~the agency, to obtain and supply within 30 days the missing~~
1369 ~~disposition information to the agency. Failure to supply the~~
1370 ~~missing information within 30 days or to show reasonable efforts~~
1371 ~~to obtain such information shall result in automatic~~
1372 ~~disqualification.~~

1373 ~~(c) The agency or a residential facility or comprehensive~~
1374 ~~transitional education program may not use the criminal records~~
1375 ~~or juvenile records of a person obtained under this subsection~~
1376 ~~for any purpose other than determining if that person meets the~~
1377 ~~minimum standards for good moral character for a manager or~~
1378 ~~supervisor of, or direct service provider in, such a facility or~~
1379 ~~program. The criminal records or juvenile records obtained by~~
1380 ~~the agency or a residential facility or comprehensive~~
1381 ~~transitional education program for determining the moral~~
1382 ~~character of a manager, supervisor, or direct service provider~~
1383 ~~are exempt from s. 119.07(1).~~
1384 ~~(6) Each applicant for licensure as an intermediate care~~
1385 ~~facility for the developmentally disabled must comply with the~~
1386 ~~following requirements:~~
1387 ~~(a) Upon receipt of a completed, signed, and dated~~
1388 ~~application, the agency shall require background screening, in~~
1389 ~~accordance with the level 2 standards for screening set forth in~~
1390 ~~chapter 435, of the managing employee, or other similarly titled~~
1391 ~~individual who is responsible for the daily operation of the~~
1392 ~~facility, and of the financial officer, or other similarly~~
1393 ~~titled individual who is responsible for the financial operation~~
1394 ~~of the center, including billings for resident care and~~
1395 ~~services. The applicant must comply with the procedures for~~
1396 ~~level 2 background screening as set forth in chapter 435, as~~
1397 ~~well as the requirements of s. 435.03(3).~~
1398 ~~(b) The agency may require background screening of any~~
1399 ~~other individual who is an applicant if the agency has probable~~
1400 ~~cause to believe that he or she has been convicted of a crime or~~
1401 ~~has committed any other offense prohibited under the level 2~~
1402 ~~standards for screening set forth in chapter 435.~~

1403 ~~(c) Proof of compliance with the level 2 background~~
1404 ~~screening requirements of chapter 435 which has been submitted~~
1405 ~~within the previous 5 years in compliance with any other health~~
1406 ~~care licensure requirements of this state is acceptable in~~
1407 ~~fulfillment of the requirements of paragraph (a).~~
1408 ~~(d) A provisional license may be granted to an applicant~~
1409 ~~when each individual required by this section to undergo~~
1410 ~~background screening has met the standards for the Department of~~
1411 ~~Law Enforcement background check, but the agency has not yet~~
1412 ~~received background screening results from the Federal Bureau of~~
1413 ~~Investigation, or a request for a disqualification exemption has~~
1414 ~~been submitted to the agency as set forth in chapter 435, but a~~
1415 ~~response has not yet been issued. A standard license may be~~
1416 ~~granted to the applicant upon the agency's receipt of a report~~
1417 ~~of the results of the Federal Bureau of Investigation background~~
1418 ~~screening for each individual required by this section to~~
1419 ~~undergo background screening which confirms that all standards~~
1420 ~~have been met, or upon the granting of a disqualification~~
1421 ~~exemption by the agency as set forth in chapter 435. Any other~~
1422 ~~person who is required to undergo level 2 background screening~~
1423 ~~may serve in his or her capacity pending the agency's receipt of~~
1424 ~~the report from the Federal Bureau of Investigation. However,~~
1425 ~~the person may not continue to serve if the report indicates any~~
1426 ~~violation of background screening standards and a~~
1427 ~~disqualification exemption has not been requested of and granted~~
1428 ~~by the agency as set forth in chapter 435.~~
1429 ~~(e) Each applicant must submit to the agency, with its~~
1430 ~~application, a description and explanation of any exclusions,~~
1431 ~~permanent suspensions, or terminations of the applicant from the~~
1432 ~~Medicare or Medicaid programs. Proof of compliance with the~~
1433 ~~requirements for disclosure of ownership and control interests~~

1434 ~~under the Medicaid or Medicare programs shall be accepted in~~
1435 ~~lieu of this submission.~~
1436 ~~(f) Each applicant must submit to the agency a description~~
1437 ~~and explanation of any conviction of an offense prohibited under~~
1438 ~~the level 2 standards of chapter 435 by a member of the board of~~
1439 ~~directors of the applicant, its officers, or any individual~~
1440 ~~owning 5 percent or more of the applicant. This requirement does~~
1441 ~~not apply to a director of a not-for-profit corporation or~~
1442 ~~organization if the director serves solely in a voluntary~~
1443 ~~capacity for the corporation or organization, does not regularly~~
1444 ~~take part in the day-to-day operational decisions of the~~
1445 ~~corporation or organization, receives no remuneration for his or~~
1446 ~~her services on the corporation or organization's board of~~
1447 ~~directors, and has no financial interest and has no family~~
1448 ~~members with a financial interest in the corporation or~~
1449 ~~organization, provided that the director and the not-for-profit~~
1450 ~~corporation or organization include in the application a~~
1451 ~~statement affirming that the director's relationship to the~~
1452 ~~corporation satisfies the requirements of this paragraph.~~
1453 ~~(g) A license may not be granted to an applicant if the~~
1454 ~~applicant or managing employee has been found guilty of,~~
1455 ~~regardless of adjudication, or has entered a plea of nolo~~
1456 ~~contendere or guilty to, any offense prohibited under the level~~
1457 ~~2 standards for screening set forth in chapter 435, unless an~~
1458 ~~exemption from disqualification has been granted by the agency~~
1459 ~~as set forth in chapter 435.~~
1460 ~~(h) The agency may deny or revoke licensure if the~~
1461 ~~applicant:~~
1462 ~~1. Has falsely represented a material fact in the~~
1463 ~~application required by paragraph (c) or paragraph (f), or has~~

1464 ~~omitted any material fact from the application required by~~
1465 ~~paragraph (e) or paragraph (f); or~~
1466 ~~2. Has had prior action taken against the applicant under~~
1467 ~~the Medicaid or Medicare program as set forth in paragraph (e).~~
1468 ~~(i) An application for license renewal must contain the~~
1469 ~~information required under paragraphs (e) and (f).~~
1470 (6) ~~(7)~~ The applicant shall furnish satisfactory proof of
1471 financial ability to operate and conduct the facility or program
1472 in accordance with the requirements of this chapter and adopted
1473 ~~all~~ rules ~~promulgated hereunder~~.
1474 (7) ~~(8)~~ The agency shall adopt rules establishing minimum
1475 standards for ~~licensure of residential~~ facilities and
1476 ~~comprehensive transitional education~~ programs licensed under
1477 this section, including rules requiring facilities and programs
1478 to train staff to detect and prevent sexual abuse of residents
1479 and clients, minimum standards of quality and adequacy of client
1480 care, incident-reporting requirements, and uniform firesafety
1481 standards established by the State Fire Marshal which are
1482 appropriate to the size of the facility or of the component
1483 centers or units of the program.
1484 (8) ~~(9)~~ The agency ~~and the Agency for Health Care~~
1485 ~~Administration~~, after consultation with the Department of
1486 Community Affairs, shall adopt rules for foster care ~~residential~~
1487 facilities, group home facilities, and residential habilitation
1488 centers which establish ~~under the respective regulatory~~
1489 ~~jurisdiction of each establishing~~ minimum standards for the
1490 preparation and annual update of a comprehensive emergency
1491 management plan. At a minimum, the rules must provide for plan
1492 components that address emergency evacuation transportation;
1493 adequate sheltering arrangements; postdisaster activities,
1494 including emergency power, food, and water; postdisaster

1495 transportation; supplies; staffing; emergency equipment;
1496 individual identification of residents and transfer of records;
1497 and responding to family inquiries. The comprehensive emergency
1498 management plan for all comprehensive transitional education
1499 programs and for homes serving individuals who have complex
1500 medical conditions is subject to review and approval by the
1501 local emergency management agency. During its review, the local
1502 emergency management agency shall ensure that the agency and the
1503 Department of Community Affairs ~~following agencies~~, at a
1504 minimum, are given the opportunity to review the plan~~: the~~
1505 ~~Agency for Health Care Administration, the Agency for Persons~~
1506 ~~with Disabilities, and the Department of Community Affairs~~.
1507 Also, appropriate volunteer organizations must be given the
1508 opportunity to review the plan. The local emergency management
1509 agency shall complete its review within 60 days and either
1510 approve the plan or advise the facility of necessary revisions.
1511 (9) ~~(10)~~ The agency may conduct unannounced inspections to
1512 determine compliance by foster care ~~residential~~ facilities,
1513 group home facilities, residential habilitation centers, and
1514 comprehensive transitional education programs with the
1515 applicable provisions of this chapter and the rules adopted
1516 pursuant hereto, including the rules adopted for training staff
1517 of a facility or a program to detect and prevent sexual abuse of
1518 residents and clients. The facility or program shall make copies
1519 of inspection reports available to the public upon request.
1520 ~~(11) An alternative living center and an independent~~
1521 ~~living education center, as defined in s. 393.063, shall be~~
1522 ~~subject to the provisions of s. 419.001, except that such~~
1523 ~~centers shall be exempt from the 1,000-foot-radius requirement~~
1524 ~~of s. 419.001(2) if:~~

1525 ~~(a) Such centers are located on a site zoned in a manner~~
1526 ~~so that all the component centers of a comprehensive transition~~
1527 ~~education center may be located thereon; or~~
1528 ~~(b) There are no more than three such centers within said~~
1529 ~~radius of 1,000 feet.~~
1530 (10) ~~(12)~~ Each ~~residential~~ facility or ~~comprehensive~~
1531 ~~transitional education~~ program licensed under this section ~~by~~
1532 ~~the agency~~ shall forward annually to the agency a true and
1533 accurate sworn statement of its costs of providing care to
1534 clients funded by the agency.
1535 (11) ~~(13)~~ The agency may audit the records of any
1536 ~~residential~~ facility or ~~comprehensive transitional education~~
1537 program that it has reason to believe may not be in full
1538 compliance with the provisions of this section; provided that,
1539 any financial audit of such facility or program shall be limited
1540 to the records of clients funded by the agency.
1541 (12) ~~(14)~~ The agency shall establish, for the purpose of
1542 control of licensure costs, a uniform management information
1543 system and a uniform reporting system with uniform definitions
1544 and reporting categories.
1545 (13) ~~(15)~~ Facilities and programs licensed pursuant to this
1546 section shall adhere to all rights specified in s. 393.13,
1547 including those enumerated in s. 393.13(4).
1548 (14) ~~(16)~~ An ~~No~~ unlicensed ~~residential~~ facility or
1549 ~~comprehensive transitional education~~ program may not ~~shall~~
1550 receive state funds. A license for the operation of a facility
1551 or program shall not be renewed if the licensee has any
1552 outstanding fines assessed pursuant to this chapter wherein
1553 final adjudication of such fines has been entered.
1554 (15) ~~(17)~~ The agency is ~~shall~~ not ~~be~~ required to contract
1555 with new facilities licensed after October 1, 1989, pursuant to

1556 this chapter. Pursuant to chapter 287, the agency shall continue
1557 to contract within available resources for residential services
1558 with facilities licensed prior to October 1, 1989, if such
1559 facilities comply with the provisions of this chapter and all
1560 other applicable laws and regulations.
1561 Section 20. Section 393.0673, Florida Statutes, is amended
1562 to read:
1563 393.0673 Denial, suspension, revocation of license;
1564 moratorium on admissions; administrative fines; procedures.--
1565 (1) The agency may deny, revoke, or suspend a license or
1566 impose an administrative fine, not to exceed $1,000 per
1567 violation per day, if the applicant or licensee:
1568 (a) Has falsely represented, or omitted a material fact in
1569 its license application submitted under s. 393.067.
1570 (b) Has had prior action taken against it under the
1571 Medicaid or Medicare program.
1572 (c) Has failed to comply with the applicable requirements
1573 of this chapter or rules applicable to the applicant or licensee
1574 ~~for a violation of any provision of s. 393.0655 or s. 393.067 or~~
1575 ~~rules adopted pursuant thereto~~.
1576 (2) All hearings shall be held within the county in which
1577 the licensee or applicant operates or applies for a license to
1578 operate a facility as defined herein.
1579 (3) ~~(2)~~ The agency, as a part of any final order issued by
1580 it under ~~the provisions of~~ this chapter, may impose such fine as
1581 it deems proper, except that such fine may not exceed $1,000 for
1582 each violation. Each day a violation of this chapter occurs
1583 constitutes a separate violation and is subject to a separate
1584 fine, but in no event may the aggregate amount of any fine
1585 exceed $10,000. Fines paid by any facility licensee under the

1586 provisions of this subsection shall be deposited in the Resident
1587 Protection Trust Fund and expended as provided in s. 400.063.
1588 (4) ~~(3)~~ The agency may issue an order immediately
1589 suspending or revoking a license when it determines that any
1590 condition in the facility presents a danger to the health,
1591 safety, or welfare of the residents in the facility.
1592 (5) ~~(4)~~ The agency may impose an immediate moratorium on
1593 admissions to any facility when the department determines that
1594 any condition in the facility presents a threat to the health,
1595 safety, or welfare of the residents in the facility.
1596 (6) The agency shall establish by rule criteria for
1597 evaluating the severity of violations and for determining the
1598 amount of fines imposed.
1599 Section 21. Subsection (1) of section 393.0674, Florida
1600 Statutes, is amended to read:
1601 393.0674 Penalties.--
1602 (1) It is a misdemeanor of the first degree, punishable as
1603 provided in s. 775.082 or s. 775.083, for any person willfully,
1604 knowingly, or intentionally to:
1605 (a) Fail, by false statement, misrepresentation,
1606 impersonation, or other fraudulent means, to disclose in any
1607 application for voluntary or paid employment a material fact
1608 used in making a determination as to such person's
1609 qualifications to be a direct service provider;
1610 (b) Provide or attempt to provide supports or services
1611 with direct service providers who are not in compliance
1612 ~~noncompliance~~ with the background screening requirements ~~minimum~~
1613 ~~standards for good moral character as contained~~ in this chapter;
1614 or
1615 (c) Use information from the criminal records or central
1616 abuse hotline obtained under s. 393.0655, s. 393.066, or s.

1617 393.067 for any purpose other than screening that person for
1618 employment as specified in those sections or release such
1619 information to any other person for any purpose other than
1620 screening for employment as specified in those sections.
1621 Section 22. Subsection (3) of section 393.0675, Florida
1622 Statutes, is amended to read:
1623 393.0675 Injunctive proceedings authorized.--
1624 (3) The agency may institute proceedings for an injunction
1625 in a court of competent jurisdiction to terminate the operation
1626 of a provider of supports or services if such provider has
1627 willfully and knowingly refused to comply with the screening
1628 requirement for direct service providers or has refused to
1629 terminate direct service providers found not to be in compliance
1630 with such ~~the~~ requirements ~~for good moral character~~.
1631 Section 23. Subsection (1) of section 393.0678, Florida
1632 Statutes, is amended to read:
1633 393.0678 Receivership proceedings.--
1634 (1) The agency may petition a court of competent
1635 jurisdiction for the appointment of a receiver for ~~an~~
1636 ~~intermediate care facility for the developmentally disabled,~~ a
1637 residential habilitation center~~,~~ or a group home facility owned
1638 and operated by a corporation or partnership when any of the
1639 following conditions exist:
1640 (a) Any person is operating a facility without a license
1641 and refuses to make application for a license as required by s.
1642 393.067 ~~or, in the case of an intermediate care facility for the~~
1643 ~~developmentally disabled, as required by ss. 393.067 and~~
1644 ~~400.062~~.
1645 (b) The licensee is closing the facility or has informed
1646 the department that it intends to close the facility; and
1647 adequate arrangements have not been made for relocation of the

1648 residents within 7 days, exclusive of weekends and holidays, of
1649 the closing of the facility.
1650 (c) The agency determines that conditions exist in the
1651 facility which present an imminent danger to the health, safety,
1652 or welfare of the residents of the facility or which present a
1653 substantial probability that death or serious physical harm
1654 would result therefrom. Whenever possible, the agency shall
1655 facilitate the continued operation of the program.
1656 (d) The licensee cannot meet its financial obligations to
1657 provide food, shelter, care, and utilities. Evidence such as the
1658 issuance of bad checks or the accumulation of delinquent bills
1659 for such items as personnel salaries, food, drugs, or utilities
1660 constitutes prima facie evidence that the ownership of the
1661 facility lacks the financial ability to operate the home in
1662 accordance with the requirements of this chapter and all rules
1663 promulgated thereunder.
1664 Section 24. Subsections (1), (2), (3), (5), and (7) of
1665 section 393.068, Florida Statutes, are amended to read:
1666 393.068 Family care program.--
1667 (1) The family care program is established for the purpose
1668 of providing services and support to families and individuals
1669 with developmental disabilities in order to maintain the
1670 individual in the home environment and avoid costly out-of-home
1671 residential placement. Services and support available to
1672 families and individuals with developmental disabilities shall
1673 emphasize community living <u>and self-determination</u> and enable
1674 individuals with developmental disabilities to enjoy typical
1675 lifestyles. One way to accomplish this is to recognize that
1676 families are the greatest resource available to individuals who
1677 have developmental disabilities and must be supported in their
1678 role as primary care givers.

1679 (2) Services and support authorized under the family care
1680 ~~this~~ program shall, to the extent of available resources,
1681 include the services listed under s. 393.066 and, in addition,
1682 shall include, but not be limited to:
1683 (a) Attendant care.
1684 (b) Barrier-free modifications to the home.
1685 (c) Home visitation by agency workers.
1686 (d) In-home subsidies.
1687 (e) Low-interest loans.
1688 (f) Modifications for vehicles used to transport the
1689 individual with a developmental disability.
1690 (g) Facilitated communication.
1691 (h) Family counseling.
1692 (i) Equipment and supplies.
1693 (j) Self-advocacy training.
1694 (k) Roommate services.
1695 (l) Integrated community activities.
1696 (m) Emergency services.
1697 (n) Support coordination.
1698 ~~(o) Supported employment.~~
1699 (o) ~~(p)~~ Other support services as identified by the family
1700 or individual.
1701 (3) When it is determined by the agency to be more cost-
1702 effective and in the best interest of the client to maintain
1703 such client in the home of a direct service provider, the parent
1704 or guardian of the client or, if competent, the client may
1705 enroll the client in the family care program. The direct service
1706 provider of a client enrolled in the family care program shall
1707 be reimbursed according to a rate schedule set by the agency,
1708 except that~~.~~ in-home subsidies ~~cited in paragraph (2)(d)~~ shall
1709 be provided in accordance with ~~according to~~ s. 393.0695 ~~and are~~

1710 ~~not subject to any other payment method or rate schedule~~
1711 ~~provided for in this section~~.
1712 (5) The agency may contract for the provision of any
1713 portion of the services required by the program, except for in-
1714 home subsidies ~~cited in paragraph (2)(d)~~, which shall be
1715 provided pursuant to s. 393.0695~~. Otherwise, purchase of service~~
1716 ~~contracts shall be used~~ whenever the services so provided are
1717 more cost-efficient than those provided by the agency.
1718 (7) To provide a range of personal care services for the
1719 client, the use of volunteers shall be maximized. The agency
1720 shall assure appropriate insurance coverage to protect
1721 volunteers from personal liability while acting within the scope
1722 of their volunteer assignments under the program.
1723 Section 25. Subsection (3) of section 393.0695, Florida
1724 Statutes, is amended, and subsection (5) is added to that
1725 section, to read:
1726 393.0695 Provision of in-home subsidies.--
1727 (3) In-home subsidies must be based on an individual
1728 determination of need and must not exceed maximum amounts set by
1729 the agency and reassessed by the agency quarterly ~~annually~~.
1730 (5) The agency shall adopt rules to administer this
1731 section, including standards and procedures governing
1732 eligibility for services, selection of housing, selection of
1733 providers, and planning for services, and requirements for
1734 ongoing monitoring.
1735 Section 26. Subsection (2) of section 393.075, Florida
1736 Statutes, is amended to read:
1737 393.075 General liability coverage.--
1738 (2) The Division of Risk Management of the Department of
1739 Financial Services shall provide coverage through the agency to
1740 any person who owns or operates a foster care facility or group

1741 home facility solely for the agency, who cares for children
1742 placed by ~~developmental services staff of~~ the agency, and who is
1743 licensed pursuant to s. 393.067 to provide such supervision and
1744 care in his or her place of residence. The coverage shall be
1745 provided from the general liability account of the State Risk
1746 Management Trust Fund. The coverage is limited to general
1747 liability claims arising from the provision of supervision and
1748 care of children in a foster care facility or group home
1749 facility pursuant to an agreement with the agency and pursuant
1750 to guidelines established through policy, rule, or statute.
1751 Coverage shall be subject to the limits provided in ss. 284.38
1752 and 284.385, and the exclusions set forth therein, together with
1753 other exclusions as may be set forth in the certificate of
1754 coverage issued by the trust fund. A person covered under the
1755 general liability account pursuant to this subsection shall
1756 immediately notify the Division of Risk Management of the
1757 Department of Financial Services of any potential or actual
1758 claim.
1759 Section 27. Section 393.11, Florida Statutes, is amended
1760 to read:
1761 393.11 Involuntary admission to residential services.--
1762 (1) JURISDICTION.--When a person <u>who has been determined</u>
1763 <u>eligible for services for mental retardation under this chapter</u>
1764 ~~is mentally retarded~~ and requires involuntary admission to
1765 residential services provided by the agency, the circuit court
1766 of the county in which the person resides shall have
1767 jurisdiction to conduct a hearing and enter an order
1768 involuntarily admitting the person in order that the person may
1769 receive the care, treatment, habilitation, and rehabilitation
1770 which the person needs. For the purpose of identifying mental
1771 retardation, diagnostic capability shall be established by the

1772 agency. The involuntary commitment of a person with mental
1773 retardation or autism who is charged with a felony offense shall
1774 be determined in accordance with s. 916.302. ~~Except as otherwise~~
1775 ~~specified, the proceedings under this section shall be governed~~
1776 ~~by the Florida Rules of Civil Procedure.~~
1777 (2) PETITION.--
1778 (a) A petition for involuntary admission to residential
1779 services may be executed by a petitioning commission. ~~For~~
1780 ~~proposed involuntary admission to residential services arising~~
1781 ~~out of chapter 916, the petition may be filed by a petitioning~~
1782 ~~commission, the agency, the state attorney of the circuit from~~
1783 ~~which the defendant was committed, or the defendant's attorney.~~
1784 (b) The petitioning commission shall consist of three
1785 persons. One of these persons shall be a physician licensed and
1786 practicing under chapter 458 or chapter 459.
1787 (c) The petition shall be verified and shall:
1788 1. State the name, age, and present address of the
1789 commissioners and their relationship to the person with mental
1790 retardation or autism;
1791 2. State the name, age, county of residence, and present
1792 address of the person with mental retardation or autism;
1793 3. Allege that the commission believes that the person
1794 needs involuntary residential services and specify the factual
1795 information on which the ~~such~~ belief is based;
1796 4. Allege that the person lacks sufficient capacity to
1797 give express and informed consent to a voluntary application for
1798 services and lacks the basic survival and self-care skills to
1799 provide for the person's well-being or is likely to physically
1800 injure others if allowed to remain at liberty; and

1801 5. State which residential setting is the least
1802 restrictive and most appropriate alternative and specify the
1803 factual information on which the ~~such~~ belief is based.
1804 (d) The petition shall be filed in the circuit court of
1805 the county in which the person with mental retardation or autism
1806 resides.
1807 (3) NOTICE.--
1808 (a) Notice of the filing of the petition shall be given to
1809 the individual and his or her legal guardian. The notice shall
1810 be given both verbally and in writing in the language of the
1811 client, or in other modes of communication of the client, and in
1812 English. Notice shall also be given to such other persons as the
1813 court may direct. The petition for involuntary admission to
1814 residential services shall be served with the notice.
1815 (b) Whenever a motion or petition has been filed pursuant
1816 to s. 916.303 to dismiss criminal charges against a defendant
1817 with retardation or autism, and a petition is filed to
1818 involuntarily admit the defendant to residential services under
1819 this section, the notice of the filing of the petition shall
1820 also be given to the defendant's attorney, ~~and to~~ the state
1821 attorney of the circuit from which the defendant was committed,
1822 and the agency.
1823 (c) The notice shall state that a hearing shall be set to
1824 inquire into the need of the person with mental retardation or
1825 autism for involuntary residential services. The notice shall
1826 also state the date of the hearing on the petition.
1827 (d) The notice shall state that the individual with mental
1828 retardation or autism has the right to be represented by counsel
1829 of his or her own choice and that, if the person cannot afford
1830 an attorney, the court shall appoint one.
1831 (4) AGENCY ~~DEVELOPMENTAL SERVICES~~ PARTICIPATION.--

1832 (a) Upon receiving the petition, the court shall
1833 immediately order the developmental services program of the
1834 agency to examine the person being considered for involuntary
1835 admission to residential services.
1836 (b) Following examination, the agency shall file ~~After the~~
1837 ~~developmental services program examines the person,~~ a written
1838 report ~~shall be filed~~ with the court not less than 10 working
1839 days before the date of the hearing. The report must ~~shall~~ be
1840 served on the petitioner, the person with mental retardation,
1841 and the person's attorney at the time the report is filed with
1842 the court.
1843 (c) The report must ~~shall~~ contain the findings of the
1844 agency's ~~developmental services program~~ evaluation, ~~and~~ any
1845 recommendations deemed appropriate, and a determination of
1846 whether the person is eligible for services under this chapter.
1847 (5) EXAMINING COMMITTEE.--
1848 (a) Upon receiving the petition, the court shall
1849 immediately appoint an examining committee to examine the person
1850 being considered for involuntary admission to residential
1851 services provided by ~~of the developmental services program of~~
1852 the agency.
1853 (b) The court shall appoint no fewer than three
1854 disinterested experts who have demonstrated to the court an
1855 expertise in the diagnosis, evaluation, and treatment of persons
1856 with mental retardation. The committee must ~~shall~~ include at
1857 least one licensed and qualified physician, one licensed and
1858 qualified psychologist, and one qualified professional with a
1859 minimum of a masters degree in social work, special education,
1860 or vocational rehabilitation counseling, to examine the person
1861 and to testify at the hearing on the involuntary admission to
1862 residential services.

1863 (c) Counsel for the person who is being considered for
1864 involuntary admission to residential services and counsel for
1865 the petition commission has ~~shall have~~ the right to challenge
1866 the qualifications of those appointed to the examining
1867 committee.
1868 (d) Members of the committee may ~~shall~~ not be employees of
1869 the agency or be associated with each other in practice or in
1870 employer-employee relationships. Members of the committee may
1871 ~~shall~~ not have served as members of the petitioning commission.
1872 Members of the committee may ~~shall~~ not be employees of the
1873 members of the petitioning commission or be associated in
1874 practice with members of the commission.
1875 (e) The committee shall prepare a written report for the
1876 court. The report must ~~shall~~ explicitly document the extent
1877 that the person meets the criteria for involuntary admission.
1878 The report, and expert testimony, must ~~shall~~ include, but not be
1879 limited to:
1880 1. The degree of the person's mental retardation and
1881 whether, using diagnostic capabilities established by the
1882 agency, the person is eligible for agency services;
1883 2. Whether, because of the person's degree of mental
1884 retardation, the person:
1885 a. Lacks sufficient capacity to give express and informed
1886 consent to a voluntary application for services pursuant to s.
1887 393.065;
1888 b. Lacks basic survival and self-care skills to such a
1889 degree that close supervision and habilitation in a residential
1890 setting is necessary and if not provided would result in a real
1891 and present threat of substantial harm to the person's well-
1892 being; or

1893 c. Is likely to physically injure others if allowed to
1894 remain at liberty.
1895 3. The purpose to be served by residential care;
1896 4. A recommendation on the type of residential placement
1897 which would be the most appropriate and least restrictive for
1898 the person; and
1899 5. The appropriate care, habilitation, and treatment.
1900 (f) The committee shall file the report with the court not
1901 less than 10 working days before the date of the hearing. The
1902 report shall be served on the petitioner, the person with mental
1903 retardation, ~~and~~ the person's attorney at the time the report is
1904 filed with the court, and the agency.
1905 (g) Members of the examining committee shall receive a
1906 reasonable fee to be determined by the court. The fees are to
1907 be paid from the general revenue fund of the county in which the
1908 person with mental retardation resided when the petition was
1909 filed.
1910 (h) The agency shall develop and prescribe by rule one or
1911 more standard forms to be used as a guide for members of the
1912 examining committee.
1913 (6) COUNSEL; GUARDIAN AD LITEM.--
1914 (a) The person with mental retardation shall be
1915 represented by counsel at all stages of the judicial proceeding.
1916 In the event the person is indigent and cannot afford counsel,
1917 the court shall appoint a public defender not less than 20
1918 working days before the scheduled hearing. The person's counsel
1919 shall have full access to the records of the service provider
1920 and the agency. In all cases, the attorney shall represent the
1921 rights and legal interests of the person with mental
1922 retardation, regardless of who may initiate the proceedings or
1923 pay the attorney's fee.

1924 (b) If the attorney, during the course of his or her
1925 representation, reasonably believes that the person with mental
1926 retardation cannot adequately act in his or her own interest,
1927 the attorney may seek the appointment of a guardian ad litem. A
1928 prior finding of incompetency is not required before a guardian
1929 ad litem is appointed pursuant to this section.
1930 (7) HEARING.--
1931 (a) The hearing for involuntary admission shall be
1932 conducted, and the order shall be entered, in the county in
1933 which the petition is filed ~~person is residing or be as~~
1934 ~~convenient to the person as may be consistent with orderly~~
1935 ~~procedure~~. The hearing shall be conducted in a physical setting
1936 not likely to be injurious to the person's condition.
1937 (b) A hearing on the petition must ~~shall~~ be held as soon
1938 as practicable after the petition is filed, but reasonable delay
1939 for the purpose of investigation, discovery, or procuring
1940 counsel or witnesses shall be granted.
1941 (c) The court may appoint a general or special magistrate
1942 to preside. Except as otherwise specified, the magistrate's
1943 proceeding shall be governed by the ~~rule 1.490,~~ Florida Rules of
1944 Civil Procedure.
1945 (d) The person with mental retardation shall be physically
1946 present throughout the entire proceeding. If the person's
1947 attorney believes that the person's presence at the hearing is
1948 not in the person's best interest, the person's presence may be
1949 waived once the court has seen the person and the hearing has
1950 commenced.
1951 (e) The person has ~~shall have~~ the right to present
1952 evidence and to cross-examine all witnesses and other evidence
1953 alleging the appropriateness of the person's admission to
1954 residential care. Other relevant and material evidence regarding

1955 the appropriateness of the person's admission to residential
1956 services; the most appropriate, least restrictive residential
1957 placement; and the appropriate care, treatment, and habilitation
1958 of the person, including written or oral reports, may be
1959 introduced at the hearing by any interested person.
1960 (f) The petitioning commission may be represented by
1961 counsel at the hearing. The petitioning commission shall have
1962 the right to call witnesses, present evidence, cross-examine
1963 witnesses, and present argument on behalf of the petitioning
1964 commission.
1965 (g) All evidence shall be presented according to chapter
1966 90. The burden of proof shall be on the party alleging the
1967 appropriateness of the person's admission to residential
1968 services. The burden of proof shall be by clear and convincing
1969 evidence.
1970 (h) All stages of each proceeding shall be
1971 stenographically reported.
1972 (8) ORDER.--
1973 (a) In all cases, the court shall issue written findings
1974 of fact and conclusions of law to support its decision. The
1975 order must ~~shall~~ state the basis for the ~~such~~ findings of fact.
1976 (b) An order of involuntary admission to residential
1977 services may ~~shall~~ not be entered unless the court finds that:
1978 1. The person is mentally retarded or autistic;
1979 2. Placement in a residential setting is the least
1980 restrictive and most appropriate alternative to meet the
1981 person's needs; and
1982 3. Because of the person's degree of mental retardation or
1983 autism, the person:
1984 a. Lacks sufficient capacity to give express and informed
1985 consent to a voluntary application for services pursuant to s.

1986 393.065 and lacks basic survival and self-care skills to such a
1987 degree that close supervision and habilitation in a residential
1988 setting is necessary and, if not provided, would result in a
1989 real and present threat of substantial harm to the person's
1990 well-being; or
1991 b. Is likely to physically injure others if allowed to
1992 remain at liberty.
1993 (c) If the evidence presented to the court is not
1994 sufficient to warrant involuntary admission to residential
1995 services, but the court feels that residential services would be
1996 beneficial, the court may recommend that the person seek
1997 voluntary admission.
1998 (d) If an order of involuntary admission to residential
1999 services provided by the ~~developmental services program of the~~
2000 agency is entered by the court, a copy of the written order
2001 shall be served upon the person, the person's counsel, the
2002 agency, and the state attorney and the person's defense counsel,
2003 if applicable. The order of involuntary admission sent to the
2004 agency shall also be accompanied by a copy of the examining
2005 committee's report and other reports contained in the court
2006 file.
2007 (e) Upon receiving the order, the agency shall, within 45
2008 days, provide the court with a copy of the person's family or
2009 individual support plan and copies of all examinations and
2010 evaluations, outlining the treatment and rehabilitative
2011 programs. The agency shall document that the person has been
2012 placed in the most appropriate, least restrictive and cost-
2013 beneficial residential setting ~~facility~~. A copy of the family or
2014 individual support plan and other examinations and evaluations
2015 shall be served upon the person and the person's counsel at the
2016 same time the documents are filed with the court.

2017 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
2018 RESIDENTIAL SERVICES.--
2019 (a) ~~In no case shall~~ An order authorizing an admission to
2020 residential care may not be considered an adjudication of mental
2021 incompetency. A ~~No~~ person is not ~~shall be~~ presumed incompetent
2022 solely by reason of the person's involuntary admission to
2023 residential services. A ~~No~~ person may not ~~shall~~ be denied the
2024 full exercise of all legal rights guaranteed to citizens of this
2025 state and of the United States.
2026 (b) Any minor involuntarily admitted to residential
2027 services shall, upon reaching majority, be given a hearing to
2028 determine the continued appropriateness of his or her
2029 involuntary admission.
2030 (10) COMPETENCY.--
2031 (a) The issue of competency shall be separate and distinct
2032 from a determination of the appropriateness of involuntary
2033 admission to residential services for a condition of mental
2034 retardation.
2035 (b) The issue of the competency of a person with mental
2036 retardation for purposes of assigning guardianship shall be
2037 determined in a separate proceeding according to the procedures
2038 and requirements of chapter 744 ~~and the Florida Probate Rules~~.
2039 The issue of the competency of a person with mental retardation
2040 or autism for purposes of determining whether the person is
2041 competent to proceed in a criminal trial shall be determined in
2042 accordance with chapter 916.
2043 (11) CONTINUING JURISDICTION.--The court which issues the
2044 initial order for involuntary admission to residential services
2045 under this section has ~~shall have~~ continuing jurisdiction to
2046 enter further orders to ensure that the person is receiving
2047 adequate care, treatment, habilitation, and rehabilitation,

2048 including psychotropic medication and behavioral programming.
2049 Upon request, the court may transfer the continuing jurisdiction
2050 to the court where a client resides if it is different from
2051 where the original involuntary admission order was issued. A ~~No~~
2052 person may not be released from an order for involuntary
2053 admission to residential services except by the order of the
2054 court.
2055 (12) APPEAL.--
2056 (a) Any party to the proceeding who is affected by an
2057 order of the court may appeal to the appropriate district court
2058 of appeal within the time and in the manner prescribed by the
2059 Florida Rules of Appellate Procedure.
2060 (b) The filing of an appeal by the person with mental
2061 retardation shall stay admission of the person into residential
2062 care. The stay shall remain in effect during the pendency of
2063 all review proceedings in Florida courts until a mandate issues.
2064 (13) HABEAS CORPUS.--At any time and without notice, any
2065 person involuntarily admitted into residential care ~~to the~~
2066 ~~developmental services program of the agency~~, or the person's
2067 parent or legal guardian in his or her behalf, is entitled to
2068 file a petition for a writ of habeas corpus to question the
2069 cause, legality, and appropriateness of the person's involuntary
2070 admission. Each person, or the person's parent or legal
2071 guardian, shall receive specific written notice of the right to
2072 petition for a writ of habeas corpus at the time of his or her
2073 involuntary placement.
2074 Section 28. Section 393.122, Florida Statutes, is amended
2075 to read:
2076 393.122 Applications for continued residential services.--

2077 (1) If a client is discharged from residential services
2078 under the provisions of s. 393.115 ~~this section~~, application for
2079 needed services shall be encouraged.
2080 (2) A ~~No~~ client receiving services from a state agency may
2081 not ~~the department as of July 1, 1977, shall~~ be denied continued
2082 services due to any change in eligibility requirements by
2083 chapter 77-335, Laws of Florida.
2084 Section 29. Section 393.13, Florida Statutes, is amended
2085 to read:
2086 393.13 ~~Personal~~ Treatment of persons with developmental
2087 disabilities ~~who are developmentally disabled~~.--
2088 (1) SHORT TITLE.--This section ~~act~~ shall be known as "The
2089 Bill of Rights of Persons with Developmental Disabilities ~~Who~~
2090 ~~are Developmentally Disabled~~."
2091 (2) LEGISLATIVE INTENT.--
2092 (a) The Legislature finds and declares that the system of
2093 care provided to individuals with developmental disabilities ~~who~~
2094 ~~are developmentally disabled~~ must be designed to meet the needs
2095 of the clients as well as protect the integrity of their legal
2096 and human rights.
2097 (b) The Legislature further finds and declares that the
2098 design and delivery of treatment and services to persons with
2099 developmental disabilities ~~who are developmentally disabled~~
2100 should be directed by the principles of self-determination
2101 ~~normalization~~ and therefore should:
2102 1. Abate the use of large institutions.
2103 2. Continue the development of community-based services
2104 that ~~which~~ provide reasonable alternatives to
2105 institutionalization in settings that are least restrictive to
2106 the client and that provide opportunities for inclusion in the
2107 community.

2108 3. Provide training and education that ~~to individuals who~~
2109 ~~are developmentally disabled which~~ will maximize their potential
2110 to lead independent and productive lives and that ~~which~~ will
2111 afford opportunities for outward mobility from institutions.
2112 4. Reduce the use of sheltered workshops and other
2113 noncompetitive employment day activities and promote
2114 opportunities for those ~~gainful employment for persons with~~
2115 ~~developmental disabilities~~ who choose to seek such employment.
2116 (c) It is the intent of the Legislature that duplicative
2117 and unnecessary administrative procedures and practices shall be
2118 eliminated, and areas of responsibility shall be clearly defined
2119 and consolidated in order to economically utilize present
2120 resources. Furthermore, personnel providing services should be
2121 sufficiently qualified and experienced to meet the needs of the
2122 clients, and they must be sufficient in number to provide
2123 treatment in a manner which is beneficial to the clients.
2124 (d) It is the intent of the Legislature:
2125 1. To articulate the existing legal and human rights of
2126 persons with developmental disabilities ~~who are developmentally~~
2127 ~~disabled~~ so that they may be exercised and protected. Persons
2128 with developmental disabilities shall have all the rights
2129 enjoyed by citizens of the state and the United States.
2130 2. To provide a mechanism for the identification,
2131 evaluation, and treatment of persons with developmental
2132 disabilities.
2133 3. To divert those individuals from institutional
2134 commitment who, by virtue of comprehensive assessment, can be
2135 placed in less costly, more effective community environments and
2136 programs.

2137 4. To fund improvements in the program in accordance with
2138 the availability of state resources and yearly priorities
2139 determined by the Legislature.
2140 5. To ensure that persons with developmental disabilities
2141 receive treatment and habilitation which fosters the
2142 developmental potential of the individual.
2143 6. To provide programs for the proper habilitation and
2144 treatment of persons with developmental disabilities which shall
2145 include, but not be limited to, comprehensive medical/dental
2146 care, education, recreation, specialized therapies, training,
2147 social services, transportation, guardianship, family care
2148 programs, day habilitation services, and habilitative and
2149 rehabilitative services suited to the needs of the individual
2150 regardless of age, degree of disability, or handicapping
2151 condition. It is the intent of the Legislature that no person
2152 with developmental disabilities shall be deprived of these
2153 enumerated services by reason of inability to pay.
2154 7. To fully effectuate the principles of self-
2155 determination ~~normalization principle~~ through the establishment
2156 of community services for persons with developmental
2157 disabilities as a viable and practical alternative to
2158 institutional care at each stage of individual life development
2159 and to promote opportunities for community inclusion. If care in
2160 a residential facility becomes necessary, it shall be in the
2161 least restrictive setting.
2162 8. To minimize and achieve an ongoing reduction in the use
2163 of restraint and seclusion in facilities and programs serving
2164 persons with developmental disabilities.
2165 (e) It is the clear, unequivocal intent of this act to
2166 guarantee individual dignity, liberty, pursuit of happiness, and

2167 protection of the civil and legal rights of persons with
2168 developmental disabilities.
2169 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL
2170 DISABILITIES.--The rights described in this subsection shall
2171 apply to all persons with developmental disabilities, whether or
2172 not such persons are clients of the agency.
2173 (a) Persons with developmental disabilities shall have a
2174 right to dignity, privacy, and humane care, including the right
2175 to be free from sexual abuse in residential facilities.
2176 (b) Persons with developmental disabilities shall have the
2177 right to religious freedom and practice. Nothing shall restrict
2178 or infringe on a person's right to religious preference and
2179 practice.
2180 (c) Persons with developmental disabilities shall receive
2181 services, within available sources, which protect the personal
2182 liberty of the individual and which are provided in the least
2183 restrictive conditions necessary to achieve the purpose of
2184 treatment.
2185 (d) Persons with developmental disabilities ~~who are~~
2186 ~~developmentally disabled~~ shall have a right to participate in an
2187 appropriate program of quality education and training services,
2188 within available resources, regardless of chronological age or
2189 degree of disability. Such persons may be provided with
2190 instruction in sex education, marriage, and family planning.
2191 (e) Persons with developmental disabilities ~~who are~~
2192 ~~developmentally disabled~~ shall have a right to social
2193 interaction and to participate in community activities.
2194 (f) Persons with developmental disabilities ~~who are~~
2195 ~~developmentally disabled~~ shall have a right to physical exercise
2196 and recreational opportunities.

2197 (g) Persons with developmental disabilities ~~who are~~
2198 ~~developmentally disabled~~ shall have a right to be free from
2199 harm, including unnecessary physical, chemical, or mechanical
2200 restraint, isolation, excessive medication, abuse, or neglect.
2201 (h) Persons with developmental disabilities ~~who are~~
2202 ~~developmentally disabled~~ shall have a right to consent to or
2203 refuse treatment, subject to the provisions of s. 393.12(2)(a)
2204 or chapter 744.
2205 (i) No otherwise qualified person shall, by reason of
2206 having a developmental disability, be excluded from
2207 participation in, or be denied the benefits of, or be subject to
2208 discrimination under, any program or activity which receives
2209 public funds, and all prohibitions set forth under any other
2210 statute shall be actionable under this statute.
2211 (j) No otherwise qualified person shall, by reason of
2212 having a developmental disability, be denied the right to vote
2213 in public elections.
2214 (4) CLIENT RIGHTS.--For purposes of this subsection, the
2215 term "client," as defined in s. 393.063, shall also include any
2216 person served in a facility licensed under ~~pursuant to~~ s.
2217 393.067.
2218 (a) Clients shall have an unrestricted right to
2219 communication:
2220 1. Each client is ~~shall be~~ allowed to receive, send, and
2221 mail sealed, unopened correspondence. A ~~No~~ client's incoming or
2222 outgoing correspondence may not ~~shall~~ be opened, delayed, held,
2223 or censored by the facility unless there is reason to believe
2224 that it contains items or substances which may be harmful to the
2225 client or others, in which case the chief administrator of the
2226 facility may direct reasonable examination of such mail and
2227 regulate the disposition of such items or substances.

2228 2. Clients in residential facilities shall be afforded
2229 reasonable opportunities for telephone communication, to make
2230 and receive confidential calls, unless there is reason to
2231 believe that the content of the telephone communication may be
2232 harmful to the client or others, in which case the chief
2233 administrator of the facility may direct reasonable observation
2234 and monitoring to the telephone communication.
2235 3. Clients ~~shall~~ have an unrestricted right to visitation
2236 subject to reasonable rules of the facility. However, ~~nothing in~~
2237 this provision may not ~~shall~~ be construed to permit infringement
2238 upon other clients' rights to privacy.
2239 (b) Each client has the right to the possession and use of
2240 his or her own clothing and personal effects, except in those
2241 specific instances where the use of some of these items as
2242 reinforcers is essential for training the client as part of an
2243 appropriately approved behavioral program. The chief
2244 administrator of the facility may take temporary custody of such
2245 effects when it is essential to do so for medical or safety
2246 reasons. Custody of such personal effects shall be promptly
2247 recorded in the client's record, and a receipt for such effects
2248 shall be immediately given to the client, if competent, or the
2249 client's parent or legal guardian.
2250 1. All money belonging to a client held by the agency
2251 shall be held in compliance with s. 402.17(2).
2252 2. All interest on money received and held for the
2253 personal use and benefit of a client shall be the property of
2254 that client and may ~~shall~~ not accrue to the general welfare of
2255 all clients or be used to defray the cost of residential care.
2256 Interest so accrued shall be used or conserved for the personal
2257 use or benefit of the individual client as provided in s.
2258 402.17(2).

2259 3. Upon the discharge or death of a client, a final
2260 accounting shall be made of all personal effects and money
2261 belonging to the client held by the agency. All ~~such~~ personal
2262 effects and money, including interest, shall be promptly turned
2263 over to the client or his or her heirs.
2264 (c) Each client shall receive prompt and appropriate
2265 medical treatment and care for physical and mental ailments and
2266 for the prevention of any illness or disability. Medical
2267 treatment shall be consistent with the accepted standards of
2268 medical practice in the community.
2269 1. Medication shall be administered only at the written
2270 order of a physician. Medication shall not be used as
2271 punishment, for the convenience of staff, as a substitute for
2272 implementation of an individual or family support plan or
2273 behavior-analysis services ~~behavior modification programming~~, or
2274 in unnecessary or excessive quantities.
2275 2. Daily notation of medication received by each client in
2276 a residential facility shall be kept in the client's record.
2277 3. Periodically, but no less frequently than every 6
2278 months, the drug regimen of each client in a residential
2279 facility shall be reviewed by the attending physician or other
2280 appropriate monitoring body, consistent with appropriate
2281 standards of medical practice. All prescriptions shall have a
2282 termination date.
2283 4. When pharmacy services are provided at any residential
2284 facility, such services shall be directed or supervised by a
2285 professionally competent pharmacist licensed according to the
2286 provisions of chapter 465.
2287 5. Pharmacy services shall be delivered in accordance with
2288 the provisions of chapter 465.

2289 6. Prior to instituting a plan of experimental medical
2290 treatment or carrying out any necessary surgical procedure,
2291 express and informed consent shall be obtained from the client,
2292 if competent, or the client's parent or legal guardian.
2293 Information upon which the client shall make necessary treatment
2294 and surgery decisions shall include, but not be limited to:
2295 a. The nature and consequences of such procedures.
2296 b. The risks, benefits, and purposes of such procedures.
2297 c. Alternate procedures available.
2298 7. When the parent or legal guardian of the client is
2299 unknown or unlocatable and the physician is unwilling to perform
2300 surgery based solely on the client's consent, a court of
2301 competent jurisdiction shall hold a hearing to determine the
2302 appropriateness of the surgical procedure. The client shall be
2303 physically present, unless the client's medical condition
2304 precludes such presence, represented by counsel, and provided
2305 the right and opportunity to be confronted with, and to cross-
2306 examine, all witnesses alleging the appropriateness of such
2307 procedure. In such proceedings, the burden of proof by clear and
2308 convincing evidence shall be on the party alleging the
2309 appropriateness of such procedures. The express and informed
2310 consent of a person described in subparagraph 6. may be
2311 withdrawn at any time, with or without cause, prior to treatment
2312 or surgery.
2313 8. The absence of express and informed consent
2314 notwithstanding, a licensed and qualified physician may render
2315 emergency medical care or treatment to any client who has been
2316 injured or who is suffering from an acute illness, disease, or
2317 condition if, within a reasonable degree of medical certainty,
2318 delay in initiation of emergency medical care or treatment would
2319 endanger the health of the client.

2320 (d) Each client shall have access to individual storage
2321 space for his or her private use.
2322 (e) Each client shall be provided with appropriate
2323 physical exercise as prescribed in the client's individual or
2324 family support plan. Indoor and outdoor facilities and equipment
2325 for such physical exercise shall be provided.
2326 (f) Each client shall receive humane discipline.
2327 (g) A ~~No~~ client may not ~~shall~~ be subjected to a treatment
2328 program to eliminate problematic ~~bizarre~~ or unusual behaviors
2329 without first being examined by a physician who in his or her
2330 best judgment determines that such behaviors are not organically
2331 caused.
2332 1. Treatment programs involving the use of noxious or
2333 painful stimuli are ~~shall be~~ prohibited.
2334 2. All alleged violations of this paragraph shall be
2335 reported immediately to the chief administrator ~~administrative~~
2336 ~~officer~~ of the facility and ~~or the district administrator,~~ the
2337 agency ~~head, and the Florida local advocacy council~~. A thorough
2338 investigation of each incident shall be conducted and a written
2339 report of the finding and results of the ~~such~~ investigation
2340 shall be submitted to the chief administrator ~~administrative~~
2341 ~~officer~~ of the facility ~~or the district administrator~~ and ~~to~~ the
2342 agency ~~head~~ within 24 hours after ~~of~~ the occurrence or discovery
2343 of the incident.
2344 3. The agency shall adopt by rule a system for the
2345 oversight of behavioral programs. The ~~Such~~ system shall
2346 establish guidelines and procedures governing the design,
2347 approval, implementation, and monitoring of all behavioral
2348 programs involving clients. The system shall ensure statewide
2349 and local review by committees of professionals certified as
2350 behavior analysts pursuant to s. 393.17. No behavioral program

2351 shall be implemented unless reviewed according to the rules
2352 established by the agency under this section. ~~Nothing stated in~~
2353 ~~this section shall prohibit the review of programs by the~~
2354 ~~Florida statewide or local advocacy councils.~~
2355 ~~(h) Each client engaged in work programs which require~~
2356 ~~compliance with federal wage and hour laws shall be provided~~
2357 ~~with minimum wage protection and fair compensation for labor in~~
2358 ~~accordance with the federal wage-per-hour regulations.~~
2359 (h) ~~(i)~~ Clients ~~shall~~ have the right to be free from
2360 unnecessary use of ~~physical, chemical, or mechanical~~ restraint
2361 or seclusion. Restraints and seclusion should only be used in
2362 situations in which the client or others are at risk of injury.
2363 ~~Restraints shall be employed only in emergencies or to protect~~
2364 ~~the client from imminent injury to himself or herself or others.~~
2365 Restraints may ~~shall~~ not be employed as punishment, for the
2366 convenience of staff, or as a substitute for a support
2367 ~~habilitative~~ plan. Restraints shall impose the least possible
2368 restrictions consistent with their purpose and shall be removed
2369 when the emergency ends. Restraints may ~~shall~~ not cause physical
2370 injury to the client and must ~~shall~~ be designed to allow the
2371 greatest possible comfort. Any instance of the use of restraint
2372 or seclusion must be documented in the facility or program
2373 record of the client.
2374 ~~1. Mechanical supports used in normative situations to~~
2375 ~~achieve proper body position and balance shall not be considered~~
2376 ~~restraints, but shall be prescriptively designed and applied~~
2377 ~~under the supervision of a qualified professional with concern~~
2378 ~~for principles of good body alignment, circulation, and~~
2379 ~~allowance for change of position.~~
2380 ~~2. Totally enclosed cribs and barred enclosures shall be~~
2381 ~~considered restraints.~~

2382 1.~~3.~~ Daily reports on the employment of restraint or
2383 seclusion ~~physical, chemical, or mechanical restraints~~ by ~~those~~
2384 specialists authorized in the use of restraint and seclusion
2385 ~~such restraints~~ shall be made to the ~~appropriate chief~~
2386 administrator of the facility or program, and a monthly
2387 compilation ~~summary~~ of the ~~such~~ reports shall be relayed to the
2388 agency's local area office ~~district administrator and the~~
2389 ~~Florida local advocacy council~~. The reports shall summarize all
2390 such cases of restraints, the type used, the duration of usage,
2391 and the reasons therefor. The area office ~~Districts~~ shall submit
2392 the ~~districtwide quarterly reports of these~~ summaries to the
2393 agency's headquarters ~~state Developmental Disabilities Program~~
2394 ~~Office~~.

2395 2.~~4.~~ The agency shall adopt by rule standards and
2396 procedures governing the use of restraint and seclusion ~~post a~~
2397 ~~copy of the rules adopted under this section in each living unit~~
2398 ~~of residential facilities~~. A copy of the rules adopted under
2399 this subparagraph ~~section~~ shall be given to the client, parent,
2400 guardian or guardian advocate, and all staff members of ~~licensed~~
2401 facilities and programs licensed under this chapter and shall be
2402 made a part of all staff preservice and inservice training
2403 programs.

2404 (i)~~(j)1.~~ Each client shall have a central record. The
2405 central record shall be established by the agency at the time
2406 that an individual is determined eligible for services, shall be
2407 maintained by the client's support coordinator, and must contain
2408 information ~~include data~~ pertaining to admission, diagnosis and
2409 treatment history, present condition, and such other information
2410 as may be required ~~under rules of the agency~~. The central record
2411 is the property of the agency.

2412 1.~~2.~~ Unless waived by the client, if competent, or the
2413 client's parent or legal guardian if the client is incompetent,
2414 the client's central record shall be confidential and exempt
2415 from the provisions of s. 119.07(1), and no part of it shall be
2416 released except:
2417 a. The record may be released to physicians, attorneys,
2418 and government agencies having need of the record to aid the
2419 client, as designated by the client, if competent, or the
2420 client's parent or legal guardian, if the client is incompetent.
2421 b. The record shall be produced in response to a subpoena
2422 or released to persons authorized by order of court, excluding
2423 matters privileged by other provisions of law.
2424 c. The record or any part thereof may be disclosed to a
2425 qualified researcher, a staff member of the facility where the
2426 client resides, or an employee of the agency when the
2427 administrator of the facility or the director of the agency
2428 deems it necessary for the treatment of the client, maintenance
2429 of adequate records, compilation of treatment data, or
2430 evaluation of programs.
2431 d. Information from the records may be used for
2432 statistical and research purposes if the information is
2433 abstracted in such a way to protect the identity of individuals.
2434 ~~3. All central records for each client in residential~~
2435 ~~facilities shall be kept on uniform forms distributed by the~~
2436 ~~agency. The central record shall accurately summarize each~~
2437 ~~client's history and present condition.~~
2438 2.~~4.~~ The client, if competent, or the client's parent or
2439 legal guardian if the client is incompetent, shall be supplied
2440 with a copy of the client's central record upon request.
2441 (j)~~(k)~~ Each client residing in a residential facility who
2442 is eligible to vote in public elections according to the laws of

2443 the state has ~~shall have~~ the right to vote. Facilities
2444 operators shall arrange the means to exercise the client's right
2445 to vote.
2446 (5) LIABILITY FOR VIOLATIONS.--Any person who violates or
2447 abuses any rights or privileges of persons with developmental
2448 disabilities ~~who are developmentally disabled~~ provided by this
2449 chapter is ~~act shall be~~ liable for damages as determined by law.
2450 Any person who acts in good faith compliance with the provisions
2451 of this chapter is ~~act shall be~~ immune from civil or criminal
2452 liability for actions in connection with evaluation, admission,
2453 habilitative programming, education, treatment, or discharge of
2454 a client. However, this section does ~~shall~~ not relieve any
2455 person from liability if the ~~such~~ person is guilty of
2456 negligence, misfeasance, nonfeasance, or malfeasance.
2457 (6) NOTICE OF RIGHTS.--Each person with developmental
2458 disabilities, if competent, or parent or legal guardian of such
2459 person if the person is incompetent, shall promptly receive from
2460 the agency or the Department of Education a written copy of this
2461 act. Each person with developmental disabilities able to
2462 comprehend shall be promptly informed, in the language or other
2463 mode of communication which such person understands, of the
2464 above legal rights of persons with developmental disabilities.
2465 (7) RESIDENT GOVERNMENT.--Each residential facility
2466 providing services to clients who are desirous and capable of
2467 participating shall initiate and develop a program of resident
2468 government to hear the views and represent the interests of all
2469 clients served by the facility. The resident government shall be
2470 composed of residents elected by other residents, staff advisers
2471 skilled in the administration of community organizations, and,
2472 at the option of the resident government, representatives of
2473 advocacy groups for persons with developmental disabilities from

2474 the community ~~a representative of the Florida local advocacy~~
2475 ~~council~~. ~~The resident government shall work closely with the~~
2476 ~~Florida local advocacy council and the district administrator to~~
2477 ~~promote the interests and welfare of all residents in the~~
2478 ~~facility.~~
2479 Section 30. Subsections (1), (2), (3), (4), and (5) of
2480 section 393.135, Florida Statutes, are amended to read:
2481 393.135 Sexual misconduct prohibited; reporting required;
2482 penalties.--
2483 (1) As used in this section, the term:
2484 (a) "Covered person" ~~"Employee"~~ includes any employee,
2485 paid staff member, volunteer, or intern of the agency ~~or the~~
2486 ~~department~~; any person under contract with the agency ~~or the~~
2487 ~~department~~; and any person providing care or support to a client
2488 on behalf of the agency ~~department~~ or its providers.
2489 (b) "Sexual activity" means:
2490 1. Fondling the genital area, groin, inner thighs,
2491 buttocks, or breasts of a person.
2492 2. The oral, anal, or vaginal penetration by or union with
2493 the sexual organ of another or the anal or vaginal penetration
2494 of another by any other object.
2495 3. Intentionally touching in a lewd or lascivious manner
2496 the breasts, genitals, the genital area, or buttocks, or the
2497 clothing covering them, of a person, or forcing or enticing a
2498 person to touch the perpetrator.
2499 4. Intentionally masturbating in the presence of another
2500 person.
2501 5. Intentionally exposing the genitals in a lewd or
2502 lascivious manner in the presence of another person.
2503 6. Intentionally committing any other sexual act that does
2504 not involve actual physical or sexual contact with the victim,

2505 including, but not limited to, sadomasochistic abuse, sexual
2506 bestiality, or the simulation of any act involving sexual
2507 activity in the presence of a victim.
2508 (c) "Sexual misconduct" means any sexual activity between
2509 a covered person ~~an employee~~ and a client to whom a covered
2510 person renders services, care, or support on behalf of the
2511 agency or its providers, or between a covered person and another
2512 client who lives in the same home as the client to whom a
2513 covered person is rendering the services, care, or support,
2514 regardless of the consent of the client. The term does not
2515 include an act done for a bona fide medical purpose or an
2516 internal search conducted in the lawful performance of duty by a
2517 covered person ~~an employee~~.
2518 (2) A covered person ~~An employee~~ who engages in sexual
2519 misconduct with an individual with a developmental disability
2520 who:
2521 ~~(a) Is in the custody of the department;~~
2522 (a) ~~(b)~~ Resides in a residential facility, including any
2523 comprehensive transitional education program, developmental
2524 disabilities ~~services~~ institution, foster care facility, group
2525 home facility, intermediate care facility for the
2526 developmentally disabled, or residential habilitation center; or
2527 (b) ~~(c)~~ Is eligible to receive ~~Receives~~ services from the
2528 agency under this chapter ~~a family care program~~,
2529
2530 commits a felony of the second degree, punishable as provided in
2531 s. 775.082, s. 775.083, or s. 775.084. A covered person ~~An~~
2532 ~~employee~~ may be found guilty of violating this subsection
2533 without having committed the crime of sexual battery.
2534 (3) The consent of the client to sexual activity is not a
2535 defense to prosecution under this section.

