

CHAPTER 393

DEVELOPMENTAL DISABILITIES

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393.002 Transfer of Florida Developmental Disabilities Council as formerly created in this chapter to private nonprofit corporation.--

(1) The Governor, by executive order, shall designate a nonprofit corporation as the agency to receive federal funds to implement, on behalf of the State of Florida, Part B of the Developmental Disabilities Assistance and Bill of Rights Act under 42 U.S.C. ss. 6000 et seq., as amended by the United States Congress. The nonprofit corporation, to be known as the "Developmental Disabilities Council," shall be the designated agency as provided by 42 U.S.C. s. 6021.

(2) The executive order designating this nonprofit corporation shall include provisions for the governance and the organizational structure of the corporation consistent with 42 U.S.C. s. 6024(d)(2)(i).

(3) The nonprofit corporation shall be organized pursuant to chapter 617 and shall possess all the powers granted by that chapter. All powers, duties and functions, records, property, and unexpended balances of appropriations, grants and donations, allocations, or any other funds or assets of the Florida Developmental Disabilities Council shall be transferred, together with title thereto, to the nonprofit corporation.

(4) This designated nonprofit corporation shall be eligible to use the state communications system in accordance with s. 282.105(3).

(5) Pursuant to the applicable provisions of chapter 284, the Division of Risk Management of the Department of Financial Services is authorized to insure this nonprofit corporation under the same general terms and conditions as the Florida Developmental Disabilities Council was insured in the Department of Children and Family Services by the division prior to the transfer of its functions authorized by this section.

(6) All departments, officers, agencies, and institutions of the state shall cooperate with the designated corporation in the performance of its duties.

(7) This nonprofit corporation shall make provisions for an annual postaudit of its financial accounts by an independent certified public accountant. The annual audit shall be submitted to the Executive Office of the Governor for review.

(8) Copies of the aforementioned federal law, the state statute, and any executive orders establishing the Developmental Disabilities Council as a nonprofit corporation shall be made available by the corporation to anyone upon request.

History.--s. 3, ch. 95-293; s. 31, ch. 99-5; s. 79, ch. 99-8; s. 412, ch. 2003-261.

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

own communities, and permit them to be diverted or removed from unnecessary institutional placements. This goal cannot be met without ensuring the availability of community residential opportunities in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who live in licensed community homes shall have a family living environment comparable to other Floridians and that such residences shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home. The Legislature further declares that, in developing community-based programs and services for individuals with developmental disabilities, private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients in a cost-efficient manner shall be given preference in lieu of operation of programs directly by state agencies. Finally, it is the intent of the Legislature that all caretakers unrelated to individuals with developmental disabilities receiving care shall be of good moral character.

History.--s. 1, ch. 77-335; s. 3, ch. 85-54; s. 6, ch. 89-308; s. 1, ch. 99-144; s. 9, ch. 2006-227.

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

- (1) "Agency" means the Agency for Persons with Disabilities.
- (2) "Adult day training" means training services which take place in a nonresidential setting, separate from the home or facility in which the client resides; are intended to support the participation of clients in daily, meaningful, and valued routines of the community; and may include work-like settings that do not meet the definition of supported employment.
- (3) "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.
- (4) "Cerebral palsy" means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.
- (5) "Client" means any person determined eligible by the agency for services under this chapter.
- (6) "Client advocate" means a friend or relative of the client, or of the client's immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.
- (7) "Comprehensive assessment" means the process used to determine eligibility for services under this chapter.
- (8) "Comprehensive transitional education program" means the program established in s. 393.18.
- (9) "Developmental disability" means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests

before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

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

(11) "Direct service provider" means a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client's living areas or to a client's funds or personal property.

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

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

(14) "Family care program" means the program established in s. 393.068.

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

(16) "Group home facility" means a residential facility licensed under this chapter which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 but not more than 15 residents.

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

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

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

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

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

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

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

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

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

(22) "Personal care services" means individual assistance with or supervision of essential activities of daily living for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar services that are incidental to the care furnished and essential to the health, safety, and welfare of the client when there is no one else available to perform those services.

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

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

(25) "Resident" means any person with developmental disabilities residing at a residential facility, whether or not such person is a client of the agency.

(26) "Residential facility" means a facility providing room and board and personal care for persons with developmental disabilities.

(27) "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.

(28) "Residential habilitation center" means a community residential facility licensed under this chapter which provides habilitation services. The capacity of such a facility shall not be fewer than nine residents. After October 1, 1989, new residential habilitation centers may not be licensed and the licensed capacity for any existing residential habilitation center may not be increased.

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

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

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

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

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

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

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

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

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

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

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

(37) "Supported employment" means employment located or provided in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is needed for job maintenance.

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

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

(40) "Treatment" means the prevention, amelioration, or cure of a client's physical and mental disabilities or illnesses.

History.--s. 1, ch. 77-335; s. 1, ch. 79-148; s. 153, ch. 79-400; s. 3, ch. 81-23; s. 4, ch. 85-54; s. 1, ch. 85-147; s. 5, ch. 87-238; s. 5, ch. 88-398; s. 7, ch. 89-308; ss. 2, 4, ch. 89-339; s. 27, ch. 90-306; s. 1, ch. 90-333; s. 17, ch. 91-158; s. 3, ch. 94-154; s. 1045, ch. 95-148; s. 53, ch. 95-228; s. 1, ch. 95-293; s. 13, ch. 96-417; s. 23, ch. 98-171; s. 140, ch. 98-403; s. 80, ch. 99-8; s. 203, ch. 99-13; s. 3, ch. 2000-338; s. 35, ch. 2002-400; s. 7, ch. 2004-260; s. 71, ch. 2004-267; s. 15, ch. 2006-197; s. 10, ch. 2006-227.

393.064 Prevention.--

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

(2) Prevention services provided by the agency shall include services to high-risk children from 3 to 5 years of age, and their families, to meet the intent of chapter 411. Except for services for children from birth to age 3 years which are the responsibility of the Division of Children's Medical Services in the Department of Health or part H of the Individuals with Disabilities Education Act, such services may include:

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

(b) Early intervention services, including developmental training and specialized therapies.

(c) Support services, such as respite care, parent education and training, parent-to-parent counseling, homemaker services, and other services which allow families to maintain and provide quality care to children in their homes.

(3) Other agencies of state government shall cooperate with and assist the agency, within available resources, in implementing programs which have the potential to prevent, or reduce the severity of, developmental disabilities and shall consider the findings and recommendations of the agency in developing and implementing agency programs and formulating agency budget requests.

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

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

History.--s. 1, ch. 77-335; s. 92, ch. 79-164; ss. 1, 2, ch. 79-367; s. 5, ch. 82-213; s. 45, ch. 83-218; s. 8, ch. 89-308; s. 4, ch. 94-154; s. 81, ch. 99-8; s. 46, ch. 2000-139; s. 13, ch. 2000-153; s. 72, ch. 2004-267; s. 51, ch. 2004-350; s. 11, ch. 2006-227.