2536 (4) This section does not apply to a covered person ~~an~~
2537 ~~employee~~ who~~:~~
2538 ~~(a)~~ is legally married to the client~~; or~~
2539 ~~(b) Has no reason to believe that the person with whom the~~
2540 ~~employee engaged in sexual misconduct is a client receiving~~
2541 ~~services as described in subsection (2)~~.
2542 (5) A covered person ~~An employee~~ who witnesses sexual
2543 misconduct, or who otherwise knows or has reasonable cause to
2544 suspect that a person has engaged in sexual misconduct, shall
2545 immediately report the incident to the ~~department's~~ central
2546 abuse hotline of the Department of Children and Family Services
2547 and to the appropriate local law enforcement agency. The covered
2548 person ~~Such employee~~ shall also prepare, date, and sign an
2549 independent report that specifically describes the nature of the
2550 sexual misconduct, the location and time of the incident, and
2551 the persons involved. The covered person ~~employee~~ shall deliver
2552 the report to the supervisor or program director, who is
2553 responsible for providing copies to the agency's local office
2554 and the agency's ~~department's~~ inspector general. ~~The inspector~~
2555 ~~general shall immediately conduct an appropriate administrative~~
2556 ~~investigation, and, if there is probable cause to believe that~~
2557 ~~sexual misconduct has occurred, the inspector general shall~~
2558 ~~notify the state attorney in the circuit in which the incident~~
2559 ~~occurred.~~
2560 Section 31. Section 393.15, Florida Statutes, is amended
2561 to read:
2562 393.15 Legislative intent; Community Resources Development
2563 Loan Program ~~Trust Fund~~.--
2564 (1) The Legislature finds and declares that the
2565 development of community-based treatment facilities for persons
2566 with developmental disabilities ~~who are developmentally disabled~~

2567 is desirable and recommended and should be encouraged and
2568 fostered by the state. The Legislature further recognizes that
2569 the development of such facilities is financially difficult for
2570 private individuals, due to initial expenditures required to
2571 adapt existing structures to the special needs of such persons
2572 ~~who are developmentally disabled~~ who may be served in community-
2573 based foster care, group home, ~~developmental training,~~ and
2574 supported employment programs. Therefore, ~~it is the intent of~~
2575 the Legislature intends that the agency ~~by this act to~~ develop
2576 and administer a loan program ~~trust fund~~ to provide support and
2577 encouragement in the establishment of community-based foster
2578 care, group home, ~~developmental training,~~ and supported
2579 employment programs for persons with developmental disabilities
2580 ~~who are developmentally disabled~~.
2581 ~~(2) As used in this section, a foster care, group home,~~
2582 ~~developmental training, or supported employment program may not~~
2583 ~~be a for-profit corporation, but may be a nonprofit corporation,~~
2584 ~~partnership, or sole proprietorship.~~
2585 (2)~~(3)~~ There is created a Community Resources Development
2586 Loan Program in ~~Trust Fund in the State Treasury to be used by~~
2587 the agency for the purpose of granting loans to eligible
2588 programs for the initial costs of development of the programs.
2589 In order to be eligible for the program, a foster home, group
2590 home, or supported employment program must:
2591 (a) Serve persons with developmental disabilities;
2592 (b) Be a nonprofit corporation, partnership, or sole
2593 proprietorship; and
2594 (c) Be ~~Loans shall be made only to those facilities which~~
2595 ~~are~~ in compliance with the zoning regulations of the local
2596 community.

2597 (3) Loans may be made to pay for the costs of development
2598 and ~~may include~~ structural modification, the purchase of
2599 equipment and fire and safety devices, preoperational staff
2600 training, and the purchase of insurance. Such costs may ~~shall~~
2601 not include the actual construction of a facility and may not be
2602 in lieu of payment for maintenance, client services, or care
2603 provided.
2604 (4) The agency may grant to an eligible program a lump-sum
2605 loan in one payment not to exceed the cost ~~to the program~~ of
2606 providing 2 months' services, care, or maintenance to each
2607 person with developmental disabilities ~~who is developmentally~~
2608 ~~disabled~~ to be placed in the program by the agency, or the
2609 actual cost of firesafety renovations to a facility required by
2610 the state, whichever is greater. ~~Loans granted to programs shall~~
2611 ~~not be in lieu of payment for maintenance, services, or care~~
2612 ~~provided, but shall stand separate and distinct.~~
2613 (5) The agency shall adopt rules~~, as provided in chapter~~
2614 ~~120,~~ to determine the criteria ~~standards~~ under which a program
2615 shall be eligible to receive a loan ~~as provided in this section~~
2616 and the methodology ~~criteria~~ for the equitable allocation of
2617 loan ~~trust~~ funds when eligible applications exceed the funds
2618 available.
2619 (6) ~~(5)~~ Any loan granted by the agency under this section
2620 shall be repaid by the program within 5 years and the amount
2621 paid shall be deposited into the agency's Administrative Trust
2622 Fund. Moneys repaid shall be used to fund new loans. A program
2623 that operates as a nonprofit corporation meeting the
2624 requirements of s. 501(c)(3) of the Internal Revenue Code, and
2625 that seeks forgiveness of its loan shall submit to the agency an
2626 annual ~~a~~ statement setting forth the service it has provided
2627 during the year together with such other information as the

2628 agency by rule shall require, and, upon approval of each such
2629 annual statement, the agency may ~~shall~~ forgive up to 20 percent
2630 of the principal of any such loan granted ~~after June 30, 1975~~.
2631 (7) ~~(6)~~ If any program that has received a loan under this
2632 section ceases to accept, or provide care, services, or
2633 maintenance to persons placed in the program by the department,
2634 or if such program files papers of bankruptcy, at that point in
2635 time the loan shall become an interest-bearing loan at the rate
2636 of 5 percent per annum on the entire amount of the initial loan
2637 which shall be repaid within a 1-year period from the date on
2638 which the program ceases to provide care, services, or
2639 maintenance, or files papers in bankruptcy, and the amount of
2640 the loan due plus interest shall constitute a lien in favor of
2641 the state against all real and personal property of the program.
2642 The lien shall be perfected by the appropriate officer of the
2643 agency by executing and acknowledging a statement of the name of
2644 the program and the amount due on the loan and a copy of the
2645 promissory note, which shall be recorded by the agency with the
2646 clerk of the circuit court in the county wherein the program is
2647 located. If the program has filed a petition for bankruptcy, the
2648 agency shall file and enforce the lien in the bankruptcy
2649 proceedings. Otherwise, the lien shall be enforced in the manner
2650 provided in s. 85.011. All funds received by the agency from the
2651 enforcement of the lien shall be deposited in the agency's
2652 Administrative ~~Community Resources Development~~ Trust Fund and
2653 used to fund new loans.
2654 Section 32. Section 393.17, Florida Statutes, is amended
2655 to read:
2656 393.17 Behavioral programs; certification of behavior
2657 analysts.--

2658 (1) The agency may establish a certification process for
2659 behavior analysts in order to ensure that only qualified
2660 employees and service providers provide behavioral analysis
2661 services to clients. The procedures must be established by rule
2662 and must include criteria for scope of practice, qualifications
2663 for certification, including training and testing requirements,
2664 continuing education requirements for ongoing certification, and
2665 standards of performance. The procedures must also include
2666 decertification procedures that may be used to determine whether
2667 an individual continues to meet the qualifications for
2668 certification or the professional performance standards and, if
2669 not, the procedures necessary to decertify an employee or
2670 service provider.
2671 (2) The agency shall ~~may~~ recognize the certification of
2672 behavior analysts awarded by a nonprofit corporation that
2673 adheres to the national standards of boards that determine
2674 professional credentials and whose mission is to meet
2675 professional credentialing needs identified by behavior
2676 analysts, state governments, and consumers of behavior analysis
2677 services ~~and whose work has the support of the Association for~~
2678 ~~Behavior Analysis International~~. The certification procedure
2679 recognized by the agency must undergo regular psychometric
2680 review and validation, pursuant to a job analysis survey of the
2681 profession and standards established by content experts in the
2682 field.
2683 Section 33. Section 393.18, Florida Statutes, is created
2684 to read:
2685 393.18 Comprehensive transitional education program.--A
2686 comprehensive transition education program is a group of jointly
2687 operating centers or units, the collective purpose of which is
2688 to provide a sequential series of educational care, training,

2689 treatment, habilitation, and rehabilitation services to persons
2690 who have developmental disabilities and who have severe or
2691 moderate maladaptive behaviors. However, this section does not
2692 require such programs to provide services only to persons with
2693 developmental disabilities. All such services shall be temporary
2694 in nature and delivered in a structured residential setting,
2695 having the primary goal of incorporating the principle of self-
2696 determination in establishing permanent residence for persons
2697 with maladaptive behaviors in facilities that are not associated
2698 with the comprehensive transitional education program. The staff
2699 shall include behavior analysts and teachers, as appropriate,
2700 who shall be available to provide services in each component
2701 center or unit of the program. A behavior analyst must be
2702 certified pursuant to s. 393.17.
2703 (1) Comprehensive transitional education programs shall
2704 include a minimum of two component centers or units, one of
2705 which shall be an intensive treatment and educational center or
2706 a transitional training and educational center, which provides
2707 services to persons with maladaptive behaviors in the following
2708 sequential order:
2709 (a) Intensive treatment and educational center.--This
2710 component is a self-contained residential unit providing
2711 intensive behavioral and educational programming for persons
2712 with severe maladaptive behaviors whose behaviors preclude
2713 placement in a less-restrictive environment due to the threat of
2714 danger or injury to themselves or others. Continuous-shift staff
2715 shall be required for this component.
2716 (b) Transitional training and educational center.--This
2717 component is a residential unit for persons with moderate
2718 maladaptive behaviors providing concentrated psychological and
2719 educational programming that emphasizes a transition toward a

2720 less-restrictive environment. Continuous-shift staff shall be
2721 required for this component.
2722 (c) Community transition residence.--This component is a
2723 residential center providing educational programs and any
2724 support services, training, and care that are needed to assist
2725 persons with maladaptive behaviors to avoid regression to more
2726 restrictive environments while preparing them for more
2727 independent living. Continuous-shift staff shall be required for
2728 this component.
2729 (d) Alternative living center.--This component is a
2730 residential unit providing an educational and family living
2731 environment for persons with maladaptive behaviors in a
2732 moderately unrestricted setting. Residential staff shall be
2733 required for this component.
2734 (e) Independent living education center.--This component
2735 is a facility providing a family living environment for persons
2736 with maladaptive behaviors in a largely unrestricted setting and
2737 includes education and monitoring that is appropriate to support
2738 the development of independent living skills.
2739 (2) Components of a comprehensive transitional education
2740 program are subject to the license issued under s. 393.067 to a
2741 comprehensive transitional education program and may be located
2742 on a single site or multiple sites.
2743 (3) Comprehensive transitional education programs shall
2744 develop individual education plans for each person with
2745 maladaptive behaviors who receives services from the program.
2746 Each individual education plan shall be developed in accordance
2747 with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34
2748 C.F.R. part 300.
2749 (4) The total number of persons with maladaptive behaviors
2750 who are being provided with services in a comprehensive

2751 transitional education program may not in any instance exceed
2752 120 residents.
2753 (5) This section shall authorize licensure for
2754 comprehensive transitional education programs which by July 1,
2755 1989:
2756 (a) Were in actual operation; or
2757 (b) Owned a fee simple interest in real property for which
2758 a county or city government has approved zoning allowing for the
2759 placement of the facilities described in this subsection, and
2760 have registered an intent with the agency to operate a
2761 comprehensive transitional education program. However, nothing
2762 shall prohibit the assignment by such a registrant to another
2763 entity at a different site within the state, so long as there is
2764 compliance with all criteria of this program and local zoning
2765 requirements and provided that each residential facility within
2766 the component centers or units of the program authorized under
2767 this subparagraph does not exceed a capacity of 15 persons.
2768 Section 34. Section 393.23, Florida Statutes, is created
2769 to read:
2770 393.23 Developmental disabilities institutions; trust
2771 accounts.--All receipts from the operation of canteens, vending
2772 machines, hobby shops, sheltered workshops, activity centers,
2773 farming projects, and other like activities operated in a
2774 developmental disabilities institution, and moneys donated to
2775 the institution, must be deposited in a trust account in any
2776 bank, credit union, or savings and loan association authorized
2777 by the State Treasury as a qualified depositor to do business in
2778 this state, if the moneys are available on demand.
2779 (1) Moneys in the trust account must be expended for the
2780 benefit, education, and welfare of clients. However, if
2781 specified, moneys that are donated to the institution must be

2782 expended in accordance with the intentions of the donor. Trust
2783 account money may not be used for the benefit of employees of
2784 the agency, or to pay the wages of such employees. The welfare
2785 of the clients includes the expenditure of funds for the
2786 purchase of items for resale at canteens or vending machines,
2787 and for the establishment of, maintenance of, and operation of
2788 canteens, hobby shops, recreational or entertainment facilities,
2789 sheltered workshops, activity centers, farming projects, or
2790 other like facilities or programs established at the
2791 institutions for the benefit of clients.
2792 (2) The institution may invest, in the manner authorized
2793 by law for fiduciaries, any money in a trust account which is
2794 not necessary for immediate use. The interest earned and other
2795 increments derived from the investments of the money must be
2796 deposited into the trust account for the benefit of clients.
2797 (3) The accounting system of an institution must account
2798 separately for revenues and expenses for each activity. The
2799 institution shall reconcile the trust account to the
2800 institution's accounting system and check registers and to the
2801 accounting system of the Chief Financial Officer.
2802 (4) All sales taxes collected by the institution as a
2803 result of sales shall be deposited into the trust account and
2804 remitted to the Department of Revenue.
2805 (5) Funds shall be expended in accordance with
2806 requirements and guidelines established by the Chief Financial
2807 Officer.
2808 Section 35. Section 393.501, Florida Statutes, is amended
2809 to read:
2810 393.501 Rulemaking.--

2811 (1) The agency may ~~shall~~ adopt rules pursuant to ss.
2812 120.536(1) and 120.54 to carry out its statutory duties ~~the~~
2813 ~~provisions of this chapter~~.
2814 (2) Such rules shall address the number of facilities on a
2815 single lot ~~parcel~~ or on adjacent lots ~~parcels of land, and in~~
2816 ~~addition, for ICF/MR, the rate and location of facility~~
2817 ~~development and level of care~~. In adopting rules, an alternative
2818 living center and an independent living education center, as
2819 described in s. 393.18, shall be subject to the provisions of s.
2820 419.001, except that such centers shall be exempt from the
2821 1,000-foot-radius requirement of s. 419.001(2) if:
2822 (a) The centers are located on a site zoned in a manner
2823 that permits all the components of a comprehensive transition
2824 education center to be located on the site; or
2825 (b) There are no more than three such centers within a
2826 radius of 1,000 feet.
2827 Section 36. Section 394.453, Florida Statutes, is amended
2828 to read:
2829 394.453 Legislative intent.--It is the intent of the
2830 Legislature to authorize and direct the Department of Children
2831 and Family Services to evaluate, research, plan, and recommend
2832 to the Governor and the Legislature programs designed to reduce
2833 the occurrence, severity, duration, and disabling aspects of
2834 mental, emotional, and behavioral disorders. It is the intent of
2835 the Legislature that treatment programs for such disorders shall
2836 include, but not be limited to, comprehensive health, social,
2837 educational, and rehabilitative services to persons requiring
2838 intensive short-term and continued treatment in order to
2839 encourage them to assume responsibility for their treatment and
2840 recovery. It is intended that such persons be provided with
2841 emergency service and temporary detention for evaluation when

2842 required; that they be admitted to treatment facilities on a
2843 voluntary basis when extended or continuing care is needed and
2844 unavailable in the community; that involuntary placement be
2845 provided only when expert evaluation determines that it is
2846 necessary; that any involuntary treatment or examination be
2847 accomplished in a setting which is clinically appropriate and
2848 most likely to facilitate the person's return to the community
2849 as soon as possible; and that individual dignity and human
2850 rights be guaranteed to all persons who are admitted to mental
2851 health facilities or who are being held under s. 394.463. It is
2852 the further intent of the Legislature that the least restrictive
2853 means of intervention be employed based on the individual needs
2854 of each person, within the scope of available services. It is
2855 the policy of this state that the use of restraint and seclusion
2856 on clients is justified only as an emergency safety measure to
2857 be used in response to imminent danger to the client or others.
2858 It is, therefore, the intent of the Legislature to achieve an
2859 ongoing reduction in the use of restraint and seclusion in
2860 programs and facilities serving persons with mental illness.
2861 Section 37. Present subsections (28) through (33) of
2862 section 394.455, Florida Statutes, are redesignated as
2863 subsections (30) through (35), respectively, and new subsections
2864 (28) and (29) are added to that section, to read:
2865 394.455 Definitions.--As used in this part, unless the
2866 context clearly requires otherwise, the term:
2867 (28)(a) "Restraint" means a physical device, method, or
2868 drug used to control behavior. A physical restraint is any
2869 manual method or physical or mechanical device, material, or
2870 equipment attached or adjacent to the individual's body so that
2871 he or she cannot easily remove the restraint and which restricts
2872 freedom of movement or normal access to one's body.

2873 (b) A drug used as a restraint is a medication used to
2874 control the person's behavior or to restrict his or her freedom
2875 of movement. Physically holding a person during a procedure to
2876 forcibly administer psychotropic medication is a physical
2877 restraint.
2878 (c) Restraint does not include physical devices, such as
2879 orthopedically prescribed appliances, surgical dressings and
2880 bandages, supportive body bands, or other physical holding when
2881 necessary for routine physical examinations and tests; or for
2882 purposes of orthopedic, surgical, or other similar medical
2883 treatment; when used to provide support for the achievement of
2884 functional body position or proper balance; or when used to
2885 protect a person from falling out of bed.
2886 (29) "Seclusion" means the physical segregation of a
2887 person in any fashion or involuntary isolation of a person in a
2888 room or area from which the person is prevented from leaving.
2889 The prevention may be by physical barrier or by a staff member
2890 who is acting in a manner, or who is physically situated, so as
2891 to prevent the person from leaving the room or area. For
2892 purposes of this chapter, the term does not mean isolation due
2893 to a person's medical condition or symptoms.
2894 Section 38. Paragraph (b) of subsection (5) of section
2895 394.457, Florida Statutes, is amended to read:
2896 394.457 Operation and administration.--
2897 (5) RULES.--
2898 (b) The department shall adopt rules necessary for the
2899 implementation and administration of the provisions of this
2900 part, and a program subject to the provisions of this part shall
2901 not be permitted to operate unless rules designed to ensure the
2902 protection of the health, safety, and welfare of the patients
2903 treated through such program have been adopted. Rules adopted

2904 under this subsection must include provisions governing the use
2905 of restraint and seclusion which are consistent with recognized
2906 best practices and professional judgment; prohibit inherently
2907 dangerous restraint or seclusion procedures; establish
2908 limitations on the use and duration of restraint and seclusion;
2909 establish measures to ensure the safety of program participants
2910 and staff during an incident of restraint or seclusion;
2911 establish procedures for staff to follow before, during, and
2912 after incidents of restraint or seclusion; establish
2913 professional qualifications of and training for staff who may
2914 order or be engaged in the use of restraint or seclusion; and
2915 establish mandatory reporting, data collection, and data
2916 dissemination procedures and requirements. Rules adopted under
2917 this subsection must require that each instance of the use of
2918 restraint or seclusion be documented in the record of the
2919 patient.
2920 Section 39. Paragraph (g) is added to subsection (1) of
2921 section 394.879, Florida Statutes, to read:
2922 394.879 Rules; enforcement.--
2923 (1) The department, in consultation with the agency, shall
2924 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
2925 the provisions of this chapter, including, at a minimum, rules
2926 providing standards to ensure that:
2927 (g) The use of restraint and seclusion is consistent with
2928 recognized best practices and professional judgment; that
2929 inherently dangerous restraint or seclusion procedures are
2930 prohibited; that limitations are established on the use and
2931 duration of restraint and seclusion; that measures are
2932 established to ensure the safety of program participants and
2933 staff during an incident of restraint or seclusion; that
2934 procedures are created for staff to follow before, during, and

2935 after incidents of restraint or seclusion; that professional
2936 qualifications and training are established for staff who may
2937 order or be engaged in the use of restraint or seclusion; and
2938 that mandatory reporting, data collection, and data
2939 dissemination procedures and requirements are instituted. Rules
2940 adopted under this section must require that any instance of the
2941 use of restraint or seclusion shall be documented in the record
2942 of the client.
2943 Section 40. Subsection (9) of section 397.405, Florida
2944 Statutes, is amended to read:
2945 397.405 Exemptions from licensure.--The following are
2946 exempt from the licensing provisions of this chapter:
2947 (9) Facilities licensed under chapter 393 which ~~s. 393.063~~
2948 ~~that~~, in addition to providing services to persons with
2949 developmental disabilities ~~who are developmentally disabled as~~
2950 ~~defined therein~~, also provide services to persons
2951 developmentally at risk as a consequence of exposure to alcohol
2952 or other legal or illegal drugs while in utero.
2953
2954 The exemptions from licensure in this section do not apply to
2955 any service provider that receives an appropriation, grant, or
2956 contract from the state to operate as a service provider as
2957 defined in this chapter or to any substance abuse program
2958 regulated pursuant to s. 397.406. Furthermore, this chapter may
2959 not be construed to limit the practice of a physician licensed
2960 under chapter 458 or chapter 459, a psychologist licensed under
2961 chapter 490, or a psychotherapist licensed under chapter 491 who
2962 provides substance abuse treatment, so long as the physician,
2963 psychologist, or psychotherapist does not represent to the
2964 public that he or she is a licensed service provider and does
2965 not provide services to clients pursuant to part V of this

2966 chapter. Failure to comply with any requirement necessary to
2967 maintain an exempt status under this section is a misdemeanor of
2968 the first degree, punishable as provided in s. 775.082 or s.
2969 775.083.
2970 Section 41. Subsection (13) of section 400.419, Florida
2971 Statutes, is amended to read:
2972 400.419 Violations; imposition of administrative fines;
2973 grounds.--
2974 (13) The agency shall develop and disseminate an annual
2975 list of all facilities sanctioned or fined $5,000 or more for
2976 violations of state standards, the number and class of
2977 violations involved, the penalties imposed, and the current
2978 status of cases. The list shall be disseminated, at no charge,
2979 to the Department of Elderly Affairs, the Department of Health,
2980 the Department of Children and Family Services, the Agency for
2981 Persons with Disabilities, the area agencies on aging, the
2982 Florida Statewide Advocacy Council, and the state and local
2983 ombudsman councils. The Department of Children and Family
2984 Services shall disseminate the list to service providers under
2985 contract to the department who are responsible for referring
2986 persons to a facility for residency. The agency may charge a fee
2987 commensurate with the cost of printing and postage to other
2988 interested parties requesting a copy of this list.
2989 Section 42. Section 400.960, Florida Statutes, is amended
2990 to read:
2991 400.960 Definitions.--As used in this part, the term:
2992 (1) "Active treatment" means the provision of services by
2993 an interdisciplinary team which are necessary to maximize a
2994 client's individual independence or prevent regression or loss
2995 of functional status.

2996 (2) "Agency" means the Agency for Health Care
2997 Administration.
2998 (3) "Autism" or "autistic disorder" has the same meaning
2999 as in s. 393.063. ~~means a pervasive, neurologically based~~
3000 ~~developmental disability of extended duration which causes~~
3001 ~~severe learning, communication, and behavior disorders with age~~
3002 ~~of onset during infancy or childhood. Individuals with autism~~
3003 ~~exhibit impairment in reciprocal social interaction, impairment~~
3004 ~~in verbal and nonverbal communication and imaginative ability,~~
3005 ~~and a markedly restricted repertoire of activities and~~
3006 ~~interests.~~
3007 (4) "Cerebral palsy" has the same meaning as in s.
3008 393.063. ~~means a group of disabling symptoms of extended~~
3009 ~~duration which results from damage to the developing brain~~
3010 ~~occurring before, during, or after birth and resulting in the~~
3011 ~~loss or impairment of control over voluntary muscles. The term~~
3012 ~~does not include those symptoms or impairments resulting solely~~
3013 ~~from a stroke.~~
3014 (5) "Client" means any person determined by the Agency for
3015 Persons with Disabilities ~~department~~ to be eligible for
3016 developmental services.
3017 ~~(6) "Client advocate" means a friend or relative of the~~
3018 ~~client, or of the client's immediate family, who advocates for~~
3019 ~~the best interests of the client in any proceedings under this~~
3020 ~~part in which the client or his or her family has the right or~~
3021 ~~duty to participate.~~
3022 ~~(7) "Department" means the Department of Children and~~
3023 ~~Family Services.~~
3024 (6) ~~(8)~~ "Developmental disability" has the same meaning as
3025 in s. 393.063 ~~means a disorder or syndrome that is attributable~~
3026 ~~to retardation, cerebral palsy, autism, spina bifida, or Prader-~~

3027 ~~Willi syndrome and that constitutes a substantial handicap that~~
3028 ~~can reasonably be expected to continue indefinitely~~.
3029 (7) ~~(9)~~ "Direct service provider" means a person 18 years
3030 of age or older who has direct contact with individuals with
3031 developmental disabilities and who is unrelated to the
3032 individuals with developmental disabilities.
3033 ~~(10) "Epilepsy" means a chronic brain disorder of various~~
3034 ~~causes which is characterized by recurrent seizures due to~~
3035 ~~excessive discharge of cerebral neurons. When found concurrently~~
3036 ~~with retardation, autism, or cerebral palsy, epilepsy is~~
3037 ~~considered a secondary disability for which the client is~~
3038 ~~eligible to receive services to ameliorate this condition~~
3039 ~~according to the provisions of this part.~~
3040 ~~(11) "Guardian advocate" means a person appointed by the~~
3041 ~~circuit court to represent a person with developmental~~
3042 ~~disabilities in any proceedings brought pursuant to s. 393.12,~~
3043 ~~and is distinct from a guardian advocate for mentally ill~~
3044 ~~persons under chapter 394.~~
3045 (8) ~~(12)~~ "Intermediate care facility for the
3046 developmentally disabled" means a residential facility licensed
3047 and certified in accordance with state law, and certified by the
3048 Federal Government, pursuant to the Social Security Act, as a
3049 provider of Medicaid services to persons with developmental
3050 disabilities ~~who are developmentally disabled~~.
3051 (9) ~~(13)~~ "Prader-Willi syndrome" has the same meaning as in
3052 s. 393.063. ~~means an inherited condition typified by neonatal~~
3053 ~~hypotonia with failure to thrive, hyperphagia, or an excessive~~
3054 ~~drive to eat which leads to obesity, usually at 18 to 36 months~~
3055 ~~of age, mild to moderate retardation, hypogonadism, short~~
3056 ~~stature, mild facial dysmorphism, and a characteristic~~
3057 ~~neurobehavior.~~

3058 (10)(a) "Restraint" means a physical device, method, or
3059 drug used to control behavior. A physical restraint is any
3060 manual method or physical or mechanical device, material, or
3061 equipment attached or adjacent to the individual's body so that
3062 he or she cannot easily remove the restraint and which restricts
3063 freedom of movement or normal access to one's body.
3064 (b) A drug used as a restraint is a medication used to
3065 control the person's behavior or to restrict his or her freedom
3066 of movement. Physically holding a person during a procedure to
3067 forcibly administer psychotropic medication is a physical
3068 restraint.
3069 (c) Restraint does not include physical devices, such as
3070 orthopedically prescribed appliances, surgical dressings and
3071 bandages, supportive body bands, or other physical holding when
3072 necessary for routine physical examinations and tests; for
3073 purposes of orthopedic, surgical, or other similar medical
3074 treatment; when used to provide support for the achievement of
3075 functional body position or proper balance; or when used to
3076 protect a person from falling out of bed.
3077 (11) ~~(14)~~ "Retardation" has the same meaning as in s.
3078 393.063. ~~means significantly subaverage general intellectual~~
3079 ~~functioning existing concurrently with deficits in adaptive~~
3080 ~~behavior and manifested during the period from conception to age~~
3081 ~~18. "Significantly subaverage general intellectual functioning,"~~
3082 ~~for the purpose of this definition, means performance that is~~
3083 ~~two or more standard deviations from the mean score on a~~
3084 ~~standardized intelligence test specified in rules of the~~
3085 ~~department. "Deficits in adaptive behavior," for the purpose of~~
3086 ~~this definition, means deficits in the effectiveness or degree~~
3087 ~~with which an individual meets the standards of personal~~

3088 ~~independence and social responsibility expected of his or her~~
3089 ~~age, cultural group, and community.~~
3090 (12) "Seclusion" means the physical segregation of a
3091 person in any fashion or the involuntary isolation of a person
3092 in a room or area from which the person is prevented from
3093 leaving. The prevention may be by physical barrier or by a staff
3094 member who is acting in a manner, or who is physically situated,
3095 so as to prevent the person from leaving the room or area. For
3096 purposes of this part, the term does not mean isolation due to a
3097 person's medical condition or symptoms.
3098 (13) ~~(15)~~ "Spina bifida" has the same meaning as in s.
3099 393.063 ~~means a medical diagnosis of spina bifida cystica or~~
3100 ~~myelomeningocele~~.
3101 Section 43. Subsection (2) of section 400.967, Florida
3102 Statutes, is amended to read:
3103 400.967 Rules and classification of deficiencies.--
3104 (2) Pursuant to the intention of the Legislature, the
3105 agency, in consultation with the Agency for Persons with
3106 Disabilities ~~Department of Children and Family Services~~ and the
3107 Department of Elderly Affairs, shall adopt and enforce rules to
3108 administer this part, which shall include reasonable and fair
3109 criteria governing:
3110 (a) The location and construction of the facility;
3111 including fire and life safety, plumbing, heating, cooling,
3112 lighting, ventilation, and other housing conditions that will
3113 ensure the health, safety, and comfort of residents. The agency
3114 shall establish standards for facilities and equipment to
3115 increase the extent to which new facilities and a new wing or
3116 floor added to an existing facility after July 1, 2000, are
3117 structurally capable of serving as shelters only for residents,
3118 staff, and families of residents and staff, and equipped to be

3119 self-supporting during and immediately following disasters. The
3120 Agency for Health Care Administration shall work with facilities
3121 licensed under this part and report to the Governor and the
3122 Legislature by April 1, 2000, its recommendations for cost-
3123 effective renovation standards to be applied to existing
3124 facilities. In making such rules, the agency shall be guided by
3125 criteria recommended by nationally recognized, reputable
3126 professional groups and associations having knowledge concerning
3127 such subject matters. The agency shall update or revise such
3128 criteria as the need arises. All facilities must comply with
3129 those lifesafety code requirements and building code standards
3130 applicable at the time of approval of their construction plans.
3131 The agency may require alterations to a building if it
3132 determines that an existing condition constitutes a distinct
3133 hazard to life, health, or safety. The agency shall adopt fair
3134 and reasonable rules setting forth conditions under which
3135 existing facilities undergoing additions, alterations,
3136 conversions, renovations, or repairs are required to comply with
3137 the most recent updated or revised standards.
3138 (b) The number and qualifications of all personnel,
3139 including management, medical nursing, and other personnel,
3140 having responsibility for any part of the care given to
3141 residents.
3142 (c) All sanitary conditions within the facility and its
3143 surroundings, including water supply, sewage disposal, food
3144 handling, and general hygiene, which will ensure the health and
3145 comfort of residents.
3146 (d) The equipment essential to the health and welfare of
3147 the residents.
3148 (e) A uniform accounting system.

3149 (f) The care, treatment, and maintenance of residents and
3150 measurement of the quality and adequacy thereof.
3151 (g) The preparation and annual update of a comprehensive
3152 emergency management plan. The agency shall adopt rules
3153 establishing minimum criteria for the plan after consultation
3154 with the Department of Community Affairs. At a minimum, the
3155 rules must provide for plan components that address emergency
3156 evacuation transportation; adequate sheltering arrangements;
3157 postdisaster activities, including emergency power, food, and
3158 water; postdisaster transportation; supplies; staffing;
3159 emergency equipment; individual identification of residents and
3160 transfer of records; and responding to family inquiries. The
3161 comprehensive emergency management plan is subject to review and
3162 approval by the local emergency management agency. During its
3163 review, the local emergency management agency shall ensure that
3164 the following agencies, at a minimum, are given the opportunity
3165 to review the plan: the Department of Elderly Affairs, the
3166 Agency for Persons with Disabilities ~~Department of Children and~~
3167 ~~Family Services~~, the Agency for Health Care Administration, and
3168 the Department of Community Affairs. Also, appropriate volunteer
3169 organizations must be given the opportunity to review the plan.
3170 The local emergency management agency shall complete its review
3171 within 60 days and either approve the plan or advise the
3172 facility of necessary revisions.
3173 (h) The posting of licenses. Each licensee shall post its
3174 license in a prominent place that is in clear and unobstructed
3175 public view at or near the place where residents are being
3176 admitted to the facility.
3177 (i) The use of restraint and seclusion. Such rules must be
3178 consistent with recognized best practices and professional
3179 judgment; prohibit inherently dangerous restraint or seclusion

3180 procedures; establish limitations on the use and duration of
3181 restraint and seclusion; establish measures to ensure the safety
3182 of program participants and staff during an incident of
3183 restraint or seclusion; create procedures for staff to follow
3184 before, during, and after incidents of restraint or seclusion;
3185 establish professional qualifications of and training for staff
3186 who may order or be engaged in the use of restraint or
3187 seclusion; and provide for mandatory reporting, data collection,
3188 and data dissemination procedures and requirements. Rules
3189 adopted under this section must require that any instance of the
3190 use of restraint or seclusion shall be documented in the
3191 facility's record of the client.
3192 Section 44. Section 402.115, Florida Statutes, is amended
3193 to read:
3194 402.115 Sharing confidential or exempt
3195 information.--Notwithstanding any other provision of law to the
3196 contrary, the Department of Health, ~~and~~ the Department of
3197 Children and Family Services, and the Agency for Persons with
3198 Disabilities may share confidential information or information
3199 exempt from disclosure under chapter 119 on any individual who
3200 is or has been the subject of a program within the jurisdiction
3201 of each agency. Information so exchanged remains confidential or
3202 exempt as provided by law.
3203 Section 45. Section 402.17, Florida Statutes, is amended
3204 to read:
3205 402.17 Claims for care and maintenance; trust
3206 property.--The Department of Children and Family Services and
3207 the Agency for Persons with Disabilities shall protect the
3208 financial interest of the state with respect to claims that
3209 ~~which~~ the state may have for the care and maintenance of clients
3210 of the department or agency. The department or agency shall, as

3211 trustee, hold in trust and administer money ~~of clients~~ and
3212 property designated for the personal benefit of clients. The
3213 department or agency shall act as trustee of clients' money and
3214 property entrusted to it in accordance with the usual fiduciary
3215 standards applicable generally to trustees, and shall act to
3216 protect both the short-term and long-term interests of the
3217 clients for whose benefit it is holding such money and property.
3218 (1) CLAIMS FOR CARE AND MAINTENANCE.--
3219 (a) The department or agency shall perform the following
3220 acts:
3221 1. Receive and supervise the collection of sums due the
3222 state.
3223 2. Bring any court action necessary to collect any claim
3224 the state may have against any client, former client, guardian
3225 of any client or former client, executor or administrator of the
3226 client's estate, or any person against whom any client or former
3227 client may have a claim.
3228 3. Obtain a copy of any inventory or appraisal of the
3229 client's property filed with any court.
3230 4. Obtain from the department's Economic Self-Sufficiency
3231 Services Program Office a financial status report on any client
3232 or former client, including the ability of third parties
3233 responsible for such client to pay all or part of the cost of
3234 the client's care and maintenance.
3235 5. Petition the court for appointment of a guardian or
3236 administrator for an otherwise unrepresented client or former
3237 client should the financial status report or other information
3238 indicate the need for such action. The cost of any such action
3239 shall be charged against the assets or estate of the client.
3240 6. Represent the interest of the state in any litigation
3241 in which a client or former client is a party.

3242 7. File claims with any person, firm, or corporation or
3243 with any federal, state, county, district, or municipal agency
3244 on behalf of an unrepresented client.
3245 8. Represent the state in the settlement of the estates of
3246 deceased clients or in the settlement of estates in which a
3247 client or a former client against whom the state may have a
3248 claim has a financial interest.
3249 9. Establish procedures by rule for the use of amounts
3250 held in trust for the client to pay for the cost of care and
3251 maintenance, if such amounts would otherwise cause the client to
3252 become ineligible for services which are in the client's best
3253 interests.
3254 (b) The department or agency ~~of Children and Family~~
3255 ~~Services~~ may charge off accounts if it certifies that the
3256 accounts are uncollectible after diligent efforts have been made
3257 to collect them. If the department certifies an account to the
3258 Department of Financial Services, setting forth the
3259 circumstances upon which it predicates the uncollectibility, and
3260 if, pursuant to s. 17.04, the Department of Financial Services
3261 concurs, the account shall be charged off.
3262 (2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE OR
3263 BENEFIT OF ANY CLIENT.--The department or agency shall perform
3264 the following acts:
3265 (a) Accept and administer in trust, as a trustee having a
3266 fiduciary responsibility to a client ~~of the department~~, any
3267 money or other property received for personal use or benefit of
3268 that client. In the case of children in the legal custody of
3269 the department, following the termination of the parental rights
3270 ~~as to that client~~, until the child ~~such client~~ leaves the legal
3271 custody of the department due to ~~the client's~~ adoption or
3272 attaining ~~because the client attains~~ the age of 18 or, in the

3273 case of children who are otherwise in the custody of the
3274 department, the court having jurisdiction over such child ~~client~~
3275 shall have jurisdiction, upon application of the department or
3276 other interested party, to review or approve any extraordinary
3277 action of the department acting as trustee as to the child's
3278 ~~client's~~ money or other property. When directed by a court of
3279 competent jurisdiction, the department may further hold money or
3280 property of a child ~~person under the age of 18~~ who has been in
3281 the care, custody, or control of the department and who is the
3282 subject of a court proceeding during the pendency of that
3283 proceeding.
3284 (b) Deposit the money in banks qualified as state
3285 depositories, or in any bank, credit union, or savings and loan
3286 association authorized to do business in this state, provided
3287 moneys so deposited or held by such institutions are fully
3288 insured by a federal depository or share insurance program, or
3289 an approved state depository or share insurance program, and are
3290 available on demand.
3291 (c) Withdraw the money and use it to meet current needs of
3292 clients. For purposes of this paragraph, "current needs"
3293 includes payment of fees assessed under s. 402.33. The amount
3294 of money withdrawn ~~by the department to meet current needs of a~~
3295 ~~client~~ shall take into account the need of the department or
3296 agency, as the trustee of a client's money and property, to
3297 provide for the long-term needs of a client, including, but not
3298 limited to, ensuring that ~~to provide for the need of~~ a client
3299 under the age of 18 will ~~to~~ have sufficient financial resources
3300 available to be able to function as an adult upon reaching the
3301 age of 18, meeting ~~or to meet~~ the special needs of a client who
3302 has a disability and whose special needs cannot otherwise be met
3303 by any form of public assistance or family resources, or

3304 maintaining ~~to maintain~~ the client's eligibility for public
3305 assistance, including medical assistance, under state or federal
3306 law.
3307 (d) As trustee, invest in the manner authorized by law for
3308 fiduciaries money not used for current needs of clients. Such
3309 investments may include, but shall not be limited to,
3310 investments in savings share accounts of any credit union
3311 chartered under the laws of the United States and doing business
3312 in this state, and savings share accounts of any credit union
3313 chartered under the laws of this state, provided the credit
3314 union is insured under the federal share insurance program or an
3315 approved state share insurance program.
3316 (3) DEPOSIT OF FUNDS RECEIVED.--Funds received by the
3317 Department of Children and Family Services in accordance with s.
3318 402.33 shall be deposited into a trust fund for the operation of
3319 the department.
3320 (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the death
3321 of any client affected by the provisions of this section, any
3322 unclaimed money held in trust by the department, the agency, or
3323 by the Chief Financial Officer for the child ~~him or her~~ shall be
3324 applied first to the payment of any unpaid claim of the state
3325 against the client, and any balance remaining unclaimed for a
3326 period of 1 year shall escheat to the state as unclaimed funds
3327 held by fiduciaries.
3328 (5) LEGAL REPRESENTATION.--To the extent that the budget
3329 will permit, the Department of Legal Affairs shall furnish the
3330 legal services to carry out the provisions of this section. Upon
3331 the request of the department or agency ~~of Children and Family~~
3332 ~~Services~~, the various state and county attorneys shall assist in
3333 litigation within their jurisdiction. The ~~Such~~ department or
3334 agency may retain legal counsel for necessary legal services

3335 which cannot be furnished by the Department of Legal Affairs and
3336 the various state and county attorneys.
3337 (6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.--
3338 (a) The department or agency ~~of Children and Family~~
3339 ~~Services~~ may deposit any funds of clients in its possession in
3340 any bank in the state or may invest or reinvest such funds in
3341 bonds or obligations of the United States for the payment of
3342 which the full faith and credit of the United States is pledged.
3343 For purposes of deposit only, the funds of any client may be
3344 mingled with the funds of any other clients.
3345 (b) The interest or increment accruing on such funds shall
3346 be the property of the clients and shall be used or conserved
3347 for the personal use or benefit of the ~~individual~~ client, in
3348 accordance with the department's or agency's fiduciary
3349 responsibility as a trustee for the money and property of the
3350 client ~~held by the department~~. Such interest shall not accrue to
3351 the general welfare of all clients. Whenever any proposed action
3352 of the department or agency, acting in its own interest, may
3353 conflict with the department's or agency's ~~obligation as a~~
3354 ~~trustee with a~~ fiduciary responsibility to the client, the
3355 department or agency shall promptly present the matter to a
3356 court of competent jurisdiction for the court's determination as
3357 to what action the department or agency may take. The department
3358 or agency shall establish ~~rules governing~~ reasonable fees by
3359 rule for the cost of administering such accounts and for
3360 establishing the minimum balance eligible to earn interest.
3361 (7) DISPOSITION OF MONEY AND PROPERTY OF CLIENTS UPON
3362 ATTAINING AGE 18 OR DISCHARGE FROM CARE, CUSTODY, CONTROL, OR
3363 SERVICES OF THE DEPARTMENT.--
3364 (a) Whenever a client of the department for whom the
3365 department is holding money or property as a trustee attains the

3366 age of 18, and thereby will no longer be in the legal custody of
3367 the department, the department shall promptly disburse such
3368 money and property ~~of the client the department has held as a~~
3369 ~~trustee~~ to that client, or as that client directs, as soon as
3370 practicable ~~once the client attains the age of 18~~.
3371 (b) Whenever a client of the department over the age of 18
3372 for whom the department is holding money or property as a
3373 trustee no longer requires the care, custody, control, or
3374 services of the department, the department shall promptly
3375 disburse such money and property ~~of the client the department~~
3376 ~~has held as a trustee~~ to that client, or as that client or a
3377 court directs, as soon as practicable.
3378 (c) When a client under the age of 18 who has been in the
3379 legal custody, care, or control of the department and for whom
3380 the department is holding money or property as a trustee attains
3381 the age of 18 and has a physical or mental disability, or is
3382 otherwise incapacitated or incompetent to handle that client's
3383 own financial affairs, the department shall apply for a court
3384 order from a court of competent jurisdiction to establish a
3385 trust on behalf of that client. Where there is no willing
3386 relative of the client acceptable to the court available to
3387 serve as trustee of such proposed trust, the court may enter an
3388 order authorizing the department to serve as trustee of a
3389 separate trust under such terms and conditions as the court
3390 determines appropriate to the circumstances.
3391 (d) When a client under the age of 18 who has been in the
3392 legal custody, care, or control of the department and for whom
3393 the department is holding money or property as a trustee leaves
3394 the care, custody, and control of the department due to adoption
3395 or placement of the client with a relative, or as otherwise
3396 directed by a court of competent jurisdiction, the department

3397 shall notify that court of the existence of the money and
3398 property ~~in the possession of the department~~ either prior to, or
3399 promptly after, receiving knowledge of the change of custody,
3400 care, or control. The department shall apply for an order from
3401 the court exercising jurisdiction over the client to direct the
3402 disposition of the money and property belonging to that client.
3403 The court order may establish a trust in which the money and
3404 property of the client will be deposited, appoint a guardian of
3405 a property as to the money or property of the client, or direct
3406 the creation of a Uniform Transfers ~~Gifts~~ to Minors Act account
3407 on behalf of that client, ~~as the court finds appropriate and~~
3408 under the terms and conditions the court determines appropriate
3409 to the circumstances.
3410 Section 46. Section 402.181, Florida Statutes, is amended
3411 to read:
3412 402.181 State Institutions Claims Program.--
3413 (1) There is created a State Institutions Claims Program,
3414 for the purpose of making restitution for property damages and
3415 direct medical expenses for injuries caused by shelter children
3416 or foster children, or escapees, inmates, or patients of state
3417 institutions under the Department of Children and Family
3418 Services, the Department of Health, the Department of Juvenile
3419 Justice, ~~or~~ the Department of Corrections, or the Agency for
3420 Persons with Disabilities.
3421 (2) Claims for restitution may be filed with the
3422 Department of Legal Affairs at its office in accordance with
3423 regulations prescribed by the Department of Legal Affairs. The
3424 Department of Legal Affairs shall have full power and authority
3425 to hear, investigate, and determine all questions in respect to
3426 such claims and is authorized, within the limits of current
3427 appropriations, to pay individual claims up to $1,000 or, with

3428 respect to children in foster care and their families,
3429 individual claims up to $1,500. Claims in excess of these
3430 amounts shall continue to require legislative approval.
3431 (3)(a) The Department of Legal Affairs shall make or cause
3432 to be made such investigations as it considers necessary in
3433 respect to such claims. Hearings shall be held in accordance
3434 with chapter 120.
3435 (b) The Department of Legal Affairs shall work with the
3436 Department of Children and Family Services, the Department of
3437 Health, the Department of Juvenile Justice, ~~and~~ the Department
3438 of Corrections, and the Agency for Persons with Disabilities to
3439 streamline the process of investigations, hearings, and
3440 determinations with respect to claims under this section, to
3441 ensure that eligible claimants receive restitution within a
3442 reasonable time.
3443 Section 47. Section 402.20, Florida Statutes, is amended
3444 to read:
3445 402.20 County contracts authorized for services and
3446 facilities for ~~in~~ mental health and developmental disabilities
3447 ~~retardation areas~~.--The boards of county commissioners are
3448 authorized to provide monetary grants and facilities, and to
3449 enter into renewable contracts, for services and facilities, for
3450 a period not to exceed 2 years, with public and private
3451 hospitals, clinics, and laboratories; other state agencies,
3452 departments, or divisions; the state colleges and universities;
3453 the community colleges; private colleges and universities;
3454 counties; municipalities; towns; townships; and any other
3455 governmental unit or nonprofit organization which provides
3456 needed facilities for persons with mental illness or
3457 developmental disabilities ~~the mentally ill or retarded~~. These
3458 services are hereby declared to be for a public and county

3459 purpose. The county commissioners may make periodic inspections
3460 to assure that the services or facilities provided under this
3461 chapter meet the standards of the Department of Children and
3462 Family Services and the Agency for Persons with Disabilities.
3463 Section 48. Section 402.22, Florida Statutes, is amended
3464 to read:
3465 402.22 Education program for students who reside in
3466 residential care facilities operated by the Department of
3467 Children and Family Services or the Agency for Persons with
3468 Disabilities.--
3469 (1)(a) The Legislature recognizes that the Department of
3470 Children and Family Services and the Agency for Persons with
3471 Disabilities have under their ~~has under its~~ residential care
3472 students with critical problems of physical impairment,
3473 emotional disturbance, mental impairment, and learning
3474 impairment.
3475 (b) The Legislature recognizes the vital role of education
3476 in the rehabilitation of such students. It is the intent of the
3477 Legislature that all such students benefit from educational
3478 services and receive such services.
3479 (c) It is the intent of the Legislature that educational
3480 services be coordinated with appropriate and existing diagnostic
3481 and evaluative, social, followup, and other therapeutic services
3482 of the department and agency ~~of Children and Family Services~~ so
3483 that the effect of the total rehabilitation process is
3484 maximized.
3485 (d) It is the intent of the Legislature that, as
3486 educational programs for students in residential care facilities
3487 are implemented by the district school board, educational
3488 personnel in the ~~Department of Children and Family Services~~
3489 residential care facilities who meet the qualifications for

3490 employees of the district school board be employed by the
3491 district school board.
3492 (2) District school boards shall establish educational
3493 programs for all students ages 5 through 18 under the
3494 residential care of the Department of Children and Family
3495 Services and the Agency for Persons with Disabilities, and may
3496 provide for students below age 3 as provided for in s.
3497 1003.21(1)(e). Funding of such programs shall be pursuant to s.
3498 1011.62.
3499 (3) Notwithstanding any provisions of chapters 39, 393,
3500 394, and 397 to the contrary, the services of the Department of
3501 Children and Family Services and the Agency for Persons with
3502 Disabilities and those of the Department of Education and
3503 district school boards shall be mutually supportive and
3504 complementary of each other. The education programs provided by
3505 the district school board shall meet the standards prescribed by
3506 the State Board of Education and the district school board.
3507 Decisions regarding the design and delivery of department or
3508 agency ~~of Children and Family Services~~ treatment or habilitative
3509 services shall be made by interdisciplinary teams of
3510 professional and paraprofessional staff of which appropriate
3511 district school system administrative and instructional
3512 personnel shall be invited to be participating members. The
3513 requirements for maintenance of confidentiality as prescribed in
3514 chapters 39, 393, 394, and 397 shall be applied to information
3515 used by such interdisciplinary teams, and such information shall
3516 be exempt from the provisions of ss. 119.07(1) and 286.011.
3517 (4) Students age 18 and under who are under the
3518 residential care of the Department of Children and Family
3519 Services or the Agency for Persons with Disabilities and who
3520 receive an education program shall be calculated as full-time

3521 equivalent student membership in the appropriate cost factor as
3522 provided for in s. 1011.62(1)(c). Residential care facilities ~~of~~
3523 ~~the Department of Children and Family Services~~ shall include,
3524 but not be limited to, developmental disabilities ~~services~~
3525 institutions and state mental health facilities. All students
3526 shall receive their education program from the district school
3527 system, and funding shall be allocated through the Florida
3528 Education Finance Program for the district school system.
3529 (5) Instructional and special educational services that
3530 ~~which~~ are provided to ~~mental health and retardation~~ clients with
3531 mental illness or developmental disabilities of the department's
3532 or agency's ~~in the Department of Children and Family Services~~
3533 residential care facilities by local school districts shall not
3534 be less than 180 days or 900 hours; however, the 900 hours may
3535 be distributed over a 12-month period, unless otherwise stated
3536 in rules developed by the State Board of Education, with the
3537 concurrence of the department or agency and adopted ~~of Children~~
3538 ~~and Family Services promulgated~~ pursuant to subsection (6).
3539 (6) The State Board of Education, ~~and~~ the Department of
3540 Children and Family Services, and the Agency for Persons with
3541 Disabilities may adopt ~~shall have the authority to promulgate~~
3542 rules to ~~which shall~~ assist in the orderly transfer of the
3543 instruction of students from department or agency ~~Department of~~
3544 ~~Children and Family Services~~ residential care facilities to the
3545 district school system or to the public education agency and
3546 which shall assist in implementing the specific intent as stated
3547 in this act.
3548 (7) Notwithstanding the provisions of s. 1001.42(4)(n),
3549 the educational program at the Marianna Sunland Center in
3550 Jackson County shall be operated by the Department of Education,
3551 either directly or through grants or contractual agreements with

3552 other public educational agencies. The annual state allocation
3553 to any such agency shall be computed pursuant to s. 1011.62(1),
3554 (2), and (5) and allocated in the amount that would have been
3555 provided the local school district in which the residential
3556 facility is located.
3557 Section 49. Paragraph (c) of subsection (1) and subsection
3558 (2) of section 402.33, Florida Statutes, are amended to read:
3559 402.33 Department authority to charge fees for services
3560 provided.--
3561 (1) As used in this section, the term:
3562 (c) "Department" means the Department of Children and
3563 Family Services, ~~and~~ the Department of Health, and the Agency
3564 for Persons with Disabilities.
3565 (2) The department, in accordance with rules established
3566 by it, shall either charge, assess, or collect, or cause to be
3567 charged, assessed, or collected, fees for any service it
3568 provides to its clients either directly or through its agencies
3569 or contractors, except for:
3570 (a) Diagnosis and evaluation procedures necessary to
3571 determine the client's eligibility and need for services
3572 provided by the department;
3573 (b) Customary and routine information and referral
3574 services;
3575 (c) Educational services provided in lieu of public
3576 education;
3577 (d) Specific services exempted by law from fee assessment;
3578 (e) Emergency shelter or emergency detention care and
3579 custody prior to a detention hearing under chapter 39;
3580 (f) Specific classes or types of services provided in
3581 programs funded by grants, donations, or contracts that prohibit
3582 charging fees;

3583 (g) Developmental disability services provided under
3584 chapter 393 to any person who is determined to be eligible for
3585 such services ~~by the department~~ and whose earned income falls
3586 below the federal Health and Human Services Poverty Guidelines,
3587 unless such fees are collected from third-party benefits and
3588 benefit payments; or
3589 (h) Any type of service for which the department
3590 determines that the net estimated revenue from such fees after
3591 deducting any loss of funds from federal grants occasioned by
3592 such fees will be less than the estimated cost to charge and
3593 collect such fees.
3594
3595 Fees, other than third-party benefits and benefit payments, may
3596 not be charged for services provided to indigents whose only
3597 sources of income are from state and federal aid. In addition,
3598 fees may not be charged parents of a minor client for services
3599 requested by the minor without parental consent or for services
3600 provided a minor client who has been permanently committed to
3601 the care and custody of the department with parental rights
3602 permanently severed. However, lack of parental consent does not
3603 preclude the charging of fees established under chapter 39. ~~The~~
3604 ~~department may not require~~ A client who is receiving wages that
3605 ~~which~~ are below the minimum wage under the federal Fair Labor
3606 Standards Act may not be required to pay fees from such wages.
3607 Voluntary payments for services must be encouraged.
3608 Section 50. Paragraphs (r) and (s) of subsection (3) of
3609 section 408.036, Florida Statutes, are amended to read:
3610 408.036 Projects subject to review; exemptions.--
3611 (3) EXEMPTIONS.--Upon request, the following projects are
3612 subject to exemption from the provisions of subsection (1):

3613 (r) For beds in state mental health treatment facilities
3614 operated under s. 394.455(32) ~~(30)~~ and state mental health
3615 forensic facilities operated under s. 916.106(8).
3616 (s) For beds in state developmental disabilities ~~services~~
3617 institutions as defined in s. 393.063.
3618 Section 51. Paragraphs (a), (j), and (k) of subsection (4)
3619 of section 409.221, Florida Statutes, are amended to read:
3620 409.221 Consumer-directed care program.--
3621 (4) CONSUMER-DIRECTED CARE.--
3622 (a) Program established.--The Agency for Health Care
3623 Administration shall establish the consumer-directed care
3624 program which shall be based on the principles of consumer
3625 choice and control. The agency shall implement the program upon
3626 federal approval. The agency shall establish interagency
3627 cooperative agreements with and shall work with the Departments
3628 of Elderly Affairs, Health, and Children and Family Services and
3629 the Agency for Persons with Disabilities to implement and
3630 administer the program. The program shall allow enrolled persons
3631 to choose the providers of services and to direct the delivery
3632 of services, to best meet their long-term care needs. The
3633 program must operate within the funds appropriated by the
3634 Legislature.
3635 (j) Rules; federal waivers.--In order to implement this
3636 section:
3637 1. The agency and the Departments of Elderly Affairs,
3638 Health, and Children and Family Services and the Agency for
3639 Persons with Disabilities are authorized to adopt and enforce
3640 rules.
3641 2. The agency shall take all necessary action to ensure
3642 state compliance with federal regulations. The agency shall

3643 apply for any necessary federal waivers or waiver amendments
3644 needed to implement the program.
3645 (k) Reviews and reports.--The agency and the Departments
3646 of Elderly Affairs, Health, and Children and Family Services and
3647 the Agency for Persons with Disabilities shall each, on an
3648 ongoing basis, review and assess the implementation of the
3649 consumer-directed care program. By January 15 of each year, the
3650 agency shall submit a written report to the Legislature that
3651 includes each department's review of the program and contains
3652 recommendations for improvements to the program.
3653 Section 52. Paragraph (a) of subsection (2) and subsection
3654 (8) of section 409.908, Florida Statutes, are amended to read:
3655 409.908 Reimbursement of Medicaid providers.--Subject to
3656 specific appropriations, the agency shall reimburse Medicaid
3657 providers, in accordance with state and federal law, according
3658 to methodologies set forth in the rules of the agency and in
3659 policy manuals and handbooks incorporated by reference therein.
3660 These methodologies may include fee schedules, reimbursement
3661 methods based on cost reporting, negotiated fees, competitive
3662 bidding pursuant to s. 287.057, and other mechanisms the agency
3663 considers efficient and effective for purchasing services or
3664 goods on behalf of recipients. If a provider is reimbursed based
3665 on cost reporting and submits a cost report late and that cost
3666 report would have been used to set a lower reimbursement rate
3667 for a rate semester, then the provider's rate for that semester
3668 shall be retroactively calculated using the new cost report, and
3669 full payment at the recalculated rate shall be effected
3670 retroactively. Medicare-granted extensions for filing cost
3671 reports, if applicable, shall also apply to Medicaid cost
3672 reports. Payment for Medicaid compensable services made on
3673 behalf of Medicaid eligible persons is subject to the

3674 availability of moneys and any limitations or directions
3675 provided for in the General Appropriations Act or chapter 216.
3676 Further, nothing in this section shall be construed to prevent
3677 or limit the agency from adjusting fees, reimbursement rates,
3678 lengths of stay, number of visits, or number of services, or
3679 making any other adjustments necessary to comply with the
3680 availability of moneys and any limitations or directions
3681 provided for in the General Appropriations Act, provided the
3682 adjustment is consistent with legislative intent.
3683 (2)(a)1. Reimbursement to nursing homes licensed under
3684 part II of chapter 400 and state-owned-and-operated intermediate
3685 care facilities for the developmentally disabled licensed under
3686 part XI of chapter 400 ~~chapter 393~~ must be made prospectively.
3687 2. Unless otherwise limited or directed in the General
3688 Appropriations Act, reimbursement to hospitals licensed under
3689 part I of chapter 395 for the provision of swing-bed nursing
3690 home services must be made on the basis of the average statewide
3691 nursing home payment, and reimbursement to a hospital licensed
3692 under part I of chapter 395 for the provision of skilled nursing
3693 services must be made on the basis of the average nursing home
3694 payment for those services in the county in which the hospital
3695 is located. When a hospital is located in a county that does not
3696 have any community nursing homes, reimbursement shall ~~must~~ be
3697 determined by averaging the nursing home payments~~,~~ in counties
3698 that surround the county in which the hospital is located.
3699 Reimbursement to hospitals, including Medicaid payment of
3700 Medicare copayments, for skilled nursing services shall be
3701 limited to 30 days, unless a prior authorization has been
3702 obtained from the agency. Medicaid reimbursement may be extended
3703 by the agency beyond 30 days, and approval must be based upon
3704 verification by the patient's physician that the patient

3705 requires short-term rehabilitative and recuperative services
3706 only, in which case an extension of no more than 15 days may be
3707 approved. Reimbursement to a hospital licensed under part I of
3708 chapter 395 for the temporary provision of skilled nursing
3709 services to nursing home residents who have been displaced as
3710 the result of a natural disaster or other emergency may not
3711 exceed the average county nursing home payment for those
3712 services in the county in which the hospital is located and is
3713 limited to the period of time which the agency considers
3714 necessary for continued placement of the nursing home residents
3715 in the hospital.

3716 (8) A provider of home-based or community-based services
3717 rendered pursuant to a federally approved waiver shall be
3718 reimbursed based on an established or negotiated rate for each
3719 service. These rates shall be established according to an
3720 analysis of the expenditure history and prospective budget
3721 developed by each contract provider participating in the waiver
3722 program, or under any other methodology adopted by the agency
3723 and approved by the Federal Government in accordance with the
3724 waiver. ~~Effective July 1, 1996,~~ Privately owned and operated
3725 community-based residential facilities which meet agency
3726 requirements and which formerly received Medicaid reimbursement
3727 for the optional intermediate care facility for the mentally
3728 retarded service may participate in the developmental services
3729 waiver as part of a home-and-community-based continuum of care
3730 for Medicaid recipients who receive waiver services.

3731 Section 53. Subsection (3) of section 409.9127, Florida
3732 Statutes, is amended to read:

3733 409.9127 Preauthorization and concurrent utilization
3734 review; conflict-of-interest standards.--

3735 (3) The agency shall help the Agency for Persons with
3736 Disabilities ~~Department of Children and Family Services~~ meet the
3737 requirements of s. 393.065(4). Only admissions approved pursuant
3738 to such assessments are eligible for reimbursement under this
3739 chapter.
3740 Section 54. Paragraph (c) of subsection (2) and subsection
3741 (5) of section 411.224, Florida Statutes, are amended to read:
3742 411.224 Family support planning process.--The Legislature
3743 establishes a family support planning process to be used by the
3744 Department of Children and Family Services as the service
3745 planning process for targeted individuals, children, and
3746 families under its purview.
3747 (2) To the extent possible within existing resources, the
3748 following populations must be included in the family support
3749 planning process:
3750 (c) Children from age 3 ~~birth~~ through age 5 who are served
3751 by the Agency for Persons with Disabilities ~~Developmental~~
3752 ~~Disabilities Program Office of the Department of Children and~~
3753 ~~Family Services~~.
3754 (5) There must be only a single-family support plan to
3755 address the problems of the various family members unless the
3756 family requests that an individual family support plan be
3757 developed for different members of that family. The family
3758 support plan must replace individual habilitation plans for
3759 children from 3 ~~birth~~ through 5 years old who are served by the
3760 Agency for Persons with Disabilities ~~Developmental Disabilities~~
3761 ~~Program Office of the Department of Children and Family~~
3762 ~~Services~~. ~~To the extent possible, the family support plan must~~
3763 ~~replace other case-planning forms used by the Department of~~
3764 ~~Children and Family Services.~~

3765 Section 55. Subsection (4) of section 411.232, Florida
3766 Statutes, is amended to read:
3767 411.232 Children's Early Investment Program.--
3768 (4) RULES FOR IMPLEMENTATION.--The Department of Health
3769 ~~and Rehabilitative Services~~ shall adopt rules necessary to
3770 implement this section.
3771 Section 56. Subsection (8) of section 415.102, Florida
3772 Statutes, is amended to read:
3773 415.102 Definitions of terms used in ss. 415.101-
3774 415.113.--As used in ss. 415.101-415.113, the term:
3775 (8) "Facility" means any location providing day or
3776 residential care or treatment for vulnerable adults. The term
3777 "facility" may include, but is not limited to, any hospital,
3778 state institution, nursing home, assisted living facility, adult
3779 family-care home, adult day care center, residential facility
3780 licensed under chapter 393, adult day training center, ~~group~~
3781 ~~home~~, or mental health treatment center.
3782 Section 57. Section 415.1035, Florida Statutes, is amended
3783 to read:
3784 415.1035 Facility's duty to inform residents of their
3785 right to report abusive, neglectful, or exploitive
3786 practices.--The department shall work cooperatively with the
3787 Agency for Health Care Administration, the Agency for Persons
3788 with Disabilities, and the Department of Elderly Affairs to
3789 ensure that every facility that serves vulnerable adults informs
3790 residents of their right to report abusive, neglectful, or
3791 exploitive practices. Each facility must establish appropriate
3792 policies and procedures to facilitate such reporting.
3793 Section 58. Subsections (1) and (10) of section 415.1055,
3794 Florida Statutes, are amended to read:
3795 415.1055 Notification to administrative entities.--

3796 (1) Upon receipt of a report that alleges that an employee
3797 or agent of the department, the Agency for Persons with
3798 Disabilities, or the Department of Elderly Affairs, acting in an
3799 official capacity, has committed an act of abuse, neglect, or
3800 exploitation, the department shall notify the state attorney in
3801 whose circuit the abuse, neglect, or exploitation occurred. This
3802 notification may be oral or written.
3803 (10) When a report has been received and the department
3804 has reason to believe that a vulnerable adult resident of a
3805 facility licensed by the Agency for Health Care Administration
3806 or the Agency for Persons with Disabilities has been the victim
3807 of abuse, neglect, or exploitation, the department shall provide
3808 a copy of its investigation to the appropriate agency. If the
3809 investigation determines that a health professional licensed or
3810 certified under the Department of Health may have abused,
3811 neglected, or exploited a vulnerable adult, the department shall
3812 also provide a copy to the Department of Health.
3813 Section 59. Paragraphs (a) and (h) of subsection (3) of
3814 section 415.107, Florida Statutes, are amended to read:
3815 415.107 Confidentiality of reports and records.--
3816 (3) Access to all records, excluding the name of the
3817 reporter which shall be released only as provided in subsection
3818 (6), shall be granted only to the following persons, officials,
3819 and agencies:
3820 (a) Employees or agents of the department, the Agency for
3821 Persons with Disabilities, ~~of~~ the Agency for Health Care
3822 Administration, or ~~of~~ the Department of Elderly Affairs who are
3823 responsible for carrying out protective investigations, ongoing
3824 protective services, or licensure or approval of nursing homes,
3825 assisted living facilities, adult day care centers, adult
3826 family-care homes, home care for the elderly, hospices,

3827 residential facilities licensed under chapter 393, or other
3828 facilities used for the placement of vulnerable adults.
3829 (h) Any appropriate official of the department, the Agency
3830 for Persons with Disabilities, ~~of~~ the Agency for Health Care
3831 Administration, or ~~of~~ the Department of Elderly Affairs who is
3832 responsible for:
3833 1. Administration or supervision of the programs for the
3834 prevention, investigation, or treatment of abuse, neglect, or
3835 exploitation of vulnerable adults when carrying out an official
3836 function; or
3837 2. Taking appropriate administrative action concerning an
3838 employee alleged to have perpetrated abuse, neglect, or
3839 exploitation of a vulnerable adult in an institution.
3840 Section 60. Subsection (1) of section 419.001, Florida
3841 Statutes, is amended to read:
3842 419.001 Site selection of community residential homes.--
3843 (1) For the purposes of this section, the term ~~following~~
3844 ~~definitions shall apply~~:
3845 (a) "Community residential home" means a dwelling unit
3846 licensed to provide ~~serve clients of the Department of Children~~
3847 ~~and Family Services, which provides~~ a living environment for 7
3848 to 14 unrelated residents who operate as the functional
3849 equivalent of a family, including such supervision and care by
3850 supportive staff as may be necessary to meet the physical,
3851 emotional, and social needs of the residents.
3852 (b) "Department" means the Department of Children and
3853 Family Services, the Agency for Health Care Administration, or
3854 the Agency for Persons with Disabilities.
3855 (c) "Local government" means a county as set forth in
3856 chapter 7 or a municipality incorporated under the provisions of
3857 chapter 165.

3858 (d) "Resident" means any of the following: a frail elder
3859 as defined in s. 400.618; a ~~physically disabled or handicapped~~
3860 person with a physical or mental impairment as described ~~as~~
3861 ~~defined~~ in s. 760.22(7)(a); a ~~developmentally disabled~~ person
3862 with a developmental disability as defined in s. 393.063; a
3863 nondangerous ~~mentally ill~~ person with a mental illness as
3864 defined in s. 394.455(18); or a child as defined in s.
3865 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).
3866 (e) "Sponsoring agency" means an agency or unit of
3867 government, a profit or nonprofit agency, or any other person or
3868 organization which intends to establish or operate a community
3869 residential home.
3870 Section 61. Paragraph (a) of subsection (3) of section
3871 435.03, Florida Statutes, is amended to read:
3872 435.03 Level 1 screening standards.--
3873 (3) Standards must also ensure that the person:
3874 (a) For employees and employers licensed or registered
3875 pursuant to chapter 400, and for employees and employers of
3876 developmental disabilities ~~services~~ institutions as defined in
3877 s. 393.063, intermediate care facilities for the developmentally
3878 disabled as defined in s. 400.960 ~~s. 393.063~~, and mental health
3879 treatment facilities as defined in s. 394.455, meets the
3880 requirements of this chapter.
3881 Section 62. Paragraph (a) of subsection (2) of section
3882 490.014, Florida Statutes, is amended to read:
3883 490.014 Exemptions.--
3884 (2) No person shall be required to be licensed or
3885 provisionally licensed under this chapter who:
3886 (a) Is a salaried employee of a government agency;
3887 developmental disability facility or ~~services~~ program, mental
3888 health, alcohol, or drug abuse facility operating under ~~pursuant~~

3889 ~~to~~ chapter 393, chapter 394, or chapter 397; subsidized child
3890 care program, subsidized child care case management program, or
3891 child care resource and referral program operating pursuant to
3892 chapter 402; child-placing or child-caring agency licensed
3893 pursuant to chapter 409; domestic violence center certified
3894 pursuant to chapter 39; accredited academic institution; or
3895 research institution, if such employee is performing duties for
3896 which he or she was trained and hired solely within the confines
3897 of such agency, facility, or institution, so long as the
3898 employee is not held out to the public as a psychologist
3899 pursuant to s. 490.012(1)(a).
3900 Section 63. Paragraph (a) of subsection (4) of section
3901 491.014, Florida Statutes, is amended to read:
3902 491.014 Exemptions.--
3903 (4) No person shall be required to be licensed,
3904 provisionally licensed, registered, or certified under this
3905 chapter who:
3906 (a) Is a salaried employee of a government agency;
3907 developmental disability facility or ~~services~~ program, mental
3908 health, alcohol, or drug abuse facility operating under ~~pursuant~~
3909 ~~to~~ chapter 393, chapter 394, or chapter 397; subsidized child
3910 care program, subsidized child care case management program, or
3911 child care resource and referral program operating pursuant to
3912 chapter 402; child-placing or child-caring agency licensed
3913 pursuant to chapter 409; domestic violence center certified
3914 pursuant to chapter 39; accredited academic institution; or
3915 research institution, if such employee is performing duties for
3916 which he or she was trained and hired solely within the confines
3917 of such agency, facility, or institution, so long as the
3918 employee is not held out to the public as a clinical social

3919 worker, mental health counselor, or marriage and family
3920 therapist.
3921 Section 64. Section 944.602, Florida Statutes, is amended
3922 to read:
3923 944.602 Agency notification ~~of Department of Children and~~
3924 ~~Family Services~~ before release of mentally retarded
3925 inmates.--Before the release by parole, release by reason of
3926 gain-time allowances provided for in s. 944.291, or expiration
3927 of sentence of any inmate who has been diagnosed as mentally
3928 retarded as defined in s. 393.063, the Department of Corrections
3929 shall notify the Agency for Persons with Disabilities ~~Department~~
3930 ~~of Children and Family Services~~ in order that sufficient time be
3931 allowed to notify the inmate or the inmate's representative, in
3932 writing, at least 7 days prior to the inmate's release, of
3933 available community services.
3934 Section 65. Subsections (2) and (3) of section 945.025,
3935 Florida Statutes, are amended to read:
3936 945.025 Jurisdiction of department.--
3937 (2) In establishing, operating, and utilizing these
3938 facilities, the department shall attempt, whenever possible, to
3939 avoid the placement of nondangerous offenders who have potential
3940 for rehabilitation with repeat offenders or dangerous offenders.
3941 Medical, mental, and psychological problems shall be diagnosed
3942 and treated whenever possible. The Department of Children and
3943 Family Services and the Agency for Persons with Disabilities
3944 shall cooperate to ensure the delivery of services to persons
3945 under the custody or supervision of the department. When it is
3946 the intent of the department to transfer a mentally ill or
3947 retarded prisoner to the Department of Children and Family
3948 Services or the Agency for Persons with Disabilities, an

3949 involuntary commitment hearing shall be held according to the
3950 provisions of chapter 393 or chapter 394.
3951 (3) There shall be other correctional facilities,
3952 including detention facilities of varying levels of security,
3953 work-release facilities, and community correctional facilities,
3954 halfway houses, and other approved community residential and
3955 nonresidential facilities and programs; however, no adult
3956 correctional facility may be established by changing the use and
3957 purpose of any mental health facility or mental health
3958 institution under the jurisdiction of any state agency or
3959 department without authorization in the General Appropriation
3960 Act or other approval by the Legislature. ~~Any facility the~~
3961 ~~purpose and use of which was changed subsequent to January 1,~~
3962 ~~1975, shall be returned to its original use and purpose by July~~
3963 ~~1, 1977. However, the G. Pierce Wood Memorial Hospital located~~
3964 ~~at Arcadia, DeSoto County, may not be converted into a~~
3965 ~~correctional facility as long as such hospital is in use as a~~
3966 ~~state mental health hospital.~~ Any community residential facility
3967 may be deemed a part of the state correctional system for
3968 purposes of maintaining custody of offenders, and for this
3969 purpose the department may contract for and purchase the
3970 services of such facilities.
3971 Section 66. Section 947.185, Florida Statutes, is amended
3972 to read:
3973 947.185 Application for mental retardation services as
3974 condition of parole.--The Parole Commission may require as a
3975 condition of parole that any inmate who has been diagnosed as
3976 mentally retarded as defined in s. 393.063 shall, upon release,
3977 apply for ~~retardation~~ services from the Agency for Persons with
3978 Disabilities ~~Department of Children and Family Services~~.

3979 Section 67. Subsection (3) of section 984.19, Florida
3980 Statutes, is amended to read:
3981 984.19 Medical screening and treatment of child;
3982 examination of parent, guardian, or person requesting custody.--
3983 (3) A judge may order that a child alleged to be or
3984 adjudicated a child in need of services be examined by a
3985 licensed health care professional. The judge may also order such
3986 child to be evaluated by a psychiatrist or a psychologist, by a
3987 district school board educational needs assessment team, or, if
3988 a developmental disability is suspected or alleged, by a ~~the~~
3989 developmental disability diagnostic and evaluation team with ~~of~~
3990 the Agency for Persons with Disabilities ~~Department of Children~~
3991 ~~and Family Services~~. The judge may order a family assessment if
3992 that assessment was not completed at an earlier time. If it is
3993 necessary to place a child in a residential facility for such
3994 evaluation, then the criteria and procedure established in s.
3995 394.463(2) or chapter 393 shall be used, whichever is
3996 applicable. The educational needs assessment provided by the
3997 district school board educational needs assessment team shall
3998 include, but not be limited to, reports of intelligence and
3999 achievement tests, screening for learning disabilities and other
4000 handicaps, and screening for the need for alternative education
4001 pursuant to s. 1003.53.
4002 Section 68. Subsection (8) of section 984.225, Florida
4003 Statutes, is amended to read:
4004 984.225 Powers of disposition; placement in a staff-secure
4005 shelter.--
4006 (8) If the child requires residential mental health
4007 treatment or residential care for a developmental disability,
4008 the court shall refer the child to the Department of Children

4009 and Family Services or the Agency for Persons with Disabilities,
4010 as appropriate, for the provision of necessary services.
4011 Section 69. Paragraph (e) of subsection (5) of section
4012 984.226, Florida Statutes, is amended to read:
4013 984.226 Physically secure setting.--
4014 (5)
4015 (e) If the child requires residential mental health
4016 treatment or residential care for a developmental disability,
4017 the court shall refer the child to the Department of Children
4018 and Family Services or the Agency for Persons with Disabilities,
4019 as appropriate, for the provision of necessary services.
4020 Section 70. Subsection (1) of section 985.224, Florida
4021 Statutes, is amended to read:
4022 985.224 Medical, psychiatric, psychological, substance
4023 abuse, and educational examination and treatment.--
4024 (1) After a detention petition or a petition for
4025 delinquency has been filed, the court may order the child named
4026 in the petition to be examined by a physician. The court may
4027 also order the child to be evaluated by a psychiatrist or a
4028 psychologist, by a district school board educational needs
4029 assessment team, or, if a developmental disability is suspected
4030 or alleged, by a ~~the~~ developmental disabilities diagnostic and
4031 evaluation team with ~~of~~ the Agency for Persons with Disabilities
4032 ~~Department of Children and Family Services~~. If it is necessary
4033 to place a child in a residential facility for such evaluation,
4034 the criteria and procedures established in chapter 393, chapter
4035 394, or chapter 397, whichever is applicable, shall be used.
4036 Section 71. Section 1003.58, Florida Statutes, is amended
4037 to read:
4038 1003.58 Students in residential care facilities.--Each
4039 district school board shall provide educational programs

4040 according to rules of the State Board of Education to students
4041 who reside in residential care facilities operated by the
4042 Department of Children and Family Services or the Agency for
4043 Persons with Disabilities.
4044 (1) The district school board shall not be charged any
4045 rent, maintenance, utilities, or overhead on such facilities.
4046 Maintenance, repairs, and remodeling of existing facilities
4047 shall be provided by the Department of Children and Family
4048 Services or the Agency for Persons with Disabilities, as
4049 appropriate.
4050 (2) If additional facilities are required, the district
4051 school board and the Department of Children and Family Services
4052 or the Agency for Persons with Disabilities, as appropriate,
4053 shall agree on the appropriate site based on the instructional
4054 needs of the students. When the most appropriate site for
4055 instruction is on district school board property, a special
4056 capital outlay request shall be made by the commissioner in
4057 accordance with s. 1013.60. When the most appropriate site is on
4058 state property, state capital outlay funds shall be requested by
4059 the department or agency in accordance with chapter 216 ~~of~~
4060 ~~Children and Family Services as provided by s. 216.043 and shall~~
4061 ~~be submitted as specified by s. 216.023~~. Any instructional
4062 facility to be built on state property shall have educational
4063 specifications jointly developed by the school district and the
4064 department or agency ~~of Children and Family Services~~ and
4065 approved by the Department of Education. The size of space and
4066 occupant design capacity criteria as provided by state board
4067 rules shall be used for remodeling or new construction whether
4068 facilities are provided on state property or district school
4069 board property. The planning of such additional facilities shall

4070 incorporate current state ~~Department of Children and Family~~
4071 ~~Services~~ deinstitutionalization goals and plans.
4072 (3) The district school board shall have full and complete
4073 authority in the matter of the assignment and placement of such
4074 students in educational programs. The parent of an exceptional
4075 student shall have the same due process rights as are provided
4076 under s. 1003.57(5).
4077 (4) The district school board shall have a written
4078 agreement with the Department of Children and Family Services
4079 and the Agency for Persons with Disabilities outlining the
4080 respective duties and responsibilities of each party.
4081
4082 Notwithstanding the provisions herein, the educational program
4083 at the Marianna Sunland Center in Jackson County shall be
4084 operated by the Department of Education, either directly or
4085 through grants or contractual agreements with other public or
4086 duly accredited educational agencies approved by the Department
4087 of Education.
4088 Section 72. Paragraph (c) of subsection (3) of section
4089 17.61, Florida Statutes, is amended to read:
4090 17.61 Chief Financial Officer; powers and duties in the
4091 investment of certain funds.--
4092 (3)
4093 (c) Except as provided in this paragraph and except for
4094 moneys described in paragraph (d), the following agencies shall
4095 not invest trust fund moneys as provided in this section, but
4096 shall retain such moneys in their respective trust funds for
4097 investment, with interest appropriated to the General Revenue
4098 Fund, pursuant to s. 17.57:
4099 1. The Agency for Health Care Administration, except for
4100 the Tobacco Settlement Trust Fund.

4101 2. The Department of Children and Family Services, except
4102 for:
4103 a. The Alcohol, Drug Abuse, and Mental Health Trust Fund.
4104 b. The Community Resources Development Loan ~~Trust~~ Fund in
4105 the Agency for Disabilities Administrative Trust Fund.
4106 c. The Refugee Assistance Trust Fund.
4107 d. The Social Services Block Grant Trust Fund.
4108 e. The Tobacco Settlement Trust Fund.
4109 f. The Working Capital Trust Fund.
4110 3. The Department of Community Affairs, only for the
4111 Operating Trust Fund.
4112 4. The Department of Corrections.
4113 5. The Department of Elderly Affairs, except for:
4114 a. The Federal Grants Trust Fund.
4115 b. The Tobacco Settlement Trust Fund.
4116 6. The Department of Health, except for:
4117 a. The Federal Grants Trust Fund.
4118 b. The Grants and Donations Trust Fund.
4119 c. The Maternal and Child Health Block Grant Trust Fund.
4120 d. The Tobacco Settlement Trust Fund.
4121 7. The Department of Highway Safety and Motor Vehicles,
4122 only for:
4123 a. The DUI Programs Coordination Trust Fund.
4124 b. The Security Deposits Trust Fund.
4125 8. The Department of Juvenile Justice.
4126 9. The Department of Law Enforcement.
4127 10. The Department of Legal Affairs.
4128 11. The Department of State, only for:
4129 a. The Grants and Donations Trust Fund.
4130 b. The Records Management Trust Fund.
4131 12. The Executive Office of the Governor, only for:

4132 a. The Economic Development Transportation Trust Fund.
4133 b. The Economic Development Trust Fund.
4134 13. The Florida Public Service Commission, only for the
4135 Florida Public Service Regulatory Trust Fund.
4136 14. The Justice Administrative Commission.
4137 15. The state courts system.
4138 Section 73. Paragraph (b) of subsection (5) of section
4139 400.464, Florida Statutes, is amended to read:
4140 400.464 Home health agencies to be licensed; expiration of
4141 license; exemptions; unlawful acts; penalties.--
4142 (5) The following are exempt from the licensure
4143 requirements of this part:
4144 (b) Home health services provided by a state agency,
4145 either directly or through a contractor with:
4146 1. The Department of Elderly Affairs.
4147 2. The Department of Health, a community health center, or
4148 a rural health network that furnishes home visits for the
4149 purpose of providing environmental assessments, case management,
4150 health education, personal care services, family planning, or
4151 followup treatment, or for the purpose of monitoring and
4152 tracking disease.
4153 3. Services provided to persons with ~~who have~~
4154 developmental disabilities, as defined in s. 393.063.
4155 4. Companion and sitter organizations that were registered
4156 under s. 400.509(1) on January 1, 1999, and were authorized to
4157 provide personal services ~~under s. 393.063(33)~~ under a
4158 developmental services provider certificate on January 1, 1999,
4159 may continue to provide such services to past, present, and
4160 future clients of the organization who need such services,
4161 notwithstanding the provisions of this act.
4162 5. The Department of Children and Family Services.

4163 Section 74. Subsection (7) of section 744.704, Florida
4164 Statutes, is amended to read:
4165 744.704 Powers and duties.--
4166 (7) A public guardian shall not commit a ward to a mental
4167 health treatment facility, as defined in s. 394.455(32) ~~(30)~~,
4168 without an involuntary placement proceeding as provided by law.
4169 Section 75. Subsection (4) of section 984.22, Florida
4170 Statutes, is amended to read:
4171 984.22 Powers of disposition.--
4172 (4) All payments of fees made to the department under
4173 ~~pursuant to~~ this chapter, or child support payments made to the
4174 department pursuant to subsection (3), shall be deposited in the
4175 General Revenue Fund. ~~In cases in which the child is placed in~~
4176 ~~foster care with the Department of Children and Family Services,~~
4177 ~~such child support payments shall be deposited in the Community~~
4178 ~~Resources Development Trust Fund.~~
4179 Section 76. This act shall take effect July 1, 2006.
4180
4181 ========== T I T L E A M E N D M E N T ==========
4182 Remove the entire title and insert:
4183 A bill to be entitled
4184 An act relating to persons with disabilities; amending s.
4185 20.197, F.S.; requiring the director of the Agency for
4186 Persons with Disabilities to be subject to confirmation by
4187 the Senate; requiring the agency to create a Division of
4188 Budget and Planning and a Division of Operations;
4189 authorizing the director to recommend creating additional
4190 subdivisions of the agency in order to promote efficient
4191 and effective operation of the agency; amending s. 39.001,
4192 F.S., relating to the development of a comprehensive state
4193 plan for children; conforming provisions to the transfer

4194 of duties from the Developmental Disabilities Program
4195 Office within the Department of Children and Family
4196 Services to the Agency for Persons with Disabilities;
4197 amending s. 39.202, F.S.; providing for certain employees,
4198 agents, and contract providers of the agency to have
4199 access to records concerning cases of child abuse or
4200 neglect for specified purposes; amending s. 39.407, F.S.;
4201 deleting provisions authorizing the treatment of a child
4202 under ch. 393, F.S., if the child is alleged to be
4203 dependent; amending s. 287.155, F.S.; authorizing the
4204 agency to purchase vehicles under certain circumstances;
4205 amending ss. 381.0072 and 383.14, F.S., relating to food
4206 service licenses and the Genetics and Newborn Screening
4207 Advisory Council, respectively; conforming provisions to
4208 the transfer of duties from the Developmental Disabilities
4209 Program Office within the Department of Children and
4210 Family Services to the Agency for Persons with
4211 Disabilities; repealing s. 393.061, F.S., relating to a
4212 short title; amending s. 393.062, F.S.; revising
4213 legislative findings and intent to conform to changes in
4214 terminology; amending s. 393.063, F.S.; revising the
4215 definitions applicable to ch. 393, F.S., relating to
4216 developmental disabilities; amending s. 393.064, F.S.;
4217 revising the duties of the Agency for Persons with
4218 Disabilities with respect to prevention services,
4219 evaluations and assessments, intervention services, and
4220 support services; amending s. 393.0641, F.S.; defining the
4221 term "severe self-injurious behavior" for purposes of a
4222 program of prevention and treatment for individuals
4223 exhibiting such behavior; amending s. 393.065, F.S.,
4224 relating to application for services and the determination

4225 of eligibility for services; providing for children in the
4226 child welfare system to be placed at the top of the
4227 agency's wait list for waiver services; authorizing the
4228 agency to adopt rules; amending s. 393.0651, F.S.,
4229 relating to support plans for families and individuals;
4230 revising the age at which support plans are developed for
4231 children; deleting a prohibition against assessing certain
4232 fees; creating s. 393.0654, F.S.; specifying circumstances
4233 under which an employee of the agency may own, operate, or
4234 work in a private facility under contract with the agency;
4235 amending s. 393.0655, F.S.; revising the screening
4236 requirements for direct service providers; providing a
4237 temporary exemption from screening requirements for
4238 certain providers; amending s. 393.0657, F.S.; revising an
4239 exemption from certain requirements for refingerprinting
4240 and rescreening; amending s. 393.066, F.S.; revising
4241 certain requirements for the services provided by the
4242 agency; requiring agency approval for purchased services;
4243 revising the agency's rulemaking authority; amending s.
4244 393.067, F.S.; revising requirements governing the
4245 agency's licensure procedures; revising the requirements
4246 for background screening of applicants for licensure and
4247 managers, supervisors, and staff members of service
4248 providers; requiring that the agency adopt rules governing
4249 the reporting of incidents; deleting certain
4250 responsibilities of the Agency for Health Care
4251 Administration with respect to the development and review
4252 of emergency management plans; amending s. 393.0673, F.S.;
4253 providing circumstances under which the agency may deny,
4254 revoke, or suspend a license or impose a fine; requiring
4255 the Agency for Persons with Disabilities to adopt rules

4256 for evaluating violations and determining the amount of
4257 fines; amending s. 393.0674, F.S.; providing a penalty for
4258 failure by a provider to comply with background screening
4259 requirements; amending s. 393.0675, F.S.; deleting certain
4260 obsolete provisions requiring that a provider be of good
4261 moral character; amending s. 393.0678, F.S.; deleting
4262 provisions governing receivership proceedings for an
4263 intermediate care facility for the developmentally
4264 disabled; amending s. 393.068, F.S.; requiring that the
4265 family care program emphasize self-determination; removing
4266 supported employment from the list of services available
4267 under the family care program; revising certain
4268 requirements for reimbursing a family care program
4269 provider; amending s. 393.0695, F.S., relating to in-home
4270 subsidies; requiring that the Agency for Persons with
4271 Disabilities adopt rules for such subsidies; amending s.
4272 393.075, F.S., relating to liability coverage for
4273 facilities licensed by the agency; conforming terminology;
4274 amending s. 393.11, F.S.; revising provisions governing
4275 the involuntary admission of a person to residential
4276 services; clarifying provisions governing involuntary
4277 commitment; requiring that a person who is charged with a
4278 felony will have his or her competency determined under
4279 ch. 916, F.S.; conforming terminology; amending s.
4280 393.122, F.S.; clarifying requirements governing
4281 applications for continued residential services; amending
4282 s. 393.13, F.S., relating to the Bill of Rights of Persons
4283 Who are Developmentally Disabled; deleting a provision
4284 protecting minimum wage compensation for certain programs;
4285 limiting the use of restraint and seclusion; requiring the
4286 agency to adopt rules governing the use of restraint or

4287 seclusion; revising requirements for client records;
4288 deleting certain requirements governing local advocacy
4289 councils; allowing the resident government to include
4290 disability advocates from the community; amending s.
4291 393.135, F.S.; revising definitions; clarifying provisions
4292 making such misconduct a second-degree felony; amending s.
4293 393.15, F.S.; establishing the Community Resources
4294 Development Loan Program to provide loans to foster homes,
4295 group homes, and supported employment programs; providing
4296 legislative intent; providing eligibility requirements;
4297 providing authorized uses of loan funds; requiring that
4298 the agency adopt rules governing the loan program;
4299 providing requirements for repaying loans; amending s.
4300 393.17, F.S.; authorizing the agency to establish
4301 certification programs for persons providing services to
4302 clients; requiring that the agency establish a
4303 certification program for behavior analysts; requiring
4304 that the program be reviewed and validated; creating s.
4305 393.18, F.S.; providing for a comprehensive transition
4306 education program for persons who have severe or moderate
4307 maladaptive behaviors; specifying the types of treatment
4308 and education centers providing services under the
4309 program; providing requirements for licensure; requiring
4310 individual education plans for persons receiving services;
4311 limiting the number of persons who may receive services in
4312 such a program; authorizing licensure of certain existing
4313 programs; creating s. 393.23, F.S.; requiring that
4314 receipts from operating canteens, vending machines, and
4315 other like activities in a developmental disabilities
4316 institution be deposited in a trust account in a bank,
4317 credit union, or savings and loan association; describing

4318 how the moneys earned may be expended; allowing for the
4319 investment of the funds; requiring that the accounting
4320 system at the institution account for the revenues and
4321 expenses of the activities; requiring that sales tax
4322 moneys be remitted to the Department of Revenue; amending
4323 s. 393.501, F.S.; revising the agency's rulemaking
4324 authority; providing requirements for rules governing
4325 alternative living centers and independent living
4326 education centers; amending s. 394.453, F.S.; declaring
4327 that the policy of the state is to achieve an ongoing
4328 reduction of the use of restraint and seclusion on persons
4329 with mental illness who are served by programs and
4330 facilities operated, licensed, or monitored by the agency;
4331 amending s. 394.455, F.S.; defining the terms "restraint"
4332 and "seclusion" for purposes of the Baker Act; amending s.
4333 394.457, F.S.; requiring the Department of Children and
4334 Family Services to adopt rules for the use of restraint
4335 and seclusion for cases handled under the Baker Act;
4336 amending s. 394.879, F.S.; requiring that rules be adopted
4337 for the use of restraint and seclusion; amending s.
4338 397.405, F.S.; clarifying an exemption from licensure
4339 provided to certain facilities licensed under ch. 393,
4340 F.S.; amending s. 400.419, F.S.; requiring that a list of
4341 facilities subject to sanctions or fines be disseminated
4342 to the Agency for Persons with Disabilities; amending s.
4343 400.960, F.S.; revising definitions for purposes of part
4344 XI of ch. 400, F.S., relating to nursing homes and related
4345 facilities; amending s. 400.967, F.S., relating to rules
4346 and classification of deficiencies; conforming provisions
4347 to the transfer of duties from the Department of Children
4348 and Family Services to the Agency for Persons with

4349 Disabilities; requiring that rules be adopted for the use
4350 of restraint and seclusion; amending ss. 402.115, 402.17,
4351 402.181, 402.20, 402.22, and 402.33, F.S.; including the
4352 Agency for Persons with Disabilities within provisions
4353 governing the sharing of information, claims for the care
4354 and maintenance of facility residents, county contracts
4355 for services for persons with developmental disabilities,
4356 education programs for students who reside in state
4357 facilities, and fees for services; conforming provisions
4358 to changes made by the act; correcting a cross-reference;
4359 amending s. 408.036, F.S., relating to projects that are
4360 exempt from obtaining a certificate of need; conforming
4361 terminology; amending s. 409.221, F.S., relating to the
4362 consumer directed care program; conforming provisions to
4363 changes made by the act; amending ss. 409.908 and
4364 409.9127, F.S., relating to the Medicaid program;
4365 conforming a cross-reference; deleting obsolete
4366 provisions; amending ss. 411.224 and 411.232, F.S.;
4367 conforming provisions to the transfer of duties from the
4368 Developmental Disabilities Program Office within the
4369 Department of Children and Family Services to the Agency
4370 for Persons with Disabilities; amending ss. 415.102,
4371 415.1035, 415.1055, and 415.107, F.S.; conforming
4372 terminology; including the Agency for Persons with
4373 Disabilities within provisions providing requirements that
4374 a facility inform residents of certain rights,
4375 notification requirements for administrative entities, and
4376 requirements for maintaining the confidentiality of
4377 reports and records; amending s. 419.001, F.S., relating
4378 to site selection of community residential homes; revising
4379 definitions; amending s. 435.03, F.S., relating to

4380 screening standards; conforming terminology and a cross-
4381 reference; amending ss. 490.014 and 491.014, F.S.,
4382 relating to exemptions from licensure for psychologists
4383 and certain specified counselors, respectively; conforming
4384 provisions to changes made by the act; amending ss.
4385 944.602, 945.025, 947.185, 984.19, 984.225, 984.226, and
4386 985.224, F.S., relating to the Department of Corrections,
4387 the Parole Commission, children in need of services, and
4388 petitions alleging delinquency; conforming provisions to
4389 the transfer of duties from the Developmental Disabilities
4390 Program Office within the Department of Children and
4391 Family Services to the Agency for Persons with
4392 Disabilities; amending s. 1003.58, F.S.; including
4393 facilities operated by the Agency for Persons with
4394 Disabilities within provisions governing the residential
4395 care of students; amending ss. 17.61 and 400.464, F.S.,
4396 relating to the Community Resources Development Trust Fund
4397 and home health services for persons with disabilities,
4398 respectively; conforming provisions to changes made by the
4399 act; amending s. 744.704, F.S.; correcting a cross-
4400 reference; amending s. 984.22, F.S.; removing a provision
4401 that specifies fines be deposited into the Community
4402 Resources Development Trust Fund; providing an effective
4403 date.

1 A bill to be entitled
2 An act relating to the Agency for Persons with
3 Disabilities; amending s. 20.197, F.S.; providing for the
4 director of the Agency for Persons with Disabilities to be
5 subject to confirmation by the Senate; amending s. 39.202,
6 F.S.; providing for certain employees, agents, and
7 contract providers of the agency to have access to records
8 concerning cases of child abuse or neglect for specified
9 purposes; amending s. 39.502, F.S.; requiring the court to
10 inform certain persons regarding advocacy services
11 provided by the agency; amending s. 287.155, F.S.;
12 authorizing the agency to purchase vehicles under certain
13 circumstances; amending s. 383.14, F.S.; providing for
14 appointment of a representative from the agency, rather
15 than from the Developmental Disabilities Program Office of
16 the Department of Children and Family Services, to be
17 appointed to the Genetics and Newborn Screening Advisory
18 Council; repealing s. 393.061, F.S., relating to a short
19 title; amending s. 393.062, F.S.; revising legislative
20 findings and intent regarding services for individuals
21 with developmental disabilities; conforming terminology;
22 amending s. 393.063, F.S.; providing, revising, and
23 deleting definitions applicable to ch. 393, F.S., relating
24 to developmental disabilities; amending s. 393.064, F.S.;
25 revising the duties of the Agency for Persons with
26 Disabilities with respect to prevention services,
27 evaluations and assessments, intervention services, and
28 support services; amending s. 393.0641, F.S., relating to

29 the program for the prevention and treatment of severe
30 self-injurious behavior; providing a definition; amending
31 s. 393.065, F.S.; deleting an obsolete reference; amending
32 s. 393.0651, F.S.; revising provisions relating to
33 individual and family support plans; deleting a
34 prohibition against assessing certain fees; creating s.
35 393.0654, F.S.; providing criteria for an exemption from
36 the prohibition on conflicting employment or contractual
37 relationships for direct care providers employed by the
38 agency; amending s. 393.0655, F.S.; providing
39 applicability of provisions relating to dismissal of
40 employees for noncompliance with certain standards
41 established for persons who provide care and services to
42 persons with developmental disabilities; amending s.
43 393.0657, F.S.; revising an exemption from certain
44 requirements for refingerprinting and rescreening;
45 revising requirements for background screening; deleting
46 obsolete language; amending s. 393.066, F.S.; revising
47 certain requirements for the services provided by the
48 agency; requiring agency approval for purchased services;
49 revising the agency's rulemaking authority; amending s.
50 393.067, F.S.; revising requirements governing the
51 agency's licensure procedures; specifying that a license
52 from the agency is not a property right; revising the
53 requirements for background screening of applicants for
54 licensure and managers, supervisors, and staff members of
55 service providers; requiring that the agency adopt rules
56 governing the reporting of incidents; deleting certain

57 responsibilities of the Agency for Health Care
58 Administration with respect to the development and review
59 of emergency management plans; deleting certain zoning
60 requirements for alternative living centers and
61 independent living education centers; amending s.
62 393.0673, F.S.; deleting a requirement that certain fines
63 be deposited into the Resident Protection Trust Fund;
64 requiring that the agency adopt rules for evaluating
65 violations and determining the amount of fines; amending
66 s. 393.0674, F.S.; providing a penalty for failure by a
67 provider to comply with background screening requirements;
68 amending s. 393.0675, F.S.; deleting certain obsolete
69 provisions requiring that a provider be of good moral
70 character; amending s. 393.0678, F.S., relating to
71 receivership proceedings, to delete obsolete language;
72 amending s. 393.068, F.S.; requiring that the family care
73 program emphasize self-determination; revising certain
74 requirements for reimbursing a family care program
75 provider; amending s. 393.0695, F.S.; requiring the agency
76 to reassess in-home subsidies quarterly rather than
77 annually; amending s. 393.075, F.S., relating to liability
78 coverage for facilities licensed by the agency; conforming
79 terminology; amending s. 393.11, F.S.; providing
80 jurisdiction for hearings in cases of involuntary
81 admission of a person with autism to residential services;
82 providing that s. 916.302, F.S., shall control in cases of
83 involuntary commitment of a person with mental retardation
84 or autism who is charged with a felony; deleting provision

85 relating to entities authorized to file a petition for
86 involuntary admission to residential services; providing
87 for agency participation and deleting an obsolete
88 reference; providing for persons with autism to be
89 examined prior to a determination of involuntary admission
90 to residential services; requiring the hearing for
91 involuntary admission to be conducted in the county in
92 which the petition is filed; providing that the competency
93 of a person with mental retardation or autism to stand
94 trial is determined under ch. 916, F.S.; amending s.
95 393.122, F.S., clarifying requirements governing
96 applications for continued residential services; amending
97 s. 393.125, F.S.; prohibiting a service provider of an
98 applicant or client from acting as that applicant's or
99 client's authorized representatives for purposes of
100 requesting an administrative hearing; amending s. 393.13,
101 F.S., relating to treatment of persons with developmental
102 disabilities; revising the short title; revising
103 legislative intent and terminology; removing requirement
104 that clients be afforded minimum wage protection and fair
105 compensation for labor under certain circumstances;
106 providing the right of clients to be free from the
107 imposition of unnecessary seclusion; requiring the agency
108 to adopt rules for the use of restraints and seclusion;
109 requiring the central record of a client to remain the
110 property of the agency; prescribing duties of agency local
111 area offices with regard to submission of certain reports;
112 revising composition of the resident government of a

113 facility; amending s. 393.135, F.S., relating to sexual
114 misconduct; revising definitions, terminology,
115 applicability, and reporting requirements; clarifying
116 provisions making sexual misconduct a second-degree
117 felony; amending s. 393.15, F.S.; establishing the
118 Community Resources Development Loan Program to provide
119 loans to foster homes, group homes, and supported
120 employment programs; providing legislative intent;
121 providing eligibility requirements; providing authorized
122 uses of loan funds; requiring that the agency adopt rules
123 governing the loan program; providing requirements for
124 repaying loans; requiring certain programs to submit an
125 annual statement containing specified information to the
126 agency; amending s. 393.17, F.S.; authorizing the agency
127 to establish by rule certification programs for providers
128 of client services; requiring that the agency establish a
129 certification program for behavior analysts; requiring
130 that the program be reviewed and validated; creating s.
131 393.18, F.S.; providing for a comprehensive transitional
132 education program for persons who have severe or moderate
133 maladaptive behaviors; specifying the types of treatment
134 and education centers providing services under the
135 program; providing requirements for licensure; requiring
136 individual education plans for persons receiving services;
137 limiting the number of persons who may receive services in
138 such a program; amending s. 393.501, F.S.; revising the
139 agency's rulemaking authority; providing requirements for
140 rules governing alternative living centers and independent

141 living education centers; providing an exemption from
142 zoning requirements under certain circumstances; amending
143 s. 393.506, F.S.; revising provisions permitting the
144 administration of medication by certain unlicensed staff
145 to persons with developmental disabilities; authorizing
146 certain direct care providers to supervise the self-
147 administration of or administer specified medications
148 under certain circumstances; requiring unlicensed direct
149 care providers to complete a training course; requiring an
150 annual assessment of competency; providing rulemaking
151 authority to the Agency for Health Care Administration;
152 requiring the informed consent of the client; providing a
153 definition; creating s. 393.507, F.S.; authorizing the
154 agency to establish a citizen support organization and
155 provide criteria therefor; providing legislative findings;
156 requiring governance by a board of directors; providing
157 for membership, terms, grounds for removal, and per diem
158 and travel expenses; authorizing the use of certain agency
159 property, facilities, and services by the organization;
160 requiring an operational contract with the agency;
161 specifying contents of the contract; requiring moneys of
162 the organization to be held in a separate account;
163 requiring an annual audit; providing for purpose of the
164 organization; authorizing the appropriation of funds to be
165 used by the organization; amending s. 397.405, F.S.;
166 clarifying an exemption from licensure provided to certain
167 facilities licensed under ch. 393, F.S.; amending s.
168 400.419, F.S.; requiring that a list of facilities subject

169 to sanctions or fines be disseminated to the agency;
170 amending s. 400.960, F.S.; revising definitions for
171 purpose of part XI of ch. 400, F.S., relating to
172 intermediate care facilities for persons with
173 developmental disabilities; amending ss. 400.963 and
174 400.964, F.S.; conforming terminology; amending s.
175 400.967, F.S. relating to rules and classification
176 deficiencies; conforming provisions to the transfer of
177 duties from the Department of Children and Family Services
178 to the agency; amending ss. 402.115, 402.17, 402.181,
179 402.20, 402.22, and 402.33, F.S.; including the Agency for
180 Persons with Disabilities within provisions governing the
181 sharing of information, claims for the care and
182 maintenance of facility residents, county contracts
183 authorized for certain services and facilities, education
184 programs for students who reside in state facilities, and
185 fees for services; amending s. 409.908, F.S.; revising a
186 reference; deleting obsolete language; amending s.
187 409.9127, F.S.; conforming reference to changes made by
188 the act; amending ss. 411.224 and 411.232, F.S.;
189 conforming provisions to the transfer of duties from the
190 Developmental Disabilities Program Office within the
191 Department of Children and Family Services to the Agency
192 for Persons with Disabilities; correcting a reference;
193 amending ss. 415.102, 415.1035, 415.1055, and 415.107,
194 F.S.; conforming terminology; including the Agency for
195 Persons with Disabilities within provisions providing
196 requirements that a facility inform residents of certain

197 rights, notification requirements for administrative
198 entities, and requirements for maintaining the
199 confidentiality of reports and records; amending s.
200 419.001, F.S., relating to site selection of community
201 residential homes; revising definitions; conforming
202 terminology; amending s. 435.03, F.S., relating to
203 screening standards; conforming terminology and a cross-
204 reference; amending ss. 490.014 and 491.014, F.S.;
205 deleting references to the developmental services program
206 to conform to changes made by the act; amending s.
207 916.105, F.S.; revising legislative intent; amending s.
208 916.106, F.S.; revising definitions; amending s. 916.107,
209 F.S.; revising provisions relating to rights of forensic
210 clients; amending s. 916.1075, F.S.; revising definitions;
211 revising provisions relating to sexual misconduct between
212 an employee and a forensic client; amending s. 916.1081,
213 F.S.; providing a penalty for a forensic client who
214 escapes or attempts to escape from a civil or forensic
215 facility; amending s. 916.1085, F.S.; revising language
216 relating to the unlawful introduction or removal of
217 certain items; conforming a reference; amending ss.
218 916.1091 and 916.1093 F.S.; conforming language to changes
219 made by the act; amending ss. 916.111 and 916.115, F.S.;
220 revising language relating to the training and appointment
221 of mental health experts; amending ss. 916.12 and
222 916.3012, F.S.; revising provisions relating to the
223 determination of the mental competence of a defendant in
224 certain proceedings; amending ss. 916.13, 916.15, 916.16,

225 and 916.17, F.S.; revising provisions relating to
226 involuntary commitment of a defendant adjudicated
227 incompetent or not guilty by reason of insanity,
228 jurisdiction of the committing court, and conditional
229 release; amending s. 916.301, F.S.; revising provisions
230 relating to court-ordered evaluations of persons with
231 mental retardation or autism; amending s. 916.302, F.S.;
232 revising provisions relating to involuntary commitment of
233 a defendant determined incompetent to proceed; amending s.
234 916.3025, F.S.; revising provisions relating to
235 jurisdiction of the committing court; amending s. 916.303,
236 F.S.; revising provisions relating to determination of
237 incompetency due to mental retardation or autism; amending
238 s. 916.304, F.S.; revising provisions relating to
239 conditional release; amending s. 921.137, F.S.; revising
240 provisions relating to the imposition of the death
241 sentence upon a defendant with mental retardation;
242 amending s. 944.602, F.S.; requiring the agency to be
243 notified before the release of an inmate with mental
244 retardation; amending s. 945.025, F.S.; providing for
245 cooperation between the Department of Children and Family
246 Services and the agency for the delivery of services to
247 certain persons under the custody or supervision of the
248 department; deleting obsolete language; amending s.
249 947.185, F.S.; providing for application for certain
250 services from the agency as a condition of parole for
251 inmates with mental retardation; amending ss. 985.223 and
252 985.224, F.S.; conforming references to changes made by

253 the act; amending s. 1003.58, F.S.; including facilities
254 operated by the Agency for Persons with Disabilities
255 within provisions governing the residential care of
256 students; amending ss. 17.61, 39.001, 287.057, 381.0072,
257 400.464, 408.036, 943.0585, 943.059, and 984.22, F.S.;
258 conforming references to changes made by the act; creating
259 s. 394.4592, F.S., relating to seclusion and restraint in
260 behavioral health care; providing legislative findings;
261 providing for applicability; requiring collection of
262 certain data; providing definitions; requiring facilities
263 to conduct assessments of individuals to be admitted to
264 the facility and providing criteria therefor; specifying
265 requirements for the use of restraint and seclusion;
266 providing for development of debriefing procedures after
267 imposition of restraint and seclusion; providing
268 requirements for facility licensing and certification;
269 providing an effective date.
270
271 Be It Enacted by the Legislature of the State of Florida:
272
273 Section 1. Subsection (1) of section 20.197, Florida
274 Statutes, is amended to read:
275 20.197 Agency for Persons with Disabilities.--There is
276 created the Agency for Persons with Disabilities, housed within
277 the Department of Children and Family Services for
278 administrative purposes only. The agency shall be a separate
279 budget entity not subject to control, supervision, or direction
280 by the Department of Children and Family Services in any manner,

281 including, but not limited to, personnel, purchasing,
282 transactions involving real or personal property, and budgetary
283 matters.
284 (1) The director of the agency shall be the agency head
285 for all purposes and shall be appointed by the Governor, subject
286 to confirmation by the Senate, and shall serve at the pleasure
287 of the Governor. The director shall administer the affairs of
288 the agency and establish administrative units as needed and may,
289 within available resources, employ assistants, professional
290 staff, and other employees as necessary to discharge the powers
291 and duties of the agency.
292 Section 2. Paragraphs (a) and (h) of subsection (2) of
293 section 39.202, Florida Statutes, are amended to read:
294 39.202 Confidentiality of reports and records in cases of
295 child abuse or neglect.--
296 (2) Except as provided in subsection (4), access to such
297 records, excluding the name of the reporter which shall be
298 released only as provided in subsection (5), shall be granted
299 only to the following persons, officials, and agencies:
300 (a) Employees, authorized agents, or contract providers of
301 the department, the Department of Health, the Agency for Persons
302 with Disabilities, or county agencies responsible for carrying
303 out:
304 1. Child or adult protective investigations;
305 2. Ongoing child or adult protective services;
306 3. Healthy Start services; ~~or~~
307 4. Licensure or approval of adoptive homes, foster homes,
308 or child care facilities, facilities licensed under chapter 393,

309 or family day care homes or informal child care providers who
310 receive subsidized child care funding, or other homes used to
311 provide for the care and welfare of children; or~~.~~
312 5. Services for victims of domestic violence when provided
313 by certified domestic violence centers working at the
314 department's request as case consultants or with shared clients.
315
316 Also, employees or agents of the Department of Juvenile Justice
317 responsible for the provision of services to children, pursuant
318 to chapters 984 and 985.
319 (h) Any appropriate official of the department or the
320 Agency for Persons with Disabilities responsible for:
321 1. Administration or supervision of the department's
322 program for the prevention, investigation, or treatment of child
323 abuse, abandonment, or neglect, or abuse, neglect, or
324 exploitation of a vulnerable adult, when carrying out his or her
325 official function;
326 2. Taking appropriate administrative action concerning a
327 department or agency ~~an~~ employee ~~of the department~~ alleged to
328 have perpetrated child abuse, abandonment, or neglect, or abuse,
329 neglect, or exploitation of a vulnerable adult; or
330 3. Employing and continuing employment of personnel of the
331 department or agency.
332 Section 3. Subsection (15) of section 39.502, Florida
333 Statutes, is amended to read:
334 39.502 Notice, process, and service.--
335 (15) A party who is identified as a person with mental
336 illness or with a developmental disability must be informed by

337 the court of the availability of advocacy services through the
338 department, the Agency for Persons with Disabilities, the
339 Association for Retarded Citizens, or other appropriate mental
340 health or developmental disability advocacy groups and
341 encouraged to seek such services.
342 Section 4. Subsection (1) of section 287.155, Florida
343 Statutes, is amended to read:
344 287.155 Motor vehicles; purchase by Division of
345 Universities, Department of Children and Family Services, Agency
346 for Persons with Disabilities, Department of Health, Department
347 of Juvenile Justice, and Department of Corrections.--
348 (1) The Division of Universities of the Department of
349 Education, the Department of Children and Family Services, the
350 Agency for Persons with Disabilities, the Department of Health,
351 the Department of Juvenile Justice, and the Department of
352 Corrections are hereby authorized, subject to the approval of
353 the Department of Management Services, to purchase automobiles,
354 trucks, tractors, and other automotive equipment for the use of
355 institutions under the management of the Division of
356 Universities, the Department of Children and Family Services,
357 the Agency for Persons with Disabilities, the Department of
358 Health, and the Department of Corrections, and for the use of
359 residential facilities managed or contracted by the Department
360 of Juvenile Justice.
361 Section 5. Subsection (5) of section 383.14, Florida
362 Statutes, is amended to read:
363 383.14 Screening for metabolic disorders, other hereditary
364 and congenital disorders, and environmental risk factors.--

365 (5) ADVISORY COUNCIL.--There is established a Genetics and
366 Newborn Screening Advisory Council made up of 15 members
367 appointed by the Secretary of Health. The council shall be
368 composed of two consumer members, three practicing
369 pediatricians, at least one of whom must be a pediatric
370 hematologist, one representative from each of the four medical
371 schools in the state, the Secretary of Health or his or her
372 designee, one representative from the Department of Health
373 representing Children's Medical Services, one representative
374 from the Florida Hospital Association, one individual with
375 experience in newborn screening programs, one individual
376 representing audiologists, and one representative from the
377 Agency for Persons with Disabilities ~~Developmental Disabilities~~
378 ~~Program Office of the Department of Children and Family~~
379 ~~Services~~. All appointments shall be for a term of 4 years. The
380 chairperson of the council shall be elected from the membership
381 of the council and shall serve for a period of 2 years. The
382 council shall meet at least semiannually or upon the call of the
383 chairperson. The council may establish ad hoc or temporary
384 technical advisory groups to assist the council with specific
385 topics which come before the council. Council members shall
386 serve without pay. Pursuant to the provisions of s. 112.061, the
387 council members are entitled to be reimbursed for per diem and
388 travel expenses. It is the purpose of the council to advise the
389 department about:
390 (a) Conditions for which testing should be included under
391 the screening program and the genetics program.
392 (b) Procedures for collection and transmission of

393 specimens and recording of results.
394 (c) Methods whereby screening programs and genetics
395 services for children now provided or proposed to be offered in
396 the state may be more effectively evaluated, coordinated, and
397 consolidated.
398 Section 6. Section 393.061, Florida Statutes, is repealed.
399 Section 7. Section 393.062, Florida Statutes, is amended
400 to read:
401 393.062 Legislative findings and declaration of
402 intent.--The Legislature finds and declares that existing state
403 programs for the treatment of individuals with developmental
404 disabilities ~~who are developmentally disabled~~, which often
405 unnecessarily place clients in institutions, are unreasonably
406 costly, are ineffective in bringing the individual client to his
407 or her maximum potential, and are in fact debilitating to many ~~a~~
408 ~~great majority of~~ clients. A redirection in state treatment
409 programs for individuals with developmental disabilities ~~who are~~
410 ~~developmentally disabled~~ is necessary if any significant
411 amelioration of the problems faced by such individuals is ever
412 to take place. Such redirection should place primary emphasis on
413 programs that ~~have the potential to~~ prevent or reduce the
414 severity of developmental disabilities. Further, the Legislature
415 declares that greatest priority shall be given to the
416 development and implementation of community-based ~~residential~~
417 ~~placements,~~ services~~, and treatment programs for individuals who~~
418 ~~are developmentally disabled~~ which will enable ~~such~~ individuals
419 with a developmental disability to achieve their greatest
420 potential for independent and productive living, ~~which will~~

421 enable them to live in their own homes or in residences located
422 in their own communities, and ~~which will~~ permit them to be
423 diverted or removed from unnecessary institutional placements.
424 This goal ~~The Legislature finds that the eligibility criteria~~
425 ~~for intermediate care facilities for the developmentally~~
426 ~~disabled which are specified in the Medicaid state plan in~~
427 ~~effect on the effective date of this act are essential to the~~
428 ~~system of residential services. The Legislature declares that~~
429 ~~the goal of this act,~~ to improve the quality of life of all
430 ~~developmentally disabled~~ persons with developmental disabilities
431 by the development and implementation of community-based
432 residential placements, services, and treatment, cannot be met
433 without ensuring the availability of community residential
434 opportunities for ~~developmentally disabled~~ persons with
435 developmental disabilities in the residential areas of this
436 state. The Legislature, therefore, declares that all persons
437 with developmental disabilities who live in licensed community
438 homes shall have a family living environment comparable to other
439 Floridians. The Legislature intends that such residences shall
440 be considered and treated as a functional equivalent of a family
441 unit and not as an institution, business, or boarding home. The
442 Legislature declares that, in developing community-based
443 programs and services for individuals with developmental
444 disabilities ~~who are developmentally disabled~~, private
445 businesses, not-for-profit corporations, units of local
446 government, and other organizations capable of providing needed
447 services to clients in a cost-efficient manner shall be given
448 preference in lieu of operation of programs directly by state

449 agencies. Finally, it is the intent of the Legislature that all
450 caretakers unrelated to individuals with developmental
451 disabilities receiving care shall be of good moral character.
452 Section 8. Section 393.063, Florida Statutes, is amended
453 to read:
454 393.063 Definitions.--For the purposes of this chapter,
455 the term:
456 (1) "Agency" means the Agency for Persons with
457 Disabilities established in s. 20.197.
458 (2) "Autism" means a disorder, as defined in the current
459 edition of the Diagnostic and Statistical Manual of the American
460 Psychiatric Association, that causes pervasive impairment in
461 social interaction, communication, and range of interests and
462 activities. While these characteristics occur on a spectrum, the
463 term "autism" refers only to the most severe disorder on this
464 spectrum as defined in the Diagnostic and Statistical Manual of
465 the American Psychiatric Association. ~~a pervasive,~~
466 ~~neurologically based developmental disability of extended~~
467 ~~duration which causes severe learning, communication, and~~
468 ~~behavior disorders with age of onset during infancy or~~
469 ~~childhood. Individuals with autism exhibit impairment in~~
470 ~~reciprocal social interaction, impairment in verbal and~~
471 ~~nonverbal communication and imaginative ability, and a markedly~~
472 ~~restricted repertoire of activities and interests.~~
473 (3) "Cerebral palsy" means a group of disabling symptoms
474 of extended duration which results from damage to the developing
475 brain that may occur before, during, or after birth and that
476 results in the loss or impairment of control over voluntary

477 muscles. For the purposes of this definition, cerebral palsy
478 does not include those symptoms or impairments resulting solely
479 from a stroke.
480 (4) "Client" means any person determined eligible by the
481 agency for services under this chapter.
482 (5) "Client advocate" means a friend or relative of the
483 client, or of the client's immediate family, who advocates for
484 the best interests of the client in any proceedings under this
485 chapter in which the client or his or her family has the right
486 or duty to participate.
487 (6) "Comprehensive assessment" means the process used to
488 determine eligibility for services under this chapter.
489 (7) "Comprehensive transitional education program" means
490 the program established in s. 393.18. ~~a group of jointly~~
491 ~~operating centers or units, the collective purpose of which is~~
492 ~~to provide a sequential series of educational care, training,~~
493 ~~treatment, habilitation, and rehabilitation services to persons~~
494 ~~who have developmental disabilities and who have severe or~~
495 ~~moderate maladaptive behaviors. However, nothing in this~~
496 ~~subsection shall require such programs to provide services only~~
497 ~~to persons with developmental disabilities. All such services~~
498 ~~shall be temporary in nature and delivered in a structured~~
499 ~~residential setting with the primary goal of incorporating the~~
500 ~~normalization principle to establish permanent residence for~~
501 ~~persons with maladaptive behaviors in facilities not associated~~
502 ~~with the comprehensive transitional education program. The staff~~
503 ~~shall include psychologists and teachers who shall be available~~
504 ~~to provide services in each component center or unit of the~~

505 ~~program. The psychologists shall be individuals who are licensed~~
506 ~~in this state and certified as behavior analysts in this state,~~
507 ~~or individuals who are certified as behavior analysts pursuant~~
508 ~~to s. 393.17.~~
509 ~~(a) Comprehensive transitional education programs shall~~
510 ~~include a minimum of two component centers or units, one of~~
511 ~~which shall be either an intensive treatment and educational~~
512 ~~center or a transitional training and educational center, which~~
513 ~~provide services to persons with maladaptive behaviors in the~~
514 ~~following sequential order:~~
515 ~~1. Intensive treatment and educational center. This~~
516 ~~component is a self-contained residential unit providing~~
517 ~~intensive psychological and educational programming for persons~~
518 ~~with severe maladaptive behaviors, whose behaviors preclude~~
519 ~~placement in a less restrictive environment due to the threat of~~
520 ~~danger or injury to themselves or others.~~
521 ~~2. Transitional training and educational center. This~~
522 ~~component is a residential unit for persons with moderate~~
523 ~~maladaptive behaviors, providing concentrated psychological and~~
524 ~~educational programming emphasizing a transition toward a less~~
525 ~~restrictive environment.~~
526 ~~3. Community transition residence. This component is a~~
527 ~~residential center providing educational programs and such~~
528 ~~support services, training, and care as are needed to assist~~
529 ~~persons with maladaptive behaviors to avoid regression to more~~
530 ~~restrictive environments while preparing them for more~~
531 ~~independent living. Continuous shift staff shall be required for~~
532 ~~this component.~~

533 ~~4. Alternative living center. This component is a~~
534 ~~residential unit providing an educational and family living~~
535 ~~environment for persons with maladaptive behaviors, in a~~
536 ~~moderately unrestricted setting. Residential staff shall be~~
537 ~~required for this component.~~
538 ~~5. Independent living education center. This component is~~
539 ~~a facility providing a family living environment for persons~~
540 ~~with maladaptive behaviors, in a largely unrestricted setting~~
541 ~~which includes education and monitoring appropriate to support~~
542 ~~the development of independent living skills.~~
543 ~~(b) Centers or units that are components of a~~
544 ~~comprehensive transitional education program are subject to the~~
545 ~~license issued to the comprehensive transitional education~~
546 ~~program and may be located on either single or multiple sites.~~
547 ~~(c) Comprehensive transitional education programs shall~~
548 ~~develop individual education plans for each person with~~
549 ~~maladaptive behaviors who receives services therein. Such~~
550 ~~individual education plans shall be developed in accordance with~~
551 ~~the criteria specified in 20 U.S.C. ss. 401 et seq., and 34~~
552 ~~C.F.R. part 300.~~
553 ~~(d) In no instance shall the total number of persons with~~
554 ~~maladaptive behaviors being provided services in a comprehensive~~
555 ~~transitional education program exceed 120.~~
556 ~~(e) This subsection shall authorize licensure for~~
557 ~~comprehensive transitional education programs which by July 1,~~
558 ~~1989:~~
559 ~~1. Are in actual operation; or~~
560 ~~2. Own a fee simple interest in real property for which a~~

561 ~~county or city government has approved zoning allowing for the~~
562 ~~placement of the facilities described in this subsection, and~~
563 ~~have registered an intent with the department to operate a~~
564 ~~comprehensive transitional education program. However, nothing~~
565 ~~shall prohibit the assignment by such a registrant to another~~
566 ~~entity at a different site within the state, so long as there is~~
567 ~~compliance with all criteria of the comprehensive transitional~~
568 ~~education program and local zoning requirements and provided~~
569 ~~that each residential facility within the component centers or~~
570 ~~units of the program authorized under this subparagraph shall~~
571 ~~not exceed a capacity of 15 persons.~~
572 ~~(8) "Day habilitation facility" means any nonresidential~~
573 ~~facility which provides day habilitation services.~~
574 ~~(9) "Day habilitation service" means assistance with the~~
575 ~~acquisition, retention, or improvement in self-help,~~
576 ~~socialization, and adaptive skills which takes place in a~~
577 ~~nonresidential setting, separate from the home or facility in~~
578 ~~which the individual resides. Day habilitation services shall~~
579 ~~focus on enabling the individual to attain or maintain his or~~
580 ~~her maximum functional level and shall be coordinated with any~~
581 ~~physical, occupational, or speech therapies listed in the plan~~
582 ~~of care.~~
583 (8) ~~(10)~~ "Developmental disability" means a disorder or
584 syndrome that is attributable to mental retardation, cerebral
585 palsy, autism, spina bifida, or Prader-Willi syndrome and that
586 constitutes a substantial handicap that can reasonably be
587 expected to continue indefinitely.
588 (9) ~~(11)~~ "Developmental disabilities institution" means a

589 state-owned and state-operated facility, formerly known as a
590 "Sunland Center," providing for the care, habilitation, and
591 rehabilitation of clients with developmental disabilities.
592 (10) ~~(12)~~ "Direct care ~~service~~ provider~~,~~" ~~also known as~~
593 ~~"caregiver" in chapters 39 and 415 or "caretaker" in provisions~~
594 ~~relating to employment security checks,~~ means a person 18 years
595 of age or older who has direct contact with individuals with
596 developmental disabilities, or has access to a client's living
597 areas or to a client's funds or personal property, and is not a
598 relative of such individuals.
599 ~~(13) "Domicile" means the place where a client legally~~
600 ~~resides, which place is his or her permanent home. Domicile may~~
601 ~~be established as provided in s. 222.17. Domicile may not be~~
602 ~~established in Florida by a minor who has no parent domiciled in~~
603 ~~Florida, or by a minor who has no legal guardian domiciled in~~
604 ~~Florida, or by any alien not classified as a resident alien.~~
605 ~~(14) "Enclave" means a work station in public or private~~
606 ~~business or industry where a small group of persons with~~
607 ~~developmental disabilities is employed and receives training and~~
608 ~~support services or follow-along services among nonhandicapped~~
609 ~~workers.~~
610 ~~(15) "Epilepsy" means a chronic brain disorder of various~~
611 ~~causes which is characterized by recurrent seizures due to~~
612 ~~excessive discharge of cerebral neurons. When found concurrently~~
613 ~~with retardation, autism, or cerebral palsy, epilepsy is~~
614 ~~considered a secondary disability for which the client is~~
615 ~~eligible to receive services to ameliorate this condition~~
616 ~~pursuant to this chapter.~~

617 (11) ~~(16)~~ "Express and informed consent" means consent
618 voluntarily given in writing with sufficient knowledge and
619 comprehension of the subject matter involved to enable the
620 person giving consent to make an understanding and enlightened
621 decision without any element of force, fraud, deceit, duress, or
622 other form of constraint or coercion.
623 (12) ~~(17)~~ "Family care program" means the program
624 established in s. 393.068.
625 ~~(18) "Follow-along services" means those support services~~
626 ~~provided to persons with developmental disabilities in all~~
627 ~~supported employment programs and may include, but are not~~
628 ~~limited to, family support, assistance in meeting transportation~~
629 ~~and medical needs, employer intervention, performance~~
630 ~~evaluation, advocacy, replacement, retraining or promotional~~
631 ~~assistance, or other similar support services.~~
632 (13) ~~(19)~~ "Foster care facility" means a residential
633 facility licensed under this chapter which provides a family
634 living environment including supervision and care necessary to
635 meet the physical, emotional, and social needs of its residents.
636 The capacity of such a facility shall not be more than three
637 residents.
638 (14) ~~(20)~~ "Group home facility" means a residential
639 facility which provides a family living environment including
640 supervision and care necessary to meet the physical, emotional,
641 and social needs of its residents. The capacity of such a
642 facility shall be at least 4 but not more than 15 residents. For
643 the purposes of this chapter, group home facilities shall not be
644 considered commercial enterprises.