Note.--Consolidation of s. 393.064 and former s. 393.20.

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

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

(2) The program shall:

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

(f) Collect data on the type, severity, incidence, and demographics of individuals with severe self-injurious behavior, and disseminate the data.

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

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

(5) The agency may license this program and adopt rules to administer the program.

History.--s. 9, ch. 89-308; s. 8, ch. 93-200; s. 25, ch. 2001-62; s. 99, ch. 2004-267; s. 12, ch. 2006-227.

393.065 Application and eligibility determination.--

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

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

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

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

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

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

History.--s. 1, ch. 77-335; s. 42, ch. 83-218; s. 7, ch. 88-398; s. 5, ch. 94-154; s. 120, ch. 96-410; s. 82, ch. 99-8; s. 2, ch. 99-144; s. 100, ch. 2004-267; s. 13, ch. 2006-227.

393.0651 Family or individual support plan.--The agency shall provide directly or contract for the development of a family support plan for children ages 3 to 18 years of age and an individual support plan for each client. The client, if competent, the client's parent or guardian, or, when appropriate, the client advocate, shall be consulted in the development of the plan and shall receive a copy of the plan. Each plan must include the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized. The plan must include provisions for the most appropriate level of care for the client. Within the specification of needs and services for each client, when residential care is necessary, the agency shall move toward placement of clients in residential facilities based within the client's community. The ultimate goal of each plan, whenever possible, shall be to enable the client to live a dignified life in the least restrictive setting, be that in the home or in the community. For children under 6 years of age, the family support plan shall be developed within the 45-day application period as specified in s. 393.065(1); for all applicants 6 years of age or older, the family or individual support plan shall be developed within the 60-day period as specified in that subsection.

- (1) The agency shall develop and specify by rule the core components of support plans.
- (2) The family or individual support plan shall be integrated with the individual education plan (IEP) for all clients who are public school students entitled to a free appropriate public education under the Individuals with Disabilities Education Act, I.D.E.A., as amended. The family or individual support plan and IEP shall be implemented to maximize the attainment of educational and habilitation goals.
 - (a) If the IEP for a student enrolled in a public school program indicates placement in a public or private residential program is necessary to provide special education and related services to a client, the local education agency shall provide for the costs of that service in accordance with the requirements of the Individuals with Disabilities Education Act, I.D.E.A., as amended. This shall not preclude local education agencies and the agency from sharing the residential service costs of students who are clients and require residential placement.
 - (b) For clients who are entering or exiting the school system, an interdepartmental staffing team composed of representatives of the agency and the local school system shall develop a written transitional living and training plan with the participation of the client or with the parent or guardian of the client, or the client advocate, as appropriate.
- (3) Each family or individual support plan shall be facilitated through case management designed solely to advance the individual needs of the client.
- (4) In the development of the family or individual support plan, a client advocate may be appointed by the support planning team for a client who is a minor or for a client who is not capable of express and informed consent when:
 - (a) The parent or guardian cannot be identified;
 - (b) The whereabouts of the parent or guardian cannot be discovered; or
 - (c) The state is the only legal representative of the client.

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

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

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

(b) Foster care facility.

(c) Group home facility.

(d) Intermediate care facility for the developmentally disabled.

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

(f) Developmental disabilities institution.

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

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

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

History.--s. 10, ch. 89-308; s. 3, ch. 89-339; s. 6, ch. 94-154; s. 1046, ch. 95-148; s. 121, ch. 96-410; s. 101, ch. 2004-267; s. 14, ch. 2006-227.

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

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

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

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

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

History.--s. 15, ch. 2006-227.

393.0655 Screening of direct service providers.--

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

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

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

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

(d) Persons 12 years of age or older, including family members, residing with a direct services provider who provides services to clients in his or her own place of residence are subject to background screening; however, such persons who are 12 to 18 years of age shall be screened for delinquency records only.

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

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

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

(4) TERMINATION; HEARINGS PROVIDED.--

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

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

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

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

History.--s. 5, ch. 85-54; s. 6, ch. 87-238; s. 2, ch. 90-225; s. 25, ch. 90-347; s. 6, ch. 91-33; s. 21, ch. 91-57; s. 88, ch. 91-221; s. 10, ch. 93-156; s. 18, ch. 94-134; s. 18, ch. 94-135; s. 7, ch. 94-154; s. 1047, ch. 95-148; s. 14, ch. 95-152; s. 12, ch. 95-158; s. 35, ch. 95-228; s. 123, ch. 95-418; s. 7, ch. 96-268; s. 206, ch. 96-406; s. 73, ch. 2004-267; s. 52, ch. 2005-2; s. 16, ch. 2006-227.

393.0657 Persons not required to be refingerprinted or rescreened.--Persons who have undergone any portion of the background screening required under s. 393.0655 within the last 12 months are not required to repeat such screening in order to comply with the screening requirements. Such persons are responsible for providing documentation of the screening and shall undergo screening for any remaining background screening requirements that have never been conducted or have not been completed within the last 12 months.

History.--s. 1, ch. 87-128; s. 1, ch. 87-141; s. 22, ch. 93-39; s. 8, ch. 94-154; s. 8, ch. 2002-219; s. 979, ch. 2002-387; s. 40, ch. 2004-5; s. 17, ch. 2006-227.

393.066 Community services and treatment.--

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

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

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

(a) Adult day training services.

- (b) Family care services.
- (c) Guardian advocate referral services.
- (d) Medical/dental services, except that medical services shall not be provided to clients with spina bifida except as specifically appropriated by the Legislature.
- (e) Parent training.
- (f) Personal care services.
- (g) Recreation.
- (h) Residential facility services.
- (i) Respite services.
- (j) Social services.
- (k) Specialized therapies.
- (l) Supported employment.
- (m) Supported living.
- (n) Training, including behavioral analysis services.
- (o) Transportation.
- (p) Other habilitative and rehabilitative services as needed.

(4) The agency shall utilize the services of private businesses, not-for-profit organizations, and units of local government whenever such services are more cost-efficient than such services provided directly by the department, including arrangements for provision of residential facilities.

(5) In order to improve the potential for utilization of more cost-effective, community-based residential facilities, the agency shall promote the statewide development of day habilitation services for clients who live with a direct service provider in a community-based residential facility and who do not require 24-hour-a-day care in a hospital or other health care institution, but who may, in the absence of day habilitation services, require admission to a developmental disabilities institution. Each day service facility shall provide a protective physical environment for clients, ensure that direct service providers meet minimum screening standards as required in s. 393.0655, make available to all day habilitation service participants at least one meal on each day of operation, provide facilities to enable participants to obtain needed rest while attending the program, as appropriate, and provide social and educational activities designed to stimulate interest and provide socialization skills.