645 (15) ~~(21)~~ "Guardian advocate" means a person appointed by a
646 written order of the court to represent a person with
647 developmental disabilities under s. 393.12.
648 (16) ~~(22)~~ "Habilitation" means the process by which a
649 client is assisted to acquire and maintain those life skills
650 which enable the client to cope more effectively with the
651 demands of his or her condition and environment and to raise the
652 level of his or her physical, mental, and social efficiency. It
653 includes, but is not limited to, programs of formal structured
654 education and treatment.
655 (17) ~~(23)~~ "High-risk child" means, for the purposes of this
656 chapter, a child from 3 ~~birth~~ to 5 years of age with one or more
657 of the following characteristics:
658 (a) A developmental delay in cognition, language, or
659 physical development.
660 (b) A child surviving a catastrophic infectious or
661 traumatic illness known to be associated with developmental
662 delay, when funds are specifically appropriated.
663 (c) A child with a parent or guardian with developmental
664 disabilities who requires assistance in meeting the child's
665 developmental needs.
666 (d) A child who has a physical or genetic anomaly
667 associated with developmental disability.
668 (18) ~~(24)~~ "Intermediate care facility for persons with
669 developmental disabilities ~~the developmentally disabled~~" or
670 "ICF/DD" means the same as the term is defined under ~~a~~
671 ~~residential facility licensed and certified pursuant to~~ part XI
672 of chapter 400.

673 ~~(25) "Job coach" means a person who provides employment-~~
674 ~~related training at a worksite to individuals with developmental~~
675 ~~disabilities.~~
676 (19) ~~(26)~~ "Medical/dental services" means medically
677 necessary ~~those~~ services which are provided or ordered for a
678 client by a person licensed under ~~pursuant to the provisions of~~
679 chapter 458, chapter 459, or chapter 466. Such services may
680 include, but are not limited to, prescription drugs, specialized
681 therapies, nursing supervision, hospitalization, dietary
682 services, prosthetic devices, surgery, specialized equipment and
683 supplies, adaptive equipment, and other services as required to
684 prevent or alleviate a medical or dental condition.
685 (20) "Mental retardation" means significantly subaverage
686 general intellectual functioning existing concurrently with
687 deficits in adaptive behavior and manifested during the period
688 from conception to 18 years of age. "Significantly subaverage
689 general intellectual functioning," for the purpose of this
690 subsection, means performance which is two or more standard
691 deviations from the mean score on a standardized intelligence
692 test specified in the rules of the agency. "Adaptive behavior,"
693 for the purpose of this subsection, means the effectiveness or
694 degree to which an individual meets the standards of personal
695 independence and social responsibility expected of his or her
696 age, cultural group, and community.
697 ~~(27) "Mobile work crew" means a group of workers employed~~
698 ~~by an agency that provides services outside the agency, usually~~
699 ~~under service contracts.~~
700 ~~(28) "Normalization principle" means the principle of~~

701 ~~letting the client obtain an existence as close to the normal as~~
702 ~~possible, making available to the client patterns and conditions~~
703 ~~of everyday life which are as close as possible to the norm and~~
704 ~~patterns of the mainstream of society.~~
705 (21) ~~(29)~~ "Personal services" include, but are not limited
706 to, such services as: individual assistance with or supervision
707 of essential activities of daily living for self-care, including
708 ambulation, bathing, dressing, eating, grooming, and toileting,
709 and other similar services that the agency may define by rule.
710 "Personal services" shall not be construed to mean the provision
711 of medical, nursing, dental, or mental health services by the
712 staff of a facility, except as provided in this chapter. In
713 addition, an emergency response device installed in the
714 apartment or living area of a resident shall not be classified
715 as a personal service.
716 (22) ~~(30)~~ "Prader-Willi syndrome" means an inherited
717 condition typified by neonatal hypotonia with failure to thrive,
718 hyperphagia or an excessive drive to eat which leads to obesity
719 usually at 18 to 36 months of age, mild to moderate retardation,
720 hypogonadism, short stature, mild facial dysmorphism, and a
721 characteristic neurobehavior.
722 (23) "Self-determination" means an individual's freedom to
723 exercise the same rights as all other citizens and to have the
724 authority to exercise control over the funds needed for his or
725 her own support, including the opportunity to reprioritize these
726 funds when necessary, the responsibility for the wise use of
727 public funds, and the right to speak and advocate for himself or
728 herself in order to gain independence and ensure that an

729 individual with a developmental disability is treated equally.
730 (24) ~~(31)~~ "Reassessment" means a process which periodically
731 develops, through annual review and revision of a client's
732 family or individual support plan, a knowledgeable statement of
733 current needs and past development for each client.
734 (25) ~~(32)~~ "Relative" means an individual who is connected
735 by affinity or consanguinity to the client and who is 18 years
736 of age or more.
737 (26) ~~(33)~~ "Resident" means any person with developmental
738 disabilities ~~who is developmentally disabled~~ residing at a
739 residential facility in the state, whether or not such person is
740 a client of the agency.
741 (27) ~~(34)~~ "Residential facility" means a facility providing
742 room and board and personal care for persons with developmental
743 disabilities.
744 (28) ~~(35)~~ "Residential habilitation" means supervision and
745 training that assists ~~assistance provided~~ with the acquisition,
746 retention, or improvement in skills related to the activities of
747 daily living, such as personal hygiene skills, homemaking skills
748 ~~grooming and cleanliness, bedmaking and household chores, eating~~
749 ~~and the preparation of food~~, and the social and adaptive skills
750 necessary to enable the individual to reside in the community ~~a~~
751 ~~noninstitutional setting~~.
752 (29) ~~(36)~~ "Residential habilitation center" means a
753 community residential facility that provides residential
754 habilitation. The capacity of such a facility shall not be fewer
755 than nine residents. After October 1, 1989, no new residential
756 habilitation centers shall be licensed and the licensed capacity

757 shall not be increased for any existing residential habilitation
758 center.
759 (30) ~~(37)~~ "Respite service" means appropriate, short-term,
760 temporary care that is provided to a person with developmental
761 disabilities to meet the planned or emergency needs of the
762 person or the family or other direct care ~~service~~ provider.
763 ~~(38) "Retardation" means significantly subaverage general~~
764 ~~intellectual functioning existing concurrently with deficits in~~
765 ~~adaptive behavior and manifested during the period from~~
766 ~~conception to age 18. "Significantly subaverage general~~
767 ~~intellectual functioning," for the purpose of this definition,~~
768 ~~means performance which is two or more standard deviations from~~
769 ~~the mean score on a standardized intelligence test specified in~~
770 ~~the rules of the agency. "Adaptive behavior," for the purpose of~~
771 ~~this definition, means the effectiveness or degree with which an~~
772 ~~individual meets the standards of personal independence and~~
773 ~~social responsibility expected of his or her age, cultural~~
774 ~~group, and community.~~
775 ~~(39) "Severe self-injurious behavior" means any chronic~~
776 ~~behavior that results in injury to the person's own body, which~~
777 ~~includes, but is not limited to, self-hitting, head banging,~~
778 ~~self-biting, scratching, and the ingestion of harmful or~~
779 ~~potentially harmful nutritive or nonnutritive substances.~~
780 (31) ~~(40)~~ "Specialized therapies" means those treatments or
781 activities prescribed by and provided by an appropriately
782 trained, licensed, or certified professional or staff person and
783 may include, but are not limited to, physical therapy, speech
784 therapy, respiratory therapy, occupational therapy, behavior

785 therapy, physical management services, and related specialized
786 equipment and supplies.
787 (32) ~~(41)~~ "Spina bifida" means, for purposes of this
788 chapter, a person with a medical diagnosis of spina bifida
789 cystica or myelomeningocele.
790 (33) ~~(42)~~ "Support coordinator" means a person who is
791 designated by the agency to assist individuals and families in
792 identifying their capacities, needs, and resources, as well as
793 finding and gaining access to necessary supports and services;
794 coordinating the delivery of supports and services; advocating
795 on behalf of the individual and family; maintaining relevant
796 records; and monitoring and evaluating the delivery of supports
797 and services to determine the extent to which they meet the
798 needs and expectations identified by the individual, family, and
799 others who participated in the development of the support plan.
800 (34) ~~(43)~~ "Supported employee" means a person who requires
801 and receives supported employment services in order to maintain
802 community-based employment.
803 (35) ~~(44)~~ "Supported employment" means employment located
804 or provided in a normal employment setting which provides at
805 least 20 hours employment per week in an integrated work
806 setting, with earnings paid on a commensurate wage basis, and
807 for which continued support is needed for job maintenance.
808 (36) ~~(45)~~ "Supported living" means a category of
809 individually determined services designed and coordinated in
810 such a manner as to provide assistance to adult clients who
811 require ongoing supports to live as independently as possible in
812 their own homes, to be integrated into the community, and to

813 participate in community life to the fullest extent possible.
814 (37) ~~(46)~~ "Training" means a planned approach to assisting
815 a client to attain or maintain his or her maximum potential and
816 includes services ranging from sensory stimulation to
817 instruction in skills for independent living and employment.
818 (38) ~~(47)~~ "Treatment" means the prevention, amelioration,
819 or cure of a client's physical and mental disabilities or
820 illnesses.
821 Section 9. Subsections (1), (2), and (4) of section
822 393.064, Florida Statutes, are amended to read:
823 393.064 Prevention.--
824 (1) The agency shall give priority to the development,
825 planning, and implementation of programs which have the
826 potential to prevent, correct, cure, or reduce the severity of
827 developmental disabilities. The agency shall direct an
828 interagency and interprogram effort for the continued
829 development of a prevention plan and program. The agency shall
830 identify, through demonstration projects, through program
831 evaluation, and through monitoring of programs and projects
832 conducted outside of the agency, any medical, social, economic,
833 or educational methods, techniques, or procedures that have the
834 potential to effectively ameliorate, correct, or cure
835 developmental disabilities. The agency ~~program~~ shall determine
836 the costs and benefits that would be associated with such
837 prevention efforts and shall implement, or recommend the
838 implementation of, those methods, techniques, or procedures
839 which are found likely to be cost-beneficial.
840 (2) Prevention services provided by the agency shall

841 ~~developmental services program~~ include services to high-risk ~~and~~
842 ~~developmentally disabled~~ children from 3 ~~birth~~ to 5 years of age
843 with developmental disabilities, and their families, to meet the
844 intent of chapter 411. Except for services for children from
845 birth to 3 years of age which ~~Such services shall include~~
846 ~~individual evaluations or assessments necessary to diagnose a~~
847 ~~developmental disability or high-risk condition and to determine~~
848 ~~appropriate individual family and support services, unless~~
849 ~~evaluations or assessments~~ are the responsibility of the
850 Division of Children's Medical Services within the Department of
851 Health ~~Prevention and Intervention for children ages birth to 3~~
852 ~~years eligible for services under this chapter~~ or part H of the
853 Individuals with Disabilities Education Act, such services ~~and~~
854 may include:
855 (a) Individual evaluations or assessments necessary to
856 diagnose a developmental disability or high-risk condition and
857 to determine appropriate individual family and support services.
858 (b) ~~(a)~~ Early intervention services, including
859 developmental training and specialized therapies. ~~Early~~
860 ~~intervention services, which are the responsibility of the~~
861 ~~Division of Children's Medical Services Prevention and~~
862 ~~Intervention for children ages birth to 3 years who are eligible~~
863 ~~for services under this chapter or under part H of the~~
864 ~~Individuals with Disabilities Education Act, shall not be~~
865 ~~provided through the developmental services program unless~~
866 ~~funding is specifically appropriated to the developmental~~
867 ~~services program for this purpose.~~
868 (c) ~~(b)~~ Support services, such as respite care, parent

869 education and training, parent-to-parent counseling, homemaker
870 services, and other services which allow families to maintain
871 and provide quality care to children in their homes. ~~The~~
872 ~~Division of Children's Medical Services Prevention and~~
873 ~~Intervention is responsible for the provision of services to~~
874 ~~children from birth to 3 years who are eligible for services~~
875 ~~under this chapter.~~
876 (4) There is created at the developmental disabilities
877 ~~services~~ institution in Gainesville a research and education
878 unit. Such unit shall be named the Raymond C. Philips Research
879 and Education Unit. The functions of such unit shall include:
880 (a) Research into the etiology of developmental
881 disabilities.
882 (b) Ensuring that new knowledge is rapidly disseminated
883 throughout the ~~developmental services program of the~~ agency.
884 (c) Diagnosis of unusual conditions and syndromes
885 associated with developmental disabilities in clients identified
886 throughout ~~the~~ developmental disabilities ~~services~~ programs.
887 (d) Evaluation of families of clients with developmental
888 disabilities of genetic origin in order to provide them with
889 genetic counseling aimed at preventing the recurrence of the
890 disorder in other family members.
891 (e) Ensuring that health professionals in the
892 developmental disabilities ~~services~~ institution at Gainesville
893 have access to information systems that will allow them to
894 remain updated on newer knowledge and maintain their
895 postgraduate education standards.
896 (f) Enhancing staff training for professionals throughout

897 the agency in the areas of genetics and developmental
898 disabilities.
899 Section 10. Section 393.0641, Florida Statutes, is amended
900 to read:
901 393.0641 Program for the prevention and treatment of
902 severe self-injurious behavior.--
903 (1) Contingent upon specific appropriations, there is
904 created a diagnostic, treatment, training, and research program
905 for clients exhibiting severe self-injurious behavior. For the
906 purposes of this section "severe self-injurious behavior" means
907 any chronic behavior that results in injury to the person's own
908 body, which includes, but is not limited to, self-hitting, head
909 banging, self-biting, scratching, and the ingestion of harmful
910 or potentially harmful nutritive or nonnutritive substances.
911 (2) The ~~This~~ program shall:
912 (a) Serve as a resource center for information, training,
913 and program development.
914 (b) Research the diagnosis and treatment of severe self-
915 injurious behavior, and related disorders, and develop methods
916 of prevention and treatment of self-injurious behavior.
917 (c) Identify individuals in critical need.
918 (d) Develop treatment programs which are meaningful to
919 individuals with developmental disabilities, in critical need,
920 while safeguarding and respecting the legal and human rights of
921 the individuals.
922 (e) Disseminate research findings on the prevention and
923 treatment of severe self-injurious behavior.
924 (f) Collect data on the type, severity, incidence, and

925 demographics of individuals with severe self-injurious behavior,
926 and disseminate the data.
927 (3) ~~(2)~~ The ~~This~~ program shall adhere to the provisions of
928 s. 393.13.
929 (4) ~~(3)~~ The agency may contract for the provision of any
930 portion or all of the services required by the program.
931 (5) ~~(4)~~ The agency has ~~the~~ authority to license this
932 program and shall adopt rules to implement the program.
933 Section 11. Subsection (1) of section 393.065, Florida
934 Statutes, is amended to read:
935 393.065 Application and eligibility determination.--
936 (1) Application for services shall be made in writing to
937 the agency, in the service area ~~district~~ in which the applicant
938 resides. Employees of the agency ~~agency's developmental services~~
939 ~~program~~ shall review each applicant for eligibility within 45
940 days after the date the application is signed for children under
941 6 years of age and within 60 days after the date the application
942 is signed for all other applicants. When necessary to
943 definitively identify individual conditions or needs, the agency
944 shall provide a comprehensive assessment. Only individuals whose
945 domicile is in Florida are eligible for services. Information
946 accumulated by other agencies, including professional reports
947 and collateral data, shall be considered in this process when
948 available.
949 Section 12. Section 393.0651, Florida Statutes, is amended
950 to read:
951 393.0651 Family or individual support plan.--The agency
952 shall provide directly or contract for the development of a ~~an~~

953 ~~appropriate~~ family support plan for children ages birth to 18
954 years of age and an individual support plan for each client. The
955 ~~parent or guardian of the~~ client ~~or~~, if competent, or the parent
956 or guardian of the client, or, when appropriate, the client
957 advocate, shall be consulted in the development of the plan and
958 shall receive a copy of the plan. Each plan shall include the
959 most appropriate, least restrictive, and most cost-beneficial
960 environment for accomplishment of the objectives for client
961 progress and a specification of all services authorized. The
962 plan shall include provisions for the most appropriate level of
963 care for the client. Within the specification of needs and
964 services for each client, if ~~when~~ residential care is necessary,
965 the agency shall move toward placement of clients in residential
966 facilities based within the client's community. The ultimate
967 goal of each plan, whenever possible, shall be to enable the
968 client to live a dignified life in the least restrictive
969 setting, be that in the home or in the community. For children
970 under 6 years of age, the family support plan shall be developed
971 within the 45-day application period as specified in s.
972 393.065(1); for all applicants 6 years of age or older, the
973 family or individual support plan shall be developed within the
974 60-day period as specified in that subsection.
975 (1) The agency shall develop and specify by rule the core
976 components of support plans ~~to be used by each district~~.
977 (2)~~(a)~~ The family or individual support plan shall be
978 integrated with the individual education plan (IEP) for all
979 clients who are public school students entitled to a free
980 appropriate public education under the Individuals with

981 Disabilities Education Act, I.D.E.A., as amended. The family or
982 individual support plan and IEP shall be implemented to maximize
983 the attainment of educational and habilitation goals.
984 (a) If the IEP for a student enrolled in a public school
985 program indicates placement in a public or private residential
986 program is necessary to provide special education and related
987 services to a client, the local education agency shall provide
988 for the costs of that service in accordance with the
989 requirements of the Individuals with Disabilities Education Act,
990 I.D.E.A., as amended. This shall not preclude local education
991 agencies and the agency from sharing the residential service
992 costs of students who are clients and require residential
993 placement. ~~Under no circumstances shall clients entitled to a~~
994 ~~public education or their parents be assessed a fee by the~~
995 ~~agency under s. 402.33 for placement in a residential program.~~
996 (b) For clients who are entering or exiting the school
997 system, an interdepartmental staffing team composed of
998 representatives of the agency and the local school system shall
999 develop a written transitional living and training plan with the
1000 participation of the client or with the parent or guardian of
1001 the client, or the client advocate, as appropriate.
1002 (3) Each family or individual support plan shall be
1003 facilitated through case management designed solely to advance
1004 the individual needs of the client.
1005 (4) In the development of the family or individual support
1006 plan, a client advocate may be appointed by the support planning
1007 team for a client who is a minor or for a client who is not
1008 capable of express and informed consent when:

1009 (a) The parent or guardian cannot be identified;
1010 (b) The whereabouts of the parent or guardian cannot be
1011 discovered; or
1012 (c) The state is the only legal representative of the
1013 client.
1014
1015 Such appointment shall not be construed to extend the powers of
1016 the client advocate to include any of those powers delegated by
1017 law to a legal guardian.
1018 (5) The agency shall place a client in the most
1019 appropriate and least restrictive, and cost-beneficial,
1020 residential facility according to his or her individual
1021 habilitation plan. ~~The parent or guardian of~~ The client ~~or~~, if
1022 competent, or the parent or guardian of the client, or, when
1023 appropriate, the client advocate, and the administrator of the
1024 residential facility to which placement is proposed shall be
1025 consulted in determining the appropriate placement for the
1026 client. Considerations for placement shall be made in the
1027 following order:
1028 (a) Client's own home or the home of a family member or
1029 direct care ~~service~~ provider.
1030 (b) Foster care facility.
1031 (c) Group home facility.
1032 (d) Intermediate care facility ~~for the developmentally~~
1033 ~~disabled~~.
1034 (e) Other facilities licensed by the agency which offer
1035 special programs for people with developmental disabilities.
1036 (f) Developmental disabilities ~~services~~ institution.

1037 (6) In developing a client's annual family or individual
1038 support plan, the individual or family with the assistance of
1039 the support planning team shall identify measurable objectives
1040 for client progress and shall specify a time period expected for
1041 achievement of each objective.
1042 (7) ~~The individual, family, and support coordinator shall~~
1043 ~~review progress in achieving the objectives specified in~~ Each
1044 client's family or individual support plan shall be reviewed and
1045 revised~~, and shall revise the plan~~ annually, following
1046 consultation with the client, if competent, or with the parent
1047 or guardian of the client, or, when appropriate, the client
1048 advocate. The agency shall annually report in writing to the
1049 client, if competent, or to the parent or guardian of the
1050 client, or to the client advocate, when appropriate, with
1051 respect to the client's habilitative and medical progress.
1052 (8) Any client, or any parent of a minor client, or
1053 guardian, authorized guardian advocate, or client advocate for a
1054 client, who is substantially affected by the client's initial
1055 family or individual support plan, or the annual review thereof,
1056 shall have the right to file a notice to challenge the decision
1057 pursuant to ss. 120.569 and 120.57. Notice of such right to
1058 appeal shall be included in all support plans provided by the
1059 agency.
1060 Section 13. Section 393.0654, Florida Statutes, is created
1061 to read:
1062 393.0654 Direct care providers; private sector
1063 services.--It is not a violation of s. 112.313(7) for a direct
1064 care provider who is employed by the agency to own, operate, or

1065 work in a private facility that is a service provider under
1066 contract with the agency if:
1067 (1) The direct care provider does not have any role in the
1068 placement recommendations of the agency or the decisionmaking
1069 process of the client regarding placement.
1070 (2) The employment of the direct care provider with the
1071 agency does not compromise the ability of the client to make a
1072 voluntary choice among private providers for services.
1073 (3) The outside employment of a direct care provider does
1074 not create a conflict with the public duties of the direct care
1075 provider and does not impede the full and faithful discharge of
1076 his or her duties as assigned by the agency.
1077 (4) The private provider discloses the dual employment or
1078 ownership status to the agency and all clients within the care
1079 of the private provider. The disclosure shall be given to the
1080 agency, the client, and the guardian or guardian advocate of the
1081 client, if appropriate.
1082 Section 14. Subsections (1) and (4) of section 393.0655,
1083 Florida Statutes, are amended to read:
1084 393.0655 Screening of direct care ~~service~~ providers.--
1085 (1) MINIMUM STANDARDS.--The agency shall require level 2
1086 employment screening pursuant to chapter 435 for direct care
1087 ~~service~~ providers who are unrelated to their clients, including
1088 support coordinators, and managers and supervisors of
1089 residential facilities or comprehensive transitional education
1090 programs licensed under this chapter ~~s. 393.067~~ and any other
1091 person, including volunteers, who provide care or services, who
1092 have access to a client's living areas, or who have access to a

1093 client's funds or personal property. Background screening shall
1094 include employment history checks as provided in s. 435.03(1)
1095 and local criminal records checks through local law enforcement
1096 agencies.
1097 (a) A volunteer who assists on an intermittent basis for
1098 less than 40 hours per month does not have to be screened if the
1099 volunteer is under the direct and constant supervision of
1100 persons who meet the screening requirements of this section.
1101 (b) Licensed physicians, nurses, or other professionals
1102 licensed and regulated by the Department of Health are not
1103 subject to background screening pursuant to this section if they
1104 are providing a service that is within their scope of licensed
1105 practice.
1106 (c) A person selected by the family or the individual with
1107 developmental disabilities and paid by the family or the
1108 individual to provide supports or services is not required to
1109 have a background screening under this section.
1110 (d) Persons residing with the direct care ~~services~~
1111 provider, including family members, are subject to background
1112 screening; however, such persons who are 12 to 18 years of age
1113 shall be screened for delinquency records only.
1114 (4) NONCOMPLIANCE WITH STANDARDS; REMEDIES; DENIAL OR
1115 TERMINATION OF EMPLOYMENT ~~EXCLUSION FROM OWNING, OPERATING, OR~~
1116 ~~BEING EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL~~
1117 ~~FACILITY~~; HEARINGS PROVIDED.--
1118 (a) The agency shall deny, suspend, terminate, or revoke a
1119 license or~~,~~ certification, ~~rate agreement, purchase order, or~~
1120 ~~contract,~~ or pursue other remedies provided in s. 393.0673, s.

1121 393.0675, or s. 393.0678 in addition to or in lieu of denial,
1122 suspension, termination, or revocation for failure to comply
1123 with this section.
1124 (b) When the agency has reasonable cause to believe that
1125 grounds for denial or termination of employment exist, it shall
1126 notify, in writing, the employer and the person ~~direct service~~
1127 ~~provider~~ affected, stating the specific record which indicates
1128 noncompliance with the standards in this section.
1129 (c) The procedures established for hearing under chapter
1130 120 shall be available to the employer and the person affected
1131 ~~direct service provider~~ in order to present evidence relating
1132 either to the accuracy of the basis of exclusion or to the
1133 denial of an exemption from disqualification.
1134 (d) Refusal on the part of an employer to dismiss a
1135 manager, supervisor, or direct care ~~service~~ provider who has
1136 been found to be in noncompliance with standards of this section
1137 shall result in automatic denial, termination, or revocation of
1138 the license or~~,~~ certification, ~~rate agreement, purchase order,~~
1139 ~~or contract,~~ in addition to any other remedies pursued by the
1140 agency.
1141 Section 15. Section 393.0657, Florida Statutes, is amended
1142 to read:
1143 393.0657 Persons not required to be refingerprinted or
1144 rescreened.--Persons who have undergone any portion of the
1145 background screening required under s. 393.0655 within the last
1146 12 months shall not be required to repeat such screening in
1147 order to comply with that portion of the screening requirements.
1148 The persons shall be responsible for providing documentation of

1149 the screening. The person shall be required to undergo screening
1150 for any remaining background screening requirements that have
1151 never been conducted or have not been completed within the last
1152 12 months. ~~Any provision of law to the contrary notwithstanding,~~
1153 ~~human resource personnel who have been fingerprinted or screened~~
1154 ~~pursuant to chapters 393, 394, 397, 402, and 409, and teachers~~
1155 ~~who have been fingerprinted pursuant to chapter 1012, who have~~
1156 ~~not been unemployed for more than 90 days thereafter, and who~~
1157 ~~under the penalty of perjury attest to the completion of such~~
1158 ~~fingerprinting or screening and to compliance with the~~
1159 ~~provisions of this section and the standards for good moral~~
1160 ~~character as contained in such provisions as ss. 110.1127(3),~~
1161 ~~393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6),~~
1162 ~~shall not be required to be refingerprinted or rescreened in~~
1163 ~~order to comply with any direct service provider screening or~~
1164 ~~fingerprinting requirements.~~
1165 Section 16. Subsections (1), (2), (3), (5), and (8) of
1166 section 393.066, Florida Statutes, are amended to read:
1167 393.066 Community services and treatment ~~for persons who~~
1168 ~~are developmentally disabled~~.--
1169 (1) The agency shall plan, develop, organize, and
1170 implement its programs of services and treatment for persons
1171 with developmental disabilities ~~who are developmentally disabled~~
1172 to allow clients to live as independently as possible in their
1173 own homes or communities and to achieve productive lives as
1174 close to normal as possible. All elements of community-based
1175 services shall be made available, and eligibility for these
1176 services shall be consistent across the state. ~~In addition, all~~

1177 ~~purchased services shall be approved by the agency.~~
1178 (2) All services needed shall be purchased instead of
1179 provided directly by the agency, when such arrangement is more
1180 cost-efficient than having those services provided directly. All
1181 purchased services must be approved by the agency.
1182 (3) Community-based services that are medically necessary
1183 to prevent institutionalization shall, to the extent of
1184 available resources, include:
1185 (a) Day habilitation services, including developmental
1186 training services.
1187 (b) Family care services.
1188 (c) Guardian advocate referral services.
1189 (d) Medical/dental services, except that medical services
1190 shall not be provided to clients with spina bifida except as
1191 specifically appropriated by the Legislature.
1192 (e) Parent training.
1193 (f) Recreation.
1194 (g) Residential facility services.
1195 (h) Respite services.
1196 (i) Social services.
1197 (j) Specialized therapies.
1198 (k) Supported employment~~, including enclave, job coach,~~
1199 ~~mobile work crew, and follow-along services~~.
1200 (l) Supported living.
1201 (m) Training, including behavioral analysis services
1202 ~~programming~~.
1203 (n) Transportation.
1204 (o) Other habilitative and rehabilitative services as

1205 needed.
1206 (5) In order to improve the potential for utilization of
1207 more cost-effective, community-based residential facilities, the
1208 agency shall promote the statewide development of day
1209 habilitation services for clients who live with a direct care
1210 ~~service~~ provider in a community-based residential facility and
1211 who do not require 24-hour-a-day care in a hospital or other
1212 health care institution, but who may, in the absence of day
1213 habilitation services, require admission to a developmental
1214 disabilities institution. Each day service facility shall
1215 provide a protective physical environment for clients, ensure
1216 that direct care ~~service~~ providers meet minimum screening
1217 standards as required in s. 393.0655, make available to all day
1218 habilitation service participants at least one meal on each day
1219 of operation, provide facilities to enable participants to
1220 obtain needed rest while attending the program, as appropriate,
1221 and provide social and educational activities designed to
1222 stimulate interest and provide socialization skills.
1223 (8) The agency is authorized to ~~may~~ adopt rules pursuant
1224 to ss. 120.536(1) and 120.54 governing the availability and
1225 purchase of services that are ~~to ensure compliance with federal~~
1226 ~~laws or regulations that apply to services~~ provided pursuant to
1227 this section.
1228 Section 17. Section 393.067, Florida Statutes, is amended
1229 to read:
1230 393.067 Facility licensure ~~of residential facilities and~~
1231 ~~comprehensive transitional education programs~~.--
1232 (1) The agency shall provide through its licensing

1233 authority and by rule license application procedures, ~~a system~~
1234 ~~of~~ provider qualifications, facility and client care standards,
1235 staff training requirements ~~criteria for meeting standards~~, and
1236 requirements for monitoring foster care facilities, group home
1237 ~~for residential~~ facilities, residential habilitation centers,
1238 and comprehensive transitional education programs serving agency
1239 clients. Receipt of a license under this chapter shall not
1240 create a property right in the recipient. A license issued under
1241 this chapter is a public trust and a privilege, and is not an
1242 entitlement. This privilege must guide the finder of fact or
1243 trier of law at any administrative proceeding or court action
1244 initiated by the agency.
1245 (2) The agency shall conduct annual inspections and
1246 reviews of ~~residential~~ facilities and ~~comprehensive transitional~~
1247 ~~education~~ programs licensed under this section ~~annually~~.
1248 (3) An application for a license under this section ~~for a~~
1249 ~~residential facility or a comprehensive transitional education~~
1250 ~~program~~ shall be made to the agency on a form furnished by it
1251 and shall be accompanied by the appropriate license fee.
1252 (4) The application shall be under oath and shall contain
1253 the following:
1254 (a) The name and address of the applicant, if an applicant
1255 is an individual; if the applicant is a firm, partnership, or
1256 association, the name and address of each member thereof; if the
1257 applicant is a corporation, its name and address and the name
1258 and address of each director and each officer thereof; and the
1259 name by which the facility or program is to be known.
1260 (b) The location of the facility or program for which a

1261 license is sought.
1262 (c) The name of the person or persons under whose
1263 management or supervision the facility or program will be
1264 conducted.
1265 (d) The number and type of residents or clients for which
1266 maintenance, care, education, or treatment is to be provided by
1267 the facility or program.
1268 (e) The number and location of the component centers or
1269 units which will compose the comprehensive transitional
1270 education program.
1271 (f) A description of the types of services and treatment
1272 to be provided by the facility or program.
1273 (g) Information relating to the number, experience, and
1274 training of the employees of the facility or program.
1275 (h) Certification that the staff of the facility or
1276 program will receive training to detect and prevent sexual abuse
1277 of residents and clients.
1278 (i) Such other information as the agency determines is
1279 necessary to carry out the provisions of this chapter.
1280 ~~(5) The applicant shall submit evidence which establishes~~
1281 ~~the good moral character of the manager or supervisor of the~~
1282 ~~facility or program and the direct service providers in the~~
1283 ~~facility or program and its component centers or units. A~~
1284 ~~license may be issued if all the screening materials have been~~
1285 ~~timely submitted; however, a license may not be issued or~~
1286 ~~renewed if any of the direct service providers have failed the~~
1287 ~~screening required by s. 393.0655.~~
1288 ~~(a)1. A licensed residential facility or comprehensive~~

1289 ~~transitional education program which applies for renewal of its~~
1290 ~~license shall submit to the agency a list of direct service~~
1291 ~~providers who have worked on a continuous basis at the applicant~~
1292 ~~facility or program since submitting fingerprints to the agency~~
1293 ~~or the Department of Children and Family Services, identifying~~
1294 ~~those direct service providers for whom a written assurance of~~
1295 ~~compliance was provided by the agency or department and~~
1296 ~~identifying those direct service providers who have recently~~
1297 ~~begun working at the facility or program and are awaiting the~~
1298 ~~results of the required fingerprint check along with the date of~~
1299 ~~the submission of those fingerprints for processing. The agency~~
1300 ~~shall by rule determine the frequency of requests to the~~
1301 ~~Department of Law Enforcement to run state criminal records~~
1302 ~~checks for such direct service providers except for those direct~~
1303 ~~service providers awaiting the results of initial fingerprint~~
1304 ~~checks for employment at the applicant facility or program. The~~
1305 ~~agency shall review the records of the direct service providers~~
1306 ~~at the applicant facility or program with respect to the crimes~~
1307 ~~specified in s. 393.0655 and shall notify the facility or~~
1308 ~~program of its findings. When disposition information is missing~~
1309 ~~on a criminal record, it is the responsibility of the person~~
1310 ~~being screened, upon request of the agency, to obtain and supply~~
1311 ~~within 30 days the missing disposition information to the~~
1312 ~~agency. Failure to supply the missing information within 30 days~~
1313 ~~or to show reasonable efforts to obtain such information shall~~
1314 ~~result in automatic disqualification.~~
1315 ~~2. The applicant shall sign an affidavit under penalty of~~
1316 ~~perjury stating that all new direct service providers have been~~

1317 ~~fingerprinted and that the facility's or program's remaining~~
1318 ~~direct service providers have worked at the applicant facility~~
1319 ~~or program on a continuous basis since being initially screened~~
1320 ~~at that facility or program or have a written assurance of~~
1321 ~~compliance from the agency or department.~~
1322 (5) ~~(b)~~ As a prerequisite for issuance of an ~~the~~ initial
1323 license or for renewal of an existing license, the applicant,
1324 manager, supervisor, and all direct care staff must submit to
1325 background screening as required under s. 393.0655. A license
1326 may not be issued or renewed if the applicant and any of the
1327 managers, supervisors, or direct care providers of the facility
1328 or program have failed the background screening required under
1329 s. 393.0655. The agency shall determine by rule the frequency of
1330 background screening. The applicant shall submit with each
1331 application for an initial license or for renewal of an existing
1332 license a signed affidavit under penalty of perjury stating that
1333 the applicant is in compliance with all background screening
1334 requirements. ~~to a residential facility or comprehensive~~
1335 ~~transitional education program:~~
1336 ~~1. The applicant shall submit to the agency a complete set~~
1337 ~~of fingerprints, taken by an authorized law enforcement agency~~
1338 ~~or an employee of the agency who is trained to take~~
1339 ~~fingerprints, for the manager, supervisor, or direct service~~
1340 ~~providers of the facility or program;~~
1341 ~~2. The agency shall submit the fingerprints to the~~
1342 ~~Department of Law Enforcement for state processing and for~~
1343 ~~federal processing by the Federal Bureau of Investigation; and~~
1344 ~~3. The agency shall review the record of the manager or~~

1345 ~~supervisor with respect to the crimes specified in s.~~
1346 ~~393.0655(1) and shall notify the applicant of its findings. When~~
1347 ~~disposition information is missing on a criminal record, it is~~
1348 ~~the responsibility of the manager or supervisor, upon request of~~
1349 ~~the agency, to obtain and supply within 30 days the missing~~
1350 ~~disposition information to the agency. Failure to supply the~~
1351 ~~missing information within 30 days or to show reasonable efforts~~
1352 ~~to obtain such information shall result in automatic~~
1353 ~~disqualification.~~
1354 ~~(c) The agency or a residential facility or comprehensive~~
1355 ~~transitional education program may not use the criminal records~~
1356 ~~or juvenile records of a person obtained under this subsection~~
1357 ~~for any purpose other than determining if that person meets the~~
1358 ~~minimum standards for good moral character for a manager or~~
1359 ~~supervisor of, or direct service provider in, such a facility or~~
1360 ~~program. The criminal records or juvenile records obtained by~~
1361 ~~the agency or a residential facility or comprehensive~~
1362 ~~transitional education program for determining the moral~~
1363 ~~character of a manager, supervisor, or direct service provider~~
1364 ~~are exempt from s. 119.07(1).~~
1365 ~~(6) Each applicant for licensure as an intermediate care~~
1366 ~~facility for the developmentally disabled must comply with the~~
1367 ~~following requirements:~~
1368 ~~(a) Upon receipt of a completed, signed, and dated~~
1369 ~~application, the agency shall require background screening, in~~
1370 ~~accordance with the level 2 standards for screening set forth in~~
1371 ~~chapter 435, of the managing employee, or other similarly titled~~
1372 ~~individual who is responsible for the daily operation of the~~

1373 ~~facility, and of the financial officer, or other similarly~~
1374 ~~titled individual who is responsible for the financial operation~~
1375 ~~of the center, including billings for resident care and~~
1376 ~~services. The applicant must comply with the procedures for~~
1377 ~~level 2 background screening as set forth in chapter 435, as~~
1378 ~~well as the requirements of s. 435.03(3).~~
1379 ~~(b) The agency may require background screening of any~~
1380 ~~other individual who is an applicant if the agency has probable~~
1381 ~~cause to believe that he or she has been convicted of a crime or~~
1382 ~~has committed any other offense prohibited under the level 2~~
1383 ~~standards for screening set forth in chapter 435.~~
1384 ~~(c) Proof of compliance with the level 2 background~~
1385 ~~screening requirements of chapter 435 which has been submitted~~
1386 ~~within the previous 5 years in compliance with any other health~~
1387 ~~care licensure requirements of this state is acceptable in~~
1388 ~~fulfillment of the requirements of paragraph (a).~~
1389 ~~(d) A provisional license may be granted to an applicant~~
1390 ~~when each individual required by this section to undergo~~
1391 ~~background screening has met the standards for the Department of~~
1392 ~~Law Enforcement background check, but the agency has not yet~~
1393 ~~received background screening results from the Federal Bureau of~~
1394 ~~Investigation, or a request for a disqualification exemption has~~
1395 ~~been submitted to the agency as set forth in chapter 435, but a~~
1396 ~~response has not yet been issued. A standard license may be~~
1397 ~~granted to the applicant upon the agency's receipt of a report~~
1398 ~~of the results of the Federal Bureau of Investigation background~~
1399 ~~screening for each individual required by this section to~~
1400 ~~undergo background screening which confirms that all standards~~

1401 ~~have been met, or upon the granting of a disqualification~~
1402 ~~exemption by the agency as set forth in chapter 435. Any other~~
1403 ~~person who is required to undergo level 2 background screening~~
1404 ~~may serve in his or her capacity pending the agency's receipt of~~
1405 ~~the report from the Federal Bureau of Investigation. However,~~
1406 ~~the person may not continue to serve if the report indicates any~~
1407 ~~violation of background screening standards and a~~
1408 ~~disqualification exemption has not been requested of and granted~~
1409 ~~by the agency as set forth in chapter 435.~~
1410 ~~(e) Each applicant must submit to the agency, with its~~
1411 ~~application, a description and explanation of any exclusions,~~
1412 ~~permanent suspensions, or terminations of the applicant from the~~
1413 ~~Medicare or Medicaid programs. Proof of compliance with the~~
1414 ~~requirements for disclosure of ownership and control interests~~
1415 ~~under the Medicaid or Medicare programs shall be accepted in~~
1416 ~~lieu of this submission.~~
1417 ~~(f) Each applicant must submit to the agency a description~~
1418 ~~and explanation of any conviction of an offense prohibited under~~
1419 ~~the level 2 standards of chapter 435 by a member of the board of~~
1420 ~~directors of the applicant, its officers, or any individual~~
1421 ~~owning 5 percent or more of the applicant. This requirement does~~
1422 ~~not apply to a director of a not-for-profit corporation or~~
1423 ~~organization if the director serves solely in a voluntary~~
1424 ~~capacity for the corporation or organization, does not regularly~~
1425 ~~take part in the day-to-day operational decisions of the~~
1426 ~~corporation or organization, receives no remuneration for his or~~
1427 ~~her services on the corporation or organization's board of~~
1428 ~~directors, and has no financial interest and has no family~~

1429 ~~members with a financial interest in the corporation or~~
1430 ~~organization, provided that the director and the not-for-profit~~
1431 ~~corporation or organization include in the application a~~
1432 ~~statement affirming that the director's relationship to the~~
1433 ~~corporation satisfies the requirements of this paragraph.~~
1434 ~~(g) A license may not be granted to an applicant if the~~
1435 ~~applicant or managing employee has been found guilty of,~~
1436 ~~regardless of adjudication, or has entered a plea of nolo~~
1437 ~~contendere or guilty to, any offense prohibited under the level~~
1438 ~~2 standards for screening set forth in chapter 435, unless an~~
1439 ~~exemption from disqualification has been granted by the agency~~
1440 ~~as set forth in chapter 435.~~
1441 ~~(h) The agency may deny or revoke licensure if the~~
1442 ~~applicant:~~
1443 ~~1. Has falsely represented a material fact in the~~
1444 ~~application required by paragraph (c) or paragraph (f), or has~~
1445 ~~omitted any material fact from the application required by~~
1446 ~~paragraph (c) or paragraph (f); or~~
1447 ~~2. Has had prior action taken against the applicant under~~
1448 ~~the Medicaid or Medicare program as set forth in paragraph (e).~~
1449 ~~(i) An application for license renewal must contain the~~
1450 ~~information required under paragraphs (e) and (f).~~
1451 (6) ~~(7)~~ The applicant shall furnish satisfactory proof of
1452 financial ability to operate and conduct the facility or program
1453 in accordance with the requirements of this chapter and all
1454 rules promulgated hereunder.
1455 (7) ~~(8)~~ The agency shall adopt rules establishing minimum
1456 standards for ~~licensure of residential~~ facilities and

1457 ~~comprehensive transitional education~~ programs licensed under
1458 this section, including rules requiring facilities and programs
1459 to train staff to detect and prevent sexual abuse of residents
1460 and clients, minimum standards of quality and adequacy of care,
1461 and uniform firesafety standards established by the State Fire
1462 Marshal which are appropriate to the size of the facility or of
1463 the component centers or units of the program.
1464 (8) ~~(9)~~ The agency ~~and the Agency for Health Care~~
1465 ~~Administration~~, after consultation with the Department of
1466 Community Affairs, shall adopt rules pursuant to ss. 120.536(1)
1467 and 120.54 for foster care ~~residential~~ facilities, group home
1468 facilities, and residential habilitation centers which establish
1469 ~~under the respective regulatory jurisdiction of each~~
1470 ~~establishing~~ minimum standards for the preparation and annual
1471 update of a comprehensive emergency management plan. At a
1472 minimum, the rules must provide for plan components that address
1473 emergency evacuation transportation; adequate sheltering
1474 arrangements; postdisaster activities, including emergency
1475 power, food, and water; postdisaster transportation; supplies;
1476 staffing; emergency equipment; individual identification of
1477 residents and transfer of records; and responding to family
1478 inquiries. The comprehensive emergency management plan for all
1479 comprehensive transitional education programs and for homes
1480 serving individuals who have complex medical conditions is
1481 subject to review and approval by the local emergency management
1482 agency. During its review, the local emergency management agency
1483 shall ensure that the agency and the Department of Community
1484 Affairs ~~following agencies~~, at a minimum, are given the

1485 opportunity to review the plan~~: the Agency for Health Care~~
1486 ~~Administration, the Agency for Persons with Disabilities, and~~
1487 ~~the Department of Community Affairs~~. Also, appropriate volunteer
1488 organizations must be given the opportunity to review the plan.
1489 The local emergency management agency shall complete its review
1490 within 60 days and either approve the plan or advise the
1491 facility of necessary revisions.
1492 (9) ~~(10)~~ The agency may conduct unannounced inspections to
1493 determine compliance by foster care ~~residential~~ facilities,
1494 group home facilities, residential habilitation centers, and
1495 comprehensive transitional education programs with the
1496 applicable provisions of this chapter and the rules adopted
1497 pursuant hereto, including the rules adopted for training staff
1498 of a facility or a program to detect and prevent sexual abuse of
1499 residents and clients. The facility or program shall make copies
1500 of inspection reports available to the public upon request.
1501 ~~(11) An alternative living center and an independent~~
1502 ~~living education center, as defined in s. 393.063, shall be~~
1503 ~~subject to the provisions of s. 419.001, except that such~~
1504 ~~centers shall be exempt from the 1,000-foot-radius requirement~~
1505 ~~of s. 419.001(2) if:~~
1506 ~~(a) Such centers are located on a site zoned in a manner~~
1507 ~~so that all the component centers of a comprehensive transition~~
1508 ~~education center may be located thereon; or~~
1509 ~~(b) There are no more than three such centers within said~~
1510 ~~radius of 1,000 feet.~~
1511 (10) ~~(12)~~ Each ~~residential~~ facility or ~~comprehensive~~
1512 ~~transitional education~~ program licensed under this section ~~by~~

1513 ~~the agency~~ shall forward annually to the agency a true and
1514 accurate sworn statement of its costs of providing care to
1515 clients funded by the agency.
1516 (11) ~~(13)~~ The agency may audit the records of any
1517 ~~residential~~ facility or ~~comprehensive transitional education~~
1518 program that it has reason to believe may not be in full
1519 compliance with the provisions of this section; provided that,
1520 any financial audit of such facility or program shall be limited
1521 to the records of clients funded by the agency.
1522 (12) ~~(14)~~ The agency shall establish, for the purpose of
1523 control of licensure costs, a uniform management information
1524 system and a uniform reporting system with uniform definitions
1525 and reporting categories.
1526 (13) ~~(15)~~ Facilities and programs licensed under ~~pursuant~~
1527 to this section shall adhere to all rights specified in s.
1528 393.13, including those enumerated in s. 393.13(4).
1529 (14) ~~(16)~~ An ~~No~~ unlicensed ~~residential~~ facility or
1530 ~~comprehensive transitional education~~ program may not ~~shall~~
1531 receive state funds. A license for the operation of a facility
1532 or program shall not be renewed if the licensee has any
1533 outstanding fines assessed pursuant to this chapter wherein
1534 final adjudication of such fines has been entered.
1535 (15) ~~(17)~~ The agency shall not be required to contract with
1536 new facilities licensed after October 1, 1989, pursuant to this
1537 chapter. Pursuant to chapter 287, the agency shall continue to
1538 contract within available resources for residential services
1539 with facilities licensed prior to October 1, 1989, if such
1540 facilities comply with the provisions of this chapter and all

1541 other applicable laws and regulations.
1542 Section 18. Subsections (1) and (2) of section 393.0673,
1543 Florida Statutes, are amended, and subsection (5) is added to
1544 that section, to read:
1545 393.0673 Denial, suspension, revocation of license;
1546 moratorium on admissions; administrative fines; procedures.--
1547 (1) The agency may deny, revoke, or suspend a license or
1548 impose an administrative fine, not to exceed $1,000 per
1549 violation per day, for a violation of any provision of s.
1550 393.0655 or s. 393.067 or adopted rules ~~adopted pursuant~~
1551 ~~thereto~~. All hearings shall be held within the county in which
1552 the licensee or applicant operates or applies for a license to
1553 operate a facility as defined herein.
1554 (2) The agency, as a part of any final order issued by it
1555 pursuant to ~~under~~ the provisions of this chapter, may impose
1556 such fine as it deems proper, except that such fine may not
1557 exceed $1,000 for each violation. Each day a violation of this
1558 chapter occurs constitutes a separate violation and is subject
1559 to a separate fine, but in no event may the aggregate amount of
1560 any fine exceed $10,000. ~~Fines paid by any facility licensee~~
1561 ~~under the provisions of this subsection shall be deposited in~~
1562 ~~the Resident Protection Trust Fund and expended as provided in~~
1563 ~~s. 400.063.~~
1564 (5) The agency shall establish by rule criteria for
1565 evaluating the severity of violations and for determining the
1566 amount of fines imposed.
1567 Section 19. Subsection (1) of section 393.0674, Florida
1568 Statutes, is amended to read:

1569 393.0674 Penalties.--
1570 (1) It is a misdemeanor of the first degree, punishable as
1571 provided in s. 775.082 or s. 775.083, for any person willfully,
1572 knowingly, or intentionally to:
1573 (a) Fail, by false statement, misrepresentation,
1574 impersonation, or other fraudulent means, to disclose in any
1575 application for voluntary or paid employment a material fact
1576 used in making a determination as to such person's
1577 qualifications to be a direct care ~~service~~ provider;
1578 (b) Provide or attempt to provide supports or services
1579 with direct care ~~service~~ providers who are not in compliance
1580 ~~noncompliance~~ with the background screening requirements set
1581 forth ~~minimum standards for good moral character as contained~~ in
1582 this chapter; or
1583 (c) Use information from the criminal records or central
1584 abuse hotline obtained under s. 393.0655, s. 393.066, or s.
1585 393.067 for any purpose other than screening that person for
1586 employment as specified in those sections or release such
1587 information to any other person for any purpose other than
1588 screening for employment as specified in those sections.
1589 Section 20. Subsection (3) of section 393.0675, Florida
1590 Statutes, is amended to read:
1591 393.0675 Injunctive proceedings authorized.--
1592 (3) The agency may institute proceedings for an injunction
1593 in a court of competent jurisdiction to terminate the operation
1594 of a provider of supports or services if such provider has
1595 willfully and knowingly refused to comply with the screening
1596 requirement for direct care ~~service~~ providers or has refused to

1597 terminate direct care ~~service~~ providers found not to be in
1598 compliance with such ~~the~~ requirements ~~for good moral character~~.
1599 Section 21. Subsection (1) of section 393.0678, Florida
1600 Statutes, is amended to read:
1601 393.0678 Receivership proceedings.--
1602 (1) The agency may petition a court of competent
1603 jurisdiction for the appointment of a receiver for ~~an~~
1604 ~~intermediate care facility for the developmentally disabled,~~ a
1605 residential habilitation center~~,~~ or a group home facility owned
1606 and operated by a corporation or partnership when any of the
1607 following conditions exist:
1608 (a) Any person is operating a facility without a license
1609 and refuses to make application for a license as required by s.
1610 393.067 ~~or, in the case of an intermediate care facility for the~~
1611 ~~developmentally disabled, as required by ss. 393.067 and~~
1612 ~~400.062~~.
1613 (b) The licensee is closing the facility or has informed
1614 the department that it intends to close the facility; and
1615 adequate arrangements have not been made for relocation of the
1616 residents within 7 days, exclusive of weekends and holidays, of
1617 the closing of the facility.
1618 (c) The agency determines that conditions exist in the
1619 facility which present an imminent danger to the health, safety,
1620 or welfare of the residents of the facility or which present a
1621 substantial probability that death or serious physical harm
1622 would result therefrom. Whenever possible, the agency shall
1623 facilitate the continued operation of the program.
1624 (d) The licensee cannot meet its financial obligations to

1625 provide food, shelter, care, and utilities. Evidence such as the
1626 issuance of bad checks or the accumulation of delinquent bills
1627 for such items as personnel salaries, food, drugs, or utilities
1628 constitutes prima facie evidence that the ownership of the
1629 facility lacks the financial ability to operate the home in
1630 accordance with the requirements of this chapter and all rules
1631 promulgated thereunder.
1632 Section 22. Subsection (1), paragraphs (o) and (p) of
1633 subsection (2), and subsection (3) of section 393.068, Florida
1634 Statutes, are amended to read:
1635 393.068 Family care program.--
1636 (1) The family care program is established for the purpose
1637 of providing services and support to families and individuals
1638 with developmental disabilities in order to maintain the
1639 individual in the home environment and avoid costly out-of-home
1640 residential placement. Services and support available to
1641 families and individuals with developmental disabilities shall
1642 emphasize community living and self-determination and enable
1643 individuals with developmental disabilities to enjoy typical
1644 lifestyles. One way to accomplish this is to recognize that
1645 families are the greatest resource available to individuals who
1646 have developmental disabilities and must be supported in their
1647 role as primary caregivers ~~care givers~~.
1648 (2) Services and support authorized under this program
1649 shall, to the extent of available resources, include the
1650 services listed under s. 393.066 and, in addition, shall
1651 include, but not be limited to:
1652 ~~(o) Supported employment.~~

1653 (o) ~~(p)~~ Other support services as identified by the family
1654 or individual.
1655 (3) When it is determined by the agency to be more cost-
1656 effective and in the best interest of the client to maintain
1657 such client in the home of a direct care ~~service~~ provider, the
1658 parent or guardian of the client or, if competent, the client
1659 may enroll the client in the family care program. The direct
1660 care ~~service~~ provider of a client enrolled in the family care
1661 program shall be reimbursed according to a rate schedule set by
1662 the agency. ~~In-home subsidies cited in paragraph (2)(d) shall be~~
1663 ~~provided according to s. 393.0695 and are not subject to any~~
1664 ~~other payment method or rate schedule provided for in this~~
1665 ~~section.~~
1666 Section 23. Subsection (3) of section 393.0695, Florida
1667 Statutes, is amended to read:
1668 393.0695 Provision of in-home subsidies.--
1669 (3) In-home subsidies must be based on an individual
1670 determination of need and must not exceed maximum amounts set by
1671 the agency and reassessed by the agency quarterly ~~annually~~.
1672 Section 24. Subsection (2) of section 393.075, Florida
1673 Statutes, is amended to read:
1674 393.075 General liability coverage.--
1675 (2) The Division of Risk Management of the Department of
1676 Financial Services shall provide coverage through the agency to
1677 any person who owns or operates a foster care facility or group
1678 home facility solely for the agency, who cares for children
1679 placed by ~~developmental services staff of~~ the agency, and who is
1680 licensed pursuant to s. 393.067 to provide such supervision and

1681 care in his or her place of residence. The coverage shall be
1682 provided from the general liability account of the State Risk
1683 Management Trust Fund. The coverage is limited to general
1684 liability claims arising from the provision of supervision and
1685 care of children in a foster care facility or group home
1686 facility pursuant to an agreement with the agency and pursuant
1687 to guidelines established through policy, rule, or statute.
1688 Coverage shall be subject to the limits provided in ss. 284.38
1689 and 284.385, and the exclusions set forth therein, together with
1690 other exclusions as may be set forth in the certificate of
1691 coverage issued by the trust fund. A person covered under the
1692 general liability account pursuant to this subsection shall
1693 immediately notify the Division of Risk Management of the
1694 Department of Financial Services of any potential or actual
1695 claim.
1696 Section 25. Subsection (1), paragraph (a) of subsection
1697 (2), paragraph (b) of subsection (3), subsections (4), (5), and
1698 (6), paragraphs (a), (c), and (d) of subsection (7), paragraphs
1699 (d) and (e) of subsection (8), paragraph (b) of subsection (10),
1700 paragraph (b) of subsection (12), and subsection (13) of section
1701 393.11, Florida Statutes, are amended to read:
1702 393.11 Involuntary admission to residential services.--
1703 (1) JURISDICTION.--When a person <u>who has been determined</u>
1704 <u>eligible for services by the agency</u> is mentally retarded <u>or</u>
1705 <u>autistic</u> and requires involuntary admission to residential
1706 services provided by the agency, the circuit court of the county
1707 in which the person resides shall have jurisdiction to conduct a
1708 hearing and enter an order involuntarily admitting the person in

1709 order that the person may receive the care, treatment,
1710 habilitation, and rehabilitation which the person needs. For the
1711 purpose of identifying mental retardation or autism, diagnostic
1712 capability shall be established by the agency. The involuntary
1713 commitment of a person with mental retardation or autism who is
1714 charged with a felony offense shall be determined in accordance
1715 with s. 916.302. ~~Except as otherwise specified, the proceedings~~
1716 ~~under this section shall be governed by the Florida Rules of~~
1717 ~~Civil Procedure.~~
1718 (2) PETITION.--
1719 (a) A petition for involuntary admission to residential
1720 services may be executed by a petitioning commission. ~~For~~
1721 ~~proposed involuntary admission to residential services arising~~
1722 ~~out of chapter 916, the petition may be filed by a petitioning~~
1723 ~~commission, the agency, the state attorney of the circuit from~~
1724 ~~which the defendant was committed, or the defendant's attorney.~~
1725 (3) NOTICE.--
1726 (b) Whenever a motion or petition has been filed pursuant
1727 to s. 916.303(2) to dismiss criminal charges against a defendant
1728 with mental retardation or autism, and a petition is filed to
1729 involuntarily admit the defendant to residential services under
1730 this section, the notice of the filing of the petition shall
1731 also be given to the defendant's attorney and to the state
1732 attorney of the circuit from which the defendant was committed.
1733 (4) AGENCY ~~DEVELOPMENTAL SERVICES~~ PARTICIPATION.--
1734 (a) Upon receiving the petition, the court shall
1735 immediately order ~~the developmental services program of~~ the
1736 agency to examine the person being considered for involuntary

1737 admission to residential services.
1738 (b) Following examination, the agency shall file ~~After the~~
1739 ~~developmental services program examines the person,~~ a written
1740 report ~~shall be filed~~ with the court not less than 10 working
1741 days before the date of the hearing. The report shall be served
1742 on the petitioner, the person with mental retardation or autism,
1743 and the person's attorney at the time the report is filed with
1744 the court.
1745 (c) The report shall contain the findings of the agency's
1746 ~~developmental services program~~ evaluation and any
1747 recommendations deemed appropriate.
1748 (5) EXAMINING COMMITTEE.--
1749 (a) Upon receiving the petition, the court shall
1750 immediately appoint an examining committee to examine the person
1751 being considered for involuntary admission to residential
1752 services ~~of the developmental services program of the agency~~.
1753 (b) The court shall appoint no fewer than three
1754 disinterested experts who have demonstrated to the court an
1755 expertise in the diagnosis, evaluation, and treatment of persons
1756 with mental retardation or autism. The committee shall include
1757 at least one licensed and qualified physician, one licensed and
1758 qualified psychologist, and one qualified professional with a
1759 minimum of a masters degree in social work, special education,
1760 or vocational rehabilitation counseling, to examine the person
1761 and to testify at the hearing on the involuntary admission to
1762 residential services.
1763 (c) Counsel for the person who is being considered for
1764 involuntary admission to residential services and counsel for

1765 the petition commission shall have the right to challenge the
1766 qualifications of those appointed to the examining committee.
1767 (d) Members of the committee shall not be employees of the
1768 agency or be associated with each other in practice or in
1769 employer-employee relationships. Members of the committee shall
1770 not have served as members of the petitioning commission.
1771 Members of the committee shall not be employees of the members
1772 of the petitioning commission or be associated in practice with
1773 members of the commission.
1774 (e) The committee shall prepare a written report for the
1775 court. The report shall explicitly document the extent that the
1776 person meets the criteria for involuntary admission. The report,
1777 and expert testimony, shall include, but not be limited to:
1778 1. The degree of the person's mental retardation <u>or</u>
1779 <u>autism</u>;
1780 2. Whether, because of the person's degree of mental
1781 retardation <u>or autism</u>, the person:
1782 a. Lacks sufficient capacity to give express and informed
1783 consent to a voluntary application for services pursuant to s.
1784 393.065;
1785 b. Lacks basic survival and self-care skills to such a
1786 degree that close supervision and habilitation in a residential
1787 setting is necessary and if not provided would result in a real
1788 and present threat of substantial harm to the person's well-
1789 being; or
1790 c. Is likely to physically injure others if allowed to
1791 remain at liberty.
1792 3. The purpose to be served by residential care;

1793 4. A recommendation on the type of residential placement
1794 which would be the most appropriate and least restrictive for
1795 the person; and
1796 5. The appropriate care, habilitation, and treatment.
1797 (f) The committee shall file the report with the court not
1798 less than 10 working days before the date of the hearing. The
1799 report shall be served on the petitioner, the person with mental
1800 retardation or autism, and the person's attorney at the time the
1801 report is filed with the court.
1802 (g) Members of the examining committee shall receive a
1803 reasonable fee to be determined by the court. The fees are to be
1804 paid from the general revenue fund of the county in which the
1805 person with mental retardation or autism resided when the
1806 petition was filed.
1807 (h) The agency shall develop and prescribe by rule one or
1808 more standard forms to be used as a guide for members of the
1809 examining committee.
1810 (6) COUNSEL; GUARDIAN AD LITEM.--
1811 (a) The person with mental retardation or autism shall be
1812 represented by counsel at all stages of the judicial proceeding.
1813 In the event the person is indigent and cannot afford counsel,
1814 the court shall appoint a public defender not less than 20
1815 working days before the scheduled hearing. The person's counsel
1816 shall have full access to the records of the service provider
1817 and the agency. In all cases, the attorney shall represent the
1818 rights and legal interests of the person with mental retardation
1819 or autism, regardless of who may initiate the proceedings or pay
1820 the attorney's fee.