(6) To promote independence and productivity, the agency shall provide supports and services, within available resources, to assist clients enrolled in Medicaid waivers who choose to pursue gainful employment.

(7) For the purpose of making needed community-based residential facilities available at the least possible cost to the state, the agency is authorized to lease privately owned residential facilities under long-term rental agreements, if such rental agreements are projected to be less costly to the state over the useful life of the facility than state purchase or state construction of such a facility.

(8) The agency may adopt rules providing definitions, eligibility criteria, and procedures for the purchase of services provided pursuant to this section.

History.--s. 1, ch. 77-335; s. 2, ch. 80-174; s. 43, ch. 83-218; s. 15, ch. 84-226; s. 6, ch. 85-54; s. 2, ch. 85-147; s. 10, ch. 86-220; s. 7, ch. 87-238; s. 11, ch. 89-308; s. 18, ch. 91-158; s. 4, ch. 92-174; ss. 2, 3, ch. 93-143; s. 9, ch. 93-200; s. 5, ch. 93-267; s. 9, ch. 94-154; s. 1, ch. 98-152; s. 83, ch. 99-8; s. 3, ch. 99-144; s. 74, ch. 2004-267; s. 18, ch. 2006-227.

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

(1) The redesign of the home and community-based services system shall include, at a minimum, all actions necessary to achieve an appropriate rate structure, client choice within a specified service package, appropriate assessment strategies, an efficient billing process that contains reconciliation and monitoring components, a redefined role for support coordinators that avoids potential conflicts of interest, and ensures that family/client budgets are linked to levels of need.

(a) The agency shall use an assessment instrument that is reliable and valid. The agency may contract with an external vendor or may use support coordinators to complete client assessments if it develops sufficient safeguards and training to ensure ongoing inter-rater reliability.

(b) The agency, with the concurrence of the Agency for Health Care Administration, may contract for the determination of medical necessity and establishment of individual budgets.

(2) A provider of services rendered to persons with developmental disabilities pursuant to a federally approved waiver shall be reimbursed according to a rate methodology based upon an analysis of the expenditure history and prospective costs of providers participating in the waiver program, or under any other methodology developed by the Agency for Health Care Administration, in consultation with the Agency for Persons with Disabilities, and approved by the Federal Government in accordance with the waiver.

(3) Pending the adoption of rate methodologies pursuant to nonemergency rulemaking under s. 120.54, the Agency for Health Care Administration may, at any time, adopt emergency rules under s. 120.54(4) in order to comply with subsection (4). In adopting such emergency rules, the agency need not make the findings required by s. 120.54(4)(a), and such rules shall be exempt from time limitations provided in s. 120.54(4)(c) and shall remain in effect until replaced by another emergency rule or the nonemergency adoption of the rate methodology.

(4) Nothing in this section or in any administrative rule shall be construed to prevent or limit the Agency for Health Care Administration, in consultation with the Agency for Persons with Disabilities, from adjusting fees, reimbursement rates, lengths of stay, number of visits, or

number of services, or from limiting enrollment, or making any other adjustment necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act.

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

History.--s. 39, ch. 2002-400; s. 75, ch. 2004-267; s. 1, ch. 2005-60; s. 15, ch. 2005-133; s. 2, ch. 2006-15.

393.067 Facility licensure.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) An unlicensed facility or program may not receive state funds. A license for the operation of a facility or program shall not be renewed if the licensee has any outstanding fines assessed pursuant to this chapter wherein final adjudication of such fines has been entered.

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

History.--s. 1, ch. 77-335; s. 154, ch. 79-400; s. 4, ch. 81-290; s. 7, ch. 85-54; s. 8, ch. 87-238; s. 12, ch. 89-308; s. 5, ch. 89-339; s. 26, ch. 90-347; s. 23, ch. 91-158; s. 23, ch. 93-211; s. 10, ch. 94-154; s. 2, ch. 95-293; s. 207, ch. 96-406; s. 14, ch. 96-417; ss. 24, 71, ch. 98-171; s. 84, ch. 99-8; s. 204, ch. 99-13; s. 4, ch. 99-144; s. 1, ch. 2000-338; s. 62, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; ss. 6, 90, ch. 2004-267; s. 19, ch. 2006-227.

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

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

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

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

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

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

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

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

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

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

History.--s. 11, ch. 83-230; s. 8, ch. 85-54; s. 40, ch. 93-217; s. 85, ch. 99-8; s. 5, ch. 99-144; s. 102, ch. 2004-267; s. 20, ch. 2006-227.

393.0674 Penalties.--

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

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

(b) Provide or attempt to provide supports or services with direct service providers who are not in compliance with the background screening requirements in this chapter; or

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

(2) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under s. 393.0655, s. 393.066, or s. 393.067 for any purpose other than screening for employment as specified in those sections or to release information from such records to any other person for any purpose other than screening for employment as specified in those sections.

History.--s. 9, ch. 85-54; s. 27, ch. 90-347; s. 11, ch. 94-154; s. 63, ch. 2000-349; s. 21, ch. 2006-227.

393.0675 Injunctive proceedings authorized.--

- (1) The agency may institute injunctive proceedings in a court of competent jurisdiction to:
 - (a) Enforce the provisions of this chapter or any minimum standard, rule, regulation, or order issued or entered pursuant thereto; or
 - (b) Terminate the operation of facilities licensed pursuant to this chapter when any of the following conditions exist:
 1. Failure by the facility to take preventive or corrective measures in accordance with any order of the agency.
 2. Failure by the facility to abide by any final order of the agency once it has become effective and binding.
 3. Any violation by the facility constituting an emergency requiring immediate action as provided in s. 393.0673.
- (2) Such injunctive relief may include temporary and permanent injunctions.
- (3) The agency may institute proceedings for an injunction in a court of competent jurisdiction to terminate the operation of a provider of supports or services if such provider has willfully and knowingly refused to comply with the screening requirement for direct service providers or has refused to terminate direct service providers found not to be in compliance with such requirements.

History.--s. 12, ch. 83-230; s. 43, ch. 85-81; s. 9, ch. 87-238; s. 13, ch. 89-308; s. 12, ch. 94-154; s. 86, ch. 99-8; s. 103, ch. 2004-267; s. 22, ch. 2006-227.

393.0678 Receivership proceedings.--

- (1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for a residential habilitation center or a group home facility owned and operated by a corporation or partnership when any of the following conditions exist:
 - (a) Any person is operating a facility without a license and refuses to make application for a license as required by s. 393.067.
 - (b) The licensee is closing the facility or has informed the department that it intends to close the facility; and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility.
 - (c) The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency shall facilitate the continued operation of the program.
 - (d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence

that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this chapter and all rules promulgated thereunder.

(2)(a) The petition for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, has priority.

(b) A hearing shall be conducted within 5 days of the filing of the petition, at which time all interested parties shall have the opportunity to present evidence pertaining to the petition. The agency shall notify the owner or operator of the facility named in the petition of its filing and the date set for the hearing.

(c) The court shall grant the petition only upon finding that the health, safety, or welfare of residents of the facility would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver may not be appointed ex parte unless the court determines that one or more of the conditions in subsection (1) exist; that the facility owner or operator cannot be found; that all reasonable means of locating the owner or operator and notifying him or her of the petition and hearing have been exhausted; or that the owner or operator after notification of the hearing chooses not to attend. After such findings, the court may appoint any person qualified by education, training, or experience to carry out the responsibilities of receiver pursuant to this section, except that the court may not appoint any owner or affiliate of the facility which is in receivership. Before the appointment as receiver of a person who is the operator, manager, or supervisor of another facility, the court shall determine that the person can reasonably operate, manage, or supervise more than one facility. The receiver may be appointed for up to 90 days with the option of petitioning the court for 30-day extensions. The receiver may be selected from a list of persons qualified to act as receivers developed by the agency and presented to the court with each petition for receivership. Under no circumstances may the agency or designated agency employee be appointed as a receiver for more than 60 days; however, the agency receiver may petition the court for 30-day extensions. The court shall grant an extension upon a showing of good cause. The agency may petition the court to appoint a substitute receiver.

(d) During the first 60 days of the receivership, the agency may not take action to decertify or revoke the license of a facility unless conditions causing imminent danger to the health and welfare of the residents exist and a receiver has been unable to remove those conditions. After the first 60 days of receivership, and every 60 days thereafter until the receivership is terminated, the agency shall submit to the court the results of an assessment of the ability of the facility to assure the safety and care of the residents. If the conditions at the facility or the intentions of the owner indicate that the purpose of the receivership is to close the facility rather than to facilitate its continued operation, the agency shall place the residents in appropriate alternate residential settings as quickly as possible. If, in the opinion of the court, the agency has not been diligent in its efforts to make adequate arrangements for placement, the court shall find the agency to be in contempt and shall order the agency to submit its plans for moving the residents.

(3) The receiver shall make provisions for the continued health, safety, and welfare of all residents of the facility and:

(a) Shall exercise those powers and perform those duties set out by the court.

(b) Shall operate the facility in such a manner as to assure the residents' safety and adequate health care for the residents.

(c) Shall take such action as is reasonably necessary to protect or conserve the assets or property of the facility for which the receiver is appointed, or the proceeds from any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

(d) Shall honor all leases, mortgages, and secured transactions governing the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of the receivership or which, in the case of a purchase agreement, become due during the period of the receivership.

(e) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership at the same rate of payment charged by the owner at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court for private, paying residents. The receiver may apply to the agency for a rate increase for residents under Title XIX of the Social Security Act if the facility is not receiving the state reimbursement cap and if expenditures justify an increase in the rate.

(f) May correct or eliminate any deficiency in the structure, furnishings, or staffing of the facility which endangers the safety or health of residents while they remain in the facility, provided the total cost of correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver after notice to the owner. A hearing may be requested by the owner within 72 hours.

(g) May let contracts and hire agents and employees to carry out the powers and duties of the receiver under this section.

(h) Shall have full power to direct, manage, hire, and discharge employees of the facility subject to any contract rights they may have. The receiver shall hire and pay employees at the rate of compensation, including benefits, approved by the court. Receivership does not relieve the owner of any obligations to employees which had been made before the appointment of a receiver and were not carried out by the receiver.

(i) Shall be entitled to take possession of all property or assets of residents which are in the possession of a facility or its owner. The receiver shall preserve all such property or assets and all resident records of which the receiver takes possession; and he or she shall provide for the prompt transfer of the property, assets, and records of any resident transferred to the resident's new placement. An inventory list certified by the owner and receiver shall be made at the time the receiver takes possession of the facility.

(4)(a) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services had they been supplied by the owner. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit accounts received in a separate account and shall use this account for all disbursements.

(b) The receiver may bring an action to enforce the liability created by paragraph (a).

(c) A payment to the receiver of any sum owing to the facility or its owner discharges any obligation to the facility to the extent of the payment.

(5)(a) A receiver may petition the court that he or she not be required to honor any lease, mortgage, secured transaction, or other wholly or partially executory contract entered into by the owner of the facility if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was entered into, or if any material provision of the agreement was unreasonable, when compared to contracts negotiated under similar conditions. Any relief in this form provided by the court shall be limited to the life of the receivership, unless otherwise determined by the court.

(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage, or security interest which the receiver has obtained a court order to avoid under paragraph (a), and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price, or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within 15 days. The receiver shall send notice of the application to any known persons who own the property involved or to the mortgage holders at least 10 days prior to the hearing. The payment by the receiver of the amount determined by the court to be reasonable is a defense to any action brought against the receiver by any person who received such notice, which action is for payment or for possession of the goods or real estate subject to the lease, mortgage, or security interest involved; but the payment does not relieve the owner of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease, mortgage, or security interest involved.

(6) The court shall set the compensation of the receiver, which shall be considered a necessary expense of the receivership.

(7) The court may require a receiver to post a bond.

(8) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts, or breach of fiduciary duty.

(9) The court may terminate a receivership when:

(a) The court determines that the receivership no longer is necessary because the conditions which gave rise to the receivership no longer exist; or

(b) All of the residents in the facility have been transferred or discharged.

(10) Within 30 days after termination of the receivership, unless this time period is extended by the court, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed, and of the expenses of the receivership.

(11) Nothing in this section shall be deemed to relieve any owner, operator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator, or employee before the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, operator, or employee for payment of taxes or other operating and maintenance expenses of the facility or any obligation of the owner, operator, or employee or any other person for the payment of mortgages or liens. The

owner shall retain the right to sell or mortgage any facility under receivership, subject to the approval of the court which ordered the receivership. A receivership imposed under the provisions of this chapter shall be subject to the Resident Protection Trust Fund pursuant to s. 400.063. The owner of a facility placed in receivership by the court shall be liable for all expenses and costs incurred by the Resident Protection Trust Fund which occur as a result of the receivership.

History.--s. 13, ch. 83-230; s. 14, ch. 89-308; s. 41, ch. 93-217; s. 700, ch. 95-148; s. 104, ch. 2004-267; s. 23, ch. 2006-227.

393.068 Family care program.--

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

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

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

(o) Other support services as identified by the family or individual.

(3) When it is determined by the agency to be more cost-effective and in the best interest of the client to maintain such client in the home of a direct service provider, the parent or guardian of the client or, if competent, the client may enroll the client in the family care program. The direct service provider of a client enrolled in the family care program shall be reimbursed according to a rate schedule set by the agency, except that in-home subsidies shall be provided in accordance with s. 393.0695.

(4) All existing community resources available to the client shall be utilized to support program objectives. Additional services may be incorporated into the program as appropriate and to the extent that resources are available. The agency is authorized to accept gifts and grants in order to carry out the program.