1821 (b) If the attorney, during the course of his or her
1822 representation, reasonably believes that the person with mental
1823 retardation or autism cannot adequately act in his or her own
1824 interest, the attorney may seek the appointment of a guardian ad
1825 litem. A prior finding of incompetency is not required before a
1826 guardian ad litem is appointed pursuant to this section.
1827 (7) HEARING.--
1828 (a) The hearing for involuntary admission shall be
1829 conducted, and the order shall be entered, in the county in
1830 which the petition is filed ~~person is residing or be as~~
1831 ~~convenient to the person as may be consistent with orderly~~
1832 ~~procedure~~. The hearing shall be conducted in a physical setting
1833 not likely to be injurious to the person's condition.
1834 (c) The court may appoint a general or special magistrate
1835 to preside. Except as otherwise specified, the magistrate's
1836 proceeding shall be governed by the ~~rule 1.490,~~ Florida Rules of
1837 Civil Procedure.
1838 (d) The person with mental retardation or autism shall be
1839 physically present throughout the entire proceeding. If the
1840 person's attorney believes that the person's presence at the
1841 hearing is not in the person's best interest, the person's
1842 presence may be waived once the court has seen the person and
1843 the hearing has commenced.
1844 (8) ORDER.--
1845 (d) If an order of involuntary admission to residential
1846 services provided by ~~the developmental services program of~~ the
1847 agency is entered by the court, a copy of the written order
1848 shall be served upon the person, the person's counsel, the

1849 agency, and the state attorney and the person's defense counsel,
1850 if applicable. The order of involuntary admission sent to the
1851 agency shall also be accompanied by a copy of the examining
1852 committee's report and other reports contained in the court
1853 file.
1854 (e) Upon receiving the order, the agency shall, within 45
1855 days, provide the court with a copy of the person's family or
1856 individual support plan and copies of all examinations and
1857 evaluations, outlining the treatment and rehabilitative
1858 programs. The agency shall document that the person has been
1859 placed in the most appropriate, least restrictive and cost-
1860 beneficial residential setting ~~facility~~. A copy of the family or
1861 individual support plan and other examinations and evaluations
1862 shall be served upon the person and the person's counsel at the
1863 same time the documents are filed with the court.
1864 (10) COMPETENCY.--
1865 (b) The issue of the competency of a person with mental
1866 retardation or autism for the purposes of assigning guardianship
1867 shall be determined in a separate proceeding according to the
1868 procedures and requirements of chapter 744 ~~and the Florida~~
1869 ~~Probate Rules~~. The issue of the competency of a person with
1870 mental retardation or autism for purposes of determining whether
1871 the person is competent to proceed in a criminal trial shall be
1872 determined in accordance with chapter 916.
1873 (12) APPEAL.--
1874 (b) The filing of an appeal by the person with mental
1875 retardation or autism shall stay admission of the person into
1876 residential care. The stay shall remain in effect during the

1877 pendency of all review proceedings in Florida courts until a
1878 mandate issues.
1879 (13) HABEAS CORPUS.--At any time and without notice, any
1880 person involuntarily admitted into residential care ~~to the~~
1881 ~~developmental services program of the agency~~, or the person's
1882 parent or legal guardian in his or her behalf, is entitled to
1883 file a petition for a writ of habeas corpus to question the
1884 cause, legality, and appropriateness of the person's involuntary
1885 admission. Each person, or the person's parent or legal
1886 guardian, shall receive specific written notice of the right to
1887 petition for a writ of habeas corpus at the time of his or her
1888 involuntary placement.
1889 Section 26. Section 393.122, Florida Statutes, is amended
1890 to read:
1891 393.122 Applications for continued residential services.--
1892 (1) If a client is discharged from residential services
1893 under the provisions of s. 393.115 ~~this section~~, application for
1894 needed services shall be encouraged.
1895 (2) No client receiving services from the state ~~department~~
1896 as of July 1, 1977, shall be denied continued services due to
1897 any change in eligibility requirements by chapter 77-335, Laws
1898 of Florida.
1899 Section 27. Paragraph (a) of subsection (1) of section
1900 393.125, Florida Statutes, is amended to read:
1901 393.125 Hearing rights.--
1902 (1) REVIEW OF AGENCY DECISIONS.--
1903 (a) Any developmental disabilities services applicant or
1904 client, or his or her parent, guardian, guardian advocate, or

1905 authorized representative, whose substantial interests have been
1906 ~~who has any substantial interest~~ determined by the agency, has
1907 the right to request an administrative hearing pursuant to ss.
1908 120.569 and 120.57. An entity or person who is a paid service
1909 provider for the applicant or client may not act as an
1910 authorized representative for the applicant or client.
1911 Section 28. Subsection (1), paragraphs (b) and (d) of
1912 subsection (2), paragraphs (c), (g), (h), (i), (j), and (k) of
1913 subsection (4), and subsection (7) of section 393.13, Florida
1914 Statutes, are amended to read:
1915 393.13 ~~Personal~~ Treatment of persons with developmental
1916 disabilities ~~who are developmentally disabled~~.--
1917 (1) SHORT TITLE.--This act shall be known as "The Bill of
1918 Rights of Persons with Developmental Disabilities ~~Who are~~
1919 ~~Developmentally Disabled~~."
1920 (2) LEGISLATIVE INTENT.--
1921 (b) The Legislature further finds and declares that the
1922 design and delivery of treatment and services to persons with
1923 developmental disabilities ~~who are developmentally disabled~~
1924 should be directed by the principles of self-determination
1925 ~~normalization~~ and therefore should:
1926 1. Abate the use of large institutions.
1927 2. Continue the development of community-based services
1928 that ~~which~~ provide reasonable alternatives to
1929 institutionalization in settings that are least restrictive to
1930 the client and that provide opportunities for inclusion in the
1931 community.
1932 3. Provide training and education that ~~to individuals who~~

1933 ~~are developmentally disabled which~~ will maximize their potential
1934 to lead independent and productive lives and which will afford
1935 opportunities for outward mobility from institutions.
1936 4. Reduce the use of sheltered workshops and other
1937 noncompetitive employment day activities and promote
1938 opportunities for gainful employment for persons with
1939 developmental disabilities who choose to seek such employment.
1940 (d) It is the intent of the Legislature:
1941 1. To articulate the existing legal and human rights of
1942 persons with developmental disabilities ~~who are developmentally~~
1943 ~~disabled~~ so that they may be exercised and protected. Persons
1944 with developmental disabilities shall have all the rights
1945 enjoyed by citizens of the state and the United States.
1946 2. To provide a mechanism for the identification,
1947 evaluation, and treatment of persons with developmental
1948 disabilities.
1949 3. To divert those individuals from institutional
1950 commitment who, by virtue of comprehensive assessment, can be
1951 placed in less costly, more effective community environments and
1952 programs.
1953 4. To fund improvements in the program in accordance with
1954 the availability of state resources and yearly priorities
1955 determined by the Legislature.
1956 5. To ensure that persons with developmental disabilities
1957 receive treatment and habilitation which fosters the
1958 developmental potential of the individual.
1959 6. To provide programs for the proper habilitation and
1960 treatment of persons with developmental disabilities which shall

1961 include, but not be limited to, comprehensive medical/dental
1962 care, education, recreation, specialized therapies, training,
1963 social services, transportation, guardianship, family care
1964 programs, day habilitation services, and habilitative and
1965 rehabilitative services suited to the needs of the individual
1966 regardless of age, degree of disability, or handicapping
1967 condition. No person with developmental disabilities shall be
1968 deprived of these enumerated services by reason of inability to
1969 pay.
1970 7. To fully effectuate the principles of self-
1971 determination ~~normalization principle~~ through the establishment
1972 of community services for persons with developmental
1973 disabilities as a viable and practical alternative to
1974 institutional care at each stage of individual life development
1975 and to promote opportunities for community inclusion. If care in
1976 a residential facility becomes necessary, it shall be in the
1977 least restrictive setting.
1978 (4) CLIENT RIGHTS.--For purposes of this subsection, the
1979 term "client," as defined in s. 393.063, shall also include any
1980 person served in a facility licensed pursuant to s. 393.067.
1981 (c) Each client shall receive prompt and appropriate
1982 medical treatment and care for physical and mental ailments and
1983 for the prevention of any illness or disability. Medical
1984 treatment shall be consistent with the accepted standards of
1985 medical practice in the community.
1986 1. Medication shall be administered only at the written
1987 order of a physician. Medication shall not be used as
1988 punishment, for the convenience of staff, as a substitute for

1989 implementation of an individual or family support plan or
1990 behavior analysis services ~~modification programming~~, or in
1991 unnecessary or excessive quantities.
1992 2. Daily notation of medication received by each client in
1993 a residential facility shall be kept in the client's record.
1994 3. Periodically, but no less frequently than every 6
1995 months, the drug regimen of each client in a residential
1996 facility shall be reviewed by the attending physician or other
1997 appropriate monitoring body, consistent with appropriate
1998 standards of medical practice. All prescriptions shall have a
1999 termination date.
2000 4. When pharmacy services are provided at any residential
2001 facility, such services shall be directed or supervised by a
2002 professionally competent pharmacist licensed according to the
2003 provisions of chapter 465.
2004 5. Pharmacy services shall be delivered in accordance with
2005 the provisions of chapter 465.
2006 6. Prior to instituting a plan of experimental medical
2007 treatment or carrying out any necessary surgical procedure,
2008 express and informed consent shall be obtained from the client,
2009 if competent, or the client's parent or legal guardian.
2010 Information upon which the client shall make necessary treatment
2011 and surgery decisions shall include, but not be limited to:
2012 a. The nature and consequences of such procedures.
2013 b. The risks, benefits, and purposes of such procedures.
2014 c. Alternate procedures available.
2015 7. When the parent or legal guardian of the client is
2016 unknown or unlocatable and the physician is unwilling to perform

2017 surgery based solely on the client's consent, a court of
2018 competent jurisdiction shall hold a hearing to determine the
2019 appropriateness of the surgical procedure. The client shall be
2020 physically present, unless the client's medical condition
2021 precludes such presence, represented by counsel, and provided
2022 the right and opportunity to be confronted with, and to cross-
2023 examine, all witnesses alleging the appropriateness of such
2024 procedure. In such proceedings, the burden of proof by clear and
2025 convincing evidence shall be on the party alleging the
2026 appropriateness of such procedures. The express and informed
2027 consent of a person described in subparagraph 6. may be
2028 withdrawn at any time, with or without cause, prior to treatment
2029 or surgery.
2030 8. The absence of express and informed consent
2031 notwithstanding, a licensed and qualified physician may render
2032 emergency medical care or treatment to any client who has been
2033 injured or who is suffering from an acute illness, disease, or
2034 condition if, within a reasonable degree of medical certainty,
2035 delay in initiation of emergency medical care or treatment would
2036 endanger the health of the client.
2037 (g) No client shall be subjected to a treatment program to
2038 eliminate problematic ~~bizarre~~ or unusual behaviors without first
2039 being examined by a physician who in his or her best judgment
2040 determines that such behaviors are not organically caused.
2041 1. Treatment programs involving the use of noxious or
2042 painful stimuli shall be prohibited.
2043 ~~2.~~ All alleged violations of this paragraph shall be
2044 reported immediately to the chief administrative officer of the

2045 facility and ~~or the district administrator,~~ the agency ~~head, and~~
2046 ~~the Florida local advocacy council~~. A thorough investigation of
2047 each incident shall be conducted and a written report of the
2048 finding and results of such investigation shall be submitted to
2049 the chief administrative officer of the facility ~~or the district~~
2050 ~~administrator~~ and to the agency ~~head~~ within 24 hours of the
2051 occurrence or discovery of the incident.
2052 2.~~3.~~ The agency shall adopt by rule a system for the
2053 oversight of behavioral programs. Such system shall establish
2054 guidelines and procedures governing the design, approval,
2055 implementation, and monitoring of all behavioral programs
2056 involving clients. The system shall ensure statewide and local
2057 review by committees of professionals certified as behavior
2058 analysts pursuant to s. 393.17. No behavioral program shall be
2059 implemented unless reviewed according to the rules established
2060 by the agency under this section. ~~Nothing stated in this section~~
2061 ~~shall prohibit the review of programs by the Florida statewide~~
2062 ~~or local advocacy councils.~~
2063 ~~(h) Each client engaged in work programs which require~~
2064 ~~compliance with federal wage and hour laws shall be provided~~
2065 ~~with minimum wage protection and fair compensation for labor in~~
2066 ~~accordance with the federal wage-per-hour regulations.~~
2067 (h) ~~(i)~~ Clients shall have the right to be free from
2068 unnecessary physical, chemical, ~~or~~ mechanical restraint, or
2069 seclusion. Restraints shall be employed only in emergencies or
2070 to protect the client from imminent injury to himself or herself
2071 or others. Restraints shall not be employed as punishment, for
2072 the convenience of staff, or as a substitute for a habilitative

2073 plan. Restraints shall impose the least possible restrictions
2074 consistent with their purpose and shall be removed when the
2075 emergency ends. Restraints shall not cause physical injury to
2076 the client and shall be designed to allow the greatest possible
2077 comfort.
2078 1. Mechanical supports used in normative situations to
2079 achieve proper body position and balance shall not be considered
2080 restraints, but shall be prescriptively designed and applied
2081 under the supervision of a qualified professional with concern
2082 for principles of good body alignment, circulation, and
2083 allowance for change of position.
2084 2. Totally enclosed cribs and barred enclosures shall be
2085 considered restraints.
2086 3. Daily reports on the employment of physical, chemical,
2087 or mechanical restraints by those specialists authorized in the
2088 use of such restraints shall be made to the ~~appropriate chief~~
2089 administrator of the facility, and a monthly compilation ~~summary~~
2090 of such reports shall be relayed to the agency's local area
2091 office ~~district administrator and the Florida local advocacy~~
2092 ~~council~~. The monthly reports shall summarize all such cases of
2093 restraints, the type used, the duration of usage, and the
2094 reasons therefor. The area offices shall submit monthly
2095 summaries of these reports to the agency's central office.
2096 ~~Districts shall submit districtwide quarterly reports of these~~
2097 ~~summaries to the state Developmental Disabilities Program~~
2098 ~~Office.~~
2099 4. The agency shall adopt by rule standards and procedures
2100 relating to the use of restraints and seclusion ~~post a copy of~~

2101 ~~the rules adopted under this section in each living unit of~~
2102 ~~residential facilities~~. A copy of the rules adopted under this
2103 paragraph ~~section~~ shall be given to all staff members of
2104 ~~licensed~~ facilities and programs licensed under this chapter and
2105 made a part of all staff preservice and inservice training
2106 programs.
2107 (i) ~~(j)1.~~ Each client shall have a central record which
2108 shall be established by the agency at the time an individual is
2109 determined eligible for services and maintained by the client's
2110 support coordinator and which contains information pertaining to
2111 admission, diagnosis and treatment history, present condition,
2112 and such other information as may be required. The central
2113 record shall remain the property of the agency. ~~The record shall~~
2114 ~~include data pertaining to admission and such other information~~
2115 ~~as may be required under rules of the agency.~~
2116 1. ~~2.~~ Unless waived by the client, if competent, or the
2117 client's parent or legal guardian if the client is incompetent,
2118 the client's central record shall be confidential and exempt
2119 from the provisions of s. 119.07(1), and no part of it shall be
2120 released except:
2121 a. The record may be released to physicians, attorneys,
2122 and government agencies having need of the record to aid the
2123 client, as designated by the client, if competent, or the
2124 client's parent or legal guardian, if the client is incompetent.
2125 b. The record shall be produced in response to a subpoena
2126 or released to persons authorized by order of court, excluding
2127 matters privileged by other provisions of law.
2128 c. The record or any part thereof may be disclosed to a

2129 qualified researcher, a staff member of the facility where the
2130 client resides, or an employee of the agency when the
2131 administrator of the facility or the director of the agency
2132 deems it necessary for the treatment of the client, maintenance
2133 of adequate records, compilation of treatment data, or
2134 evaluation of programs.
2135 d. Information from the records may be used for
2136 statistical and research purposes if the information is
2137 abstracted in such a way to protect the identity of individuals.
2138 ~~3. All central records for each client in residential~~
2139 ~~facilities shall be kept on uniform forms distributed by the~~
2140 ~~agency. The central record shall accurately summarize each~~
2141 ~~client's history and present condition.~~
2142 2.~~4.~~ The client, if competent, or the client's parent or
2143 legal guardian if the client is incompetent, shall be supplied
2144 with a copy of the client's central record upon request.
2145 (j)~~(k)~~ Each client residing in a residential facility or
2146 who is eligible to vote in public elections according to the
2147 laws of the state shall have the right to vote. Facilities
2148 operators shall arrange the means to exercise the client's right
2149 to vote.
2150 (7) RESIDENT GOVERNMENT.--Each residential facility
2151 providing services to clients who are desirous and capable of
2152 participating shall initiate and develop a program of resident
2153 government to hear the views and represent the interests of all
2154 clients served by the facility. The resident government shall be
2155 composed of residents elected by other residents and~~,~~ staff
2156 advisers skilled in the administration of community

2157 organizations, and, at the option of the residential government,
2158 representatives of advocacy groups for persons with
2159 developmental disabilities from the community ~~a representative~~
2160 ~~of the Florida local advocacy council~~. ~~The resident government~~
2161 ~~shall work closely with the Florida local advocacy council and~~
2162 ~~the district administrator to promote the interests and welfare~~
2163 ~~of all residents in the facility.~~
2164 Section 29. Section 393.135, Florida Statutes, is amended
2165 to read:
2166 393.135 Sexual misconduct prohibited; reporting required;
2167 penalties.--
2168 (1) As used in this section, the term:
2169 (a) "Covered person" means ~~"Employee" includes~~ any paid
2170 staff member, volunteer, or intern of the agency, ~~or the~~
2171 ~~department;~~ any person under contract with the agency, ~~or the~~
2172 ~~department;~~ and any person providing care or support to a client
2173 on behalf of the agency ~~department~~ or its providers.
2174 (b) "Sexual activity" means:
2175 1. Fondling the genital area, groin, inner thighs,
2176 buttocks, or breasts of a person.
2177 2. The oral, anal, or vaginal penetration by or union with
2178 the sexual organ of another or the anal or vaginal penetration
2179 of another by any other object.
2180 3. Intentionally touching in a lewd or lascivious manner
2181 the breasts, genitals, the genital area, or buttocks, or the
2182 clothing covering them, of a person, or forcing or enticing a
2183 person to touch the perpetrator.
2184 4. Intentionally masturbating in the presence of another

2185 person.
2186 5. Intentionally exposing the genitals in a lewd or
2187 lascivious manner in the presence of another person.
2188 6. Intentionally committing any other sexual act that does
2189 not involve actual physical or sexual contact with the victim,
2190 including, but not limited to, sadomasochistic abuse, sexual
2191 bestiality, or the simulation of any act involving sexual
2192 activity in the presence of a victim.
2193 (c) "Sexual misconduct" means any sexual activity between
2194 a covered person ~~an employee~~ and a client to whom the covered
2195 person renders services, care, or support on behalf of the
2196 agency or its providers, or between the covered person and
2197 another client who lives in the same home as the client to whom
2198 the covered person is rendering the services, care, or support,
2199 regardless of the consent of the client. The term does not
2200 include an act done for a bona fide medical purpose or an
2201 internal search conducted in the lawful performance of duty by
2202 an employee.
2203 (2) A covered person ~~An employee~~ who engages in sexual
2204 misconduct with an individual with a developmental disability
2205 who:
2206 ~~(a) Is in the custody of the department;~~
2207 (a) ~~(b)~~ Resides in a residential facility, including any
2208 comprehensive transitional education program, developmental
2209 disabilities ~~services~~ institution, foster care facility, group
2210 home facility, intermediate care facility for persons with
2211 developmental disabilities ~~the developmentally disabled~~, or
2212 residential habilitation center; or

2213 (b) ~~(c)~~ Is eligible to receive ~~Receives~~ services from the
2214 agency under this chapter ~~a family care program~~,
2215
2216 commits a felony of the second degree, punishable as provided in
2217 s. 775.082, s. 775.083, or s. 775.084. A covered person ~~An~~
2218 ~~employee~~ may be found guilty of violating this subsection
2219 without having committed the crime of sexual battery.
2220 (3) The consent of the client to sexual activity is not a
2221 defense to prosecution under this section.
2222 (4) This section does not apply to a covered person ~~an~~
2223 ~~employee~~ who~~:~~
2224 ~~(a)~~ is legally married to the client~~; or~~
2225 ~~(b) Has no reason to believe that the person with whom the~~
2226 ~~employee engaged in sexual misconduct is a client receiving~~
2227 ~~services as described in subsection (2)~~.
2228 (5) A covered person ~~An employee~~ who witnesses sexual
2229 misconduct, or who otherwise knows or has reasonable cause to
2230 suspect that a covered person has engaged in sexual misconduct,
2231 shall immediately report the incident to the ~~department's~~
2232 central abuse hotline of the Department of Children and Family
2233 Services and to the appropriate local law enforcement agency.
2234 Such employee shall also prepare, date, and sign an independent
2235 report that specifically describes the nature of the sexual
2236 misconduct, the location and time of the incident, and the
2237 persons involved. The employee shall deliver the report to the
2238 supervisor or program director, who is responsible for providing
2239 copies to the agency's local office and the agency's
2240 ~~department's~~ inspector general. ~~The inspector general shall~~

2241 ~~immediately conduct an appropriate administrative investigation,~~
2242 ~~and, if there is probable cause to believe that sexual~~
2243 ~~misconduct has occurred, the inspector general shall notify the~~
2244 ~~state attorney in the circuit in which the incident occurred.~~
2245 (6)(a) Any person who is required to make a report under
2246 this section and who knowingly or willfully fails to do so, or
2247 who knowingly or willfully prevents another person from doing
2248 so, commits a misdemeanor of the first degree, punishable as
2249 provided in s. 775.082 or s. 775.083.
2250 (b) Any person who knowingly or willfully submits
2251 inaccurate, incomplete, or untruthful information with respect
2252 to a report required under this section commits a misdemeanor of
2253 the first degree, punishable as provided in s. 775.082 or s.
2254 775.083.
2255 (c) Any person who knowingly or willfully coerces or
2256 threatens any other person with the intent to alter testimony or
2257 a written report regarding an incident of sexual misconduct
2258 commits a felony of the third degree, punishable as provided in
2259 s. 775.082, s. 775.083, or s. 775.084.
2260 (7) The provisions and penalties set forth in this section
2261 are in addition to any other civil, administrative, or criminal
2262 action provided by law which may be applied against a covered
2263 person ~~an employee~~.
2264 Section 30. Section 393.15, Florida Statutes, is amended
2265 to read:
2266 393.15 Legislative intent; Community Resources Development
2267 Loan Program ~~Trust Fund~~.--
2268 (1) The Legislature finds and declares that the

2269 development of community-based treatment facilities for persons
2270 with developmental disabilities ~~who are developmentally disabled~~
2271 is desirable and recommended and should be encouraged and
2272 fostered by the state. The Legislature further recognizes that
2273 the development of such facilities is financially difficult for
2274 private individuals, due to initial expenditures required to
2275 adapt existing structures to the special needs of persons with
2276 developmental disabilities ~~who are developmentally disabled~~ who
2277 may be served in community-based foster care, group home,
2278 developmental training, and supported employment programs.
2279 Therefore, ~~it is the intent of~~ the Legislature intends that the
2280 agency ~~by this act to~~ develop and implement a loan program ~~trust~~
2281 ~~fund~~ to provide support and encouragement in the establishment
2282 of community-based foster care, group home, developmental
2283 training, and supported employment programs for persons with
2284 developmental disabilities ~~who are developmentally disabled~~.
2285 ~~(2) As used in this section, a foster care, group home,~~
2286 ~~developmental training, or supported employment program may not~~
2287 ~~be a for-profit corporation, but may be a nonprofit corporation,~~
2288 ~~partnership, or sole proprietorship.~~
2289 (2) ~~(3)~~ There is created a Community Resources Development
2290 Loan Program in ~~Trust Fund in the State Treasury to be used by~~
2291 the agency for the purpose of granting loans to eligible
2292 programs for the initial costs of development of the programs.
2293 In order to be eligible, a foster home, group home,
2294 developmental training program, or supported employment program
2295 must:
2296 (a) Serve persons with developmental disabilities.

2297 (b) Be a nonprofit corporation, a partnership, or a sole
2298 proprietorship.
2299 (c) Be ~~Loans shall be made only to those facilities which~~
2300 ~~are~~ in compliance with the zoning regulations of the local
2301 community.
2302 (3) Loans may be made to pay for the costs of development,
2303 ~~may include~~ structural modification, the purchase of equipment
2304 and fire and safety devices, preoperational staff training, and
2305 the purchase of insurance. Such costs shall not include the
2306 actual construction of a facility nor be in lieu of payment for
2307 maintenance, client services, or care provided.
2308 (4) The agency may grant to an eligible program a lump-sum
2309 loan in one payment not to exceed the cost ~~to the program~~ of
2310 providing 2 months' services, care, or maintenance to each
2311 person with developmental disabilities ~~who is developmentally~~
2312 ~~disabled~~ to be placed in the program by the agency, or the
2313 actual cost of firesafety renovations to a facility required by
2314 the state, whichever is greater. ~~Loans granted to programs shall~~
2315 ~~not be in lieu of payment for maintenance, services, or care~~
2316 ~~provided, but shall stand separate and distinct.~~
2317 (5) The agency shall adopt rules~~, as provided in chapter~~
2318 ~~120,~~ to determine the criteria ~~standards~~ under which a program
2319 shall be eligible to receive a loan ~~as provided in this section~~
2320 and the methodology ~~criteria~~ for the equitable allocation of
2321 loan ~~trust~~ funds when eligible applications exceed the funds
2322 available.
2323 (6) ~~(5)~~ Any loan granted by the agency under this section
2324 shall be repaid by the program within 5 years and the amount

2325 paid shall be deposited in the agency's Administrative Trust
2326 Fund. Money repaid shall be used to fund new loans. A program
2327 that operates as a nonprofit corporation meeting the
2328 requirements of s. 501(c)(3) of the Internal Revenue Code, and
2329 that seeks forgiveness of its loan shall submit to the agency an
2330 annual ~~a~~ statement setting forth the service it has provided
2331 during the year together with such other information as the
2332 agency by rule shall require, and, upon approval of each such
2333 annual statement, the agency may ~~shall~~ forgive up to 20 percent
2334 of the principal of any such loan ~~granted after June 30, 1975~~.
2335 (7) ~~(6)~~ If any program that has received a loan under this
2336 section ceases to accept, or provide care, services, or
2337 maintenance to persons placed in the program by the department,
2338 or if such program files papers of bankruptcy, at that point in
2339 time the loan shall become an interest-bearing loan at the rate
2340 of 5 percent per annum on the entire amount of the initial loan
2341 which shall be repaid within a 1-year period from the date on
2342 which the program ceases to provide care, services, or
2343 maintenance, or files papers in bankruptcy, and the amount of
2344 the loan due plus interest shall constitute a lien in favor of
2345 the state against all real and personal property of the program.
2346 The lien shall be perfected by the appropriate officer of the
2347 agency by executing and acknowledging a statement of the name of
2348 the program and the amount due on the loan and a copy of the
2349 promissory note, which shall be recorded by the agency with the
2350 clerk of the circuit court in the county wherein the program is
2351 located. If the program has filed a petition for bankruptcy, the
2352 agency shall file and enforce the lien in the bankruptcy

2353 proceedings. Otherwise, the lien shall be enforced in the manner
2354 provided in s. 85.011. All funds received by the agency from the
2355 enforcement of the lien shall be deposited in the agency's
2356 Administrative ~~Community Resources Development~~ Trust Fund and
2357 used to fund new loans.
2358 Section 31. Section 393.17, Florida Statutes, is amended
2359 to read:
2360 393.17 Certification ~~Behavioral~~ programs; certification of
2361 behavior analysts.--
2362 (1) The agency may establish by rule pursuant to ss.
2363 120.536(1) and 120.54 certification programs in order to ensure
2364 that only qualified employees and service providers provide
2365 client services. Such rules shall include criteria for scope of
2366 practice, qualifications for certification, including training
2367 and testing requirements, continuing education requirements for
2368 ongoing certification, standards of performance, and
2369 decertification procedures to be used to determine when an
2370 individual no longer meets the qualifications for certification
2371 or performance standards and to implement the decertification of
2372 an employee or service provider.
2373 (2) As provided in subsection (1), the agency shall
2374 establish a certification program for behavior analysts and may
2375 recognize the certification of behavior analysts awarded by a
2376 nonprofit corporation that adheres to the national standards for
2377 professional credentialing boards and whose mission is to meet
2378 the professional credentialing needs identified by behavior
2379 analysts, state governments, and consumers of behavior analysis
2380 services ~~and whose work has the support of the Association for~~

2381 ~~Behavior Analysis International~~. The certification program
2382 recognized by the agency must undergo regular psychometric
2383 review and validation, pursuant to a job analysis survey of the
2384 profession and standards established by content experts in the
2385 field.
2386 Section 32. Section 393.18, Florida Statutes, is created
2387 to read:
2388 393.18 Comprehensive transitional education program.--A
2389 comprehensive transitional education program is a group of
2390 jointly operating centers or units, the collective purpose of
2391 which is to provide a sequential series of educational care,
2392 training, treatment, habilitation, and rehabilitation services
2393 to persons with developmental disabilities and severe or
2394 moderate maladaptive behaviors. However, nothing in this section
2395 shall require such programs to provide services only to persons
2396 with developmental disabilities. All such services shall be
2397 temporary in nature and delivered in a structured residential
2398 setting with the primary goal of incorporating the principle of
2399 self-determination in establishing permanent residence for
2400 persons with maladaptive behaviors in facilities not associated
2401 with the comprehensive transitional education program. The staff
2402 shall include psychologists and teachers who shall be available
2403 to provide services in each component center or unit of the
2404 program. The psychologists shall be individuals who are licensed
2405 in this state and certified as behavior analysts in this state
2406 or who are certified as behavior analysts pursuant to s. 393.17.
2407 (1) Comprehensive transitional education programs shall
2408 include a minimum of two component centers or units, one of

2409 which shall be either an intensive treatment and educational
2410 center or a transitional training and educational center, which
2411 provide services to persons with maladaptive behaviors in the
2412 following sequential order:
2413 (a) Intensive treatment and education center.--This
2414 component is a self-contained residential unit that provides
2415 intensive psychological and educational programming for persons
2416 with severe maladaptive behaviors whose behaviors preclude
2417 placement in a less restrictive environment due to the threat of
2418 danger or injury to themselves or others.
2419 (b) Transitional training and education center.--This
2420 component is a residential unit for persons with moderate
2421 maladaptive behaviors that provides concentrated psychological
2422 and educational programming emphasizing a transition toward a
2423 less restrictive environment.
2424 (c) Community transition residence.--This component is a
2425 residential center that provides educational programs and the
2426 support services, training, and care needed to assist persons
2427 with maladaptive behaviors to avoid regression to more
2428 restrictive environments while preparing them for more
2429 independent living. Continuous-shift staff shall be required for
2430 this component.
2431 (d) Alternative living center.--This component is a
2432 residential unit that provides an educational and family living
2433 environment for persons with maladaptive behaviors in a
2434 moderately unrestricted setting. Residential staff shall be
2435 required for this component.
2436 (e) Independent living education center.--This component

2437 is a facility that provides a family living environment for
2438 persons with maladaptive behaviors in a largely unrestricted
2439 setting which includes education and monitoring appropriate to
2440 support the development of independent living skills.
2441 (2) Components of a comprehensive transitional education
2442 program are subject to the license issued under s. 393.067 to a
2443 comprehensive transitional education program and may be located
2444 on either single or multiple sites.
2445 (3) A comprehensive transitional education program shall
2446 develop individual education plans for each person with
2447 maladaptive behaviors who receives services therein. Such
2448 individual education plans shall be developed in accordance with
2449 the criteria specified in 20 U.S.C. ss. 401 et seq., and 34
2450 C.F.R. part 300.
2451 (4) The total number of persons with maladaptive behaviors
2452 who are provided services in a comprehensive transitional
2453 education program shall not exceed 120 residents.
2454 Section 33. Section 393.501, Florida Statutes, is amended
2455 to read:
2456 393.501 Rulemaking.--
2457 (1) The agency may ~~shall~~ adopt rules pursuant to ss.
2458 120.536(1) and 120.54 to carry out its statutory duties ~~the~~
2459 ~~provisions of this chapter~~.
2460 (2) Such rules shall address the number of facilities on a
2461 single lot ~~parcel~~ or on adjacent lots ~~parcels~~ of land~~, and in~~
2462 ~~addition, for ICF/MR, the rate and location of facility~~
2463 ~~development and level of care~~. In adopting such rules, an
2464 alternative living center and an independent living education

2465 center, as described in s. 393.18, shall be subject to the
2466 provisions of s. 419.001, except that such centers shall be
2467 exempt from the 1,000-foot-radius requirement of s. 419.001(2)
2468 if:
2469 (a) The centers are located on a site zoned in a manner
2470 that permits all the components of a comprehensive transition
2471 education center to be located on the site; or
2472 (b) There are no more than three such centers within a
2473 radius of 1,000 feet.
2474 Section 34. Section 393.506, Florida Statutes, is amended
2475 to read:
2476 393.506 Administration of medication.--
2477 (1) Notwithstanding the provisions of part I of chapter
2478 464, ~~the Nurse Practice Act, unlicensed~~ direct care providers
2479 who are not otherwise licensed to administer prescription
2480 medications may supervise the self-administration of or ~~services~~
2481 ~~staff providing services to persons with developmental~~
2482 ~~disabilities may~~ administer oral, transdermal, ophthalmic, otic,
2483 rectal, inhaled, or topical prescription medications to agency
2484 clients as provided in this section and agency rule.
2485 ~~(a) For day programs, as defined in s. 393.063, the~~
2486 ~~director of the facility or program shall designate in writing~~
2487 ~~unlicensed direct care services staff who are eligible to be~~
2488 ~~trained to assist in the administration of or to administer~~
2489 ~~medication.~~
2490 ~~(b) For intermediate care facilities for the~~
2491 ~~developmentally disabled licensed pursuant to part XI of chapter~~
2492 ~~400, unlicensed staff designated by the director may provide~~

2493 ~~medication assistance under the general supervision of a~~
2494 ~~registered nurse licensed pursuant to chapter 464~~.
2495 (2) In order to supervise the self-administration of or
2496 administer medications as provided in subsection (1), unlicensed
2497 direct care providers must satisfactorily complete a medication-
2498 administration training course that meets curriculum
2499 requirements specified in agency rule and have been determined
2500 by a registered nurse licensed under chapter 464 to be competent
2501 to supervise the self-administration of or administer
2502 medications to agency clients in a safe and sanitary manner.
2503 Competency must be assessed and validated at least annually in
2504 an onsite client setting, and a registered nurse licensed under
2505 chapter 464 must observe the direct care provider correctly
2506 administer medication to a client. Standards and procedures for
2507 the safe supervision of self-administration and administration
2508 of medication shall be established by agency rule. ~~Each~~
2509 ~~facility, institution, or program must include in its policies~~
2510 ~~and procedures a plan for training designated staff to ensure~~
2511 ~~the safe handling, storage, and administration of prescription~~
2512 ~~medication. These policies and procedures must be approved by~~
2513 ~~the agency before unlicensed direct care services staff assist~~
2514 ~~with medication.~~
2515 (3) Unlicensed direct care providers may only supervise or
2516 administer medications to agency clients who have been informed
2517 of and have consented to the supervision of self-administration
2518 or the administration of medication by an unlicensed person.
2519 Such informed consent shall be based on a description of the
2520 medication routes and procedures that the direct care provider

2521 is authorized to supervise or administer and verification that
2522 only those providers that have received appropriate training and
2523 have been validated as competent may provide this assistance.
2524 For the purpose of this section, the term "medication routes"
2525 means the method by which a medication is administered. ~~The~~
2526 ~~policies and procedures must include, at a minimum, the~~
2527 ~~following provisions:~~
2528 ~~(a) An expressed and informed consent for each client.~~
2529 ~~(b) The director of the facility, program, or provider~~
2530 ~~must maintain a copy of the written prescription, and that~~
2531 ~~prescription must include the name of the medication, the dosage~~
2532 ~~and administration schedule, the reason for the prescription,~~
2533 ~~and the termination date.~~
2534 ~~(c) Each prescribed medication shall be kept in its~~
2535 ~~original container and in a secure location.~~
2536 ~~(4) The training required in this section shall be~~
2537 ~~conducted by a registered nurse or a physician licensed pursuant~~
2538 ~~to chapter 458 or chapter 459.~~
2539 Section 35. Section 393.507, Florida Statutes, is created
2540 to read:
2541 393.507 Citizen support organization.--The Legislature
2542 recognizes that many persons with disabilities and their
2543 families are often isolated and have few opportunities to meet
2544 and interact with similarly situated persons and families in an
2545 informal, supportive, and congenial atmosphere. The Legislature
2546 also finds that the opportunity for exposure to a wide range of
2547 organizations, experts, state agency partners, exhibits, and
2548 providers with information about disability resources is often

2549 limited as well. Such exposure provides informational and
2550 educational opportunities that help educate and empower persons
2551 with disabilities and their families and encourages self-help
2552 and independence, self-advocacy, and participation and promotion
2553 of events and activities which directly affect the interests and
2554 needs of persons with disabilities. The Legislature finds,
2555 therefore, that it is in the public interest to facilitate such
2556 networking through the establishment of a citizen support
2557 organization dedicated to promoting and providing such
2558 opportunities.
2559 (1) The agency may establish a citizen support
2560 organization that is:
2561 (a) A not for profit corporation, as defined in s.
2562 501(c)(6) of the Internal Revenue Code of 1986, as amended, that
2563 is incorporated under the provisions of chapter 617 and on file
2564 with the Department of State. The not for profit corporation
2565 shall provide the agency with copies of the organization's
2566 federal Internal Revenue Service Application for Recognition of
2567 Exemption Form 1023, federal Internal Revenue Service Return of
2568 Organization Exempt from Income Tax Form 990, and a current
2569 certificate of status obtained from the Department of State
2570 under s. 617.0128 certifying that the organization is duly
2571 incorporated under the law of this state.
2572 (b) Organized and operated to conduct programs and
2573 activities; raise funds; request and receive grants, gifts, and
2574 bequests of money; acquire, receive, hold, invest, and
2575 administer, in its own name, securities, funds, or other
2576 property, real or personal; exercise all other corporate powers

2577 specified in chapter 617; and make expenditures to or for the
2578 direct or indirect benefit of the agency and the populations the
2579 agency serves.
2580 (c) Operating under articles of incorporation and bylaws,
2581 and any amendments thereto, approved by the agency, consistent
2582 with the goals of this section, and in the best interest of the
2583 state, as determined by the agency.
2584 (d) Not considered an agency for the purposes of chapters
2585 120, 216, and 287; ss. 255.21, 255.25, and 255.254, relating to
2586 leasing of buildings; ss. 283.33 and 283.35, relating to bids
2587 for printing; s. 215.31, relating to the deposit of state funds;
2588 and parts I, II, and IV-VIII of chapter 112, relating to public
2589 employment. However, before the citizen support organization may
2590 enter into a contract or agreement without competitive bidding,
2591 the organization shall file a statement of the conditions and
2592 circumstances with the inspector general of the agency
2593 justifying such contract or agreement.
2594 (2) The citizen support organization shall be governed by
2595 a board of directors, managed by an executive director, and
2596 staffed by employees and volunteers as are deemed necessary and
2597 appropriate to administer the purposes of the organization. The
2598 executive director shall serve at the pleasure of the board.
2599 (a) The director of the agency, or his or her designee,
2600 shall be the president of the board.
2601 (b) In addition to the board president, the board of
2602 directors shall consist of a minimum of six members appointed by
2603 the president. The board members may be selected from a list of
2604 nominees submitted by the executive director of the

2605 organization. Priority for consideration shall be given to
2606 individuals who have an interest in service to persons with
2607 disabilities and who:
2608 1. Have skills in foundation work or other fundraising
2609 activities, financial consulting, investment banking, or other
2610 related experience; or
2611 2. Have experience in policymaking or management-level
2612 positions related to persons with disabilities or have otherwise
2613 distinguished themselves in the field of business, industry, or
2614 disability services.
2615 3. Are persons with disabilities or their family members
2616 who have a strong interest and experience in promoting active
2617 participation in disability issues.
2618 (c) An employee or a board member may not receive a
2619 commission, fee, or financial benefit in connection with any
2620 activity carried out by the citizen support organization or be a
2621 business associate or close relative of any individual, firm, or
2622 organization in a position to receive a commission, fee, or
2623 financial benefit in connection with any activity carried out by
2624 the organization.
2625 (d) The executive director or the board may remove any
2626 member for cause and vacancies shall be filled as they occur.
2627 The term "for cause" includes, but is not limited to,
2628 malfeasance, misfeasance, neglect of duty, incompetence, or
2629 permanent inability to perform official duties or for pleading
2630 nolo contendere to, or being found guilty of, a crime.
2631 (e) A board member's term shall be 4 years. No board
2632 member may serve more than two full consecutive terms.

2633 (f) Board members shall not receive compensation, but are
2634 entitled to reimbursement for per diem and travel expenses in
2635 accordance with s. 112.061.
2636 (3) The agency may authorize the citizen support
2637 organization to use the fixed property, facilities, and
2638 administrative and operational support services of the agency,
2639 subject to the provisions of this section. Such use must be
2640 directly in keeping with the approved purposes of the citizen
2641 support organization and may not be made at times or places that
2642 would unreasonably interfere with the operation of the agency or
2643 the general public's use of agency facilities for established
2644 purposes. For the purposes of this subsection, the term
2645 "administrative and operational support services" includes
2646 personnel, purchasing, information technology support, legal
2647 support, and office space and utilities.
2648 (4) The citizen support organization shall operate under
2649 written contract with the agency. The contract must provide for:
2650 (a) Oversight by the agency.
2651 (b) Submission of an annual budget for approval by the
2652 agency in a format specified by the agency.
2653 (c) The release and conditions of the expenditure of any
2654 state revenues.
2655 (d) The conditions which the citizen-support organization
2656 must comply with in order to use the property, facilities, or
2657 administrative and operational services of the agency, which
2658 must include arrangement for the appropriate reimbursement for
2659 colocation costs, office space, and other operating expenses.

2660 The agency may in its discretion provide such services at no
2661 cost to the organization.
2662 (e) Assurance that the citizen support organization will
2663 provide equal employment opportunities to all persons regardless
2664 of race, religion, sex, age, disability, or national origin and
2665 will not expend any funds, regardless of the source, to purchase
2666 membership in, or goods and services from, any organization that
2667 discriminates on the basis of race, religion, sex, age,
2668 disability, or national origin.
2669 (f) The reversion to the agency of moneys and property
2670 held in trust by the citizen support organization if the
2671 organization is no longer approved to operate for the agency.
2672 (g) Requiring the fiscal year of the citizen support
2673 organization to begin July 1 of each year and end June 30 of the
2674 following year.
2675 (h) Requiring the provision of quarterly reports to the
2676 agency on current activities, unaudited financial statements of
2677 the sources and uses of public and private funds, and an annual
2678 report, all of which shall be published on the organization's
2679 website. The annual report shall provide:
2680 1. A summary of its assets and liabilities annually at the
2681 end of its most recent fiscal year. The audited report required
2682 by s. 215.981(2) shall meet this requirement.
2683 2. A report on the organization's activities,
2684 accomplishments, and progress towards meeting the organization's
2685 goals and objectives as set forth in this section.
2686 3. Provide other measures of accountability as requested
2687 by the agency, including:

2688 a. The disclosure of material provisions of the contract
2689 and the distinction between the agency and the citizen support
2690 organization to donors of gifts, contributions, or bequests, as
2691 well as on all promotional and fundraising publications.
2692 b. The terms of any other activity that the agency may
2693 contract with the organization to perform. Notwithstanding
2694 chapter 287, the agency may use a sole source contract with the
2695 organization to perform activities that are consistent with the
2696 purposes for which the citizen support organization was created
2697 as specified in this section.
2698 (5) Moneys of the citizen support organization shall be
2699 held in a separate depository account, outside of the State
2700 Treasury, in the name of the citizen support organization and
2701 subject to the provisions of the contract with the agency. Such
2702 moneys may include private donations, income derived from
2703 fundraising activities, educational and training fees, and
2704 grants applied for and received by the organization. The
2705 organization shall separately account for public funds and
2706 private funds deposited into the corporation's depository
2707 account. The organization is prohibited from giving, either
2708 directly or indirectly, any gift to a political committee or
2709 committee of continuous existence as defined in s. 106.011.
2710 (6) The citizen support organization shall provide for an
2711 annual financial audit in accordance with s. 215.981. The annual
2712 audit shall be presented to the agency and the Auditor General.
2713 The Auditor General shall have the authority to require and
2714 receive from the corporation or from its independent auditor any

2715 detail or supplemental data relating to the operation of the
2716 organization.
2717 (7) The purpose or activities of the citizen support
2718 organization shall be to encourage, support, and assist persons
2719 with developmental disabilities and their families to directly
2720 communicate and collaborate with each other, advocacy and
2721 service organizations, experts, state agency partners,
2722 caregivers, and service providers in order to gain knowledge and
2723 skills, exchange information on resources and activities,
2724 provide mutual support, and encourage active participation in
2725 and contribution to events and efforts related to developmental
2726 disability issues. Such activities shall include, but are not
2727 limited to:
2728 (a) Holding an annual convention for persons with
2729 developmental disabilities and their families and caregivers.
2730 The conventions shall be centrally located and, subject to the
2731 availability of resources, may provide stipends based on
2732 financial need to cover the travel and lodging costs of
2733 participants.
2734 (b) Providing seminars and training to individuals, family
2735 members, organizations, providers, and other interested persons
2736 on issues relevant to caregiving, coalition building, disability
2737 policy, and other disability issues and concerns. Such training,
2738 if approved by the agency, may be used to meet continuing
2739 education requirements for direct care providers and other
2740 service providers, and revenues raised from such training may be
2741 used to fund the programs and expenses of the citizen support
2742 organization.

2743 (c) Providing promotional support and general information
2744 to advance better public understanding and appreciation of
2745 persons with developmental disabilities.
2746 (d) Identifying, initiating, coordinating, or implementing
2747 events and programs designed to foster and facilitate increased
2748 interaction and participation by persons with developmental
2749 disabilities and their families and caretakers.
2750 (e) Facilitating mentoring and peer support activities
2751 that encourage and support collaboration and participation.
2752 (f) Encouraging and assisting existing organizations,
2753 associations, and programs to support networking and
2754 participation activities.
2755 (g) Maintaining a website that provides networking
2756 information and links to organizational and community resources.
2757 (h) Recognizing outstanding achievements in and
2758 contributions to participation in developmental disability
2759 activities. The agency is authorized to properly recognize and
2760 honor a private donor by placing a plaque or other appropriate
2761 designation noting the contribution to project or program
2762 facilities or by naming project or program facilities after the
2763 person or organization that provided matching funds.
2764 (8) The Legislature may annually appropriate funds to be
2765 used in conjunction with private donations and fundraising
2766 revenues to support the programs or projects of the citizen
2767 support organization initiated pursuant to this section. In
2768 addition, the organization may receive funds from state agencies
2769 at such times and in such amounts as may be appropriated by the
2770 Legislature or through contracts with state agencies that

2771 achieve the purposes of this section. The organization shall
2772 make recommendations for state funding to the agency and the
2773 agency may include requests for funding in the agency's
2774 legislative budget request, as the director deems appropriate.
2775 Section 36. Subsection (9) of section 397.405, Florida
2776 Statutes, is amended to read:
2777 397.405 Exemptions from licensure.--The following are
2778 exempt from the licensing provisions of this chapter:
2779 (9) Facilities licensed under chapter 393 which ~~s. 393.063~~
2780 ~~that~~, in addition to providing services to persons with
2781 developmental disabilities ~~who are developmentally disabled as~~
2782 ~~defined therein~~, also provide services to persons
2783 developmentally at risk as a consequence of exposure to alcohol
2784 or other legal or illegal drugs while in utero.
2785
2786 The exemptions from licensure in this section do not apply to
2787 any service provider that receives an appropriation, grant, or
2788 contract from the state to operate as a service provider as
2789 defined in this chapter or to any substance abuse program
2790 regulated pursuant to s. 397.406. Furthermore, this chapter may
2791 not be construed to limit the practice of a physician licensed
2792 under chapter 458 or chapter 459, a psychologist licensed under
2793 chapter 490, or a psychotherapist licensed under chapter 491 who
2794 provides substance abuse treatment, so long as the physician,
2795 psychologist, or psychotherapist does not represent to the
2796 public that he or she is a licensed service provider and does
2797 not provide services to clients pursuant to part V of this
2798 chapter. Failure to comply with any requirement necessary to

2799 maintain an exempt status under this section is a misdemeanor of
2800 the first degree, punishable as provided in s. 775.082 or s.
2801 775.083.
2802 Section 37. Subsection (13) of section 400.419, Florida
2803 Statutes, is amended to read:
2804 400.419 Violations; imposition of administrative fines;
2805 grounds.--
2806 (13) The agency shall develop and disseminate an annual
2807 list of all facilities sanctioned or fined $5,000 or more for
2808 violations of state standards, the number and class of
2809 violations involved, the penalties imposed, and the current
2810 status of cases. The list shall be disseminated, at no charge,
2811 to the Department of Elderly Affairs, the Department of Health,
2812 the Department of Children and Family Services, the Agency for
2813 Persons with Disabilities, the area agencies on aging, the
2814 Florida Statewide Advocacy Council, and the state and local
2815 ombudsman councils. The Department of Children and Family
2816 Services shall disseminate the list to service providers under
2817 contract to the department who are responsible for referring
2818 persons to a facility for residency. The agency may charge a fee
2819 commensurate with the cost of printing and postage to other
2820 interested parties requesting a copy of this list.
2821 Section 38. Section 400.960, Florida Statutes, is amended
2822 to read:
2823 400.960 Definitions.--As used in this part, the term:
2824 ~~(1) "Active treatment" means the provision of services by~~
2825 ~~an interdisciplinary team which are necessary to maximize a~~

2826 ~~client's individual independence or prevent regression or loss~~
2827 ~~of functional status.~~
2828 (1) ~~(2)~~ "Agency" means the Agency for Health Care
2829 Administration.
2830 (2) ~~(3)~~ "Autism" means a pervasive, neurologically based
2831 developmental disability of extended duration which causes
2832 severe learning, communication, and behavior disorders with age
2833 of onset during infancy or childhood. Individuals with autism
2834 exhibit impairment in reciprocal social interaction, impairment
2835 in verbal and nonverbal communication and imaginative ability,
2836 and a markedly restricted repertoire of activities and
2837 interests.
2838 (3) ~~(4)~~ "Cerebral palsy" means a group of disabling
2839 symptoms of extended duration which results from damage to the
2840 developing brain occurring before, during, or after birth and
2841 resulting in the loss or impairment of control over voluntary
2842 muscles. The term does not include those symptoms or impairments
2843 resulting solely from a stroke.
2844 (4) ~~(5)~~ "Client" means any person determined by the agency
2845 ~~department~~ to be eligible for ~~developmental~~ services.
2846 ~~(6) "Client advocate" means a friend or relative of the~~
2847 ~~client, or of the client's immediate family, who advocates for~~
2848 ~~the best interests of the client in any proceedings under this~~
2849 ~~part in which the client or his or her family has the right or~~
2850 ~~duty to participate.~~
2851 ~~(7) "Department" means the Department of Children and~~
2852 ~~Family Services.~~

2853 (5) ~~(8)~~ "Developmental disability" means a disorder or
2854 syndrome that is attributable to retardation, cerebral palsy,
2855 autism, spina bifida, or Prader-Willi syndrome and that
2856 constitutes a substantial handicap that can reasonably be
2857 expected to continue indefinitely.
2858 (6) ~~(9)~~ "Direct care ~~service~~ provider" means a person 18
2859 years of age or older who has direct contact with individuals
2860 with developmental disabilities and who is unrelated to the
2861 individuals with developmental disabilities.
2862 ~~(10) "Epilepsy" means a chronic brain disorder of various~~
2863 ~~causes which is characterized by recurrent seizures due to~~
2864 ~~excessive discharge of cerebral neurons. When found concurrently~~
2865 ~~with retardation, autism, or cerebral palsy, epilepsy is~~
2866 ~~considered a secondary disability for which the client is~~
2867 ~~eligible to receive services to ameliorate this condition~~
2868 ~~according to the provisions of this part.~~
2869 ~~(11) "Guardian advocate" means a person appointed by the~~
2870 ~~circuit court to represent a person with developmental~~
2871 ~~disabilities in any proceedings brought pursuant to s. 393.12,~~
2872 ~~and is distinct from a guardian advocate for mentally ill~~
2873 ~~persons under chapter 394.~~
2874 (7) ~~(12)~~ "Intermediate care facility for persons with
2875 developmental disabilities ~~the developmentally disabled~~" means a
2876 residential facility licensed and certified in accordance with
2877 state law, and certified by the Federal Government, pursuant to
2878 the Social Security Act, as a provider of Medicaid services to
2879 persons with developmental disabilities ~~who are developmentally~~
2880 ~~disabled~~.

2881 (8) ~~(13)~~ "Prader-Willi syndrome" means an inherited
2882 condition typified by neonatal hypotonia with failure to thrive,
2883 hyperphagia, or an excessive drive to eat which leads to
2884 obesity, usually at 18 to 36 months of age, mild to moderate
2885 retardation, hypogonadism, short stature, mild facial
2886 dysmorphism, and a characteristic neurobehavior.
2887 (9) ~~(14)~~ "Retardation" means significantly subaverage
2888 general intellectual functioning existing concurrently with
2889 deficits in adaptive behavior and manifested during the period
2890 from conception to age 18. "Significantly subaverage general
2891 intellectual functioning," for the purpose of this definition,
2892 means performance that is two or more standard deviations from
2893 the mean score on a standardized intelligence test specified in
2894 rules of the department. "Deficits in adaptive behavior," for
2895 the purpose of this definition, means deficits in the
2896 effectiveness or degree with which an individual meets the
2897 standards of personal independence and social responsibility
2898 expected of his or her age, cultural group, and community.
2899 (10) ~~(15)~~ "Spina bifida" means a medical diagnosis of spina
2900 bifida cystica or myelomeningocele.
2901 Section 39. Subsection (3) of section 400.963, Florida
2902 Statutes, is amended to read:
2903 400.963 Injunctive proceedings.--The Agency for Health
2904 Care Administration may seek a temporary or permanent injunction
2905 to:
2906 (3) Terminate the operation of a provider of supports or
2907 services who has willfully and knowingly refused to comply with
2908 the screening requirement for direct care ~~service~~ providers or

2909 has refused to terminate direct care ~~service~~ providers found not
2910 to be in compliance with the requirements for good moral
2911 character.
2912 Section 40. Subsection (1) of section 400.964, Florida
2913 Statutes, is amended to read:
2914 400.964 Personnel screening requirement.--
2915 (1) The agency shall require level 2 background screening
2916 as provided in chapter 435 for all employees or prospective
2917 employees of facilities licensed under this part who are
2918 expected to be, or whose responsibilities are such that they
2919 would be considered to be, a direct care ~~service~~ provider.
2920 Section 41. Subsection (2) of section 400.967, Florida
2921 Statutes, is amended to read:
2922 400.967 Rules and classification of deficiencies.--
2923 (2) Pursuant to the intention of the Legislature, the
2924 agency, in consultation with the Agency for Persons with
2925 Disabilities ~~Department of Children and Family Services~~ and the
2926 Department of Elderly Affairs, shall adopt and enforce rules to
2927 administer this part, which shall include reasonable and fair
2928 criteria governing:
2929 (a) The location and construction of the facility;
2930 including fire and life safety, plumbing, heating, cooling,
2931 lighting, ventilation, and other housing conditions that will
2932 ensure the health, safety, and comfort of residents. The agency
2933 shall establish standards for facilities and equipment to
2934 increase the extent to which new facilities and a new wing or
2935 floor added to an existing facility after July 1, 2000, are
2936 structurally capable of serving as shelters only for residents,

2937 staff, and families of residents and staff, and equipped to be
2938 self-supporting during and immediately following disasters. ~~The~~
2939 ~~Agency for Health Care Administration shall work with facilities~~
2940 ~~licensed under this part and report to the Governor and the~~
2941 ~~Legislature by April 1, 2000, its recommendations for cost-~~
2942 ~~effective renovation standards to be applied to existing~~
2943 ~~facilities. In making such rules, the agency shall be guided by~~
2944 ~~criteria recommended by nationally recognized, reputable~~
2945 ~~professional groups and associations having knowledge concerning~~
2946 ~~such subject matters.~~ The agency shall update or revise such
2947 criteria as the need arises. All facilities must comply with
2948 those lifesafety code requirements and building code standards
2949 applicable at the time of approval of their construction plans.
2950 The agency may require alterations to a building if it
2951 determines that an existing condition constitutes a distinct
2952 hazard to life, health, or safety. The agency shall adopt fair
2953 and reasonable rules setting forth conditions under which
2954 existing facilities undergoing additions, alterations,
2955 conversions, renovations, or repairs are required to comply with
2956 the most recent updated or revised standards.
2957 (b) The number and qualifications of all personnel,
2958 including management, ~~medical~~ nursing, and other personnel,
2959 having responsibility for any part of the care given to
2960 residents.
2961 (c) All sanitary conditions within the facility and its
2962 surroundings, including water supply, sewage disposal, food
2963 handling, and general hygiene, which will ensure the health and
2964 comfort of residents.

2965 (d) The equipment essential to the health and welfare of
2966 the residents.
2967 (e) A uniform accounting system.
2968 (f) The care, treatment, and maintenance of residents and
2969 measurement of the quality and adequacy thereof.
2970 (g) The preparation and annual update of a comprehensive
2971 emergency management plan. The agency shall adopt rules
2972 establishing minimum criteria for the plan after consultation
2973 with the Department of Community Affairs. At a minimum, the
2974 rules must provide for plan components that address emergency
2975 evacuation transportation; adequate sheltering arrangements;
2976 postdisaster activities, including emergency power, food, and
2977 water; postdisaster transportation; supplies; staffing;
2978 emergency equipment; individual identification of residents and
2979 transfer of records; and responding to family inquiries. The
2980 comprehensive emergency management plan is subject to review and
2981 approval by the local emergency management agency. During its
2982 review, the local emergency management agency shall ensure that
2983 the following agencies, at a minimum, are given the opportunity
2984 to review the plan: the Department of Elderly Affairs, the
2985 Agency for Persons with Disabilities ~~Department of Children and~~
2986 ~~Family Services~~, the Agency for Health Care Administration, and
2987 the Department of Community Affairs. Also, appropriate volunteer
2988 organizations must be given the opportunity to review the plan.
2989 The local emergency management agency shall complete its review
2990 within 60 days and either approve the plan or advise the
2991 facility of necessary revisions.

2992 (h) Each licensee shall post its license in a prominent
2993 place that is in clear and unobstructed public view at or near
2994 the place where residents are being admitted to the facility.
2995 Section 42. Section 402.115, Florida Statutes, is amended
2996 to read:
2997 402.115 Sharing confidential or exempt
2998 information.--Notwithstanding any other provision of law to the
2999 contrary, the Department of Health, ~~and~~ the Department of
3000 Children and Family Services, and the Agency for Persons with
3001 Disabilities may share confidential information or information
3002 exempt from disclosure under chapter 119 on any individual who
3003 is or has been the subject of a program within the jurisdiction
3004 of each agency. Information so exchanged remains confidential or
3005 exempt as provided by law.
3006 Section 43. Section 402.17, Florida Statutes, is amended
3007 to read:
3008 402.17 Claims for care and maintenance; trust
3009 property.--The Department of Children and Family Services and
3010 the Agency for Persons with Disabilities shall protect the
3011 financial interest of the state with respect to claims which the
3012 state may have for the care and maintenance of clients of the
3013 department or agency. The department or the agency shall, as
3014 trustee, hold in trust and administer money ~~of clients~~ and
3015 property designated for the personal benefit of clients. The
3016 department or the agency shall act as trustee of clients' money
3017 and property entrusted to it in accordance with the usual
3018 fiduciary standards applicable generally to trustees, and shall
3019 act to protect both the short-term and long-term interests of

3020 the clients for whose benefit it is holding such money and
3021 property.
3022 (1) CLAIMS FOR CARE AND MAINTENANCE.--
3023 (a) The department or the agency shall perform the
3024 following acts:
3025 1. Receive and supervise the collection of sums due the
3026 state.
3027 2. Bring any court action necessary to collect any claim
3028 the state may have against any client, former client, guardian
3029 of any client or former client, executor or administrator of the
3030 client's estate, or any person against whom any client or former
3031 client may have a claim.
3032 3. Obtain a copy of any inventory or appraisal of the
3033 client's property filed with any court.
3034 4. Obtain from the department's Economic Self-Sufficiency
3035 Services Program Office a financial status report on any client
3036 or former client, including the ability of third parties
3037 responsible for such client to pay all or part of the cost of
3038 the client's care and maintenance.
3039 5. Petition the court for appointment of a guardian or
3040 administrator for an otherwise unrepresented client or former
3041 client should the financial status report or other information
3042 indicate the need for such action. The cost of any such action
3043 shall be charged against the assets or estate of the client.
3044 6. Represent the interest of the state in any litigation
3045 in which a client or former client is a party.

3046 7. File claims with any person, firm, or corporation or
3047 with any federal, state, county, district, or municipal agency
3048 on behalf of an unrepresented client.
3049 8. Represent the state in the settlement of the estates of
3050 deceased clients or in the settlement of estates in which a
3051 client or a former client against whom the state may have a
3052 claim has a financial interest.
3053 9. Establish procedures by rule for the use of amounts
3054 held in trust for the client to pay for the cost of care and
3055 maintenance, if such amounts would otherwise cause the client to
3056 become ineligible for services which are in the client's best
3057 interests.
3058 (b) The department or the agency ~~of Children and Family~~
3059 ~~Services~~ may charge off accounts if it certifies that the
3060 accounts are uncollectible after diligent efforts have been made
3061 to collect them. If the department certifies an account to the
3062 Department of Financial Services, setting forth the
3063 circumstances upon which it predicates the uncollectibility, and
3064 if, pursuant to s. 17.04, the Department of Financial Services
3065 concurs, the account shall be charged off.
3066 (2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE OR
3067 BENEFIT OF ANY CLIENT.--The department or the agency shall
3068 perform the following acts:
3069 (a) Accept and administer in trust, as a trustee having a
3070 fiduciary responsibility to a client ~~of the department~~, any
3071 money or other property received for personal use or benefit of
3072 that client. In the case of children in the legal custody of the
3073 department, following the termination of the parental rights ~~as~~

3074 ~~to that client~~, until the child ~~such client~~ leaves the legal
3075 custody of the department due to ~~the client's~~ adoption or
3076 attaining ~~because the client attains~~ the age of 18 or, in the
3077 case of children who are otherwise in the custody of the
3078 department, the court having jurisdiction over such child ~~client~~
3079 shall have jurisdiction, upon application of the department or
3080 other interested party, to review or approve any extraordinary
3081 action of the department acting as trustee as to the child's
3082 ~~client's~~ money or other property. When directed by a court of
3083 competent jurisdiction, the department may further hold money or
3084 property of a child ~~person under the age of 18~~ who has been in
3085 the care, custody, or control of the department and who is the
3086 subject of a court proceeding during the pendency of that
3087 proceeding.
3088 (b) Deposit the money in banks qualified as state
3089 depositories, or in any bank, credit union, or savings and loan
3090 association authorized to do business in this state, provided
3091 moneys so deposited or held by such institutions are fully
3092 insured by a federal depository or share insurance program, or
3093 an approved state depository or share insurance program, and ~~are~~
3094 available on demand.
3095 (c) Withdraw the money and use it to meet current needs of
3096 clients. For purposes of this paragraph, "current needs"
3097 includes payment of fees assessed under s. 402.33. The amount of
3098 money withdrawn ~~by the department to meet current needs of a~~
3099 ~~client~~ shall take into account the need of the department or the
3100 agency, as the trustee of a client's money and property, to
3101 provide for the long-term needs of a client, including, but not

3102 limited to, ensuring that ~~to provide for the need of~~ a client
3103 under the age of 18 will ~~to~~ have sufficient financial resources
3104 available to be able to function as an adult upon attaining
3105 ~~reaching~~ the age of 18, meeting ~~or to meet~~ the special needs of
3106 a client who has a disability and whose special needs cannot
3107 otherwise be met by any form of public assistance or family
3108 resources, or maintaining ~~to maintain~~ the client's eligibility
3109 for public assistance, including medical assistance, under state
3110 or federal law.
3111 (d) As trustee, invest in the manner authorized by law for
3112 fiduciaries money not used for current needs of clients. Such
3113 investments may include, but shall not be limited to,
3114 investments in savings share accounts of any credit union
3115 chartered under the laws of the United States and doing business
3116 in this state, and savings share accounts of any credit union
3117 chartered under the laws of this state, provided the credit
3118 union is insured under the federal share insurance program or an
3119 approved state share insurance program.
3120 (3) DEPOSIT OF FUNDS RECEIVED.--Funds received by the
3121 Department of Children and Family Services in accordance with s.
3122 402.33 shall be deposited into a trust fund for the operation of
3123 the department.
3124 (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the death
3125 of any client affected by the provisions of this section, any
3126 unclaimed money held in trust by the department, the agency, or
3127 ~~by~~ the Chief Financial Officer for the client ~~him or her~~ shall
3128 be applied first to the payment of any unpaid claim of the state
3129 against the client, and any balance remaining unclaimed for a

3130 period of 1 year shall escheat to the state as unclaimed funds
3131 held by fiduciaries.
3132 (5) LEGAL REPRESENTATION.--To the extent that the budget
3133 will permit, the Department of Legal Affairs shall furnish the
3134 legal services to carry out the provisions of this section. Upon
3135 the request of the department or the agency ~~of Children and~~
3136 ~~Family Services~~, the various state and county attorneys shall
3137 assist in litigation within their jurisdiction. The ~~Such~~
3138 department or the agency may retain legal counsel for necessary
3139 legal services which cannot be furnished by the Department of
3140 Legal Affairs and the various state and county attorneys.
3141 (6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.--
3142 (a) The department or the agency ~~of Children and Family~~
3143 ~~Services~~ may deposit any funds of clients in its possession in
3144 any bank in the state or may invest or reinvest such funds in
3145 bonds or obligations of the United States for the payment of
3146 which the full faith and credit of the United States is pledged.
3147 For purposes of deposit only, the funds of any client may be
3148 mingled with the funds of any other clients.
3149 (b) The interest or increment accruing on such funds shall
3150 be the property of the clients and shall be used or conserved
3151 for the personal use or benefit of the individual client, in
3152 accordance with the department's or the agency's fiduciary
3153 responsibility as a trustee for the money and property of the
3154 client ~~held by the department~~. Such interest shall not accrue to
3155 the general welfare of all clients. Whenever any proposed action
3156 of the department or the agency, acting in its own interest, may
3157 conflict with the department's or the agency's ~~obligation as a~~

3158 ~~trustee with a~~ fiduciary responsibility to the client, the
3159 department or the agency shall promptly present the matter to a
3160 court of competent jurisdiction for the court's determination as
3161 to what action the department or the agency may take. The
3162 department and the agency shall establish ~~rules governing~~
3163 reasonable fees by rule for the cost of administering such
3164 accounts and for establishing the minimum balance eligible to
3165 earn interest.
3166 (7) DISPOSITION OF MONEY AND PROPERTY OF CLIENTS UPON
3167 ATTAINING AGE 18 OR DISCHARGE FROM CARE, CUSTODY, CONTROL, OR
3168 SERVICES OF THE DEPARTMENT.--
3169 (a) Whenever a client of the department for whom the
3170 department is holding money or property as a trustee attains the
3171 age of 18, and thereby will no longer be in the legal custody of
3172 the department, the department shall promptly disburse such
3173 money and property ~~of the client the department has held as a~~
3174 ~~trustee~~ to that client, or as that client directs, as soon as
3175 practicable ~~once the client attains the age of 18~~.
3176 (b) Whenever a client of the department over the age of 18
3177 for whom the department is holding money or property as a
3178 trustee no longer requires the care, custody, control, or
3179 services of the department, the department shall promptly
3180 disburse such money and property ~~of the client the department~~
3181 ~~has held as a trustee~~ to that client, or as that client or a
3182 court directs, as soon as practicable.
3183 (c) When a client under the age of 18 who has been in the
3184 legal custody, care, or control of the department and for whom
3185 the department is holding money or property as a trustee attains

3186 the age of 18 and has a physical or mental disability, or is
3187 otherwise incapacitated or incompetent to handle that client's
3188 own financial affairs, the department shall apply for a court
3189 order from a court of competent jurisdiction to establish a
3190 trust on behalf of that client. Where there is no willing
3191 relative of the client acceptable to the court available to
3192 serve as trustee of such proposed trust, the court may enter an
3193 order authorizing the department to serve as trustee of a
3194 separate trust under such terms and conditions as the court
3195 determines appropriate to the circumstances.
3196 (d) When a client under the age of 18 who has been in the
3197 legal custody, care, or control of the department and for whom
3198 the department is holding money or property as a trustee leaves
3199 the care, custody, and control of the department due to adoption
3200 or placement of the client with a relative, or as otherwise
3201 directed by a court of competent jurisdiction, the department
3202 shall notify that court of the existence of such ~~the~~ money and
3203 property ~~in the possession of the department~~ either prior to, or
3204 promptly after, receiving knowledge of the change of custody,
3205 care, or control. The department shall apply for an order from
3206 the court exercising jurisdiction over the client to direct the
3207 disposition of the money and property belonging to that client.
3208 The court order may establish a trust in which the money and
3209 property of the client will be deposited, appoint a guardian of
3210 a property as to the money or property of the client, or direct
3211 the creation of a Uniform Transfers ~~Gifts~~ to Minors Act account
3212 on behalf of that client, ~~as the court finds appropriate and~~

3213 under the terms and conditions the court determines appropriate
3214 to the circumstances.
3215 Section 44. Section 402.181, Florida Statutes, is amended
3216 to read:
3217 402.181 State Institutions Claims Program.--
3218 (1) There is created a State Institutions Claims Program,
3219 for the purpose of making restitution for property damages and
3220 direct medical expenses for injuries caused by shelter children
3221 or foster children, or escapees, inmates, or patients of state
3222 institutions under the Department of Children and Family
3223 Services, the Department of Health, the Department of Juvenile
3224 Justice, ~~or~~ the Department of Corrections, or the Agency for
3225 Persons with Disabilities.
3226 (2) Claims for restitution may be filed with the
3227 Department of Legal Affairs at its office in accordance with
3228 regulations prescribed by the Department of Legal Affairs. The
3229 Department of Legal Affairs shall have full power and authority
3230 to hear, investigate, and determine all questions in respect to
3231 such claims and is authorized, within the limits of current
3232 appropriations, to pay individual claims up to $1,000 or, with
3233 respect to children in foster care and their families,
3234 individual claims up to $1,500. Claims in excess of these
3235 amounts shall continue to require legislative approval.
3236 (3)(a) The Department of Legal Affairs shall make or cause
3237 to be made such investigations as it considers necessary in
3238 respect to such claims. Hearings shall be held in accordance
3239 with chapter 120.

3240 (b) The Department of Legal Affairs shall work with the
3241 Department of Children and Family Services, the Department of
3242 Health, the Department of Juvenile Justice, ~~and~~ the Department
3243 of Corrections, and the Agency for Persons with Disabilities to
3244 streamline the process of investigations, hearings, and
3245 determinations with respect to claims under this section, to
3246 ensure that eligible claimants receive restitution within a
3247 reasonable time.
3248 Section 45. Section 402.20, Florida Statutes, is amended
3249 to read:
3250 402.20 County contracts authorized for services and
3251 facilities for ~~in~~ mental health and developmental disabilities
3252 ~~retardation areas~~.--The boards of county commissioners are
3253 authorized to provide monetary grants and facilities, and to
3254 enter into renewable contracts, for services and facilities, for
3255 a period not to exceed 2 years, with public and private
3256 hospitals, clinics, and laboratories; other state agencies,
3257 departments, or divisions; the state colleges and universities;
3258 the community colleges; private colleges and universities;
3259 counties; municipalities; towns; townships; and any other
3260 governmental unit or nonprofit organization which provides
3261 needed facilities for persons with mental illness or
3262 developmental disabilities ~~the mentally ill or retarded~~. These
3263 services are hereby declared to be for a public and county
3264 purpose. The county commissioners may make periodic inspections
3265 to assure that the services or facilities provided under this
3266 chapter meet the standards of the Department of Children and
3267 Family Services and the Agency for Persons with Disabilities.

3268 Section 46. Subsections (1) through (6) of section 402.22,
3269 Florida Statutes, are amended to read:
3270 402.22 Education program for students who reside in
3271 residential care facilities operated by the Department of
3272 Children and Family Services and the Agency for Persons with
3273 Disabilities.--
3274 (1)(a) The Legislature recognizes that the Department of
3275 Children and Family Services and the Agency for Persons with
3276 Disabilities have under their ~~has under its~~ residential care
3277 students with critical problems of physical impairment,
3278 emotional disturbance, mental impairment, and learning
3279 impairment.
3280 (b) The Legislature recognizes the vital role of education
3281 in the rehabilitation of such students. It is the intent of the
3282 Legislature that all such students benefit from educational
3283 services and receive such services.
3284 (c) It is the intent of the Legislature that educational
3285 services be coordinated with appropriate and existing diagnostic
3286 and evaluative, social, followup, and other therapeutic services
3287 of the department and the agency ~~of Children and Family Services~~
3288 so that the effect of the total rehabilitation process is
3289 maximized.
3290 (d) It is the intent of the Legislature that, as
3291 educational programs for students in residential care facilities
3292 are implemented by the district school board, educational
3293 personnel in ~~the Department of Children and Family Services~~
3294 residential care facilities who meet the qualifications for

3295 employees of the district school board be employed by the
3296 district school board.
3297 (2) District school boards shall establish educational
3298 programs for all students ages 5 through 18 under the
3299 residential care of the Department of Children and Family
3300 Services and the Agency for Persons with Disabilities and may
3301 provide for students below age 3 as provided for in s.
3302 1003.21(1)(e). Funding of such programs shall be pursuant to s.
3303 1011.62.
3304 (3) Notwithstanding any provisions of chapters 39, 393,
3305 394, and 397 to the contrary, the services of the Department of
3306 Children and Family Services and the Agency for Persons with
3307 Disabilities and those of the Department of Education and
3308 district school boards shall be mutually supportive and
3309 complementary of each other. The education programs provided by
3310 the district school board shall meet the standards prescribed by
3311 the State Board of Education and the district school board.
3312 Decisions regarding the design and delivery of Department of
3313 Children and Family Services or agency treatment or habilitative
3314 services shall be made by interdisciplinary teams of
3315 professional and paraprofessional staff of which appropriate
3316 district school system administrative and instructional
3317 personnel shall be invited to be participating members. The
3318 requirements for maintenance of confidentiality as prescribed in
3319 chapters 39, 393, 394, and 397 shall be applied to information
3320 used by such interdisciplinary teams, and such information shall
3321 be exempt from the provisions of ss. 119.07(1) and 286.011.

3322 (4) Students age 18 and under who are under the
3323 residential care of the Department of Children and Family
3324 Services or the Agency for Persons with Disabilities and who
3325 receive an education program shall be calculated as full-time
3326 equivalent student membership in the appropriate cost factor as
3327 provided for in s. 1011.62(1)(c). Residential care facilities ~~of~~
3328 ~~the Department of Children and Family Services~~ shall include,
3329 but not be limited to, developmental disabilities ~~services~~
3330 institutions and state mental health facilities. All students
3331 shall receive their education program from the district school
3332 system, and funding shall be allocated through the Florida
3333 Education Finance Program for the district school system.
3334 (5) Instructional and special educational services which
3335 are provided to ~~mental health and retardation~~ clients with
3336 mental illness or developmental disabilities of ~~in~~ the
3337 Department of Children and Family Services or the Agency for
3338 Persons with Disabilities residential care facilities by local
3339 school districts shall not be less than 180 days or 900 hours;
3340 however, the 900 hours may be distributed over a 12-month
3341 period, unless otherwise stated in rules developed by the State
3342 Board of Education, with the concurrence of the department or
3343 the agency, and adopted ~~of Children and Family Services~~
3344 ~~promulgated~~ pursuant to subsection (6).
3345 (6) The State Board of Education, ~~and~~ the Department of
3346 Children and Family Services, and the Agency for Persons with
3347 Disabilities shall have ~~the~~ authority to adopt ~~promulgate~~ rules
3348 which shall assist in the orderly transfer of the instruction of
3349 students from department or agency ~~of Children and Family~~

3350 ~~Services~~ residential care facilities to the district school
3351 system or to the public education agency and which shall assist
3352 in implementing the specific intent as stated in this act.
3353 Section 47. Subsections (1) and (2) of section 402.33,
3354 Florida Statutes, are amended to read:
3355 402.33 Department authority to charge fees for services
3356 provided.--
3357 (1) As used in this section, the term:
3358 (a) "Benefit payments" means cash payments from
3359 retirement, survivors, or disability insurance or from
3360 supplemental security income programs, and includes, but is not
3361 limited to, payments from social security, railroad retirement,
3362 and the United States Department of Veterans Affairs.
3363 (b) "Client" means any natural person receiving services
3364 provided by the department, including supervision, care, and
3365 maintenance, but not as a licensee subject to regulation by the
3366 department for purposes of licensure.
3367 (c) "Department" means the Department of Children and
3368 Family Services, ~~and~~ the Department of Health, or the Agency for
3369 Persons with Disabilities.
3370 (d) "Fee collections" means all fees collected by the
3371 department for services provided to clients.
3372 (e) "Representative payee" means an individual or entity
3373 which acts on behalf of a client as the receiver of any or all
3374 benefits owing to the client.
3375 (f) "Responsible party" means any person legally
3376 responsible for the financial support of the client and may
3377 include a minor client's natural or adoptive parent, a client's

3378 spouse, and an estate or trust established for the financial
3379 support of a client, but not a payor of third-party benefits.
3380 (g) "State and federal aid" means cash assistance or cash
3381 equivalent benefits based on an individual's proof of financial
3382 need, including, but not limited to, temporary cash assistance
3383 and food stamps.
3384 (h) "Third-party benefits" means moneys received by or
3385 owing to a client or responsible party because of the client's
3386 need for or receipt of services such as those provided by the
3387 department. Such benefits include, but are not limited to,
3388 benefits from insurers, Medicare, and workers' compensation.
3389 (2) The department, in accordance with rules established
3390 by it, shall either charge, assess, or collect, or cause to be
3391 charged, assessed, or collected, fees for any service it
3392 provides to its clients either directly or through its agencies
3393 or contractors, except for:
3394 (a) Diagnosis and evaluation procedures necessary to
3395 determine the client's eligibility and need for services
3396 provided by the department;
3397 (b) Customary and routine information and referral
3398 services;
3399 (c) Educational services provided in lieu of public
3400 education;
3401 (d) Specific services exempted by law from fee assessment;
3402 (e) Emergency shelter or emergency detention care and
3403 custody prior to a detention hearing under chapter 39;

3404 (f) Specific classes or types of services provided in
3405 programs funded by grants, donations, or contracts that prohibit
3406 charging fees;
3407 (g) Developmental disability services provided under
3408 chapter 393 to any person who is determined to be eligible for
3409 such services ~~by the department~~ and whose earned income falls
3410 below the federal Health and Human Services Poverty Guidelines,
3411 unless such fees are collected from third-party benefits and
3412 benefit payments; or
3413 (h) Any type of service for which the department
3414 determines that the net estimated revenue from such fees after
3415 deducting any loss of funds from federal grants occasioned by
3416 such fees will be less than the estimated cost to charge and
3417 collect such fees.
3418
3419 Fees, other than third-party benefits and benefit payments, may
3420 not be charged for services provided to indigents whose only
3421 sources of income are from state and federal aid. In addition,
3422 fees may not be charged parents of a minor client for services
3423 requested by the minor without parental consent or for services
3424 provided a minor client who has been permanently committed to
3425 the care and custody of the department with parental rights
3426 permanently severed. However, lack of parental consent does not
3427 preclude the charging of fees established under chapter 39. ~~The~~
3428 ~~department may not require~~ A client who is receiving wages which
3429 are below the minimum wage under the federal Fair Labor
3430 Standards Act shall not be required to pay fees from such wages.
3431 Voluntary payments for services must be encouraged.

3432 Section 48. Paragraphs (r) and (s) of subsection (3) of
3433 section 408.036, Florida Statutes, are amended to read:
3434 408.036 Projects subject to review; exemptions.--
3435 (3) EXEMPTIONS.--Upon request, the following projects are
3436 subject to exemption from the provisions of subsection (1):
3437 (r) For beds in state mental health treatment facilities
3438 operated under s. 394.455(30) and state mental health forensic
3439 facilities operated under s. 916.106(10) ~~(8)~~.
3440 (s) For beds in state developmental disabilities ~~services~~
3441 institutions as defined in s. 393.063.
3442 Section 49. Paragraph (a) of subsection (2) and subsection
3443 (8) of section 409.908, Florida Statutes, are amended to read:
3444 409.908 Reimbursement of Medicaid providers.--Subject to
3445 specific appropriations, the agency shall reimburse Medicaid
3446 providers, in accordance with state and federal law, according
3447 to methodologies set forth in the rules of the agency and in
3448 policy manuals and handbooks incorporated by reference therein.
3449 These methodologies may include fee schedules, reimbursement
3450 methods based on cost reporting, negotiated fees, competitive
3451 bidding pursuant to s. 287.057, and other mechanisms the agency
3452 considers efficient and effective for purchasing services or
3453 goods on behalf of recipients. If a provider is reimbursed based
3454 on cost reporting and submits a cost report late and that cost
3455 report would have been used to set a lower reimbursement rate
3456 for a rate semester, then the provider's rate for that semester
3457 shall be retroactively calculated using the new cost report, and
3458 full payment at the recalculated rate shall be effected
3459 retroactively. Medicare-granted extensions for filing cost

3460 reports, if applicable, shall also apply to Medicaid cost
3461 reports. Payment for Medicaid compensable services made on
3462 behalf of Medicaid eligible persons is subject to the
3463 availability of moneys and any limitations or directions
3464 provided for in the General Appropriations Act or chapter 216.
3465 Further, nothing in this section shall be construed to prevent
3466 or limit the agency from adjusting fees, reimbursement rates,
3467 lengths of stay, number of visits, or number of services, or
3468 making any other adjustments necessary to comply with the
3469 availability of moneys and any limitations or directions
3470 provided for in the General Appropriations Act, provided the
3471 adjustment is consistent with legislative intent.
3472 (2)(a)1. Reimbursement to nursing homes licensed under
3473 part II of chapter 400 and state-owned-and-operated intermediate
3474 care facilities for the persons with developmental disabilities
3475 ~~developmentally disabled~~ licensed under part XI of chapter 400
3476 ~~chapter 393~~ must be made prospectively.
3477 2. Unless otherwise limited or directed in the General
3478 Appropriations Act, reimbursement to hospitals licensed under
3479 part I of chapter 395 for the provision of swing-bed nursing
3480 home services must be made on the basis of the average statewide
3481 nursing home payment, and reimbursement to a hospital licensed
3482 under part I of chapter 395 for the provision of skilled nursing
3483 services must be made on the basis of the average nursing home
3484 payment for those services in the county in which the hospital
3485 is located. When a hospital is located in a county that does not
3486 have any community nursing homes, reimbursement shall ~~must~~ be
3487 determined by averaging the nursing home payments, in counties

3488 that surround the county in which the hospital is located.
3489 Reimbursement to hospitals, including Medicaid payment of
3490 Medicare copayments, for skilled nursing services shall be
3491 limited to 30 days, unless a prior authorization has been
3492 obtained from the agency. Medicaid reimbursement may be extended
3493 by the agency beyond 30 days, and approval must be based upon
3494 verification by the patient's physician that the patient
3495 requires short-term rehabilitative and recuperative services
3496 only, in which case an extension of no more than 15 days may be
3497 approved. Reimbursement to a hospital licensed under part I of
3498 chapter 395 for the temporary provision of skilled nursing
3499 services to nursing home residents who have been displaced as
3500 the result of a natural disaster or other emergency may not
3501 exceed the average county nursing home payment for those
3502 services in the county in which the hospital is located and is
3503 limited to the period of time which the agency considers
3504 necessary for continued placement of the nursing home residents
3505 in the hospital.
3506 (8) A provider of home-based or community-based services
3507 rendered pursuant to a federally approved waiver shall be
3508 reimbursed based on an established or negotiated rate for each
3509 service. These rates shall be established according to an
3510 analysis of the expenditure history and prospective budget
3511 developed by each contract provider participating in the waiver
3512 program, or under any other methodology adopted by the agency
3513 and approved by the Federal Government in accordance with the
3514 waiver. ~~Effective July 1, 1996,~~ Privately owned and operated
3515 community-based residential facilities which meet agency

3516 requirements and which formerly received Medicaid reimbursement
3517 for the optional intermediate care facility for the mentally
3518 retarded service may participate in the developmental services
3519 waiver as part of a home-and-community-based continuum of care
3520 for Medicaid recipients who receive waiver services.
3521 Section 50. Subsection (3) of section 409.9127, Florida
3522 Statutes, is amended to read:
3523 409.9127 Preauthorization and concurrent utilization
3524 review; conflict-of-interest standards.--
3525 (3) The agency shall help the Agency for Persons with
3526 Disabilities ~~Department of Children and Family Services~~ meet the
3527 requirements of s. 393.065(4). Only admissions approved pursuant
3528 to such assessments are eligible for reimbursement under this
3529 chapter.
3530 Section 51. Paragraph (c) of subsection (2) and subsection
3531 (5) of section 411.224, Florida Statutes, are amended to read:
3532 411.224 Family support planning process.--The Legislature
3533 establishes a family support planning process to be used by the
3534 Department of Children and Family Services as the service
3535 planning process for targeted individuals, children, and
3536 families under its purview.
3537 (2) To the extent possible within existing resources, the
3538 following populations must be included in the family support
3539 planning process:
3540 (c) Children from age 3 ~~birth~~ through age 5 who are served
3541 by the Agency for Persons with Disabilities ~~Developmental~~
3542 ~~Disabilities Program Office of the Department of Children and~~
3543 ~~Family Services~~.

3544 (5) There must be only a single-family support plan to
3545 address the problems of the various family members unless the
3546 family requests that an individual family support plan be
3547 developed for different members of that family. The family
3548 support plan must replace individual habilitation plans for
3549 children from 3 ~~birth~~ through 5 years old who are served by the
3550 Agency for Persons with Disabilities ~~Developmental Disabilities~~
3551 ~~Program Office of the Department of Children and Family~~
3552 ~~Services. To the extent possible, the family support plan must~~
3553 ~~replace other case planning forms used by the Department of~~
3554 ~~Children and Family Services~~.
3555 Section 52. Subsection (4) of section 411.232, Florida
3556 Statutes, is amended to read:
3557 411.232 Children's Early Investment Program.--
3558 (4) RULES FOR IMPLEMENTATION.--The Department of Health
3559 ~~and Rehabilitative Services~~ shall adopt rules necessary to
3560 implement this section.
3561 Section 53. Subsection (8) of section 415.102, Florida
3562 Statutes, is amended to read:
3563 415.102 Definitions of terms used in ss. 415.101-
3564 415.113.--As used in ss. 415.101-415.113, the term:
3565 (8) "Facility" means any location providing day or
3566 residential care or treatment for vulnerable adults. The term
3567 "facility" may include, but is not limited to, any hospital,
3568 state institution, nursing home, assisted living facility, adult
3569 family-care home, adult day care center, residential facility
3570 licensed under chapter 393 ~~group home~~, or mental health
3571 treatment center.

3572 Section 54. Section 415.1035, Florida Statutes, is amended
3573 to read:
3574 415.1035 Facility's duty to inform residents of their
3575 right to report abusive, neglectful, or exploitive
3576 practices.--The department shall work cooperatively with the
3577 Agency for Health Care Administration, the Agency for Persons
3578 with Disabilities, and the Department of Elderly Affairs to
3579 ensure that every facility that serves vulnerable adults informs
3580 residents of their right to report abusive, neglectful, or
3581 exploitive practices. Each facility must establish appropriate
3582 policies and procedures to facilitate such reporting.
3583 Section 55. Subsections (1) and (10) of section 415.1055,
3584 Florida Statutes, are amended to read:
3585 415.1055 Notification to administrative entities.--
3586 (1) Upon receipt of a report that alleges that an employee
3587 or agent of the department, the Agency for Persons with
3588 Disabilities, or the Department of Elderly Affairs, acting in an
3589 official capacity, has committed an act of abuse, neglect, or
3590 exploitation, the department shall notify the state attorney in
3591 whose circuit the abuse, neglect, or exploitation occurred. This
3592 notification may be oral or written.
3593 (10) When a report has been received and the department
3594 has reason to believe that a vulnerable adult resident of a
3595 facility licensed by the Agency for Health Care Administration
3596 or the Agency for Persons with Disabilities has been the victim
3597 of abuse, neglect, or exploitation, the department shall provide
3598 a copy of its investigation to the agency. If the investigation
3599 determines that a health professional licensed or certified

3600 under the Department of Health may have abused, neglected, or
3601 exploited a vulnerable adult, the department shall also provide
3602 a copy to the Department of Health.
3603 Section 56. Paragraphs (a) and (h) of subsection (3) of
3604 section 415.107, Florida Statutes, are amended to read:
3605 415.107 Confidentiality of reports and records.--
3606 (3) Access to all records, excluding the name of the
3607 reporter which shall be released only as provided in subsection
3608 (6), shall be granted only to the following persons, officials,
3609 and agencies:
3610 (a) Employees or agents of the department, the Agency for
3611 Persons with Disabilities, ~~of~~ the Agency for Health Care
3612 Administration, or ~~of~~ the Department of Elderly Affairs who are
3613 responsible for carrying out protective investigations, ongoing
3614 protective services, or licensure or approval of nursing homes,
3615 assisted living facilities, adult day care centers, adult
3616 family-care homes, home care for the elderly, hospices,
3617 residential facilities licensed under chapter 393, or other
3618 facilities used for the placement of vulnerable adults.
3619 (h) Any appropriate official of the department, the Agency
3620 for Persons with Disabilities, ~~of~~ the Agency for Health Care
3621 Administration, or ~~of~~ the Department of Elderly Affairs who is
3622 responsible for:
3623 1. Administration or supervision of the programs for the
3624 prevention, investigation, or treatment of abuse, neglect, or
3625 exploitation of vulnerable adults when carrying out an official
3626 function; or

3627 2. Taking appropriate administrative action concerning an
3628 employee alleged to have perpetrated abuse, neglect, or
3629 exploitation of a vulnerable adult in an institution.
3630 Section 57. Subsections (1), (2), (3), and (6) of section
3631 419.001, Florida Statutes, are amended to read:
3632 419.001 Site selection of community residential homes.--
3633 (1) For the purposes of this section, the term ~~following~~
3634 ~~definitions shall apply~~:
3635 (a) "Community residential home" means a dwelling unit
3636 licensed to provide ~~serve clients of the Department of Children~~
3637 ~~and Family Services, which provides~~ a living environment for 7
3638 to 14 unrelated residents who operate as the functional
3639 equivalent of a family, including such supervision and care by
3640 supportive staff as may be necessary to meet the physical,
3641 emotional, and social needs of the residents.
3642 (b) "Department" or "agency" means the Department of
3643 Children and Family Services, the Agency for Health Care
3644 Administration, or the Agency for Persons with Disabilities.
3645 (c) "Local government" means a county as set forth in
3646 chapter 7 or a municipality incorporated under the provisions of
3647 chapter 165.
3648 (d) "Resident" means any of the following: a frail elder
3649 as defined in s. 400.618; a ~~physically disabled or handicapped~~
3650 person with a physical or mental impairment as described ~~as~~
3651 ~~defined~~ in s. 760.22(7)(a); a ~~developmentally disabled~~ person
3652 with a developmental disability as defined in s. 393.063; a
3653 nondangerous person with mental illness ~~mentally ill person~~ as

3654 defined in s. 394.455~~(18)~~; or a child as defined in s.
3655 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).
3656 (e) "Sponsoring agency" means an agency or unit of
3657 government, a profit or nonprofit agency, or any other person or
3658 organization which intends to establish or operate a community
3659 residential home.
3660 (2) Homes of six or fewer residents which otherwise meet
3661 the definition of a community residential home shall be deemed a
3662 single-family unit and a noncommercial, residential use for the
3663 purpose of local laws and ordinances. Homes of six or fewer
3664 residents which otherwise meet the definition of a community
3665 residential home shall be allowed in single-family or
3666 multifamily zoning without approval by the local government,
3667 provided that such homes shall not be located within a radius of
3668 1,000 feet of another existing such home with six or fewer
3669 residents. Such homes with six or fewer residents shall not be
3670 required to comply with the notification provisions of this
3671 section; provided, however, that the sponsoring agency or the
3672 department notifies the local government at the time of home
3673 occupancy that the home is licensed by the department <u>or the</u>
3674 <u>agency</u>.
3675 (3)(a) When a site for a community residential home has
3676 been selected by a sponsoring agency in an area zoned for
3677 multifamily, the <u>sponsoring</u> agency shall notify the chief
3678 executive officer of the local government in writing and include
3679 in such notice the specific address of the site, the residential
3680 licensing category, the number of residents, and the community
3681 support requirements of the program. Such notice shall also

3682 contain a statement from the district administrator of the
3683 department indicating the need for and the licensing status of
3684 the proposed community residential home and specifying how the
3685 home meets applicable licensing criteria for the safe care and
3686 supervision of the clients in the home. The department and the
3687 agency ~~district administrator~~ shall also provide to the local
3688 government the most recently published data compiled that
3689 identifies all community residential homes in the department
3690 ~~district~~ in which the proposed site is to be located. The local
3691 government shall review the notification of the sponsoring
3692 agency in accordance with the zoning ordinance of the
3693 jurisdiction.
3694 (b) Pursuant to such review, the local government may:
3695 1. Determine that the siting of the community residential
3696 home is in accordance with local zoning and approve the siting.
3697 If the siting is approved, the sponsoring agency may establish
3698 the home at the site selected.
3699 2. Fail to respond within 60 days. If the local government
3700 fails to respond within such time, the sponsoring agency may
3701 establish the home at the site selected.
3702 3. Deny the siting of the home.
3703 (c) The local government shall not deny the siting of a
3704 community residential home unless the local government
3705 establishes that the siting of the home at the site selected:
3706 1. Does not otherwise conform to existing zoning
3707 regulations applicable to other multifamily uses in the area.
3708 2. Does not meet applicable licensing criteria established
3709 and determined by the department or the agency, including

3710 requirements that the home be located to assure the safe care
3711 and supervision of all clients in the home.
3712 3. Would result in such a concentration of community
3713 residential homes in the area in proximity to the site selected,
3714 or would result in a combination of such homes with other
3715 residences in the community, such that the nature and character
3716 of the area would be substantially altered. A home that is
3717 located within a radius of 1,200 feet of another existing
3718 community residential home in a multifamily zone shall be an
3719 overconcentration of such homes that substantially alters the
3720 nature and character of the area. A home that is located within
3721 a radius of 500 feet of an area of single-family zoning
3722 substantially alters the nature and character of the area.
3723 (6) The department or the agency shall not issue a license
3724 to a sponsoring agency for operation of a community residential
3725 home if the sponsoring agency does not notify the local
3726 government of its intention to establish a program, as required
3727 by subsection (3). A license issued without compliance with the
3728 provisions of this section shall be considered null and void,
3729 and continued operation of the home may be enjoined.
3730 Section 58. Paragraph (a) of subsection (3) of section
3731 435.03, Florida Statutes, is amended to read:
3732 435.03 Level 1 screening standards.--
3733 (3) Standards must also ensure that the person:
3734 (a) For employees and employers licensed or registered
3735 pursuant to chapter 400, and for employees and employers of
3736 developmental disabilities ~~services~~ institutions as defined in
3737 s. 393.18 ~~393.063~~, intermediate care facilities for persons with

3738 developmental disabilities ~~the developmentally disabled~~ as
3739 defined in s. 400.960 ~~393.063~~, and mental health treatment
3740 facilities as defined in s. 394.455, meets the requirements of
3741 this chapter.
3742 Section 59. Paragraph (a) of subsection (2) of section
3743 490.014, Florida Statutes, is amended to read:
3744 490.014 Exemptions.--
3745 (2) No person shall be required to be licensed or
3746 provisionally licensed under this chapter who:
3747 (a) Is a salaried employee of a government agency;
3748 ~~developmental services program,~~ mental health, alcohol, or drug
3749 abuse facility operating pursuant to chapter 393, chapter 394,
3750 or chapter 397; subsidized child care program, subsidized child
3751 care case management program, or child care resource and
3752 referral program operating pursuant to chapter 402; child-
3753 placing or child-caring agency licensed pursuant to chapter 409;
3754 domestic violence center certified pursuant to chapter 39;
3755 accredited academic institution; or research institution, if
3756 such employee is performing duties for which he or she was
3757 trained and hired solely within the confines of such agency,
3758 facility, or institution, so long as the employee is not held
3759 out to the public as a psychologist pursuant to s.
3760 490.012(1)(a).
3761 Section 60. Paragraph (a) of subsection (4) of section
3762 491.014, Florida Statutes, is amended to read:
3763 491.014 Exemptions.--

3764 (4) No person shall be required to be licensed,
3765 provisionally licensed, registered, or certified under this
3766 chapter who:
3767 (a) Is a salaried employee of a government agency;
3768 ~~developmental services program,~~ mental health, alcohol, or drug
3769 abuse facility operating pursuant to chapter 393, chapter 394,
3770 or chapter 397; subsidized child care program, subsidized child
3771 care case management program, or child care resource and
3772 referral program operating pursuant to chapter 402; child-
3773 placing or child-caring agency licensed pursuant to chapter 409;
3774 domestic violence center certified pursuant to chapter 39;
3775 accredited academic institution; or research institution, if
3776 such employee is performing duties for which he or she was
3777 trained and hired solely within the confines of such agency,
3778 facility, or institution, so long as the employee is not held
3779 out to the public as a clinical social worker, mental health
3780 counselor, or marriage and family therapist.
3781 Section 61. Section 916.105, Florida Statutes, is amended
3782 to read:
3783 916.105 Legislative intent.--
3784 (1) It is the intent of the Legislature that the
3785 Department of Children and Family Services and the Agency for
3786 Persons With Disabilities, as appropriate, establish, locate,
3787 and maintain separate and secure forensic facilities and
3788 programs for the treatment or training of defendants who have
3789 been ~~are~~ charged with a felony and who have been found to be
3790 incompetent to proceed due to their mental illness, mental
3791 retardation, or autism, or who have been acquitted of a felony

3792 ~~felonies~~ by reason of insanity, and who, while still under the
3793 jurisdiction of the committing court, are committed to the
3794 department or agency under the provisions of this chapter. Such
3795 ~~The separate, secure~~ facilities shall be sufficient to
3796 accommodate the number of defendants committed under the
3797 conditions noted above.~~,~~ Except for those defendants found by
3798 the department or agency to be appropriate for treatment or
3799 training in a civil ~~treatment~~ facility or program pursuant to
3800 subsection (3), forensic~~. Such secure~~ facilities shall be
3801 designed and administered so that ingress and egress, together
3802 with other requirements of this chapter, may be strictly
3803 controlled by staff responsible for security in order to protect
3804 the defendant, facility personnel, other clients, and citizens
3805 in adjacent communities.
3806 (2) It is further the intent of the Legislature that
3807 treatment or training programs for defendants who are found to
3808 be mentally ill, retarded, or autistic and are involuntarily
3809 committed to the department or the agency, and who are still
3810 under the jurisdiction of the committing court, be provided in
3811 ~~such~~ a manner, subject to security requirements and other
3812 mandates of this chapter, as to ensure the rights of the
3813 defendants as provided in this chapter.
3814 (3) It is also the intent of the Legislature that
3815 evaluation and services to defendants who are mentally ill,
3816 retarded, or autistic be provided in community settings, in
3817 community residential facilities, or in civil~~, nonforensic~~
3818 facilities, whenever this is a feasible alternative to treatment
3819 or training in a state forensic facility.

3820 Section 62. Section 916.106, Florida Statutes, is amended
3821 to read:
3822 916.106 Definitions.--For the purposes of this chapter:
3823 (1) "Agency" means the Agency for Persons With
3824 Disabilities. The agency is responsible for the training of
3825 forensic clients with developmental disabilities due to mental
3826 retardation or autism and have been determined incompetent to
3827 proceed.
3828 (2) "Autism" means a pervasive, neurologically based
3829 developmental disability of extended duration which causes
3830 severe learning, communication, and behavior disorders, with the
3831 age of onset of autism occurring during infancy or childhood.
3832 Individuals with autism exhibit impairment in reciprocal social
3833 interaction, impairment in verbal and nonverbal communication
3834 and imaginative ability, and a markedly restricted repertoire of
3835 activities and interests.
3836 (3) ~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb,
3837 gun, or other device capable of emitting chloroacetophenone
3838 (CN), chlorobenzalmalononitrile (CS) or any derivatives thereof
3839 in any form, or any other agent with lacrimatory properties, and
3840 shall include products such as that commonly known as "mace."
3841 (4) ~~(3)~~ "Civil facility" means:
3842 (a) A mental health facility established within the
3843 department or by contract with the department to serve
3844 individuals committed pursuant to chapter 394 and those
3845 defendants committed pursuant to this chapter who do not require
3846 the security provided in a forensic facility; or

3847 (b) An intermediate care facility for persons with
3848 developmental disabilities, foster care facility, group home
3849 facility, or supported living setting, as defined in s. 393.063,
3850 designated by the agency to serve those defendants who do not
3851 require the security provided in a forensic facility.
3852 (5) ~~(4)~~ "Court" means the circuit court.
3853 (6) "Defendant" means an adult or juvenile prosecuted as
3854 an adult who has been arraigned and charged with a felony
3855 offense under the laws of this state.
3856 (7) ~~(5)~~ "Department" means the Department of Children and
3857 Family Services. The department is responsible for treatment of
3858 forensic clients who have been determined incompetent to proceed
3859 due to mental illness or who have been acquitted of a felony by
3860 reason of insanity.
3861 (8) ~~(6)~~ "Express and informed consent" or "consent" means
3862 consent given voluntarily in writing after a conscientious and
3863 sufficient explanation and disclosure of the purpose of the
3864 proposed treatment, the common side effects of the treatment, if
3865 any, the expected duration of the treatment, and any alternative
3866 treatment available.
3867 (9) ~~(7)~~ "Forensic client" or "client" means any defendant
3868 who has been ~~is mentally ill, retarded, or autistic and who is~~
3869 committed to the department or the agency pursuant to ss.
3870 916.13, 916.15, or 916.302. ~~this chapter and:~~
3871 ~~(a) Who has been determined to need treatment for a mental~~
3872 ~~illness or training for retardation or autism;~~

3873 ~~(b) Who has been found incompetent to proceed on a felony~~
3874 ~~offense or has been acquitted of a felony offense by reason of~~
3875 ~~insanity;~~
3876 ~~(c) Who has been determined by the department to:~~
3877 ~~1. Be dangerous to himself or herself or others; or~~
3878 ~~2. Present a clear and present potential to escape; and~~
3879 ~~(d) Who is an adult or a juvenile prosecuted as an adult.~~
3880 (10) ~~(8)~~ "Forensic facility" means a separate and secure
3881 facility established within the department or the agency to
3882 serve forensic clients. A ~~Such~~ separate and secure facility
3883 means ~~facilities shall be~~ security-grade buildings separately
3884 housing persons who are mentally ill from persons who are
3885 mentally retarded or autistic, and persons who have been
3886 involuntarily committed pursuant to this chapter from
3887 nonforensic residents. ~~located on grounds distinct in location~~
3888 ~~from other facilities for persons who are mentally ill. The~~
3889 ~~Florida State Hospital shall not be required to maintain~~
3890 ~~separate facilities for mentally ill, retarded, or autistic~~
3891 ~~defendants who are found incompetent to proceed or who are~~
3892 ~~acquitted of a criminal offense by reason of insanity.~~
3893 (11) ~~(9)~~ "Incompetent to proceed" means unable to proceed
3894 at any material stage of a criminal proceeding, which shall
3895 include trial of the case, pretrial hearings involving questions
3896 of fact on which the defendant might be expected to testify,
3897 entry of a plea, proceedings for violation of probation or
3898 violation of community control, sentencing, and hearings on
3899 issues regarding a defendant's failure to comply with court
3900 orders or conditions or other matters in which the mental

3901 competence of the defendant is necessary for a just resolution
3902 of the issues being considered.
3903 (12) ~~(10)~~ "Institutional security personnel" means
3904 employees of forensic facilities ~~staff members~~ who meet or
3905 exceed the requirements of s. 943.13 and who are responsible for
3906 providing security, the ~~for~~ protection of clients and personnel,
3907 ~~for~~ the enforcement of rules, the ~~for~~ prevention and
3908 investigation of unauthorized activities, and the ~~for~~
3909 safeguarding the interests of citizens in the surrounding
3910 communities.
3911 (13) ~~(11)~~ "Mental illness" means an impairment of the
3912 emotional processes that exercise conscious control of one's
3913 actions, or of the ability to perceive or understand reality,
3914 which impairment substantially interferes with a defendant's
3915 ability to meet the ordinary demands of living. For the purposes
3916 of this chapter, the term does not apply to defendants who are
3917 solely retarded or autistic, and does not include intoxication
3918 or conditions manifested only by antisocial behavior or
3919 substance abuse impairment.
3920 (14) ~~(12)~~ "Retardation" means significantly subaverage
3921 general intellectual functioning existing concurrently with
3922 deficits in adaptive behavior and manifested during the period
3923 from conception to age 18. "Significantly subaverage general
3924 intellectual functioning," for the purpose of this definition,
3925 means performance which is two or more standard deviations from
3926 the mean score on a standardized intelligence test specified in
3927 the rules of the agency ~~department~~. "Adaptive behavior," for the
3928 purpose of this definition, means the effectiveness or degree

3929 with which an individual meets the standards of personal
3930 independence and social responsibility expected of the
3931 individual's age, cultural group, and community.
3932 (15) ~~(13)~~ "Social service professional~~,~~" ~~for the purposes~~
3933 ~~of part III,~~ means a person whose minimum qualifications include
3934 a bachelor's degree and at least 2 years of social work,
3935 clinical practice, special education, habilitation, or
3936 equivalent experience working directly with persons with
3937 retardation, autism, or other developmental disabilities.
3938 Section 63. Section 916.107, Florida Statutes, is amended
3939 to read:
3940 916.107 Rights of forensic clients.--
3941 (1) RIGHT TO INDIVIDUAL DIGNITY.--
3942 (a) The policy of the state is that the individual dignity
3943 of the client shall be respected at all times and upon all
3944 occasions, including any occasion when the forensic client is
3945 detained, transported, or treated. Clients ~~Defendants~~ who are
3946 mentally ill, retarded, or autistic and who are charged with
3947 committing felonies shall receive appropriate treatment or
3948 training. In a criminal case involving a client ~~defendant~~ who
3949 has been adjudicated incompetent to proceed or not guilty by
3950 reason of insanity, a jail may be used as an emergency facility
3951 for up to 15 days from the date the department or the agency
3952 receives a completed copy of the court commitment order
3953 containing all the documentation required by the applicable
3954 ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For
3955 a forensic client ~~defendant who is mentally ill, retarded, or~~
3956 ~~autistic,~~ who is held in a jail awaiting admission to a

3957 department or agency facility, ~~and who has been adjudicated~~
3958 ~~incompetent to proceed or not guilty by reason of insanity,~~
3959 evaluation and treatment or training may ~~shall~~ be provided in
3960 the jail by the local community mental health provider ~~public~~
3961 ~~receiving facility~~ for mental health services or by the
3962 developmental disabilities ~~services~~ program for persons with
3963 retardation or autism, the client's physician or psychologist,
3964 or any other appropriate program until the client is transferred
3965 to a civil or forensic facility ~~the custody of the department~~.
3966 (b) Forensic clients ~~Mentally ill, retarded, or autistic~~
3967 ~~defendants who are committed to the department pursuant to this~~
3968 ~~chapter and~~ who are initially placed in, or subsequently
3969 transferred to, a civil facility as described in part I of
3970 chapter 394 or to a residential facility as described in chapter
3971 393 shall have the same rights as other persons committed to
3972 these facilities for as long as they remain there.
3973 (2) RIGHT TO TREATMENT.--
3974 (a) The policy of the state is that neither the department
3975 nor the agency shall ~~not~~ deny treatment or training to any
3976 client and that no services shall be delayed ~~at a facility~~
3977 because the forensic client is indigent pursuant to s. 27.52 and
3978 presently unable to pay. However, every reasonable effort to
3979 collect appropriate reimbursement for the cost of providing
3980 services to clients able to pay for the services, including
3981 reimbursement from insurance or other third-party payments,
3982 shall be made by facilities providing services pursuant to this
3983 chapter and in accordance with the provisions of s. 402.33.