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

(6) When possible, services shall be obtained under the "Florida Comprehensive Annual Services Program Plan under Title XX of the Social Security Act" and the "Florida Plan for Medical Assistance under Title XIX of the Social Security Act."

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

History.--s. 1, ch. 77-335; s. 11, ch. 86-220; s. 15, ch. 89-308; s. 19, ch. 91-158; s. 5, ch. 92-174; s. 1, ch. 93-143; s. 10, ch. 93-200; s. 6, ch. 93-267; s. 13, ch. 94-154; s. 76, ch. 2004-267; s. 53, ch. 2005-2; s. 24, ch. 2006-227.

393.0695 Provision of in-home subsidies.--

(1) The agency may pay in-home subsidies to clients enrolled in the family care program or supported living when it is determined to be more cost-effective and in the best interest of the client to provide a cash supplement to the client's income to enable the client to remain in the family home or the client's own home. Payments may be made to the parent or guardian of the client or, if the client is competent, directly to the client.

(2) In-home subsidies may be used to pay for basic living necessities including, but not limited to: rent, utilities, food, clothing, toiletries, household supplies, and other household items. In-home subsidies may not be used to pay a contractor for the provision of services and supports to the client or to pay for medical or dental services, medicines, medical supplies, or adaptive equipment or aids.

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

(4) Payments may be made monthly and shall be considered a client service rather than a purchase of service. Chapter 287 does not apply to in-home subsidies.

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

History.--s. 20, ch. 91-158; s. 77, ch. 2004-267; s. 25, ch. 2006-227.

393.071 Client fees.--The agency shall charge fees for services provided to clients in accordance with s. 402.33.

History.--s. 1, ch. 77-335; s. 87, ch. 99-8; s. 105, ch. 2004-267.

393.075 General liability coverage.--

(1) As used in this section, the term "children" means those persons under the age of 18 years.

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

(3) This section shall not be construed as designating or not designating that a person who owns or operates a foster care facility or group home facility as described in this section or any other person is an employee or agent of the state. Nothing in this section amends, expands, or supersedes the provisions of s. 768.28.

History.--s. 1, ch. 88-386; s. 701, ch. 95-148; s. 88, ch. 99-8; s. 21, ch. 2000-122; s. 413, ch. 2003-261; s. 106, ch. 2004-267; s. 26, ch. 2006-227.

393.11 Involuntary admission to residential services.--

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

(2) **PETITION.**--

(a) A petition for involuntary admission to residential services may be executed by a petitioning commission.

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

(c) The petition shall be verified and shall:

1. State the name, age, and present address of the commissioners and their relationship to the person with mental retardation or autism;
2. State the name, age, county of residence, and present address of the person with mental retardation or autism;
3. Allege that the commission believes that the person needs involuntary residential services and specify the factual information on which the belief is based;
4. Allege that the person lacks sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to provide for the person's well-being or is likely to physically injure others if allowed to remain at liberty; and
5. State which residential setting is the least restrictive and most appropriate alternative and specify the factual information on which the belief is based.

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

(3) NOTICE.--

(a) Notice of the filing of the petition shall be given to the individual and his or her legal guardian. The notice shall be given both verbally and in writing in the language of the client, or in other modes of communication of the client, and in English. Notice shall also be given to such other persons as the court may direct. The petition for involuntary admission to residential services shall be served with the notice.

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

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

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

(4) AGENCY PARTICIPATION.--

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

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

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

(5) EXAMINING COMMITTEE.--

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

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

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

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

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

1. The degree of the person's mental retardation and whether, using diagnostic capabilities established by the agency, the person is eligible for agency services;
2. Whether, because of the person's degree of mental retardation, the person:
 - a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065;
 - b. Lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and if not provided would result in a real and present threat of substantial harm to the person's well-being; or
 - c. Is likely to physically injure others if allowed to remain at liberty.
3. The purpose to be served by residential care;

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

5. The appropriate care, habilitation, and treatment.

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

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

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

(6) COUNSEL; GUARDIAN AD LITEM.--

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

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

(7) HEARING.--

(a) The hearing for involuntary admission shall be conducted, and the order shall be entered, in the county in which the petition is filed. The hearing shall be conducted in a physical setting not likely to be injurious to the person's condition.

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

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

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

(e) The person has the right to present evidence and to cross-examine all witnesses and other evidence alleging the appropriateness of the person's admission to residential care. Other

relevant and material evidence regarding the appropriateness of the person's admission to residential services; the most appropriate, least restrictive residential placement; and the appropriate care, treatment, and habilitation of the person, including written or oral reports, may be introduced at the hearing by any interested person.

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

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

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

(8) ORDER.--

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

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

1. The person is mentally retarded or autistic;
2. Placement in a residential setting is the least restrictive and most appropriate alternative to meet the person's needs; and
3. Because of the person's degree of mental retardation or autism, the person:
 - a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065 and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to the person's well-being; or
 - b. Is likely to physically injure others if allowed to remain at liberty.

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

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

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

evaluations shall be served upon the person and the person's counsel at the same time the documents are filed with the court.

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

(a) An order authorizing an admission to residential care may not be considered an adjudication of mental incompetency. A person is not presumed incompetent solely by reason of the person's involuntary admission to residential services. A person may not be denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States.

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

(10) COMPETENCY.--

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

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

(11) CONTINUING JURISDICTION.--The court which issues the initial order for involuntary admission to residential services under this section has continuing jurisdiction to enter further orders to ensure that the person is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behavioral programming. Upon request, the court may transfer the continuing jurisdiction to the court where a client resides if it is different from where the original involuntary admission order was issued. A person may not be released from an order for involuntary admission to residential services except by the order of the court.

(12) APPEAL.--

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

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

(13) HABEAS CORPUS.--At any time and without notice, any person involuntarily admitted into residential care, or the person's parent or legal guardian in his or her behalf, is entitled to file a petition for a writ of habeas corpus to question the cause, legality, and appropriateness of the person's involuntary admission. Each person, or the person's parent or legal guardian, shall receive specific written notice of the right to petition for a writ of habeas corpus at the time of his or her involuntary placement.

History.--s. 4, ch. 10272, 1925; CGL 3677; s. 1, ch. 61-426; s. 5, ch. 67-65; s. 1, ch. 70-343; s. 1, ch. 70-439; s. 4, ch. 73-308; s. 25, ch. 73-334; s. 8, ch. 75-259; s. 197, ch. 77-147; s. 2, ch. 77-335; s. 155, ch. 79-400; s. 3, ch. 80-174; s. 5, ch. 81-290; s. 8, ch. 88-398; s. 2, ch. 90-333; s. 7, ch. 92-58; s. 14, ch. 94-154; s. 95, ch. 95-143; s. 1048, ch. 95-148; s. 2, ch. 98-92; s. 89, ch. 99-8; s. 5, ch. 99-240; s. 76, ch. 2004-11; s. 78, ch. 2004-267; s. 27, ch. 2006-227.