3984 (b) Each client shall be given, at the time of admission
3985 and at regular intervals thereafter, a physical examination,
3986 which shall include screening for communicable disease by a
3987 health practitioner authorized by law to give such screenings
3988 and examinations.
3989 (c) Every client ~~committed pursuant to this act~~ shall be
3990 afforded the opportunity to participate in activities designed
3991 to enhance self-image and the beneficial effects of other
3992 treatments or training, as determined by the facility.
3993 (d) Not more than 30 days after admission, each client
3994 shall have and receive, in writing, an individualized treatment
3995 or training plan which the client has had an opportunity to
3996 assist in preparing.
3997 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--
3998 (a) A forensic client ~~committed to the department pursuant~~
3999 ~~to this act~~ shall be asked to give express and informed written
4000 consent for treatment. If a client ~~in a forensic facility~~
4001 refuses such treatment as is deemed necessary and essential by
4002 the client's multidisciplinary treatment team ~~at the forensic~~
4003 ~~facility~~ for the appropriate care of the client ~~and the safety~~
4004 ~~of the client or others~~, such treatment may be provided under
4005 the following circumstances:
4006 1. In an emergency situation in which there is immediate
4007 danger to the safety of the client or others, such treatment may
4008 be provided upon the written order of a physician for a period
4009 not to exceed 48 hours, excluding weekends and legal holidays.
4010 If, after the 48-hour period, the client has not given express
4011 and informed consent to the treatment initially refused, the

4012 administrator or designee of the civil or forensic facility
4013 shall, within 48 hours, excluding weekends and legal holidays,
4014 petition the committing court or the circuit court serving the
4015 county in which the facility is located, at the option of the
4016 facility administrator or designee, for an order authorizing the
4017 continued treatment of the client. In the interim, the need for
4018 treatment shall be reviewed every 48 hours and may be continued
4019 without the consent of the client upon the continued written
4020 order of a physician who has determined that the emergency
4021 situation continues to present a danger to the safety of the
4022 client or others.
4023 2. In a situation other than an emergency situation, the
4024 administrator or designee of the ~~forensic~~ facility shall
4025 petition the court for an order authorizing necessary and
4026 essential ~~the~~ treatment for ~~to~~ the client. The order shall allow
4027 such treatment for a period not to exceed 90 days from the date
4028 of the entry of the order. Unless the court is notified in
4029 writing that the client has provided express and informed
4030 consent in writing or that the client has been discharged by the
4031 committing court, the administrator or designee shall, prior to
4032 the expiration of the initial 90-day order, petition the court
4033 for an order authorizing the continuation of treatment for
4034 another 90-day period. This procedure shall be repeated until
4035 the client provides consent or is discharged by the committing
4036 court.
4037 3. At the hearing on the issue of whether the court should
4038 enter an order authorizing treatment for which a client was
4039 unable ~~has refused~~ to give express and informed consent, the

4040 court shall determine by clear and convincing evidence that the
4041 client is mentally ill, retarded, or autistic ~~as defined in this~~
4042 ~~chapter~~, that the treatment not consented to is essential to the
4043 care of the client, and that the treatment not consented to is
4044 not experimental and does not present an unreasonable risk of
4045 serious, hazardous, or irreversible side effects. In arriving at
4046 the substitute judgment decision, the court must consider at
4047 least the following factors:
4048 a. The client's expressed preference regarding treatment;
4049 b. The probability of adverse side effects;
4050 c. The prognosis without treatment; and
4051 d. The prognosis with treatment.
4052
4053 The hearing shall be as convenient to the client as may be
4054 consistent with orderly procedure and shall be conducted in
4055 physical settings not likely to be injurious to the client's
4056 condition. The court may appoint a general or special magistrate
4057 to preside at the hearing. The client or the client's guardian,
4058 and the representative, shall be provided with a copy of the
4059 petition and the date, time, and location of the hearing. The
4060 client has the right to have an attorney represent him or her at
4061 the hearing, and, if the client is indigent, the court shall
4062 appoint the office of the public defender to represent the
4063 client at the hearing. The client may testify or not, as he or
4064 she chooses, and has the right to cross-examine witnesses and
4065 may present his or her own witnesses.
4066 (b) In addition to the provisions of paragraph (a), in the
4067 case of surgical procedures requiring the use of a general

4068 anesthetic or electroconvulsive treatment or nonpsychiatric
4069 medical procedures, and prior to performing the procedure,
4070 written permission shall be obtained from the client, if the
4071 client is legally competent, from the parent or guardian of a
4072 minor client, or from the guardian of an incompetent client. The
4073 administrator or designee of the forensic facility or a
4074 designated representative may, with the concurrence of the
4075 client's attending physician, authorize emergency surgical or
4076 nonpsychiatric medical treatment if such treatment is deemed
4077 lifesaving or for a situation threatening serious bodily harm to
4078 the client and permission of the client or the client's guardian
4079 could not ~~cannot~~ be obtained prior to provision of the needed
4080 treatment.
4081 (4) QUALITY OF TREATMENT.--Each forensic client ~~committed~~
4082 ~~pursuant to this chapter~~ shall receive treatment or training
4083 suited to the client's needs, which shall be administered
4084 skillfully, safely, and humanely with full respect for the
4085 client's dignity and personal integrity. Each client shall
4086 receive such medical, vocational, social, educational, and
4087 rehabilitative services as the client's condition requires to
4088 bring about a return to court for disposition of charges or a
4089 return to the community. In order to achieve this goal, the
4090 department and the agency shall coordinate their services with
4091 each other, the Department of Corrections, ~~is directed to~~
4092 ~~coordinate the services of the Mental Health Program Office and~~
4093 ~~the Developmental Disabilities Program Office with all other~~
4094 ~~programs of the department~~ and other appropriate state agencies.
4095 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

4096 ~~(a)~~ Each forensic client ~~committed pursuant to the~~
4097 ~~provisions of this chapter~~ has the right to communicate freely
4098 and privately with persons outside the facility unless it is
4099 determined that such communication is likely to be harmful to
4100 the client or others. Clients shall have the right to contact
4101 and to receive communication from their attorneys at any
4102 reasonable time.
4103 (a) ~~(b)~~ Each forensic client ~~committed under the provisions~~
4104 ~~of this chapter~~ shall be allowed to receive, send, and mail
4105 sealed, unopened correspondence; and no client's incoming or
4106 outgoing correspondence shall be opened, delayed, held, or
4107 censored by the facility unless there is reason to believe that
4108 it contains items or substances which may be harmful to the
4109 client or others, in which case the administrator or designee
4110 may direct reasonable examination of such mail and may regulate
4111 the disposition of such items or substances. "Correspondence"
4112 shall not include parcels or packages. Forensic facilities are
4113 authorized to promulgate reasonable institutional policies to
4114 provide for the inspection of parcels or packages and for the
4115 removal of contraband items for health or security reasons prior
4116 to the contents being given to a client.
4117 (b) ~~(c)~~ If a client's right to communicate is restricted by
4118 the administrator, written notice of such restriction and the
4119 duration of the restriction shall be served on the client or his
4120 or her legal guardian or representatives, and such restriction
4121 shall be recorded on the client's clinical record with the
4122 reasons therefor. ~~The restriction of a client's right to~~
4123 ~~communicate shall be reviewed at least every 7 days.~~

4124 (c) ~~(d)~~ Each forensic facility shall establish reasonable
4125 institutional policies governing visitors, visiting hours, and
4126 the use of telephones by clients in the least restrictive manner
4127 possible.
4128 (d) ~~(e)~~ Each forensic client ~~committed pursuant to this~~
4129 ~~chapter~~ shall have ready access to a telephone in order to
4130 report an alleged abuse. The facility or program staff shall
4131 orally and in writing inform each client of the procedure for
4132 reporting abuse and shall present the information in a language
4133 the client understands. A written copy of that procedure,
4134 including the telephone number of the central abuse hotline and
4135 reporting forms, shall be posted in plain view.
4136 (e) ~~(f)~~ The department's or agency's forensic facilities
4137 shall develop policies providing a procedure for reporting
4138 abuse. Facility staff shall be required, as a condition of
4139 employment, to become familiar with the procedures for the
4140 reporting of abuse.
4141 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A
4142 forensic client's right to possession of clothing and personal
4143 effects shall be respected. The department or agency by rule, or
4144 the administrator of any forensic facility by written
4145 institutional policy, may declare certain items to be hazardous
4146 to the health or welfare of clients or others or to the
4147 operation of the facility. Such items may be restricted from
4148 introduction into the facility or may be restricted from being
4149 in a client's possession. The administrator or designee may take
4150 temporary custody of such effects when required for medical and

4151 safety reasons. Custody of such personal effects shall be
4152 recorded in the client's clinical record.
4153 (7) VOTING IN PUBLIC ELECTIONS.--A forensic client
4154 ~~committed pursuant to this chapter~~ who is eligible to vote
4155 according to the laws of the state has the right to vote in the
4156 primary and general elections. The department and agency shall
4157 establish rules to enable clients to obtain voter registration
4158 forms, applications for absentee ballots, and absentee ballots.
4159 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record
4160 for each forensic client shall be maintained. The record shall
4161 include data pertaining to admission and such other information
4162 as may be required under rules of the department or the agency.
4163 Unless waived by express and informed consent of the client or
4164 the client's legal guardian or, if the client is deceased, by
4165 the client's personal representative or by that family member
4166 who stands next in line of intestate succession or except as
4167 otherwise provided in this subsection, the clinical record is
4168 confidential and exempt from the provisions of s. 119.07(1) and
4169 s. 24(a), Art. I of the State Constitution.
4170 (a) Such clinical record may be released:
4171 1. To such persons and agencies as are designated by the
4172 client or the client's legal guardian.
4173 2. To persons authorized by order of court and to the
4174 client's counsel when the records are needed by the counsel for
4175 adequate representation.
4176 3. To a qualified researcher, as defined by rule; a staff
4177 member of the facility; or an employee of the department or
4178 agency when the administrator of the facility, or secretary or

4179 director of the department or the agency deems it necessary for
4180 treatment of the client, maintenance of adequate records,
4181 compilation of treatment data, or evaluation of programs.
4182 4. For statistical and research purposes if the
4183 information is abstracted in such a way as to protect the
4184 identity of individuals.
4185 5. If a client receiving services ~~pursuant to this chapter~~
4186 has declared an intention to harm other persons~~. When such a~~
4187 ~~declaration has been made~~, the administrator shall authorize the
4188 release of sufficient information to provide adequate warning to
4189 the person threatened with harm by the client, and to the
4190 committing court, the state attorney, and the attorney
4191 representing the client.
4192 6. To the parent or next of kin of a client ~~mentally ill,~~
4193 ~~retarded, or autistic person~~ who is committed to, or is being
4194 served by, a facility or program when such information is
4195 limited to that person's service plan and current physical and
4196 mental condition. Release of such information shall be in
4197 accordance with the code of ethics of the profession involved
4198 and must comply with all state and federal laws and regulations
4199 pertaining to the release of personal health information.
4200 (b) Notwithstanding other provisions of this subsection,
4201 the department or the agency may request or receive from or
4202 provide to any of the following entities client information to
4203 facilitate treatment, habilitation, rehabilitation, and
4204 continuity of care of any forensic client:
4205 1. The Social Security Administration and the United
4206 States Department of Veterans Affairs.~~;~~

4207 2. Law enforcement agencies, state attorneys, defense
4208 attorneys, and judges in regard to the client's status.~~;~~
4209 3. Jail personnel in the jail to which a client may be
4210 housed. ~~returned; and~~
4211 4. Community agencies and others expected to provide
4212 followup care to the client upon the client's return to the
4213 community.
4214 (c) The department or the agency may provide notice to any
4215 client's next of kin or first representative regarding any
4216 serious medical illness or the death of the client.
4217 (d)1. Any law enforcement agency, facility, or other
4218 governmental agency that receives information pursuant to this
4219 subsection shall maintain the confidentiality of such
4220 information except as otherwise provided herein.
4221 2. Any agency or private practitioner who acts in good
4222 faith in releasing information pursuant to this subsection is
4223 not subject to civil or criminal liability for such release.
4224 (9) HABEAS CORPUS.--
4225 (a) At any time, and without notice, a forensic client
4226 detained by a facility, or a relative, friend, guardian,
4227 representative, or attorney on behalf of such client, may
4228 petition for a writ of habeas corpus to question the cause and
4229 legality of such detention and request that the committing court
4230 issue a writ for release. Each client ~~committed pursuant to this~~
4231 ~~chapter~~ shall receive a written notice of the right to petition
4232 for a writ of habeas corpus.
4233 (b) A client or his or her legal guardian or
4234 representatives or attorney may file a petition in the circuit

4235 court in the county where the client is committed alleging that
4236 the client is being unjustly denied a right or privilege granted
4237 herein or that a procedure authorized herein is being abused.
4238 Upon the filing of such a petition, the circuit court shall have
4239 the authority to conduct a judicial inquiry and to issue any
4240 appropriate order to correct an abuse of the provisions of this
4241 chapter.
4242 (10) TRANSPORTATION.--
4243 (a) The sheriff shall consult with the governing board of
4244 the county as to the most appropriate and cost-effective means
4245 of transportation for forensic clients in the custody of the
4246 department or the agency who have been committed for treatment
4247 or training. Such consultation shall include, but is not limited
4248 to, consideration of the cost to the county of transportation
4249 performed by sheriff's ~~department~~ personnel as opposed to
4250 transportation performed by other means and, if sheriff's
4251 ~~department~~ personnel are to be used for transportation, the
4252 effect such use will have, if any, on service delivery levels of
4253 the sheriff's road patrol. After such consultation with the
4254 governing board of the county, the sheriff shall determine the
4255 most appropriate and cost-effective means of transportation for
4256 forensic clients committed for treatment or training.
4257 (b) The governing board of each county is authorized to
4258 contract with private transport companies for the transportation
4259 of such clients to and from a facility.
4260 (c) Any company that transports a client pursuant to this
4261 section is considered an independent contractor and is solely
4262 liable for the safe and dignified transportation of the client.

4263 Any transport company that contracts with the governing board of
4264 a county for the transport of clients as provided for in this
4265 section shall be insured and provide no less than $100,000 in
4266 liability insurance with respect to the transportation of the
4267 clients.
4268 (d) Any company that contracts with a governing board of a
4269 county to transport clients shall comply with the applicable
4270 rules of the department or the agency to ensure the safety and
4271 dignity of the clients.
4272 (11) LIABILITY FOR VIOLATIONS.--Any person who violates or
4273 abuses any rights or privileges of a forensic client in the
4274 custody of the department or agency provided under this chapter
4275 shall be ~~by this act is~~ liable for damages as determined by law.
4276 Any person who acts in good faith in complying with the
4277 provisions of this chapter ~~act~~ is immune from civil or criminal
4278 liability for his or her actions in connection with the
4279 admission, diagnosis, treatment, training, or discharge of a
4280 client to or from a facility. However, this subsection does not
4281 relieve any person from liability if he or she is negligent.
4282 Section 64. Section 916.1075, Florida Statutes, is amended
4283 to read:
4284 916.1075 Sexual misconduct prohibited; reporting required;
4285 penalties.--
4286 (1) As used in this section, the term:
4287 (a) "Employee" includes any paid staff member, volunteer,
4288 or intern of the department or the agency; any person under
4289 contract with the department or the agency; and any person

4290 providing care or support to a forensic client on behalf of the
4291 department, the agency, or their ~~its~~ providers.
4292 (b) "Sexual activity" means:
4293 1. Fondling the genital area, groin, inner thighs,
4294 buttocks, or breasts of a person.
4295 2. The oral, anal, or vaginal penetration by or union with
4296 the sexual organ of another or the anal or vaginal penetration
4297 of another by any other object.
4298 3. Intentionally touching in a lewd or lascivious manner
4299 the breasts, genitals, the genital area, or buttocks, or the
4300 clothing covering them, of a person, or forcing or enticing a
4301 person to touch the perpetrator.
4302 4. Intentionally masturbating in the presence of another
4303 person.
4304 5. Intentionally exposing the genitals in a lewd or
4305 lascivious manner in the presence of another person.
4306 6. Intentionally committing any other sexual act that does
4307 not involve actual physical or sexual contact with the victim,
4308 including, but not limited to, sadomasochistic abuse, sexual
4309 bestiality, or the simulation of any act involving sexual
4310 activity in the presence of a victim.
4311 (c) "Sexual misconduct" means any sexual activity between
4312 an employee and a forensic client in the custody of the
4313 department or the agency, regardless of the consent of the
4314 client. The term does not include an act done for a bona fide
4315 medical purpose or an internal search conducted in the lawful
4316 performance of duty by an employee.

4317 (2) An employee who engages in sexual misconduct with a
4318 forensic client who resides in a civil or forensic facility
4319 commits a felony of the second degree, punishable as provided in
4320 s. 775.082, s. 775.083, or s. 775.084. An employee may be found
4321 guilty of violating this subsection without having committed the
4322 crime of sexual battery.
4323 (3) The consent of a forensic ~~the~~ client to sexual
4324 activity is not a defense to prosecution under this section.
4325 (4) This section does not apply to an employee who~~:~~
4326 ~~(a)~~ is legally married to the client~~; or~~
4327 ~~(b) Has no reason to believe that the person with whom the~~
4328 ~~employee engaged in sexual misconduct is a client receiving~~
4329 ~~services as described in subsection (2)~~.
4330 (5) An employee who witnesses sexual misconduct, or who
4331 otherwise knows or has reasonable cause to suspect that a person
4332 has engaged in sexual misconduct, shall immediately report the
4333 incident to the department's central abuse hotline and to the
4334 appropriate local law enforcement agency. Such employee shall
4335 also prepare, date, and sign an independent report that
4336 specifically describes the nature of the sexual misconduct, the
4337 location and time of the incident, and the persons involved. For
4338 allegations pertaining to forensic clients committed to the
4339 agency, the employee shall deliver the report to the supervisor
4340 or program director, who shall provide copies to the agency's ~~is~~
4341 ~~responsible for providing copies to the department's~~ inspector
4342 general. For allegations pertaining to forensic clients
4343 committed to the department, the employees shall deliver the
4344 report to the supervisor or program director, who shall be

4345 responsible for providing copies to the department's inspector
4346 general. ~~The inspector general shall immediately conduct an~~
4347 ~~appropriate administrative investigation, and, if there is~~
4348 ~~probable cause to believe that sexual misconduct has occurred,~~
4349 ~~the inspector general shall notify the state attorney in the~~
4350 ~~circuit in which the incident occurred.~~
4351 (6)(a) Any person who is required to make a report under
4352 this section and who knowingly or willfully fails to do so, or
4353 who knowingly or willfully prevents another person from doing
4354 so, commits a misdemeanor of the first degree, punishable as
4355 provided in s. 775.082 or s. 775.083.
4356 (b) Any person who knowingly or willfully submits
4357 inaccurate, incomplete, or untruthful information with respect
4358 to a report required under this section commits a misdemeanor of
4359 the first degree, punishable as provided in s. 775.082 or s.
4360 775.083.
4361 (c) Any person who knowingly or willfully coerces or
4362 threatens any other person with the intent to alter testimony or
4363 a written report regarding an incident of sexual misconduct
4364 commits a felony of the third degree, punishable as provided in
4365 s. 775.082, s. 775.083, or s. 775.084.
4366 (7) The provisions and penalties set forth in this section
4367 are in addition to any other civil, administrative, or criminal
4368 action provided by law which may be applied against an employee.
4369 Section 65. Section 916.1081, Florida Statutes, is amended
4370 to read:
4371 916.1081 Escape from program; penalty.--

4372 (1) A forensic client ~~A defendant~~ involuntarily committed
4373 to the department or the agency, in the custody of the
4374 department or agency ~~under the provisions of this chapter~~ who
4375 escapes or attempts to escape from a civil or forensic facility
4376 ~~or program~~ commits a felony of the second degree, punishable as
4377 provided in s. 775.082, s. 775.083, or s. 775.084.
4378 (2) A forensic client involuntarily committed to the
4379 department or the agency, in the custody of the Department of
4380 Corrections who escapes or attempts to escape from a facility or
4381 program commits a felony of the second degree, punishable as
4382 provided in s. 944.40.
4383 Section 66. Section 916.1085, Florida Statutes, is amended
4384 to read:
4385 916.1085 Introduction or removal of certain articles
4386 unlawful; penalty.--
4387 (1)(a) Except as authorized by law or as specifically
4388 authorized by the person in charge of a facility, it is unlawful
4389 to introduce into or upon the grounds of any facility under the
4390 supervision or control of the department, or to take or attempt
4391 to take or send therefrom, any of the following articles, which
4392 are hereby declared to be contraband for the purposes of this
4393 section:
4394 1. Any intoxicating beverage or beverage which causes or
4395 may cause an intoxicating effect;
4396 2. Any controlled substance as defined in chapter 893;
4397 3. Any firearm or deadly weapon; or
4398 4. Any other item as determined by the department, and as
4399 designated by ~~departmental~~ rule or ~~by the administrator of any~~

4400 ~~facility, and designated~~ by written institutional policies, to
4401 be hazardous to the welfare of clients ~~patients~~ or the operation
4402 of the facility.
4403 (b) It is unlawful to transmit to, attempt to transmit to,
4404 or cause or attempt to cause to be transmitted to or received by
4405 any client of any facility under the supervision or control of
4406 the department or the agency any article or thing declared by
4407 this section to be contraband, at any place which is outside of
4408 the grounds of such facility, except as authorized by law or as
4409 specifically authorized by the person in charge of such
4410 facility.
4411 (2)(a) All individuals or vehicles entering upon the
4412 grounds of any facility under the supervision or control of the
4413 department may be subject to reasonable search and seizure of
4414 any contraband materials introduced thereon, for purpose of
4415 enforcement of this chapter.
4416 (b) These provisions shall be enforced by institutional
4417 security personnel as defined in s. 916.106(12) ~~(10)~~ or by a law
4418 enforcement officer as defined in s. 943.10.
4419 (c) A person who violates any provision of subparagraph
4420 (1)(a)2. or subparagraph (1)(a)3. commits a felony of the third
4421 degree, punishable as provided in s. 775.082, s. 775.083, or s.
4422 775.084.
4423 Section 67. Section 916.1091, Florida Statutes, is amended
4424 to read:
4425 916.1091 Duties, functions, and powers of institutional
4426 security personnel.--In case of emergency, and when necessary to
4427 provide protection and security to any client, to the personnel,

4428 equipment, buildings, or grounds of a department or agency
4429 facility, or to citizens in the surrounding community,
4430 institutional security personnel may, when authorized by the
4431 administrator of the facility, or her or his designee when the
4432 administrator is not present, use a chemical weapon against a
4433 patient housed in a forensic facility. However, such weapon
4434 shall be used only to the extent necessary to provide ~~such~~
4435 protection and security. Under no circumstances shall any ~~such~~
4436 officer carry a chemical weapon on her or his person except
4437 during the period of the emergency for which its use was
4438 authorized. All chemical weapons shall be placed in secure
4439 storage when their use is not authorized as provided in this
4440 section.
4441 Section 68. Section 916.1093, Florida Statutes, is amended
4442 to read:
4443 916.1093 Operation and administration; rules.--
4444 (1) The department or the agency is authorized to enter
4445 into contracts and do such things as may be necessary and
4446 incidental to assure compliance with and to carry out the
4447 provisions of this chapter in accordance with the stated
4448 legislative intent.
4449 (2) The department or the agency has authority to adopt
4450 rules pursuant to ss. 120.536(1) and 120.54 to implement the
4451 provisions of this chapter.
4452 Section 69. Section 916.111, Florida Statutes, is amended
4453 to read:
4454 916.111 Training of mental health experts.--The evaluation
4455 of defendants for competency to proceed or for sanity at the

4456 time of the commission of the offense shall be conducted in such
4457 a way as to ensure uniform application of the criteria
4458 enumerated in the applicable rules of the ~~Rules 3.210 and 3.216,~~
4459 Florida Rules of Criminal Procedure. The department shall
4460 develop, and may contract with accredited institutions:
4461 (1) To provide:
4462 (a) A plan for training ~~community~~ mental health
4463 professionals to perform forensic evaluations and to standardize
4464 the criteria and procedures to be used in these evaluations;
4465 (b) Clinical protocols and procedures consistent with the
4466 applicable rules of the ~~based upon the criteria of Rules 3.210~~
4467 ~~and 3.216,~~ Florida Rules of Criminal Procedure; and
4468 (c) Training for ~~community~~ mental health professionals in
4469 the application of these protocols and procedures in performing
4470 forensic evaluations and providing reports to the courts; and
4471 (2) To compile and maintain the necessary information for
4472 evaluating the success of this program, including the number of
4473 persons trained, the cost of operating the program, and the
4474 effect on the quality of forensic evaluations as measured by
4475 appropriateness of admissions to state forensic facilities and
4476 to community-based care programs.
4477 Section 70. Section 916.115, Florida Statutes, is amended
4478 to read:
4479 916.115 Appointment of experts.--
4480 (1)~~(a) Annually, the department shall provide the courts~~
4481 ~~with a list of mental health professionals who have completed~~
4482 ~~approved training as experts.~~

4483 ~~(b)~~ The court shall ~~may~~ appoint no more than three nor
4484 fewer than two experts to determine ~~issues of~~ the mental
4485 condition of a defendant in a criminal case, including ~~the~~
4486 ~~issues of~~ competency to proceed, insanity, ~~and~~ involuntary
4487 ~~hospitalization or~~ placement, and treatment. The panel of
4488 experts ~~An expert~~ may evaluate the defendant in jail or in
4489 another appropriate local facility, or in a Department of
4490 Corrections facility.
4491 (a) ~~(c)~~ To the extent possible, an appointed expert shall
4492 have completed forensic evaluator training approved by the
4493 department and shall be either a psychiatrist, licensed
4494 psychologist, or physician.
4495 (b) The department shall maintain and provide the courts
4496 with a list of available mental health professionals who have
4497 completed approved training as experts.
4498 (2) Experts ~~Expert witnesses~~ appointed by the court to
4499 evaluate the mental condition of a defendant in a criminal case
4500 shall be allowed reasonable fees for services rendered as
4501 evaluators of competence or sanity and as witnesses, which shall
4502 be paid in accordance with s. 29.004(6).
4503 (a)1. The court shall pay for any expert that it appoints
4504 by court order, upon motion of counsel for the defendant or the
4505 state or upon its own motion. If the defense or the state
4506 retains an expert and waives the confidentiality of the expert's
4507 report, the court may pay for no more than two additional
4508 experts appointed by court order. If an expert appointed by the
4509 court upon motion of counsel for the defendant specifically to
4510 evaluate the competence of the defendant to proceed also

4511 addresses in his or her evaluation issues related to sanity as
4512 an affirmative defense, the court shall pay only for that
4513 portion of the expert's fees relating to the evaluation on
4514 competency to proceed, and the balance of the fees shall be
4515 chargeable to the defense.
4516 2. Pursuant to s. 29.006, the office of the public
4517 defender shall pay for any expert retained by the office.
4518 3. Pursuant to s. 29.005, the office of the state attorney
4519 shall pay for any expert retained by the office. Notwithstanding
4520 subparagraph 1., the office of the state attorney shall pay for
4521 any expert whom the office retains and whom the office moves the
4522 court to appoint in order to ensure that the expert has access
4523 to the defendant.
4524 4. An expert retained by the defendant who is represented
4525 by private counsel appointed under s. 27.5303 shall be paid by
4526 the Justice Administrative Commission.
4527 5. An expert retained by a defendant who is indigent for
4528 costs as determined by the court and who is represented by
4529 private counsel, other than private counsel appointed under s.
4530 27.5303, on a fee or pro bono basis, or who is representing
4531 himself or herself, shall be paid by the Justice Administrative
4532 Commission from funds specifically appropriated for these
4533 expenses.
4534 (b) State employees shall be paid expenses pursuant to s.
4535 112.061.
4536 (c) The fees shall be taxed as costs in the case.
4537 (d) In order for an expert to be paid for the services
4538 rendered, the expert's report and testimony must explicitly

4539 address each of the factors specified in s. 916.12 and follow
4540 the procedures set out in this chapter and in the Florida Rules
4541 of Criminal Procedure.
4542 Section 71. Section 916.12, Florida Statutes, is amended
4543 to read:
4544 916.12 Mental competence to proceed.--
4545 (1) A defendant is incompetent to proceed within the
4546 meaning of this chapter if the defendant does not have
4547 sufficient present ability to consult with her or his lawyer
4548 with a reasonable degree of rational understanding or if the
4549 defendant has no rational, as well as factual, understanding of
4550 the proceedings against her or him.
4551 (2) Mental health experts appointed pursuant to s. 916.115
4552 ~~An expert~~ shall first determine whether the defendant ~~person~~ is
4553 mentally ill and, if so, consider the factors related to the
4554 issue of whether the defendant meets the criteria for competence
4555 to proceed as described in subsection (1)~~; that is, whether the~~
4556 ~~defendant has sufficient present ability to consult with counsel~~
4557 ~~with a reasonable degree of rational understanding and whether~~
4558 ~~the defendant has a rational, as well as factual, understanding~~
4559 ~~of the pending proceedings~~. A defendant must be evaluated by no
4560 fewer than two experts before the court commits the defendant or
4561 takes other action authorized by this chapter or the Florida
4562 Rules of Criminal Procedure, except if one expert finds that the
4563 defendant is incompetent to proceed and the parties stipulate to
4564 that finding, the court may commit the defendant or take other
4565 action authorized by this chapter or the rules without further
4566 evaluation or hearing, or the court may appoint no more than two

4567 additional experts to evaluate the defendant. Notwithstanding
4568 any stipulation by the state and the defendant, the court may
4569 require a hearing with testimony from the expert or experts
4570 before ordering the commitment of a defendant.
4571 (3) In considering the issue of competence to proceed, an
4572 examining expert shall first consider and specifically include
4573 in his or her report the defendant's capacity to:
4574 (a) Appreciate the charges or allegations against the
4575 defendant.~~;~~
4576 (b) Appreciate the range and nature of possible penalties,
4577 if applicable, that may be imposed in the proceedings against
4578 the defendant.~~;~~
4579 (c) Understand the adversarial nature of the legal
4580 process.~~;~~
4581 (d) Disclose to counsel facts pertinent to the proceedings
4582 at issue.~~;~~
4583 (e) Manifest appropriate courtroom behavior.~~; and~~
4584 (f) Testify relevantly.~~;~~
4585 (g) ~~and include in his or her report~~ Any other factor
4586 deemed relevant by the expert.
4587 (4) If an expert finds that the defendant is incompetent
4588 to proceed, the expert shall report on any recommended treatment
4589 for the defendant to attain competence to proceed. In
4590 considering the issues relating to treatment, the examining
4591 expert shall specifically report on:
4592 (a) The mental illness causing the incompetence.~~;~~

4593 (b) The treatment or treatments appropriate for the mental
4594 illness of the defendant and an explanation of each of the
4595 possible treatment alternatives in order of choices.~~;~~
4596 (c) The availability of acceptable treatment and, if
4597 treatment is available in the community, the expert shall so
4598 state in the report.~~; and~~
4599 (d) The likelihood of the defendant's attaining competence
4600 under the treatment recommended, an assessment of the probable
4601 duration of the treatment required to restore competence, and
4602 the probability that the defendant will attain competence to
4603 proceed in the foreseeable future.
4604 (5) A defendant who, because of psychotropic medication,
4605 is able to understand the nature of proceedings and assist in
4606 the defendant's own defense shall not automatically be deemed
4607 incompetent to proceed simply because the defendant's
4608 satisfactory mental functioning is dependent upon such
4609 medication. As used in this subsection, "psychotropic
4610 medication" means any drug or compound used to treat mental or
4611 emotional disorders affecting the mind, behavior, intellectual
4612 functions, perception, moods, or emotions and includes
4613 antipsychotic, antidepressant, antimanic, and antianxiety drugs.
4614 Section 72. Section 916.13, Florida Statutes, is amended
4615 to read:
4616 916.13 Involuntary commitment of defendant adjudicated
4617 incompetent.--
4618 (1) Every defendant who is charged with a felony and who
4619 is adjudicated incompetent to proceed~~, pursuant to the~~
4620 ~~applicable Florida Rules of Criminal Procedure,~~ may be

4621 involuntarily committed for treatment upon a finding by the
4622 court of clear and convincing evidence that:
4623 (a) The defendant is mentally ill and because of the
4624 mental illness:
4625 1. The defendant is manifestly incapable of surviving
4626 alone or with the help of willing and responsible family or
4627 friends, including available alternative services, and, without
4628 treatment, the defendant is likely to suffer from neglect or
4629 refuse to care for herself or himself and such neglect or
4630 refusal poses a real and present threat of substantial harm to
4631 the defendant's well-being; or ~~and~~
4632 2. There is a substantial likelihood that in the near
4633 future the defendant will inflict serious bodily harm on herself
4634 or himself or another person, as evidenced by recent behavior
4635 causing, attempting, or threatening such harm;
4636 (b) All available, less restrictive treatment
4637 alternatives, including treatment in community residential
4638 facilities or community inpatient or outpatient settings, which
4639 would offer an opportunity for improvement of the defendant's
4640 condition have been judged to be inappropriate; and
4641 (c) There is a substantial probability that the mental
4642 illness causing the defendant's incompetence will respond to
4643 treatment and the defendant will regain competency to proceed in
4644 the reasonably foreseeable future.
4645 (2) A defendant who has been charged with a felony and who
4646 has been adjudicated incompetent to proceed due to mental
4647 illness, and who meets the criteria for involuntary commitment
4648 to the department under the provisions of this chapter, may be

4649 committed to the department, and the department shall retain and
4650 treat the defendant. No later than 6 months after the date of
4651 admission and ~~or~~ at the end of any period of extended
4652 commitment, or at any time the administrator or designee shall
4653 have determined that the defendant has regained competency to
4654 proceed or no longer meets the criteria for continued
4655 commitment, the administrator or designee shall file a report
4656 with the court pursuant to the applicable Florida Rules of
4657 Criminal Procedure.
4658 Section 73. Section 916.15, Florida Statutes, is amended
4659 to read:
4660 916.15 Involuntary commitment of defendant adjudicated not
4661 guilty by reason of insanity.--
4662 (1) The determination of whether a defendant is not guilty
4663 by reason of insanity shall be determined in accordance with the
4664 Florida Rules of Criminal Procedure.
4665 (2) ~~(1)~~ A defendant who is acquitted of criminal charges
4666 because of a finding of not guilty by reason of insanity may be
4667 involuntarily committed pursuant to such finding if the
4668 defendant is mentally ill and, because of the illness, is
4669 manifestly dangerous to himself or herself or others.
4670 (3) ~~(2)~~ Every defendant acquitted of criminal charges by
4671 reason of insanity and found to meet the criteria for
4672 involuntary commitment may be committed and treated in
4673 accordance with the provisions of this section and the
4674 applicable Florida Rules of Criminal Procedure. The department
4675 shall admit a defendant so adjudicated to an appropriate
4676 facility or program for treatment and shall retain and treat

4677 such defendant. No later than 6 months after the date of
4678 admission, prior to the end of any period of extended
4679 commitment, or at any time the administrator or designee shall
4680 have determined that the defendant no longer meets the criteria
4681 for continued commitment placement, the administrator or
4682 designee shall file a report with the court pursuant to the
4683 applicable Florida Rules of Criminal Procedure.
4684 (4) ~~(3)~~ In all proceedings under this section ~~subsection~~,
4685 both the defendant and the state shall have the right to a
4686 hearing before the committing court. Evidence at such hearing
4687 may be presented by the hospital administrator or the
4688 administrator's designee as well as by the state and the
4689 defendant. The defendant shall have the right to counsel at any
4690 such hearing. In the event that a defendant is determined to be
4691 indigent pursuant to s. 27.52, the public defender shall
4692 represent the defendant. The parties shall have access to the
4693 defendant's records at the treating facilities and may interview
4694 or depose personnel who have had contact with the defendant at
4695 the treating facilities.
4696 Section 74. Section 916.16, Florida Statutes, is amended
4697 to read:
4698 916.16 Jurisdiction of committing court.--
4699 (1) The committing court shall retain jurisdiction over ~~in~~
4700 ~~the case of~~ any defendant involuntarily committed due to a
4701 determination ~~hospitalized~~ as incompetent to proceed due to
4702 mental illness or because of a finding of not guilty by reason
4703 of insanity pursuant to this chapter. No such defendant may be
4704 released except by order of the committing court. An ~~The~~

4705 administrative hearing examiner shall have no jurisdiction to
4706 determine issues of continuing commitment ~~hospitalization~~ or
4707 release of any defendant involuntarily committed ~~admitted~~
4708 pursuant to this chapter.
4709 (2) The committing court shall retain jurisdiction in the
4710 case of any defendant placed on conditional release pursuant to
4711 s. 916.17. No such defendant may be released from the conditions
4712 of release except by order of the committing court.
4713 Section 75. Section 916.17, Florida Statutes, is amended
4714 to read:
4715 916.17 Conditional release.--
4716 (1) ~~The committing court may order a conditional release~~
4717 ~~of any defendant who has been found to be incompetent to proceed~~
4718 ~~or not guilty by reason of insanity, based on an approved plan~~
4719 ~~for providing appropriate outpatient care and treatment.~~ Except
4720 for an inmate currently serving a prison sentence, the
4721 committing court may order a conditional release of any
4722 defendant in lieu of an involuntary commitment to a facility
4723 pursuant to s. 916.13 or s. 916.15, based upon an approved plan
4724 for providing appropriate outpatient care and treatment. Upon a
4725 recommendation that outpatient treatment of the defendant is
4726 appropriate, a written plan for outpatient treatment, including
4727 recommendations from qualified professionals, must be filed with
4728 the court, with copies to all parties. Such a plan may also be
4729 submitted by the defendant and filed with the court with copies
4730 to all parties. The plan shall include:
4731 (a) Special provisions for residential care or adequate
4732 supervision of the defendant.

4733 (b) Provisions for outpatient mental health services.
4734 (c) If appropriate, recommendations for auxiliary services
4735 such as vocational training, educational services, or special
4736 medical care.
4737
4738 In its order of conditional release, the court shall specify the
4739 conditions of release based upon the release plan and shall
4740 direct the appropriate agencies or persons to submit periodic
4741 reports to the court regarding the defendant's compliance with
4742 the conditions of the release and progress in treatment, with
4743 copies to all parties.
4744 (2) Upon the filing of an affidavit or statement under
4745 oath by any person that the defendant has failed to comply with
4746 the conditions of release, that the defendant's condition has
4747 deteriorated to the point that inpatient care is required, or
4748 that the release conditions should be modified, the court shall
4749 hold a hearing within 7 days after receipt of the affidavit or
4750 statement under oath. After the hearing, the court may modify
4751 the release conditions. The court may also order that the
4752 defendant be returned to the department if it is found, after
4753 the appointment and report of experts, that the person meets the
4754 criteria for involuntary commitment under s. 916.13 or s. 916.15
4755 ~~treatment~~.
4756 (3) If at any time it is determined after a hearing that
4757 the defendant who has been conditionally released under
4758 subsection (1) no longer requires court-supervised followup
4759 care, the court shall terminate its jurisdiction in the cause
4760 and discharge the defendant.

4761 Section 76. Section 916.301, Florida Statutes, is amended
4762 to read:
4763 916.301 Appointment of experts.--
4764 (1) All evaluations ordered by the court under this part
4765 must be conducted by qualified experts with experience in
4766 evaluating persons with mental retardation or autism. The agency
4767 ~~department~~ shall maintain and provide the courts ~~annually~~ with a
4768 list of available mental retardation and autism professionals
4769 who are appropriately licensed and qualified to perform
4770 evaluations of defendants alleged to be incompetent to proceed
4771 due to retardation or autism. The courts may use professionals
4772 from this list when appointing experts and ordering evaluations
4773 under this part ~~for defendants suspected of being retarded or~~
4774 ~~autistic~~.
4775 (2) If a defendant's suspected mental condition is
4776 retardation or autism, the court shall appoint a panel of
4777 experts consisting of the following: ~~two experts, one of whom~~
4778 ~~must be the developmental services program of the department,~~
4779 ~~each of whom will evaluate whether the defendant meets the~~
4780 ~~definition of retardation or autism and, if so, whether the~~
4781 ~~defendant is competent to proceed.~~
4782 (a) ~~(3)~~ At least one or, at the request of any party, two
4783 experts ~~the court may appoint one additional expert~~ to evaluate
4784 ~~the defendant. The expert appointed by the court will evaluate~~
4785 whether the defendant meets the definition of retardation or
4786 autism and, if so, whether the defendant is competent to
4787 proceed.

4788 (b) ~~(4)~~ An agency-selected ~~The developmental services~~
4789 ~~program shall select a~~ psychologist who is licensed or
4790 authorized by law to practice in this state, with experience in
4791 evaluating persons suspected of having retardation or autism,
4792 and ~~a~~ social service professional, with experience in working
4793 with persons with retardation or autism ~~to evaluate the~~
4794 ~~defendant~~.
4795 1. ~~(a)~~ The psychologist shall evaluate whether the
4796 defendant meets the definition of retardation or autism and, if
4797 so, whether the defendant is incompetent to proceed due to
4798 retardation or autism.
4799 2. ~~(b)~~ The social service professional shall provide a
4800 social and developmental history of the defendant.
4801 ~~(5) All evaluations ordered by the court must be from~~
4802 ~~qualified experts with experience in evaluating persons with~~
4803 ~~retardation or autism.~~
4804 (3) ~~(6)~~ The panel of experts may examine the defendant in
4805 jail, in another appropriate local facility, in a Department of
4806 Corrections facility, or on an outpatient basis.
4807 (4) ~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to
4808 evaluate the mental condition of a defendant in a criminal case
4809 shall be allowed reasonable fees for services rendered as
4810 evaluators and as witnesses, which shall be paid in accordance
4811 with s. 29.004(6) by the court. State employees shall be paid
4812 expenses pursuant to s. 112.061. The fees shall be taxed as
4813 costs in the case. In order for the experts to be paid for the
4814 services rendered, the reports and testimony must explicitly

4815 address each of the factors and follow the procedures set out in
4816 this chapter and in the Florida Rules of Criminal Procedure.
4817 Section 77. Section 916.3012, Florida Statutes, is amended
4818 to read:
4819 916.3012 Mental competence to proceed.--
4820 (1) A defendant whose suspected mental condition is
4821 retardation or autism is incompetent to proceed within the
4822 meaning of this chapter if the defendant does not have
4823 sufficient present ability to consult with the defendant's
4824 lawyer with a reasonable degree of rational understanding or if
4825 the defendant has no rational, as well as factual, understanding
4826 of the proceedings against the defendant.
4827 (2) ~~The~~ Experts in mental retardation or autism, appointed
4828 pursuant to s. 916.301, shall first consider whether the
4829 defendant meets the definition of retardation or autism and, if
4830 so, consider the factors related to the issue of whether the
4831 defendant meets the criteria for competence to proceed as
4832 described in subsection (1)~~; that is, whether the defendant has~~
4833 ~~sufficient present ability to consult with counsel with a~~
4834 ~~reasonable degree of rational understanding and whether the~~
4835 ~~defendant has a rational, as well as factual, understanding of~~
4836 ~~the pending proceedings~~.
4837 (3) In considering the issue of competence to proceed, the
4838 examining experts shall first consider and specifically include
4839 in their report the defendant's capacity to:
4840 (a) Appreciate the charges or allegations against the
4841 defendant;

4842 (b) Appreciate the range and nature of possible penalties,
4843 if applicable, that may be imposed in the proceedings against
4844 the defendant;
4845 (c) Understand the adversarial nature of the legal
4846 process;
4847 (d) Disclose to counsel facts pertinent to the proceedings
4848 at issue;
4849 (e) Manifest appropriate courtroom behavior; ~~and~~
4850 (f) Testify relevantly; and
4851 (g) ~~and include in their report~~ Any other factor deemed
4852 relevant by the experts.
4853 (4) If the experts should find that the defendant is
4854 incompetent to proceed, the experts shall report on any
4855 recommended training for the defendant to attain competence to
4856 proceed. In considering the issues relating to training, the
4857 examining experts shall specifically report on:
4858 (a) The retardation or autism causing the incompetence;
4859 (b) The training appropriate for the retardation or autism
4860 of the defendant and an explanation of each of the possible
4861 training alternatives in order of choices;
4862 (c) The availability of acceptable training and, if
4863 training is available in the community, the expert shall so
4864 state in the report; and
4865 (d) The likelihood of the defendant's attaining competence
4866 under the training recommended, an assessment of the probable
4867 duration of the training required to restore competence, and the
4868 probability that the defendant will attain competence to proceed
4869 in the foreseeable future.

4870 Section 78. Section 916.302, Florida Statutes, is amended
4871 to read:
4872 916.302 Involuntary commitment of defendant determined to
4873 be incompetent to proceed ~~due to retardation or autism~~.--
4874 (1) CRITERIA.--Every defendant who is charged with a
4875 felony and who is adjudicated ~~found to be~~ incompetent to proceed
4876 due to mental retardation or autism~~, pursuant to this chapter~~
4877 ~~and the applicable Florida Rules of Criminal Procedure,~~ may be
4878 involuntarily committed for training upon a finding by the court
4879 of clear and convincing evidence that:
4880 (a) The defendant is retarded or autistic;
4881 (b) There is a substantial likelihood that in the near
4882 future the defendant will inflict serious bodily harm on himself
4883 or herself or another person, as evidenced by recent behavior
4884 causing, attempting, or threatening such harm;
4885 (c) All available, less restrictive alternatives,
4886 including services provided in community residential facilities
4887 or other community settings, which would offer an opportunity
4888 for improvement of the condition have been judged to be
4889 inappropriate; and
4890 (d) There is a substantial probability that the
4891 retardation or autism causing the defendant's incompetence will
4892 respond to training and the defendant will regain competency to
4893 proceed in the reasonably foreseeable future.
4894 (2) ADMISSION TO A FACILITY.--
4895 (a) A defendant who has been charged with a felony and who
4896 is found to be incompetent to proceed due to mental retardation
4897 or autism, and who meets the criteria for involuntary commitment

4898 to the agency ~~department~~ under the provisions of this chapter,
4899 shall be committed to the agency ~~department~~, and the agency
4900 ~~department~~ shall retain and provide appropriate training to
4901 ~~serve~~ the defendant. No later than 6 months after the date of
4902 admission or at the end of any period of extended commitment or
4903 at any time the administrator or designee shall have determined
4904 that the defendant has regained competency to proceed or no
4905 longer meets the criteria for continued commitment, the
4906 administrator or designee shall file a report with the court
4907 pursuant to this chapter and the applicable Florida Rules of
4908 Criminal Procedure.
4909 (b) A defendant determined to be incompetent to proceed
4910 due to retardation or autism may be ordered by a circuit court
4911 into a forensic ~~secure~~ facility designated by the agency
4912 ~~department~~ for retarded or autistic defendants.
4913 (c) The agency ~~department~~ may transfer a defendant from a
4914 designated forensic ~~secure~~ facility to another designated
4915 forensic ~~secure~~ facility and must notify the court of the
4916 transfer within 30 days after the transfer is completed.
4917 (d) The agency ~~department~~ may not transfer a defendant
4918 from a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~
4919 facility without first notifying the court, and all parties, 30
4920 days before the proposed transfer. If the court objects to the
4921 proposed transfer ~~to a nonsecure facility~~, it must send its
4922 written objection to the agency ~~department~~. The agency
4923 ~~department~~ may transfer the defendant unless it receives the
4924 written objection from the court within 30 days after the
4925 court's receipt of the notice of the proposed transfer.

4926 (3) PLACEMENT OF DUALLY DIAGNOSED DEFENDANTS.--
4927 (a) If a defendant is both retarded or autistic and
4928 mentally ill, evaluations must address which condition is
4929 primarily affecting the defendant's competency to proceed.
4930 Referral of the defendant should be made to a civil or forensic
4931 ~~the~~ facility ~~or program~~ most appropriate to address the symptoms
4932 which are the cause of the defendant's incompetence.
4933 (b) Transfer from one civil or forensic facility ~~or~~
4934 ~~program~~ to another civil or forensic facility ~~or program~~ may
4935 occur when, in the department's and agency's judgment, it is in
4936 the defendant's best treatment or training interests. The
4937 department and agency shall submit an evaluation and
4938 justification for the transfer to the court. The court may
4939 consult with an outside expert if necessary. Transfer will
4940 require an amended order from the committing court.
4941 Section 79. Section 916.3025, Florida Statutes, is amended
4942 to read:
4943 916.3025 Jurisdiction of committing court.--
4944 (1) The committing court shall retain jurisdiction in the
4945 case of any defendant found to be incompetent to proceed due to
4946 retardation or autism and ordered into a forensic ~~secure~~
4947 facility designated by the agency ~~department~~ for retarded or
4948 autistic defendants. No defendant may be released except by the
4949 order of the committing court. An administrative hearing
4950 examiner shall have no jurisdiction to determine issues of
4951 continuing commitment or release of any defendant involuntarily
4952 committed pursuant to this chapter.

4953 (2) The committing court shall retain jurisdiction in the
4954 case of any defendant placed on conditional release pursuant to
4955 s. 916.304. No such defendant may be released from the
4956 conditions of release except by order of the committing court.
4957 (3) The committing court shall consider a ~~the~~ petition to
4958 involuntarily admit a defendant whose charges have been
4959 dismissed to residential services provided by the agency
4960 ~~department's developmental services program a person whose~~
4961 ~~charges have been dismissed,~~ and, when applicable, to continue
4962 secure placement of such person as provided in s. 916.303. The
4963 committing court shall retain jurisdiction over such person so
4964 long as he or she remains in secure placement or is on
4965 conditional release as provided in s. 916.304. However, upon
4966 request, the court may transfer the continuing jurisdiction to
4967 the court in the circuit where the defendant resides if
4968 different from where the original secure placement order was
4969 issued. No person may be released from an order for secure
4970 placement except by the order of the court.
4971 Section 80. Section 916.303, Florida Statutes, is amended
4972 to read:
4973 916.303 Determination of incompetency due to mental
4974 retardation or autism; dismissal of charges.--
4975 (1) Except for an inmate currently serving a prison
4976 sentence, the charges against any defendant found to be
4977 incompetent to proceed due to mental retardation or autism shall
4978 be dismissed without prejudice to the state if the defendant
4979 remains incompetent to proceed within a reasonable time after
4980 such determination, not to exceed 2 years, unless the court in

4981 its order specifies its reasons for believing that the defendant
4982 will become competent to proceed within the foreseeable future
4983 and specifies the time within which the defendant is expected to
4984 become competent to proceed. The charges may be refiled by the
4985 state ~~against the defendant are dismissed without prejudice to~~
4986 ~~the state to refile the charges~~ should the defendant be declared
4987 competent to proceed in the future.
4988 (2) ~~(a)~~ If the charges are dismissed and if the defendant
4989 is considered to lack sufficient capacity to give express and
4990 informed consent to a voluntary application for services and
4991 lacks the basic survival and self-care skills to provide for his
4992 or her well-being or is likely to physically injure himself or
4993 herself or others if allowed to remain at liberty, the agency
4994 ~~department~~, the state attorney, or the defendant's attorney
4995 shall ~~may~~ apply to the committing court to involuntarily admit
4996 the defendant to residential services pursuant to s. 393.11.
4997 (3) ~~(b)~~ If the defendant is considered to need involuntary
4998 residential services for the reasons described in subsection (2)
4999 ~~under s. 393.11~~ and, further, there is a substantial likelihood
5000 that the defendant will injure another person or continues to
5001 present a danger of escape, and all available less restrictive
5002 alternatives, including services in community residential
5003 facilities or other community settings, which would offer an
5004 opportunity for improvement of the condition have been judged to
5005 be inappropriate, then the agency ~~person or entity filing the~~
5006 ~~petition under s. 393.11~~, the state attorney, or the defendant's
5007 counsel may request~~, the petitioning commission, or the~~
5008 ~~department may also petition~~ the committing court to continue

5009 the defendant's placement in a secure facility ~~or program~~
5010 pursuant to this part ~~section~~. Any placement so continued
5011 ~~defendant involuntarily admitted~~ under this subsection must be
5012 ~~paragraph shall have his or her status~~ reviewed by the court at
5013 least annually at a hearing. The annual review and hearing shall
5014 determine whether the defendant continues to meet the criteria
5015 described in this subsection ~~for involuntary residential~~
5016 ~~services~~ and, if so, whether the defendant still requires
5017 involuntary placement in a secure facility or program ~~because~~
5018 ~~the court finds that the defendant is likely to physically~~
5019 ~~injure others as specified in s. 393.11~~ and whether the
5020 defendant is receiving adequate care, treatment, habilitation,
5021 and rehabilitation, including psychotropic medication and
5022 behavioral programming. Notice of the annual review and review
5023 hearing shall be given to the state attorney and to the
5024 defendant's attorney. In no instance may a defendant's placement
5025 in a secure facility or program exceed the maximum sentence for
5026 the crime for which the defendant was charged.
5027 Section 81. Section 916.304, Florida Statutes, is amended
5028 to read:
5029 916.304 Conditional release.--
5030 (1) Except for an inmate currently serving a prison
5031 sentence, the committing court may order a conditional release
5032 of any defendant who has been found to be incompetent to proceed
5033 due to mental retardation or autism, based on an approved plan
5034 for providing ~~continuing~~ community-based training. The
5035 committing criminal court may order a conditional release of any
5036 defendant to a civil facility in lieu of an involuntary

5037 commitment to a forensic facility pursuant to s. 916.302. Upon a
5038 recommendation that community-based training for the defendant
5039 is appropriate, a written plan for community-based training,
5040 including recommendations from qualified professionals, may be
5041 filed with the court, with copies to all parties. Such a plan
5042 may also be submitted by the defendant and filed with the court,
5043 with copies to all parties. The plan shall include:
5044 (a) Special provisions for residential care and adequate
5045 supervision of the defendant, including recommended location of
5046 placement.
5047 (b) Recommendations for auxiliary services such as
5048 vocational training, psychological training, educational
5049 services, leisure services, and special medical care.
5050
5051 In its order of conditional release, the court shall specify the
5052 conditions of release based upon the release plan and shall
5053 direct the appropriate agencies or persons to submit periodic
5054 reports to the courts regarding the defendant's compliance with
5055 the conditions of the release and progress in training, with
5056 copies to all parties.
5057 (2) Upon the filing of an affidavit or statement under
5058 oath by any person that the defendant has failed to comply with
5059 the conditions of release, that the defendant's condition has
5060 deteriorated, or that the release conditions should be modified,
5061 the court shall hold a hearing within 7 days after receipt of
5062 the affidavit or statement under oath. <u>With notice to the court,</u>
5063 <u>the agency may detain a defendant in a forensic facility until</u>
5064 <u>the hearing occurs.</u> After the hearing, the court may modify the

5065 release conditions. The court may also order that the defendant
5066 be placed into more appropriate programs for further training or
5067 may order the defendant to be committed ~~returned~~ to a forensic
5068 facility ~~involuntary residential services of the department~~ if
5069 it is found, after the appointment and report of experts, that
5070 the defendant meets the criteria for placement in a forensic
5071 facility ~~involuntary residential services~~.
5072 (3) If at any time it is determined after a hearing that
5073 the defendant conditionally released under subsection (1) no
5074 longer requires court-supervised followup care, the court shall
5075 terminate its jurisdiction in the cause and discharge the
5076 defendant.
5077 Section 82. Subsection (1) of section 921.137, Florida
5078 Statutes, is amended to read:
5079 921.137 Imposition of the death sentence upon a ~~mentally~~
5080 ~~retarded~~ defendant with mental retardation prohibited.--
5081 (1) As used in this section, the term "mental retardation"
5082 means significantly subaverage general intellectual functioning
5083 existing concurrently with deficits in adaptive behavior and
5084 manifested during the period from conception to age 18. The term
5085 "significantly subaverage general intellectual functioning," for
5086 the purpose of this section, means performance that is two or
5087 more standard deviations from the mean score on a standardized
5088 intelligence test specified in the rules of the Agency for
5089 Persons with Disabilities ~~Department of Children and Family~~
5090 ~~Services~~. The term "adaptive behavior," for the purpose of this
5091 definition, means the effectiveness or degree with which an
5092 individual meets the standards of personal independence and

5093 social responsibility expected of his or her age, cultural
5094 group, and community. The Agency for Persons with Disabilities
5095 ~~Department of Children and Family Services~~ shall adopt rules to
5096 specify the standardized intelligence tests as provided in this
5097 subsection.
5098 Section 83. Section 944.602, Florida Statutes, is amended
5099 to read:
5100 944.602 Notification of the Agency for Persons with
5101 Disabilities ~~Department of Children and Family Services~~ before
5102 release of inmates with mental retardation ~~mentally retarded~~
5103 ~~inmates~~.--Before the release by parole, release by reason of
5104 gain-time allowances provided for in s. 944.291, or expiration
5105 of sentence of any inmate who has been diagnosed as mentally
5106 retarded as defined in s. 393.063, the Department of Corrections
5107 shall notify the Agency for Persons with Disabilities ~~Department~~
5108 ~~of Children and Family Services~~ in order that sufficient time be
5109 allowed to notify the inmate or the inmate's representative, in
5110 writing, at least 7 days prior to the inmate's release, of
5111 available community services.
5112 Section 84. Subsections (2) and (3) of section 945.025,
5113 Florida Statutes, are amended to read:
5114 945.025 Jurisdiction of department.--
5115 (2) In establishing, operating, and utilizing these
5116 facilities, the department shall attempt, whenever possible, to
5117 avoid the placement of nondangerous offenders who have potential
5118 for rehabilitation with repeat offenders or dangerous offenders.
5119 Medical, mental, and psychological problems shall be diagnosed
5120 and treated whenever possible. The Department of Children and

5121 Family Services and the Agency for Persons with Disabilities
5122 shall cooperate to ensure the delivery of services to persons
5123 under the custody or supervision of the department. When it is
5124 the intent of the department to transfer a mentally ill or
5125 mentally retarded prisoner to the Department of Children and
5126 Family Services or the Agency for Persons with Disabilities, an
5127 involuntary commitment hearing shall be held according to the
5128 provisions of chapter 393 or chapter 394.
5129 (3) There shall be other correctional facilities,
5130 including detention facilities of varying levels of security,
5131 work-release facilities, and community correctional facilities,
5132 halfway houses, and other approved community residential and
5133 nonresidential facilities and programs; however, no adult
5134 correctional facility may be established by changing the use and
5135 purpose of any mental health facility or mental health
5136 institution under the jurisdiction of any state agency or
5137 department without authorization in the General Appropriation
5138 Act or other approval by the Legislature. ~~Any facility the~~
5139 ~~purpose and use of which was changed subsequent to January 1,~~
5140 ~~1975, shall be returned to its original use and purpose by July~~
5141 ~~1, 1977. However, the G. Pierce Wood Memorial Hospital located~~
5142 ~~at Arcadia, DeSoto County, may not be converted into a~~
5143 ~~correctional facility as long as such hospital is in use as a~~
5144 ~~state mental health hospital.~~ Any community residential facility
5145 may be deemed a part of the state correctional system for
5146 purposes of maintaining custody of offenders, and for this
5147 purpose the department may contract for and purchase the
5148 services of such facilities.

5149 Section 85. Section 947.185, Florida Statutes, is amended
5150 to read:
5151 947.185 Application for mental retardation services as
5152 condition of parole.--The Parole Commission may require as a
5153 condition of parole that any inmate who has been diagnosed as
5154 mentally retarded as defined in s. 393.063 shall, upon release,
5155 apply for mental retardation services from the Agency for
5156 Persons with Disabilities ~~Department of Children and Family~~
5157 ~~Services~~.
5158 Section 86. Section 985.223, Florida Statutes, is amended
5159 to read:
5160 985.223 Incompetency in juvenile delinquency cases.--
5161 (1) If, at any time prior to or during a delinquency case,
5162 the court has reason to believe that the child named in the
5163 petition may be incompetent to proceed with the hearing, the
5164 court on its own motion may, or on the motion of the child's
5165 attorney or state attorney must, stay all proceedings and order
5166 an evaluation of the child's mental condition.
5167 (a) Any motion questioning the child's competency to
5168 proceed must be served upon the child's attorney, the state
5169 attorney, the attorneys representing the Department of Juvenile
5170 Justice, and the attorneys representing the Department of
5171 Children and Family Services or the Agency for Persons with
5172 Disabilities. Thereafter, any motion, notice of hearing, order,
5173 or other legal pleading relating to the child's competency to
5174 proceed with the hearing must be served upon the child's
5175 attorney, the state attorney, the attorneys representing the
5176 Department of Juvenile Justice, and the attorneys representing

5177 the Department of Children and Family Services or the Agency for
5178 Persons with Disabilities.
5179 (b) All determinations of competency shall be made at a
5180 hearing, with findings of fact based on an evaluation of the
5181 child's mental condition made by not less than two nor more than
5182 three experts appointed by the court. The basis for the
5183 determination of incompetency must be specifically stated in the
5184 evaluation. In addition, a recommendation as to whether
5185 residential or nonresidential treatment or training is required
5186 must be included in the evaluation. Experts appointed by the
5187 court to determine the mental condition of a child shall be
5188 allowed reasonable fees for services rendered. State employees
5189 may be paid expenses pursuant to s. 112.061. The fees shall be
5190 taxed as costs in the case.
5191 (c) All court orders determining incompetency must include
5192 specific written findings by the court as to the nature of the
5193 incompetency and whether the child requires secure or nonsecure
5194 treatment or training environments.
5195 (d) For incompetency evaluations related to mental
5196 illness, the Department of Children and Family Services shall
5197 maintain and ~~annually~~ provide the courts with a list of
5198 available mental health professionals who have completed a
5199 training program approved by the Department of Children and
5200 Family Services to perform the evaluations.
5201 (e) For incompetency evaluations related to mental
5202 retardation or autism, the court shall order the Agency for
5203 Persons with Disabilities ~~Developmental Disabilities Program~~
5204 ~~Office within the Department of Children and Family Services~~ to

5205 examine the child to determine if the child meets the definition
5206 of "mental retardation" or "autism" in s. 393.063 and, if so,
5207 whether the child is competent to proceed with delinquency
5208 proceedings.
5209 (f) A child is competent to proceed if the child has
5210 sufficient present ability to consult with counsel with a
5211 reasonable degree of rational understanding and the child has a
5212 rational and factual understanding of the present proceedings.
5213 The report must address the child's capacity to:
5214 1. Appreciate the charges or allegations against the
5215 child.
5216 2. Appreciate the range and nature of possible penalties
5217 that may be imposed in the proceedings against the child, if
5218 applicable.
5219 3. Understand the adversarial nature of the legal process.
5220 4. Disclose to counsel facts pertinent to the proceedings
5221 at issue.
5222 5. Display appropriate courtroom behavior.
5223 6. Testify relevantly.
5224 (g) Immediately upon the filing of the court order finding
5225 a child incompetent to proceed, the clerk of the court shall
5226 notify the Department of Children and Family Services or the
5227 Agency for Persons with Disabilities and fax or hand deliver ~~to~~
5228 ~~the Department of Children and Family Services~~ a referral packet
5229 which includes, at a minimum, the court order, the charging
5230 documents, the petition, and the court-appointed evaluator's
5231 reports.