393.115 Discharge.--

(1) DISCHARGE AT THE AGE OF MAJORITY.--

(a) When any residential client reaches his or her 18th birthday, the agency shall give the resident or legal guardian the option to continue residential services or to be discharged from residential services.

(b) If the resident appears to meet the criteria for involuntary admission to residential services, as defined in s. 393.11, the agency shall file a petition to determine the appropriateness of continued residential placement on an involuntary basis. The agency shall file the petition for involuntary admission in the county in which the client resides. If the resident was originally involuntarily admitted to residential services pursuant to s. 393.11, then the agency shall file the petition in the court having continuing jurisdiction over the case.

(c) Nothing in this section shall in any way limit or restrict the resident's right to a writ of habeas corpus or the right of the agency to transfer a resident receiving residential care to a program of appropriate services provided by the agency when such program is the appropriate habilitative setting for the resident.

(2) DISCHARGE AFTER CRIMINAL OR JUVENILE COMMITMENT.--Any person with developmental disabilities committed to the custody of the agency pursuant to the provisions of the applicable criminal or juvenile court law shall be discharged in accordance with the requirements of the applicable criminal or juvenile court law.

History.--s. 7, ch. 7887, 1919; ss. 2, 3, ch. 10272, 1925; CGL 3669, 3674-3676; s. 1, ch. 61-426; ss. 19, 35, ch. 69-106; s. 1, ch. 70-343; s. 1, ch. 70-439; s. 7, ch. 73-308; s. 194, ch. 77-147; s. 3, ch. 77-335; s. 19, ch. 78-95; s. 9, ch. 88-398; s. 16, ch. 89-308; s. 702, ch. 95-148; s. 107, ch. 2004-267.

Note.--Former s. 393.05.

393.12 Capacity; appointment of guardian advocate.--

(1) CAPACITY.--

(a) The issue of capacity shall be separate and distinct from a determination of the appropriateness of admission to nonresidential services or residential care for a condition of developmental disabilities. No person shall be presumed incapacitated solely by reason of his or her acceptance in nonresidential services or admission to residential care; nor shall any such person be denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States.

(b) The issue of capacity of a person with developmental disabilities shall be determined in a separate proceeding according to the procedures and requirements of chapter 744 and the Florida Probate Rules.

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.--

(a) *Conditions.*--A probate court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities, if the person lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate or if the person has voluntarily petitioned for the appointment of a guardian advocate. Except as otherwise specified, the proceeding shall be governed by the Florida Rules of Civil Procedure.

(b) *Petition.*--A petition to appoint a guardian advocate may be executed by an adult person who is a resident of this state. The petition shall be verified and shall:

1. State the name, age, and present address of the petitioner and his or her relationship to the person with developmental disabilities;
2. State the name, age, county of residence, and present address of the person with developmental disabilities;
3. Allege that the petitioner believes that the person needs a guardian advocate and specify the factual information on which such belief is based;
4. Specify the exact areas in which the person lacks the capacity to make informed decisions about his or her care and treatment services or to meet the essential requirements for his or her physical health or safety;
5. Specify the legal disabilities to which the person is subject; and
6. State the name of the proposed guardian advocate, the relationship of that person to the person with developmental disabilities, and the reason why this person should be appointed. If a willing and qualified guardian advocate cannot be located, the petition shall so state.

(c) *Notice.*--

1. Notice of the filing of the petition shall be given to the individual and his or her parent or parents. The notice shall be given both verbally and in writing in the language of the person and in English. Notice shall also be given to such other persons as the court may direct. The petition to appoint a guardian advocate shall be served with the notice.
2. The notice shall state that a hearing shall be set to inquire into the capacity of the person with developmental disabilities to exercise the rights enumerated in the petition. The notice shall also state the date of the hearing on the petition.
3. The notice shall state that the individual with developmental disabilities has the right to be represented by counsel of his or her own choice and that if the individual cannot afford an attorney, the court shall appoint one.

(d) *Counsel.*--

1. Every person with developmental disabilities who is the subject of a petition to appoint a guardian advocate shall be represented by counsel.
2. Every person with developmental disabilities has the right to be represented by counsel of his or her own choice. If the person cannot afford an attorney, the court shall appoint one to

represent the person. The court shall appoint counsel if no appearance has been filed within 10 working days of the hearing.

(e) *Hearing.*--

1. Upon the filing of the petition to appoint a guardian advocate, the court shall set a date upon which the petition shall be heard. A hearing on the petition shall be held as soon as practicable after the petition is filed, but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted.
2. The hearing shall be conducted at the time and place specified in the notice of hearing. The hearing shall be conducted in a manner consistent with due process.
3. The individual has the right to be present at the hearing and shall be present unless good cause to exclude the individual can be shown. The individual has the right to remain silent, to present evidence, to call and cross-examine witnesses, and to have the hearing open or closed, as the person may choose.
4. At the hearing, the court shall receive and consider all reports relevant to the person's disabilities, including, but not limited to, the current individual family or individual support plan, the individual education plan, and other professional reports documenting the condition and needs of the individual.
5. The Florida Evidence Code, chapter 90, shall apply at the hearing. The burden of proof shall be by clear and convincing evidence.

(f) *Order determining the appointment of a guardian advocate.*--If the court finds the person with developmental disabilities requires the appointment of a guardian advocate, the court shall enter a written order determining the need for a guardian advocate. The written order shall contain the findings of facts and conclusions of law on which the court made its decision. The court shall make the following findings:

1. The nature and scope of the person's incapacity;
2. The exact areas in which the individual lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for his or her physical health and safety;
3. The specific legal disabilities to which the person with developmental disabilities is subject; and
4. The powers and duties of the guardian advocate, including bonding of the guardian advocate, as governed by s. 744.351.

(g) *Legal rights.*--A person with developmental disabilities for whom a guardian advocate has been appointed retains all legal rights except those which have been specifically granted to the guardian advocate.

(h) *Powers and duties of guardian advocate.*--A guardian advocate for a person with developmental disabilities shall be a person or corporation qualified to act as guardian, with the same powers, duties, and responsibilities required of a guardian under chapter 744 or those defined by court order under this section. However, a guardian advocate may not be required to file an annual accounting under s. 744.3678 if the court determines that the person with

developmental disabilities receives income only from Social Security benefits and the guardian advocate is the person's representative payee for the benefits.

(3) COURT COSTS.--In all proceedings under this section, no court costs shall be charged against the agency.

History.--s. 1, ch. 29853, 1955; s. 1, ch. 61-426; s. 26, ch. 63-559; s. 1, ch. 70-343; s. 5, ch. 73-308; s. 25, ch. 73-334; s. 4, ch. 77-335; s. 2, ch. 80-171; s. 10, ch. 88-398; s. 109, ch. 89-96; s. 15, ch. 94-154; s. 96, ch. 95-143; s. 1049, ch. 95-148; s. 8, ch. 2004-260; s. 108, ch. 2004-267.