5232 (h) After placement of the child in the appropriate
5233 setting, the Department of Children and Family Services or the
5234 Agency for Persons with Disabilities, as appropriate, must,
5235 within 30 days after placement of ~~the Department of Children and~~
5236 ~~Family Services places~~ the child, prepare and submit to the
5237 court a treatment or training plan for the child's restoration
5238 of competency. A copy of the ~~treatment~~ plan must be served upon
5239 the child's attorney, the state attorney, and the attorneys
5240 representing the Department of Juvenile Justice.
5241 (2) A child ~~who is mentally ill or retarded,~~ who is
5242 adjudicated incompetent to proceed, and who has committed a
5243 delinquent act or violation of law, either of which would be a
5244 felony if committed by an adult, must be committed to the
5245 Department of Children and Family Services for mental health
5246 treatment or to the Agency for Persons with Disabilities for
5247 training appropriate to a person with mental retardation or
5248 autism. A child who has been adjudicated incompetent to proceed
5249 because of age or immaturity, or for any reason other than for
5250 mental illness, mental ~~or~~ retardation, or autism, must not be
5251 committed to the department, ~~or to~~ the Department of Children
5252 and Family Services, or the Agency for Persons with Disabilities
5253 for restoration-of-competency treatment or training services.
5254 For purposes of this section, a child who has committed a
5255 delinquent act or violation of law, either of which would be a
5256 misdemeanor if committed by an adult, may not be committed to
5257 the department, ~~or to~~ the Department of Children and Family
5258 Services, or the Agency for Persons with Disabilities for
5259 restoration-of-competency treatment or training services.

5260 (3) If the court finds that a child is mentally ill,
5261 mentally ~~or~~ retarded, or autistic and adjudicates the child
5262 incompetent to proceed, the court must also determine whether
5263 the child meets the criteria for secure placement. A child may
5264 be placed in a secure facility or program if the court makes a
5265 finding by clear and convincing evidence that:
5266 (a) The child is mentally ill and because of the mental
5267 illness; or the child is mentally retarded or autistic and
5268 because of the mental retardation or autism:
5269 1. The child is manifestly incapable of surviving with the
5270 help of willing and responsible family or friends, including
5271 available alternative services, and without treatment or
5272 training the child is likely to either suffer from neglect or
5273 refuse to care for self, and such neglect or refusal poses a
5274 real and present threat of substantial harm to the child's well-
5275 being; or
5276 2. There is a substantial likelihood that in the near
5277 future the child will inflict serious bodily harm on self or
5278 others, as evidenced by recent behavior causing, attempting, or
5279 threatening such harm; and
5280 (b) All available less restrictive alternatives, including
5281 treatment or training in community residential facilities or
5282 community settings which would offer an opportunity for
5283 improvement of the child's condition, are inappropriate.
5284 (4) A child who is determined to be mentally ill, mentally
5285 ~~or~~ retarded, or autistic who has been adjudicated incompetent to
5286 proceed, and who meets the criteria set forth in subsection (3),
5287 must be committed to the Department of Children and Family

5288 Services or the Agency for Persons with Disabilities~~,~~ and
5289 receive treatment or training ~~the Department of Children and~~
5290 ~~Family Services must treat or train the child~~ in a secure
5291 facility or program which is the least restrictive alternative
5292 consistent with public safety. Any placement of a child to a
5293 secure residential program must be separate from adult forensic
5294 programs. If the child attains competency, then custody, case
5295 management, and supervision of the child will be transferred to
5296 the department in order to continue delinquency proceedings;
5297 however, the court retains authority to order the Department of
5298 Children and Family Services or the Agency for Persons with
5299 Disabilities to provide continued treatment or training to
5300 maintain competency.
5301 (a) A child adjudicated incompetent due to mental
5302 retardation or autism may be ordered into a secure program or
5303 facility designated by the Agency for Persons with Disabilities
5304 ~~Department of Children and Family Services~~ for mentally retarded
5305 or autistic children.
5306 (b) A child adjudicated incompetent due to mental illness
5307 may be ordered into a secure program or facility designated by
5308 the Department of Children and Family Services for mentally ill
5309 children.
5310 (c) Whenever a child is placed in a secure residential
5311 facility, the department will provide transportation to the
5312 secure residential facility for admission and from the secure
5313 residential facility upon discharge.
5314 (d) The purpose of the treatment or training is the
5315 restoration of the child's competency to proceed.

5316 (e) The service provider must file a written report with
5317 the court pursuant to the applicable Florida Rules of Juvenile
5318 Procedure not later than 6 months after the date of commitment,
5319 or at the end of any period of extended treatment or training,
5320 and at any time the Department of Children and Family Services
5321 or the Agency for Persons with Disabilities, through its service
5322 provider determines the child has attained competency or no
5323 longer meets the criteria for secure placement, or at such
5324 shorter intervals as ordered by the court. A copy of a written
5325 report evaluating the child's competency must be filed by the
5326 provider with the court and with the state attorney, the child's
5327 attorney, the department, and the Department of Children and
5328 Family Services or the Agency for Persons with Disabilities.
5329 (5)(a) If a child is determined to be incompetent to
5330 proceed, the court shall retain jurisdiction of the child for up
5331 to 2 years after the date of the order of incompetency, with
5332 reviews at least every 6 months to determine competency.
5333 (b) Whenever the provider files a report with the court
5334 informing the court that the child will never become competent
5335 to proceed, the Department of Children and Family Services or
5336 the Agency for Persons with Disabilities shall ~~will~~ develop a
5337 discharge plan for the child prior to any hearing determining
5338 whether the child will ever become competent to proceed and send
5339 such~~. The Department of Children and Family Services must send~~
5340 ~~the proposed discharge~~ plan to the court, the state attorney,
5341 the child's attorney, and the attorneys representing the
5342 Department of Juvenile Justice. The provider shall ~~will~~ continue

5343 to provide services to the child until the court issues the
5344 order finding the child will never become competent to proceed.
5345 (c) If the court determines at any time that the child
5346 will never become competent to proceed, the court may dismiss
5347 the delinquency petition. If, at the end of the 2-year period
5348 following the date of the order of incompetency, the child has
5349 not attained competency and there is no evidence that the child
5350 will attain competency within a year, the court must dismiss the
5351 delinquency petition. If appropriate, the court may order that
5352 proceedings under chapter 393 or chapter 394 be instituted. Such
5353 proceedings must be instituted not less than 60 days prior to
5354 the dismissal of the delinquency petition.
5355 (6)(a) If a child is determined to be mentally ill,
5356 mentally ~~or~~ retarded, or autistic and is found to be incompetent
5357 to proceed but does not meet the criteria set forth in
5358 subsection (3), the court shall commit the child to the
5359 Department of Children and Family Services or the Agency for
5360 Persons with Disabilities and shall order the respective agency
5361 ~~Department of Children and Family Services~~ to provide
5362 appropriate treatment and training in the community. The purpose
5363 of the treatment or training is the restoration of the child's
5364 competency to proceed.
5365 (b) All court-ordered treatment or training must be the
5366 least restrictive alternative that is consistent with public
5367 safety. Any placement by the Department of Children and Family
5368 Services or the Agency for Persons with Disabilities to a
5369 residential program must be separate from adult forensic
5370 programs.

5371 (c) If a child is ordered to receive competency
5372 restoration services, the services shall be provided by the
5373 Department of Children and Family Services or the Agency for
5374 Persons with Disabilities. The department shall continue to
5375 provide case management services to the child and receive notice
5376 of the competency status of the child.
5377 (d) The service provider must file a written report with
5378 the court pursuant to the applicable Florida Rules of Juvenile
5379 Procedure, not later than 6 months after the date of commitment,
5380 at the end of any period of extended treatment or training, and
5381 at any time the service provider determines the child has
5382 attained competency or will never attain competency, or at such
5383 shorter intervals as ordered by the court. A copy of a written
5384 report evaluating the child's competency must be filed by the
5385 provider with the court, the state attorney, the child's
5386 attorney, the Department of Children and Family Services or the
5387 Agency for Persons with Disabilities, and the department.
5388 (7) The provisions of this section shall be implemented
5389 only subject to specific appropriation.
5390 Section 87. Subsection (1) of section 985.224, Florida
5391 Statutes, is amended to read:
5392 985.224 Medical, psychiatric, psychological, substance
5393 abuse, and educational examination and treatment.--
5394 (1) After a detention petition or a petition for
5395 delinquency has been filed, the court may order the child named
5396 in the petition to be examined by a physician. The court may
5397 also order the child to be evaluated by a psychiatrist or a
5398 psychologist, by a district school board educational needs

5399 assessment team, or, if a developmental disability is suspected
5400 or alleged, by a ~~the~~ developmental disabilities diagnostic and
5401 evaluation team with ~~of~~ the Agency for Persons with Disabilities
5402 ~~Department of Children and Family Services~~. If it is necessary
5403 to place a child in a residential facility for such evaluation,
5404 the criteria and procedures established in chapter 393, chapter
5405 394, or chapter 397, whichever is applicable, shall be used.
5406 Section 88. Section 1003.58, Florida Statutes, is amended
5407 to read:
5408 1003.58 Students in residential care facilities.--Each
5409 district school board shall provide educational programs
5410 according to rules of the State Board of Education to students
5411 who reside in residential care facilities operated by the
5412 Department of Children and Family Services or the Agency for
5413 Persons with Disabilities.
5414 (1) The district school board shall not be charged any
5415 rent, maintenance, utilities, or overhead on such facilities.
5416 Maintenance, repairs, and remodeling of existing facilities
5417 shall be provided by the Department of Children and Family
5418 Services or the Agency for Persons with Disabilities, as
5419 appropriate.
5420 (2) If additional facilities are required, the district
5421 school board and the Department of Children and Family Services
5422 or the Agency for Persons with Disabilities, as appropriate,
5423 shall agree on the appropriate site based on the instructional
5424 needs of the students. When the most appropriate site for
5425 instruction is on district school board property, a special
5426 capital outlay request shall be made by the commissioner in

5427 accordance with s. 1013.60. When the most appropriate site is on
5428 state property, state capital outlay funds shall be requested by
5429 the department or the agency in accordance with chapter 216 ~~of~~
5430 ~~Children and Family Services as provided by s. 216.043 and shall~~
5431 ~~be submitted as specified by s. 216.023~~. Any instructional
5432 facility to be built on state property shall have educational
5433 specifications jointly developed by the school district and the
5434 department or the agency ~~of Children and Family Services~~ and
5435 approved by the Department of Education. The size of space and
5436 occupant design capacity criteria as provided by state board
5437 rules shall be used for remodeling or new construction whether
5438 facilities are provided on state property or district school
5439 board property. The planning of such additional facilities shall
5440 incorporate current state ~~Department of Children and Family~~
5441 ~~Services~~ deinstitutionalization goals and plans.
5442 (3) The district school board shall have full and complete
5443 authority in the matter of the assignment and placement of such
5444 students in educational programs. The parent of an exceptional
5445 student shall have the same due process rights as are provided
5446 under s. 1003.57(5).
5447 (4) The district school board shall have a written
5448 agreement with the Department of Children and Family Services
5449 and the Agency for Persons with Disabilities outlining the
5450 respective duties and responsibilities of each party.
5451
5452 Notwithstanding the provisions herein, the educational program
5453 at the Marianna Sunland Center in Jackson County shall be
5454 operated by the Department of Education, either directly or

5455 through grants or contractual agreements with other public or
5456 duly accredited educational agencies approved by the Department
5457 of Education.
5458 Section 89. Paragraph (c) of subsection (3) of section
5459 17.61, Florida Statutes, is amended to read:
5460 17.61 Chief Financial Officer; powers and duties in the
5461 investment of certain funds.--
5462 (3)
5463 (c) Except as provided in this paragraph and except for
5464 moneys described in paragraph (d), the following agencies shall
5465 not invest trust fund moneys as provided in this section, but
5466 shall retain such moneys in their respective trust funds for
5467 investment, with interest appropriated to the General Revenue
5468 Fund, pursuant to s. 17.57:
5469 1. The Agency for Health Care Administration, except for
5470 the Tobacco Settlement Trust Fund.
5471 2. The Department of Children and Family Services, except
5472 for:
5473 a. The Alcohol, Drug Abuse, and Mental Health Trust Fund.
5474 b. The Community Resources Development Loan Program ~~Trust~~
5475 ~~Fund~~.
5476 c. The Refugee Assistance Trust Fund.
5477 d. The Social Services Block Grant Trust Fund.
5478 e. The Tobacco Settlement Trust Fund.
5479 f. The Working Capital Trust Fund.
5480 3. The Department of Community Affairs, only for the
5481 Operating Trust Fund.
5482 4. The Department of Corrections.

5483 5. The Department of Elderly Affairs, except for:
5484 a. The Federal Grants Trust Fund.
5485 b. The Tobacco Settlement Trust Fund.
5486 6. The Department of Health, except for:
5487 a. The Federal Grants Trust Fund.
5488 b. The Grants and Donations Trust Fund.
5489 c. The Maternal and Child Health Block Grant Trust Fund.
5490 d. The Tobacco Settlement Trust Fund.
5491 7. The Department of Highway Safety and Motor Vehicles,
5492 only for:
5493 a. The DUI Programs Coordination Trust Fund.
5494 b. The Security Deposits Trust Fund.
5495 8. The Department of Juvenile Justice.
5496 9. The Department of Law Enforcement.
5497 10. The Department of Legal Affairs.
5498 11. The Department of State, only for:
5499 a. The Grants and Donations Trust Fund.
5500 b. The Records Management Trust Fund.
5501 12. The Executive Office of the Governor, only for:
5502 a. The Economic Development Transportation Trust Fund.
5503 b. The Economic Development Trust Fund.
5504 13. The Florida Public Service Commission, only for the
5505 Florida Public Service Regulatory Trust Fund.
5506 14. The Justice Administrative Commission.
5507 15. The state courts system.
5508 Section 90. Paragraph (b) of subsection (7) of section
5509 39.001, Florida Statutes, is amended to read:

5510 39.001 Purposes and intent; personnel standards and
5511 screening.--
5512 (7) PLAN FOR COMPREHENSIVE APPROACH.--
5513 (b) The development of the comprehensive state plan shall
5514 be accomplished in the following manner:
5515 1. The department shall establish an interprogram task
5516 force comprised of the Program Director for Family Safety, or a
5517 designee, a representative from the Child Care Services Program
5518 Office, a representative from the Family Safety Program Office,
5519 a representative from the Mental Health Program Office, a
5520 representative from the Substance Abuse Program Office, a
5521 representative from the Agency for Persons with Disabilities
5522 ~~Developmental Disabilities Program Office~~, and a representative
5523 from the Division of Children's Medical Services Prevention and
5524 Intervention of the Department of Health. Representatives of the
5525 Department of Law Enforcement and of the Department of Education
5526 shall serve as ex officio members of the interprogram task
5527 force. The interprogram task force shall be responsible for:
5528 a. Developing a plan of action for better coordination and
5529 integration of the goals, activities, and funding pertaining to
5530 the prevention of child abuse, abandonment, and neglect
5531 conducted by the department in order to maximize staff and
5532 resources at the state level. The plan of action shall be
5533 included in the state plan.
5534 b. Providing a basic format to be utilized by the
5535 districts in the preparation of local plans of action in order
5536 to provide for uniformity in the district plans and to provide
5537 for greater ease in compiling information for the state plan.

5538 c. Providing the districts with technical assistance in
5539 the development of local plans of action, if requested.
5540 d. Examining the local plans to determine if all the
5541 requirements of the local plans have been met and, if they have
5542 not, informing the districts of the deficiencies and requesting
5543 the additional information needed.
5544 e. Preparing the state plan for submission to the
5545 Legislature and the Governor. Such preparation shall include the
5546 collapsing of information obtained from the local plans, the
5547 cooperative plans with the Department of Education, and the plan
5548 of action for coordination and integration of departmental
5549 activities into one comprehensive plan. The comprehensive plan
5550 shall include a section reflecting general conditions and needs,
5551 an analysis of variations based on population or geographic
5552 areas, identified problems, and recommendations for change. In
5553 essence, the plan shall provide an analysis and summary of each
5554 element of the local plans to provide a statewide perspective.
5555 The plan shall also include each separate local plan of action.
5556 f. Working with the specified state agency in fulfilling
5557 the requirements of subparagraphs 2., 3., 4., and 5.
5558 2. The department, the Department of Education, and the
5559 Department of Health shall work together in developing ways to
5560 inform and instruct parents of school children and appropriate
5561 district school personnel in all school districts in the
5562 detection of child abuse, abandonment, and neglect and in the
5563 proper action that should be taken in a suspected case of child
5564 abuse, abandonment, or neglect, and in caring for a child's

5565 needs after a report is made. The plan for accomplishing this
5566 end shall be included in the state plan.
5567 3. The department, the Department of Law Enforcement, and
5568 the Department of Health shall work together in developing ways
5569 to inform and instruct appropriate local law enforcement
5570 personnel in the detection of child abuse, abandonment, and
5571 neglect and in the proper action that should be taken in a
5572 suspected case of child abuse, abandonment, or neglect.
5573 4. Within existing appropriations, the department shall
5574 work with other appropriate public and private agencies to
5575 emphasize efforts to educate the general public about the
5576 problem of and ways to detect child abuse, abandonment, and
5577 neglect and in the proper action that should be taken in a
5578 suspected case of child abuse, abandonment, or neglect. The plan
5579 for accomplishing this end shall be included in the state plan.
5580 5. The department, the Department of Education, and the
5581 Department of Health shall work together on the enhancement or
5582 adaptation of curriculum materials to assist instructional
5583 personnel in providing instruction through a multidisciplinary
5584 approach on the identification, intervention, and prevention of
5585 child abuse, abandonment, and neglect. The curriculum materials
5586 shall be geared toward a sequential program of instruction at
5587 the four progressional levels, K-3, 4-6, 7-9, and 10-12.
5588 Strategies for encouraging all school districts to utilize the
5589 curriculum are to be included in the comprehensive state plan
5590 for the prevention of child abuse, abandonment, and neglect.
5591 6. Each district of the department shall develop a plan
5592 for its specific geographical area. The plan developed at the

5593 district level shall be submitted to the interprogram task force
5594 for utilization in preparing the state plan. The district local
5595 plan of action shall be prepared with the involvement and
5596 assistance of the local agencies and organizations listed in
5597 paragraph (a), as well as representatives from those
5598 departmental district offices participating in the treatment and
5599 prevention of child abuse, abandonment, and neglect. In order to
5600 accomplish this, the district administrator in each district
5601 shall establish a task force on the prevention of child abuse,
5602 abandonment, and neglect. The district administrator shall
5603 appoint the members of the task force in accordance with the
5604 membership requirements of this section. In addition, the
5605 district administrator shall ensure that each subdistrict is
5606 represented on the task force; and, if the district does not
5607 have subdistricts, the district administrator shall ensure that
5608 both urban and rural areas are represented on the task force.
5609 The task force shall develop a written statement clearly
5610 identifying its operating procedures, purpose, overall
5611 responsibilities, and method of meeting responsibilities. The
5612 district plan of action to be prepared by the task force shall
5613 include, but shall not be limited to:
5614 a. Documentation of the magnitude of the problems of child
5615 abuse, including sexual abuse, physical abuse, and emotional
5616 abuse, and child abandonment and neglect in its geographical
5617 area.
5618 b. A description of programs currently serving abused,
5619 abandoned, and neglected children and their families and a
5620 description of programs for the prevention of child abuse,

5621 abandonment, and neglect, including information on the impact,
5622 cost-effectiveness, and sources of funding of such programs.
5623 c. A continuum of programs and services necessary for a
5624 comprehensive approach to the prevention of all types of child
5625 abuse, abandonment, and neglect as well as a brief description
5626 of such programs and services.
5627 d. A description, documentation, and priority ranking of
5628 local needs related to child abuse, abandonment, and neglect
5629 prevention based upon the continuum of programs and services.
5630 e. A plan for steps to be taken in meeting identified
5631 needs, including the coordination and integration of services to
5632 avoid unnecessary duplication and cost, and for alternative
5633 funding strategies for meeting needs through the reallocation of
5634 existing resources, utilization of volunteers, contracting with
5635 local universities for services, and local government or private
5636 agency funding.
5637 f. A description of barriers to the accomplishment of a
5638 comprehensive approach to the prevention of child abuse,
5639 abandonment, and neglect.
5640 g. Recommendations for changes that can be accomplished
5641 only at the state program level or by legislative action.
5642 Section 91. Paragraph (b) of subsection (14) of section
5643 287.057, Florida Statutes, is amended to read:
5644 287.057 Procurement of commodities or contractual
5645 services.--
5646 (14)
5647 (b) Notwithstanding paragraph (a), the Department of
5648 Children and Family Services may enter into agreements, not to

5649 exceed 20 years, with a private provider to finance, design, and
5650 construct a forensic treatment facility, as defined in s.
5651 916.106(10) ~~(8)~~, of at least 200 beds and to operate all aspects
5652 of daily operations within the forensic treatment facility. The
5653 selected contractor is authorized to sponsor the issuance of
5654 tax-exempt certificates of participation or other securities to
5655 finance the project, and the state is authorized to enter into a
5656 lease-purchase agreement for the forensic treatment facility.
5657 This paragraph expires July 1, 2006.
5658 Section 92. Paragraph (a) of subsection (3) of section
5659 381.0072, Florida Statutes, is amended to read:
5660 381.0072 Food service protection.--It shall be the duty of
5661 the Department of Health to adopt and enforce sanitation rules
5662 consistent with law to ensure the protection of the public from
5663 food-borne illness. These rules shall provide the standards and
5664 requirements for the storage, preparation, serving, or display
5665 of food in food service establishments as defined in this
5666 section and which are not permitted or licensed under chapter
5667 500 or chapter 509.
5668 (3) LICENSES REQUIRED.--
5669 (a) Licenses; annual renewals.--Each food service
5670 establishment regulated under this section shall obtain a
5671 license from the department annually. Food service establishment
5672 licenses shall expire annually and shall not be transferable
5673 from one place or individual to another. However, those
5674 facilities licensed by the department's Office of Licensure and
5675 Certification, the Child Care Services Program Office, or the
5676 Agency for Persons with Disabilities ~~Developmental Disabilities~~

5677 ~~Program Office~~ are exempt from this subsection. It shall be a
5678 misdemeanor of the second degree, punishable as provided in s.
5679 381.0061, s. 775.082, or s. 775.083, for such an establishment
5680 to operate without this license. The department may refuse a
5681 license, or a renewal thereof, to any establishment that is not
5682 constructed or maintained in accordance with law and with the
5683 rules of the department. Annual application for renewal shall
5684 not be required.
5685 Section 93. Paragraph (b) of subsection (5) of section
5686 400.464, Florida Statutes, is amended to read:
5687 400.464 Home health agencies to be licensed; expiration of
5688 license; exemptions; unlawful acts; penalties.--
5689 (5) The following are exempt from the licensure
5690 requirements of this part:
5691 (b) Home health services provided by a state agency,
5692 either directly or through a contractor with:
5693 1. The Department of Elderly Affairs.
5694 2. The Department of Health, a community health center, or
5695 a rural health network that furnishes home visits for the
5696 purpose of providing environmental assessments, case management,
5697 health education, personal care services, family planning, or
5698 followup treatment, or for the purpose of monitoring and
5699 tracking disease.
5700 3. Services provided to persons who have developmental
5701 disabilities, as defined in s. 393.063.
5702 4. Companion and sitter organizations that were registered
5703 under s. 400.509(1) on January 1, 1999, and were authorized to
5704 provide personal services under s. 393.063(21) ~~(33)~~ under a

5705 developmental services provider certificate on January 1, 1999,
5706 may continue to provide such services to past, present, and
5707 future clients of the organization who need such services,
5708 notwithstanding the provisions of this act.
5709 5. The Department of Children and Family Services.
5710 Section 94. Paragraph (a) of subsection (4) of section
5711 943.0585, Florida Statutes, is amended to read:
5712 943.0585 Court-ordered expunction of criminal history
5713 records.--The courts of this state have jurisdiction over their
5714 own procedures, including the maintenance, expunction, and
5715 correction of judicial records containing criminal history
5716 information to the extent such procedures are not inconsistent
5717 with the conditions, responsibilities, and duties established by
5718 this section. Any court of competent jurisdiction may order a
5719 criminal justice agency to expunge the criminal history record
5720 of a minor or an adult who complies with the requirements of
5721 this section. The court shall not order a criminal justice
5722 agency to expunge a criminal history record until the person
5723 seeking to expunge a criminal history record has applied for and
5724 received a certificate of eligibility for expunction pursuant to
5725 subsection (2). A criminal history record that relates to a
5726 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5727 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5728 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5729 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5730 expunged, without regard to whether adjudication was withheld,
5731 if the defendant was found guilty of or pled guilty or nolo
5732 contendere to the offense, or if the defendant, as a minor, was

5733 found to have committed, or pled guilty or nolo contendere to
5734 committing, the offense as a delinquent act. The court may only
5735 order expunction of a criminal history record pertaining to one
5736 arrest or one incident of alleged criminal activity, except as
5737 provided in this section. The court may, at its sole discretion,
5738 order the expunction of a criminal history record pertaining to
5739 more than one arrest if the additional arrests directly relate
5740 to the original arrest. If the court intends to order the
5741 expunction of records pertaining to such additional arrests,
5742 such intent must be specified in the order. A criminal justice
5743 agency may not expunge any record pertaining to such additional
5744 arrests if the order to expunge does not articulate the
5745 intention of the court to expunge a record pertaining to more
5746 than one arrest. This section does not prevent the court from
5747 ordering the expunction of only a portion of a criminal history
5748 record pertaining to one arrest or one incident of alleged
5749 criminal activity. Notwithstanding any law to the contrary, a
5750 criminal justice agency may comply with laws, court orders, and
5751 official requests of other jurisdictions relating to expunction,
5752 correction, or confidential handling of criminal history records
5753 or information derived therefrom. This section does not confer
5754 any right to the expunction of any criminal history record, and
5755 any request for expunction of a criminal history record may be
5756 denied at the sole discretion of the court.
5757 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5758 criminal history record of a minor or an adult which is ordered
5759 expunged by a court of competent jurisdiction pursuant to this
5760 section must be physically destroyed or obliterated by any

5761 criminal justice agency having custody of such record; except
5762 that any criminal history record in the custody of the
5763 department must be retained in all cases. A criminal history
5764 record ordered expunged that is retained by the department is
5765 confidential and exempt from the provisions of s. 119.07(1) and
5766 s. 24(a), Art. I of the State Constitution and not available to
5767 any person or entity except upon order of a court of competent
5768 jurisdiction. A criminal justice agency may retain a notation
5769 indicating compliance with an order to expunge.
5770 (a) The person who is the subject of a criminal history
5771 record that is expunged under this section or under other
5772 provisions of law, including former s. 893.14, former s. 901.33,
5773 and former s. 943.058, may lawfully deny or fail to acknowledge
5774 the arrests covered by the expunged record, except when the
5775 subject of the record:
5776 1. Is a candidate for employment with a criminal justice
5777 agency;
5778 2. Is a defendant in a criminal prosecution;
5779 3. Concurrently or subsequently petitions for relief under
5780 this section or s. 943.059;
5781 4. Is a candidate for admission to The Florida Bar;
5782 5. Is seeking to be employed or licensed by or to contract
5783 with the Department of Children and Family Services or the
5784 Department of Juvenile Justice or to be employed or used by such
5785 contractor or licensee in a sensitive position having direct
5786 contact with children, persons with developmental disabilities
5787 ~~the developmentally disabled~~, the aged, or the elderly as
5788 provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s.

5789 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
5790 415.102(4), s. 916.106(12) ~~(10)~~ and (15) ~~(13)~~, s. 985.407, or
5791 chapter 400; or
5792 6. Is seeking to be employed or licensed by the Department
5793 of Education, any district school board, any university
5794 laboratory school, any charter school, any private or parochial
5795 school, or any local governmental entity that licenses child
5796 care facilities.
5797 Section 95. Paragraph (a) of subsection (4) of section
5798 943.059, Florida Statutes, is amended to read:
5799 943.059 Court-ordered sealing of criminal history
5800 records.--The courts of this state shall continue to have
5801 jurisdiction over their own procedures, including the
5802 maintenance, sealing, and correction of judicial records
5803 containing criminal history information to the extent such
5804 procedures are not inconsistent with the conditions,
5805 responsibilities, and duties established by this section. Any
5806 court of competent jurisdiction may order a criminal justice
5807 agency to seal the criminal history record of a minor or an
5808 adult who complies with the requirements of this section. The
5809 court shall not order a criminal justice agency to seal a
5810 criminal history record until the person seeking to seal a
5811 criminal history record has applied for and received a
5812 certificate of eligibility for sealing pursuant to subsection
5813 (2). A criminal history record that relates to a violation of s.
5814 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
5815 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
5816 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or

5817 a violation enumerated in s. 907.041 may not be sealed, without
5818 regard to whether adjudication was withheld, if the defendant
5819 was found guilty of or pled guilty or nolo contendere to the
5820 offense, or if the defendant, as a minor, was found to have
5821 committed or pled guilty or nolo contendere to committing the
5822 offense as a delinquent act. The court may only order sealing of
5823 a criminal history record pertaining to one arrest or one
5824 incident of alleged criminal activity, except as provided in
5825 this section. The court may, at its sole discretion, order the
5826 sealing of a criminal history record pertaining to more than one
5827 arrest if the additional arrests directly relate to the original
5828 arrest. If the court intends to order the sealing of records
5829 pertaining to such additional arrests, such intent must be
5830 specified in the order. A criminal justice agency may not seal
5831 any record pertaining to such additional arrests if the order to
5832 seal does not articulate the intention of the court to seal
5833 records pertaining to more than one arrest. This section does
5834 not prevent the court from ordering the sealing of only a
5835 portion of a criminal history record pertaining to one arrest or
5836 one incident of alleged criminal activity. Notwithstanding any
5837 law to the contrary, a criminal justice agency may comply with
5838 laws, court orders, and official requests of other jurisdictions
5839 relating to sealing, correction, or confidential handling of
5840 criminal history records or information derived therefrom. This
5841 section does not confer any right to the sealing of any criminal
5842 history record, and any request for sealing a criminal history
5843 record may be denied at the sole discretion of the court.

5844 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
5845 history record of a minor or an adult which is ordered sealed by
5846 a court of competent jurisdiction pursuant to this section is
5847 confidential and exempt from the provisions of s. 119.07(1) and
5848 s. 24(a), Art. I of the State Constitution and is available only
5849 to the person who is the subject of the record, to the subject's
5850 attorney, to criminal justice agencies for their respective
5851 criminal justice purposes, or to those entities set forth in
5852 subparagraphs (a)1., 4., 5., and 6. for their respective
5853 licensing and employment purposes.
5854 (a) The subject of a criminal history record sealed under
5855 this section or under other provisions of law, including former
5856 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
5857 deny or fail to acknowledge the arrests covered by the sealed
5858 record, except when the subject of the record:
5859 1. Is a candidate for employment with a criminal justice
5860 agency;
5861 2. Is a defendant in a criminal prosecution;
5862 3. Concurrently or subsequently petitions for relief under
5863 this section or s. 943.0585;
5864 4. Is a candidate for admission to The Florida Bar;
5865 5. Is seeking to be employed or licensed by or to contract
5866 with the Department of Children and Family Services or the
5867 Department of Juvenile Justice or to be employed or used by such
5868 contractor or licensee in a sensitive position having direct
5869 contact with children, <u>persons with developmental disabilities</u>
5870 ~~the developmentally disabled~~, the aged, or the elderly as
5871 provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s.

5872 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
5873 415.102(4), s. 415.103, s. 916.106(12)~~(10)~~ and (15)~~(13)~~, s.
5874 985.407, or chapter 400; or
5875 6. Is seeking to be employed or licensed by the Department
5876 of Education, any district school board, any university
5877 laboratory school, any charter school, any private or parochial
5878 school, or any local governmental entity that licenses child
5879 care facilities.
5880 Section 96. Subsection (4) of section 984.22, Florida
5881 Statutes, is amended to read:
5882 984.22 Powers of disposition.--
5883 (4) All payments of fees made to the department pursuant
5884 to this chapter, or child support payments made to the
5885 department pursuant to subsection (3), shall be deposited in the
5886 General Revenue Fund. In cases in which the child is placed in
5887 foster care with the Department of Children and Family Services,
5888 such child support payments shall be deposited in the Community
5889 Resources Development Loan Program ~~Trust Fund~~.
5890 Section 97. Section 394.4592, Florida Statutes, is created
5891 to read:
5892 394.4592 Use of restraints or seclusion in behavioral
5893 health care.--
5894 (1) LEGISLATIVE FINDINGS.--The Legislature finds and
5895 declares that:
5896 (a) The use of restraint or seclusion in behavioral health
5897 care poses inherent risks both physically and psychologically to
5898 individuals subject to restraint or seclusion and staff who
5899 utilize these interventions. Physical risks include serious

5900 injury or death, and psychological injuries include
5901 retraumatization for individuals with histories of abuse.
5902 (b) Some state-operated and private facilities in the
5903 state have almost eliminated the use of restraint and seclusion,
5904 while other facilities serving similar individuals continue to
5905 experience hundreds of episodes of restraint and seclusion each
5906 year. Research has demonstrated that the key variable in
5907 achieving meaningful reduction in the use of restraint and
5908 seclusion is a firm commitment by the facility, the department,
5909 the Agency for Persons with Disabilities, and the Agency for
5910 Health Care Administration to the goal of reducing the use of
5911 restraint and seclusion. It is therefore the policy of the state
5912 to achieve an ongoing reduction in the use of restraint and
5913 seclusion on individuals in facilities operated, certified,
5914 licensed, or monitored by the department, the Agency for Persons
5915 with Disabilities, and the Agency for Health Care
5916 Administration, with the goal of reducing the use of restraint
5917 and seclusion to the status of a rare event and reduce the
5918 occurrence of behavioral emergencies that have prompted the use
5919 of restraints or seclusion.
5920 (2) SCOPE.--This section shall apply to all facilities, as
5921 well as residential and day treatment programs, operated,
5922 certified, licensed, or monitored by the Department of Children
5923 and Family Services, the Agency for Persons with Disabilities,
5924 and the Agency for Health Care Administration that use
5925 behavioral restraints or seclusion.
5926 (3) DATA COLLECTION; APPLICABILITY.--

5927 (a) This subsection shall apply to all facilities
5928 operated, certified, licensed, or monitored by the Department of
5929 Children and Family Services, the Agency for Persons with
5930 Disabilities, and the Agency for Health Care Administration that
5931 utilize seclusion or behavioral restraints as defined in this
5932 section, and shall include the North Florida Evaluation and
5933 Treatment Center (NFETC).
5934 (b) The department, the Agency for Persons with
5935 Disabilities, and the Agency for Health Care Administration
5936 shall establish a system of mandatory, consistent, timely, and
5937 publicly accessible data collection that documents the instances
5938 in which behavioral restraints or seclusion are used in
5939 facilities.
5940 (c) The data required under this section shall be compiled
5941 in a manner that allows for standard statistical comparison. The
5942 department, the Agency for Persons with Disabilities, and the
5943 Agency for Health Care Administration shall make this
5944 information publicly accessible on each agency's Internet
5945 website beginning July 1, 2006, and the information shall be
5946 updated monthly.
5947 (d) Data collected pursuant to this subsection shall
5948 include all of the following relating to each facility:
5949 1. The number of deaths that occur as a result of any form
5950 of behavioral control by any facility staff, while individuals
5951 are in behavioral restraint or seclusion, within 48 hours of
5952 release from behavioral restraint or seclusion, or when it is
5953 reasonable to assume that serious injury or death was

5954 proximately related to the use of behavioral restraints or
5955 seclusion.
5956 2. The number of serious injuries sustained by individuals
5957 as a result of takedowns or any form of behavioral control by
5958 any facility staff, while individuals are in behavioral
5959 restraints or seclusion or when it is reasonable to assume that
5960 the serious injury was proximately related to the use of
5961 behavioral restraint or seclusion.
5962 3. The number of serious injuries sustained by staff that
5963 occur during the use of takedowns, behavioral control,
5964 behavioral restraints, or seclusion.
5965 4. The number of incidents when behavioral restraints were
5966 used and the kinds of restraints used.
5967 5. The number of incidents of seclusion.
5968 6. The duration of time spent per incident in seclusion.
5969 7. The duration of time spent per incident in behavioral
5970 restraints were used.
5971 8. The number of times an involuntary emergency medication
5972 was used to control behavior and whether or not in each case
5973 medication was used in combination with behavioral restraints or
5974 seclusion.
5975 9. The number of individuals who were subject to
5976 behavioral restraint or seclusion more than 10 times in a single
5977 month.
5978 10. The number of individuals who were subject to renewal
5979 of behavioral restraint or seclusion orders each month.
5980 (e) A facility shall report each serious injury or death
5981 of an individual occurring during or related to the use of

5982 behavioral restraints or seclusion. In addition to any other
5983 statutory and regulatory requirements, this report shall be
5984 submitted to the department, the Agency for Persons with
5985 Disabilities, the Agency for Health Care Administration, and the
5986 Advocacy Center for Persons with Disabilities, Inc., no later
5987 than the close of the business day following the injury or
5988 death. The report shall include the encrypted identifier of the
5989 individual involved and the name, street address, telephone
5990 number, and the name of a contact person at the facility.
5991 (4) DEFINITIONS.--For purposes of this section:
5992 (a) "Authorized physician" means any physician who has
5993 been authorized by the administrator of the facility to order
5994 medication restraint, mechanical restraint, physical restraint,
5995 or seclusion, to examine individuals in such restraint or
5996 seclusion, and to assess readiness for release and order release
5997 from restraint or seclusion.
5998 (b) "Authorized staff person" means any physician,
5999 physician's assistant, or psychiatric nurse who has been
6000 authorized by the administrator of the facility to initiate or
6001 renew mechanical restraint, physical restraint, or seclusion
6002 pursuant and to assess readiness for release and order release
6003 from restraint or seclusion.
6004 (c) "Behavioral restraint" means any mechanical, physical,
6005 or medication restraint or containment.
6006 (d) "Containment" means a brief period of physical
6007 restraint of a person for the purpose of effectively gaining
6008 quick control of a person who is aggressive or agitated or who
6009 is an imminent danger to himself or herself or others.

6010 (e) "Emergency" means the occurrence or serious threat of
6011 extreme violence, personal injury, or attempted suicide. An
6012 emergency shall include only situations in which there is a
6013 substantial risk or the occurrence of serious self-destructive
6014 behavior or serious physical assault. "Substantial risk" means
6015 the serious, imminent threat of bodily harm when there is the
6016 present ability to effect such harm. The term "emergency" does
6017 not include threats to property.
6018 (f) "Individual" means an individual receiving services in
6019 a community facility, as defined in s. 394.455(5), or a
6020 facility, as defined in s. 394.455(10). The term "individual" is
6021 synonymous with the term "client," "customer," "consumer,"
6022 "resident," "patient," or "person served."
6023 (g) "PRN" means "as needed" in Latin and may apply to the
6024 prescription and administration of psychotropic medication or
6025 use of behavioral restraint or seclusion.
6026 (h) "Restraint" means the use of mechanical restraint,
6027 physical restraint, and medication used to control behavior in
6028 an emergency or any involuntary as needed medication. Restraint
6029 also means the use of bodily physical restriction, mechanical
6030 devices, or a device that unreasonably limits freedom of
6031 movement. The term "restraint" does not include the use of
6032 physical devices, such as orthopedically prescribed appliances,
6033 surgical dressings and bandages, and supportive body bands, or
6034 other physical holding when necessary for routine physical
6035 examinations and tests or for orthopedic, surgical, and other
6036 similar medical treatment purposes or when used to provide

6037 support for the achievement of functional body position, proper
6038 balance, or to protect an individual from falling out of bed.
6039 1. Medication restraint occurs when an individual is given
6040 medication involuntarily for the purpose of immediate control of
6041 the individual's behavior.
6042 2. Mechanical restraint occurs when a physical device is
6043 used to restrict the movement of an individual or the movement
6044 or normal function of a portion of his or her body.
6045 3. Physical restraint occurs when a manual method is used
6046 to restrict an individual's freedom of movement or normal access
6047 to his or her body.
6048 (i) "Seclusion" means an individual is involuntarily
6049 confined in a room or an area of a room and is prevented from
6050 leaving, or reasonably believes that he or she will be prevented
6051 from leaving, by means that include, but are not limited to:
6052 1. Manually, mechanically, or electrically locked doors or
6053 one-way doors that, when closed and unlocked, cannot be opened
6054 from the inside.
6055 2. Physical intervention of staff.
6056 3. Coercive measures, such as the threat of restraint,
6057 sanctions, or the loss of privileges that the individual would
6058 otherwise have, used for the purpose of keeping the individual
6059 from leaving the room.
6060 (j) "Staff" means any staff member, volunteer, or intern
6061 of the department, the Agency for Persons with Disabilities, or
6062 the Agency for Health Care Administration, any person under
6063 contract with the department, the Agency for Persons with
6064 Disabilities, or the Agency for Health Care Administration or

6065 working in any capacity in a facility operated, certified,
6066 licensed, or monitored by the department, the Agency for Persons
6067 with Disabilities, or the Agency for Health Care Administration
6068 and any person providing care or support to an individual on
6069 behalf of the department, the Agency for Persons with
6070 Disabilities, or the Agency for Health Care Administration or
6071 its providers, and any person assigned to provide security for a
6072 facility.
6073 (5) INITIAL ASSESSMENT.--A facility shall conduct an
6074 initial assessment of each individual upon admission to the
6075 facility or as soon thereafter as possible. This assessment
6076 shall include input from the individual and from someone whom he
6077 or she desires to be present, such as a family member,
6078 significant other, or authorized representative designated by
6079 the individual, if the desired third party can be present at the
6080 time of admission. This assessment shall also include, based on
6081 the information available at the time of initial assessment, all
6082 of the following:
6083 (a) An individual's preferences regarding de-escalation or
6084 the use of seclusion or behavioral restraints, including any
6085 advance directive or crisis plan that the individual may
6086 present.
6087 (b) The use of a de-escalation preference form or personal
6088 safety plan which allows an individual to identify early warning
6089 signs, triggers, and precipitants of distress, stress, or
6090 aggression and that cause an individual to escalate, as well as
6091 techniques, methods, or tools that help the individual to
6092 control his or her own behavior, including preferences relating

6093 to the gender of staff assigned to monitor an individual in
6094 restraint, shall be mandatory in all facilities. This includes
6095 both completion of the form and active, documented use in
6096 treatment planning and de-escalation.
6097 (c) Documentation of any preexisting medical condition or
6098 any physical disability or limitation that would place the
6099 individual at greater risk during restraint or seclusion. These
6100 conditions include, but are not limited to, obesity, cardiac
6101 conditions, pregnancy, asthma or other respiratory conditions,
6102 impaired gag reflex, back conditions, seizure disorders,
6103 deafness, blindness, and hemophilia.
6104 (d) Any trauma history, including any history of sexual or
6105 physical abuse that the individual feels is relevant.
6106
6107 A reassessment of the individual based on the information
6108 provided under this subsection shall be completed whenever there
6109 is a significant change in an individual's physical or
6110 psychological condition in conjunction with reassessments
6111 required by federal or state law.
6112 (6) REQUIREMENTS FOR THE USE OF RESTRAINT AND SECLUSION.--
6113 (a) A facility described in paragraph (3)(a) may use
6114 behavioral restraint or seclusion for emergencies only, and only
6115 for the duration of the emergency.
6116 (b) A facility described in paragraph (3)(a) may not use
6117 any of the following:
6118 1. A physical restraint or containment technique that
6119 obstructs a person's respiratory airway or impairs the
6120 individual's breathing or respiratory capacity, including

6121 techniques in which a staff member places pressure on an
6122 individual's back or places his or her body weight against the
6123 individual's torso or back. Use of such restraint shall result
6124 in immediate disciplinary suspension and investigation of staff
6125 who utilized these methods of restraints.
6126 2. A pillow, blanket, or other item covering the
6127 individual's face as part of a physical or mechanical restraint
6128 or containment process. Use of such restraint shall result in
6129 immediate disciplinary suspension and investigation of staff who
6130 used these methods of restraint.
6131 3. Physical or mechanical restraint or containment on an
6132 individual who has a known medical or physical condition when
6133 there is reason to believe that the use would endanger the
6134 individual's life or significantly exacerbate the individual's
6135 medical condition.
6136 4. Restraint in a prone position without a detailed
6137 physician's order specifically requiring the use of this
6138 position and explaining the medical justification for the order.
6139 5. Prone containment techniques whenever possible. An
6140 individual shall not be subject to prone containment unless a
6141 designated staff member, not involved in the restraint, observes
6142 the individual throughout and in no event shall prone
6143 containment last longer than 10 seconds as clocked by the
6144 designated staff person.
6145 6. Restraint or containment with any restraint devices
6146 that restrain an individual's hands behind his or her back.
6147 7. No "PRN" or "as required" authorization of behavioral
6148 restraint or seclusion may be written.

6149 (c) No individual shall simultaneously be subject to
6150 mechanical restraints and seclusion as defined in this section.
6151 (d) Prior to the imposition of behavioral restraint or
6152 seclusion, the following conditions must be met:
6153 1. Provision shall be made for appropriate attention to
6154 the personal needs of the individual, including access to food
6155 and drink, toileting facilities, and medical and hygiene needs,
6156 by staff escort or otherwise, and for the individual's physical
6157 and mental comfort.
6158 2. The physical environment shall be as conducive as
6159 possible to facilitating early release, with attention to
6160 calming the individual with sensory interventions. Any space
6161 used for restraint or seclusion shall include a clock within
6162 visual observation of the individual.
6163 3. Every effort shall be made to protect the individual's
6164 privacy. Individuals shall not be placed in four-point
6165 restraints in public view, and several individuals may not be
6166 restrained together in one room.
6167 (e) An individual may be given medication restraint only
6168 on the order of an authorized physician who has determined,
6169 either while present at the time of the emergency to justify the
6170 use of the restraint or after telephone consultation with an
6171 authorized staff person who is present at the time at the site
6172 of the emergency and who has personally examined the individual,
6173 that such medication restraint is the least restrictive, most
6174 appropriate alternative available.
6175 1. The order, along with a description of the specific
6176 behaviors which make medication restraint the least restrictive,

6177 most appropriate alternative available and the expected results
6178 of the medication, shall be recorded in the individual's record
6179 when the order is issued. If the physician is not present to
6180 write the order, the physician must dictate this language when
6181 the order is issued to the authorized staff person. The order
6182 shall be signed when it is issued by such authorized physician
6183 if present at the time of the emergency or within 1 hour after
6184 the order is issued.
6185 2. An authorized physician shall conduct a face-to-face
6186 evaluation of the individual within 1 hour after the initiation
6187 of the restraint, if the restraint was authorized by telephone,
6188 and record in the individual's records the results of this
6189 evaluation and whether the expected results of the medication
6190 have been achieved.
6191 3. Staff shall monitor the individual carefully and record
6192 the effects of the medication restraint at least once every half
6193 hour in the individual's record.
6194 (f) The order authorizing an individual to be placed in
6195 behavioral restraint or seclusion shall be made by an authorized
6196 physician who is present when an emergency occurs. The order and
6197 the reasons for its issuance shall be recorded in writing and
6198 signed at the time of its issuance by such physician.
6199 1. The order shall authorize use of mechanical restraint,
6200 physical restraint, or seclusion for no more than 2 hours.
6201 2. If an authorized physician is not present when an
6202 emergency occurs to justify the use of mechanical restraint and
6203 physical restraint or seclusion occurs, an individual may be
6204 placed in mechanical restraint, physical restraint, or seclusion

6205 at the initiation of an authorized staff person, subject to the
6206 following conditions and limitations:
6207 a. The order and the reasons for its issuance, with
6208 specific identification of the actual behaviors involved and not
6209 characterizations of the behavior, shall be recorded in writing
6210 and signed at the time of the incident by the authorized staff
6211 person.
6212 b. The order shall authorize use of mechanical restraint,
6213 physical restraint, or seclusion for no more than 2 hours and
6214 shall terminate whenever a release decision is made. The order
6215 shall include criteria for early release that are made known to
6216 the individual and that permit staff to make objective
6217 appraisals as to when an individual may be safely released.
6218 c. An authorized physician shall examine the individual
6219 within 1 hour of such initiation of mechanical restraint,
6220 physical restraint, or seclusion.
6221 (g) Subsequent renewals of mechanical restraint or
6222 seclusion may be made for up to a 1-hour period only if an
6223 authorized physician has examined the individual and ordered
6224 such renewal prior to the expiration of the preceding order,
6225 subject to the following conditions and limitations.
6226 1. A renewal order may only be issued if the individual is
6227 an adult or minor over 9 years of age and the physician
6228 determines that such restraint or seclusion is necessary to
6229 prevent the continuation or renewal of an emergency condition or
6230 conditions.

6231 2. Each renewal order shall be recorded in writing and
6232 signed by the physician only after a face-to-face examination of
6233 the individual in restraint or seclusion by the physician.
6234 3. Each renewed order shall authorize continued use of
6235 restraint or seclusion for no more than 1 hour from the time of
6236 expiration of the preceding order and shall terminate whenever a
6237 release decision is made.
6238 4. No order for continuation of mechanical restraint or
6239 seclusion beyond the initial order may be issued if the
6240 individual is a minor under 9 years of age and only one such
6241 order for continuation may be issued if the individual is a
6242 minor 9 through 17 years of age.
6243 (h) The limitations on the duration of restraint or
6244 seclusion are as follows:
6245 1. A minor under 9 years of age may not be placed in
6246 behavioral restraints. A minor under 9 years of age may not be
6247 placed in seclusion for more than 1 hour in any 24-hour period.
6248 2. No minor 9 through 17 years of age may be in behavioral
6249 restraint or seclusion for more than 2 hours in any 24-hour
6250 period.
6251 3. If an episode of mechanical restraint or seclusion has
6252 exceeded 3 hours and it is expected that a new order will be
6253 issued to extend the episode beyond 3 hours, prior to the third
6254 order extending the use of restraint or seclusion, the facility
6255 director and facility medical director shall be notified. The
6256 facility medical director shall inquire about the circumstances
6257 of the episode of restraint or seclusion, the efforts made to
6258 facilitate release, and the impediments to such release and help

6259 to identify additional measures or resources that might be
6260 beneficial in facilitating release.
6261 (i) If an episode of mechanical restraint or seclusion has
6262 exceeded 6 hours and it is expected that a sixth order will be
6263 issued to extend the episode beyond 6 hours or if episodes of
6264 restraint or seclusion for an individual have exceeded 10 hours
6265 in the aggregate in any 48-hour period, the following shall
6266 occur:
6267 1. The individual shall receive a physical examination by
6268 an authorized physician.
6269 2. The facility director and facility medical director
6270 shall be notified.
6271 3. The episode shall be reported to the Secretary of
6272 Children and Family Services, the director of the Agency for
6273 Persons with Disabilities, and the Secretary of Health Care
6274 Administration or a designee by the next business day.
6275 (j) If an individual is released from restraint or
6276 seclusion prior to the expiration of an order and an emergency
6277 occurs prior to such order's expiration, but no later than 15
6278 minutes after release, the individual may be returned by an
6279 authorized staff person to restraint or seclusion without a new
6280 order until the time listed in the original order expires. Such
6281 return to restraint or seclusion shall be documented in the
6282 individual's record.
6283 (k) The individuals in mechanical restraint, physical
6284 restraint, or seclusion shall be monitored and assessed in the
6285 following manner:

6286 1. There shall be an authorized staff person with
6287 oversight responsibility during each episode of mechanical or
6288 physical restraint or seclusion.
6289 2. Whenever a individual is in physical or mechanical
6290 restraint or seclusion, a staff person shall be specifically
6291 assigned to monitor the individual one-on-one. The facility
6292 shall make every effort to ensure that the gender of the staff
6293 person matches the preference stated by the individual in the
6294 de-escalation preference form or personal safety plan identified
6295 in paragraph (5)(b). If this is not possible at the moment the
6296 individual is restrained or secluded, staff shall specifically
6297 document why it was not possible and continue to make active
6298 efforts to meet the individual's preference until the individual
6299 is released or a staff person of the appropriate gender can be
6300 found.
6301 3. The staff person conducting such monitoring may be
6302 immediately outside a space in which an individual is being
6303 secluded without mechanical restraint provided that the
6304 following conditions are met:
6305 a. The staff person must be in full view of the
6306 individual.
6307 b. The staff person must be able at all times to observe
6308 the individual and to have immediate physical access to the
6309 individual in order to be able to respond to any emergency
6310 situation.
6311 4. The staff person shall monitor an individual in
6312 mechanical or physical restraint by being situated so that the
6313 staff person is able to hear and be heard by the individual and

6314 visually observe the individual at all times. It is not
6315 necessary for a staff person monitoring an individual in
6316 mechanical or physical restraint to be in full view of the
6317 individual, although if such visibility has been expressed as a
6318 preference by the individual, consideration shall be given to
6319 honoring that preference.
6320 5. Staff who monitor an individual in physical or
6321 mechanical restraint or seclusion shall continually assist and
6322 support the individual, including monitoring physical and
6323 psychological status and comfort, body alignment, and
6324 circulation, taking vital signs when indicated, and monitoring
6325 for readiness for release. Such monitoring activities shall be
6326 documented every 15 minutes.
6327 6. Staff who monitor an individual in restraint or
6328 seclusion shall continue appropriate interventions designed to
6329 calm the individual throughout the episode of restraint or
6330 seclusion and shall maintain a log of the individual's specific
6331 behavior with respect to the early release criteria established
6332 in the physician's order.
6333 (l) The procedure for monitoring an individual in
6334 mechanical or physical restraint or seclusion for readiness for
6335 release shall include the following factors:
6336 1. Staff conducting monitoring shall continually consider
6337 whether an individual in mechanical restraint, physical
6338 restraint, or seclusion appears ready to be released. If the
6339 staff person believes that the individual is ready to be
6340 released from such restraint or seclusion, he or she shall
6341 immediately notify an authorized physician or authorized staff

6342 person, who shall promptly assess the individual for readiness
6343 to be released. If the individual believes that he or she has
6344 met the release criteria, the individual can request an
6345 assessment by an authorized staff person.
6346 2. If an individual falls asleep while in mechanical
6347 restraint, staff conducting monitoring shall notify an
6348 authorized physician or authorized staff person, who shall
6349 release the individual from the restraint or seclusion.
6350 3. If, at any time during mechanical restraint, physical
6351 restraint, or seclusion, a person is briefly released from such
6352 restraint or seclusion to attend to personal needs, hygiene,
6353 eating, or other purpose, staff conducting monitoring shall
6354 consider the individual's readiness to be permanently released,
6355 rather than returned to the restraint or seclusion and notify an
6356 authorized staff person if the individual appears ready to be
6357 released.
6358 (m) An authorized staff person or authorized physician
6359 shall assess an individual in mechanical or physical restraint
6360 or seclusion for physical and psychological comfort, including
6361 vital signs, and readiness to be released at least every 15
6362 minutes and at any other time that it appears that the
6363 individual is ready to be released. Such assessments shall be
6364 documented in the record and include specific descriptions of
6365 the individual's behavior and the reasons for not releasing the
6366 individual from restraint.
6367 (n) An individual shall be released from mechanical
6368 restraint, physical restraint, or seclusion as soon as an
6369 authorized physician or authorized staff person determines after

6370 examination of the individual or consultation with staff that
6371 such mechanical restraint, physical restraint, or seclusion is
6372 no longer needed to prevent the continuation or renewal of an
6373 emergency and, in no event, no later than the achievement of the
6374 early release criteria or the expiration of an initial or
6375 renewed order for such mechanical restraint or seclusion, unless
6376 such order is renewed.
6377 (7) DEBRIEFING PROCEDURES.--A facility shall develop
6378 procedures to ensure that debriefing activities occur after each
6379 episode of restraint or seclusion in order to determine what led
6380 to the incident, what might have prevented or curtailed it, and
6381 how to prevent future incidents.
6382 (a) As soon as possible, but no later than 24 hours
6383 following each episode of restraint or seclusion, supervisory
6384 staff and staff involved in the episode shall convene a
6385 debriefing. The debriefing shall, at a minimum, include the
6386 following:
6387 1. Identification of what led to the incident.
6388 2. Assessment of alternative interventions that may have
6389 avoided the use of restraint or seclusion.
6390 3. Determination of whether the individual's physical and
6391 psychological needs and right to privacy were appropriately
6392 addressed.
6393 4. Consideration of counseling or treatment for the
6394 individual involved and staff for any emotional or physical
6395 trauma that may have resulted from the incident.

6396 5. Consideration of whether the legally authorized
6397 representative, if any, family members, or others should be
6398 notified of or involved in debriefing activities.
6399 6. Consideration of whether other individuals and staff
6400 who may have witnessed or otherwise been affected by the
6401 incident should be involved in debriefing activities or offered
6402 counseling.
6403 7. Identification of any environmental precipitants of the
6404 restraint or seclusion episode.
6405 8. Identification of needed refinements in the
6406 individual's plan of care or the need for additional assessments
6407 to better understand the factors underlying the behavioral
6408 problem related to the incident.
6409 9. Consideration of whether additional supervision or
6410 training should be provided to staff involved in the incident.
6411 10. Consideration of whether the incident should be
6412 referred to senior administrative or clinical staff for review.
6413 (b) Within 24 hours after a individual's release from
6414 restraint or seclusion, the individual shall be asked to debrief
6415 and provide comment on the episode, including the circumstances
6416 leading to the episode, staff or individual actions that may
6417 have helped to prevent it, the type of restraint or seclusion
6418 used, and any physical or psychological effects he or she may be
6419 experiencing from the restraint or seclusion. Whenever possible
6420 and appropriate, the staff person providing the individual with
6421 the opportunity to comment shall not have been involved in the
6422 episode of restraint or seclusion. As part of the debriefing,
6423 the individual shall be offered the opportunity to provide

6424 comment in writing and to participate in care planning meetings
6425 aimed at reducing the likelihood of future incidents.
6426 (c) As indicated, a senior administrative review shall be
6427 conducted by the next business day following the identification
6428 of the episode and shall include, but not be limited to,
6429 assessment of the need for expert consultation, training,
6430 performance improvement activities, or change in policy. The
6431 facility director shall ensure that senior administrative and
6432 clinical staff and other appropriate staff conduct a review if
6433 any of the following apply:
6434 1. An individual or staff member experienced significant
6435 emotional or physical injury as a result of the episode. This
6436 may include witnesses to the incident as well.
6437 2. The episode of restraint or seclusion exceeded 4 hours
6438 or episodes of restraint or seclusion for an individual exceeded
6439 8 hours in the aggregate in any 48-hour period.
6440 3. An exception to the restrictions on mechanical
6441 restraint of minors has occurred.
6442 4. The episode appears to be part of a pattern warranting
6443 review.
6444 5. The episode is marked by unusual circumstances.
6445 6. The individual or staff involved in the episode
6446 requested such a review.
6447 (d) All debriefing activities shall be documented and
6448 included in the individual's record and shall be used in
6449 treatment planning, revision of the individual crisis prevention
6450 plan, and ongoing restraint and seclusion prevention efforts.

6451 (8) FACILITY LICENSING AND CERTIFICATION REQUIREMENTS.--In
6452 addition to complying with all applicable standards in this
6453 section, a facility applying to be licensed by the department or
6454 the Agency for Health Care Administration shall include the
6455 following in its application for a license or renewal of a
6456 license:
6457 (a) The facility's plan to reduce and, wherever possible,
6458 eliminate restraint and seclusion.
6459 (b) A comprehensive statement of the facility's policies
6460 and procedures for the utilization and monitoring of restraint
6461 and seclusion, including a listing of all types of mechanical
6462 restraints used by the facility, a statistical analysis of the
6463 facility's actual use of such restraint and seclusion, and a
6464 certification by the facility of its ability and intent to
6465 comply with all applicable laws and rules regarding physical
6466 space, staff training, staff authorization, recordkeeping,
6467 monitoring, and other requirements for the use of restraint and
6468 seclusion.
6469 Section 98. This act shall take effect upon becoming a
6470 law.