393.122 Applications for continued residential services.--

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

(2) A client receiving services from a state agency may not be denied continued services due to any change in eligibility requirements by chapter 77-335, Laws of Florida.

History.--s. 5, ch. 77-335; s. 11, ch. 88-398; s. 28, ch. 2006-227.

393.125 Hearing rights.--

(1) REVIEW OF AGENCY DECISIONS.--

(a) Any developmental services applicant or client, or his or her parent, guardian, guardian advocate, or authorized representative, who has any substantial interest determined by the agency, has the right to request an administrative hearing pursuant to ss. 120.569 and 120.57.

(b) Notice of the right to an administrative hearing shall be given, both verbally and in writing, to the applicant or client, and his or her parent, guardian, guardian advocate, or authorized representative, at the same time that the agency gives the applicant or client notice of the agency's action. The notice shall be given, both verbally and in writing, in the language of the client or applicant and in English.

(c) A request for a hearing under this section shall be made to the agency, in writing, within 30 days of the applicant's or client's receipt of the notice.

(2) REVIEW OF PROVIDER DECISIONS.--The agency shall adopt rules to establish uniform guidelines for the agency and service providers relevant to termination, suspension, or reduction of client services by the service provider. The rules shall ensure the due process rights of service providers and clients.

History.--s. 17, ch. 89-308; s. 703, ch. 95-148; s. 122, ch. 96-410; s. 109, ch. 2004-267.

393.13 Treatment of persons with developmental disabilities.--

(1) SHORT TITLE.--This section shall be known as "The Bill of Rights of Persons with Developmental Disabilities."

(2) LEGISLATIVE INTENT.--

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

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

1. Abate the use of large institutions.
2. Continue the development of community-based services that provide reasonable alternatives to institutionalization in settings that are least restrictive to the client and that provide opportunities for inclusion in the community.
3. Provide training and education that will maximize their potential to lead independent and productive lives and that will afford opportunities for outward mobility from institutions.
4. Reduce the use of sheltered workshops and other noncompetitive employment day activities and promote opportunities for those who choose to seek such employment.

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

(d) It is the intent of the Legislature:

1. To articulate the existing legal and human rights of persons with developmental disabilities so that they may be exercised and protected. Persons with developmental disabilities shall have all the rights enjoyed by citizens of the state and the United States.
2. To provide a mechanism for the identification, evaluation, and treatment of persons with developmental disabilities.
3. To divert those individuals from institutional commitment who, by virtue of comprehensive assessment, can be placed in less costly, more effective community environments and programs.
4. To fund improvements in the program in accordance with the availability of state resources and yearly priorities determined by the Legislature.
5. To ensure that persons with developmental disabilities receive treatment and habilitation which fosters the developmental potential of the individual.

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

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

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

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

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

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

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

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

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

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

(f) Persons with developmental disabilities shall have a right to physical exercise and recreational opportunities.

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

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

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

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

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

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

1. Each client is allowed to receive, send, and mail sealed, unopened correspondence. A client's incoming or outgoing correspondence may not be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable examination of such mail and regulate the disposition of such items or substances.

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

3. Clients have an unrestricted right to visitation subject to reasonable rules of the facility. However, this provision may not be construed to permit infringement upon other clients' rights to privacy.

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

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

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

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

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

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

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

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

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

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

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

a. The nature and consequences of such procedures.

b. The risks, benefits, and purposes of such procedures.

c. Alternate procedures available.

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

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

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

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

(f) Each client shall receive humane discipline.

(g) A client may not be subjected to a treatment program to eliminate problematic or unusual behaviors without first being examined by a physician who in his or her best judgment determines that such behaviors are not organically caused.

1. Treatment programs involving the use of noxious or painful stimuli are prohibited.
2. All alleged violations of this paragraph shall be reported immediately to the chief administrator of the facility and the agency. A thorough investigation of each incident shall be conducted and a written report of the finding and results of the investigation shall be submitted to the chief administrator of the facility and the agency within 24 hours after the occurrence or discovery of the incident.
3. The agency shall adopt by rule a system for the oversight of behavioral programs. The system shall establish guidelines and procedures governing the design, approval, implementation, and monitoring of all behavioral programs involving clients. The system shall ensure statewide and local review by committees of professionals certified as behavior analysts pursuant to s. 393.17. No behavioral program shall be implemented unless reviewed according to the rules established by the agency under this section.

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

1. Daily reports on the employment of restraint or seclusion shall be made to the administrator of the facility or program licensed under this chapter, and a monthly compilation of such reports shall be relayed to the agency's local area office. The monthly reports shall summarize all such cases of restraints, the type used, the duration of usage, and the reasons therefor. The area offices shall submit monthly summaries of these reports to the agency's central office.

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

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

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

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

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

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

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

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

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

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

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

(7) RESIDENT GOVERNMENT.--Each residential facility providing services to clients who are desirous and capable of participating shall initiate and develop a program of resident government to hear the views and represent the interests of all clients served by the facility. The resident government shall be composed of residents elected by other residents, staff advisers skilled in the administration of community organizations, and, at the option of the

resident government, representatives of advocacy groups for persons with developmental disabilities from the community.

History.--ss. 1, 2, 3, 4, 5, 6, 7, ch. 75-259; s. 1, ch. 77-174; s. 7, ch. 77-335; s. 7, ch. 79-12; s. 9, ch. 79-320; s. 18, ch. 89-308; s. 3, ch. 90-333; s. 39, ch. 90-347; s. 11, ch. 93-200; s. 16, ch. 94-154; s. 1050, ch. 95-148; s. 208, ch. 96-406; s. 90, ch. 99-8; s. 47, ch. 2000-139; s. 8, ch. 2000-263; s. 79, ch. 2004-267; s. 29, ch. 2006-227.

393.135 Sexual misconduct prohibited; reporting required; penalties.--

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

(a) "Covered person" includes any employee, 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.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.
2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.
3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.
4. Intentionally masturbating in the presence of another person.
5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.
6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

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

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

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

(b) Is eligible to receive services from the agency under this chapter,

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

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

(4) This section does not apply to a covered person who is legally married to the client.

(5) A covered person who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the central abuse hotline of the Department of Children and Family Services and to the appropriate local law enforcement agency. The covered person shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The covered person shall deliver the report to the supervisor or program director, who is responsible for providing copies to the agency's local office and the agency's inspector general.

(6)(a) Any person who is required to make a report under this section and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The provisions and penalties set forth in this section are in addition to any other civil, administrative, or criminal action provided by law which may be applied against an employee.

History.--s. 1, ch. 2004-267; s. 30, ch. 2006-227.

393.15 Legislative intent; Community Resources Development Loan Program.--

(1) The Legislature finds and declares that the development of community-based treatment facilities for persons with developmental disabilities is desirable and recommended and should be encouraged and fostered by the state. The Legislature further recognizes that the development of such facilities is financially difficult for private individuals, due to initial expenditures required to adapt existing structures to the special needs of such persons who may be served in community-based foster care, group home, and supported employment programs. Therefore, the Legislature intends that the agency 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.

(2) There is created a Community Resources Development Loan Program in the agency for the purpose of granting loans to eligible programs for the initial costs of development of the

programs. In order to be eligible for the program, a foster home, group home, or supported employment program must:

- (a) Serve persons with developmental disabilities;
- (b) Be a nonprofit corporation, partnership, or sole proprietorship; and
- (c) Be in compliance with the zoning regulations of the local community.

(3) 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. Such costs may not include the actual construction of a facility and may not be in lieu of payment for maintenance, client services, or care provided.

(4) The agency may grant to an eligible program a lump-sum loan in one payment not to exceed the cost of providing 2 months' services, care, or maintenance to each person with developmental disabilities to be placed in the program by the agency, or the actual cost of firesafety renovations to a facility required by the state, whichever is greater.

(5) The agency shall adopt rules to determine the criteria under which a program shall be eligible to receive a loan and the methodology for the equitable allocation of loan funds when eligible applications exceed the funds available.

(6) Any loan granted by the agency under this section shall be repaid by the program within 5 years, and the amount paid shall be deposited into the agency's Administrative Trust Fund. Moneys repaid shall be used to fund new loans. A program that operates as a nonprofit corporation meeting the requirements of s. 501(c)(3) of the Internal Revenue Code, and that seeks forgiveness of its loan shall submit to the agency an annual statement setting forth the service it has provided during the year together with such other information as the agency by rule shall require, and, upon approval of each such annual statement, the agency may forgive up to 20 percent of the principal of any such loan granted.

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

History.--ss. 1, 2, 3, ch. 75-197; s. 1, ch. 76-128; s. 1, ch. 79-321; s. 4, ch. 80-174; s. 20, ch. 89-308; s. 52, ch. 96-418; s. 91, ch. 99-8; s. 110, ch. 2004-267; s. 31, ch. 2006-227.

393.17 Behavioral programs; certification of behavior analysts.--

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

(2) The agency shall recognize the certification of behavior analysts awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services. 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.

History.--s. 22, ch. 89-308; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 2, ch. 98-152; s. 80, ch. 2004-267; s. 32, ch. 2006-227.

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

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

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

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

(c) *Community transition residence.*--This component is a residential center providing educational programs and any support services, training, and care that are needed to assist

persons with maladaptive behaviors to avoid regression to more restrictive environments while preparing them for more independent living. Continuous-shift staff shall be required for this component.

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

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

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

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

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

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

(a) Were in actual operation; or

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

History.--s. 33, ch. 2006-227.

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

History.--s. 12, ch. 88-398; s. 6, ch. 99-144; s. 55, ch. 2000-158; s. 2, ch. 2000-338; s. 81, ch. 2004-267.

393.23 Developmental disabilities institutions; trust accounts.--All receipts from the operation of canteens, vending machines, hobby shops, sheltered workshops, activity centers, farming projects, and other like activities operated in a developmental disabilities institution, and moneys donated to the institution, must be deposited in a trust account in any bank, credit union, or savings and loan association authorized by the State Treasury as a qualified¹ depository to do business in this state, if the moneys are available on demand.

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

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

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

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

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

History.--s. 34, ch. 2006-227.

¹**Note.**--The word "depository" was substituted for the word "depositor" by the editors.

393.501 Rulemaking.--

(1) The agency may adopt rules pursuant to ss. 120.536(1) and 120.54 to carry out its statutory duties.

(2) Such rules shall address the number of facilities on a single lot or on adjacent lots. In adopting rules, an alternative living center and an independent living education center, as described in s. 393.18, shall be subject to the provisions of s. 419.001, except that such centers shall be exempt from the 1,000-foot-radius requirement of s. 419.001(2) if:

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

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

History.--s. 13, ch. 88-398; s. 56, ch. 2000-158; s. 9, ch. 2000-338; s. 111, ch. 2004-267; s. 35, ch. 2006-227.

393.502 Family care councils.--

(1) **CREATION.**--There shall be established and located within each service area of the agency a family care council.

(2) **MEMBERSHIP.**--

(a) Each local family care council shall consist of at least 10 and no more than 15 members recommended by a majority vote of the local family care council and appointed by the Governor.

(b) At least three of the members of the council must be consumers. One such member shall be a consumer who received services within the 4 years prior to the date of recommendation, or the legal guardian of such a consumer. The remainder of the council members shall be parents, guardians, or siblings of persons with developmental disabilities who qualify for services pursuant to this chapter.

(c) A person who is currently serving on another board or council of the agency may not be appointed to a local family care council.

(d) Employees of the agency are not eligible to serve on a local family care council.

(e) Persons related by consanguinity or affinity within the third degree shall not serve on the same local family care council at the same time.

(f) A chair for the council shall be chosen by the council members to serve for 1 year. A person may serve no more than four 1-year terms as chair.

(3) **TERMS; VACANCIES.**--

(a) Council members shall be appointed for a 3-year term, except as provided in subsection (8), and may be reappointed to one additional term.

(b) A member who has served two consecutive terms shall not be eligible to serve again until 12 months have elapsed since ending his or her service on the local council.

(c) Upon expiration of a term or in the case of any other vacancy, the local council shall, by majority vote, recommend to the Governor for appointment a person for each vacancy.

(4) **COMMITTEE APPOINTMENTS.**--The chair of the local family care council may appoint persons to serve on council committees. Such persons may include former members of the council and persons not eligible to serve on the council.

(5) **TRAINING.**--

(a) The agency, in consultation with the local councils, shall establish a training program for local family care council members. Each local area shall provide the training program when new persons are appointed to the local council and at other times as the secretary deems necessary.

(b) The training shall assist the council members to understand the laws, rules, and policies applicable to their duties and responsibilities.

(c) All persons appointed to a local council must complete this training within 90 days after their appointment. A person who fails to meet this requirement shall be considered to have resigned from the council.

(6) MEETINGS.--Council members shall serve on a voluntary basis without payment for their services but shall be reimbursed for per diem and travel expenses as provided for in s. 112.061. The council shall meet at least six times per year.

(7) PURPOSE.--The purpose of the local family care councils shall be to advise the agency, to develop a plan for the delivery of family support services within the local area, and to monitor the implementation and effectiveness of services and support provided under the plan. The primary functions of the local family care councils shall be to:

(a) Assist in providing information and outreach to families.

(b) Review the effectiveness of service programs and make recommendations with respect to program implementation.

(c) Advise the agency with respect to policy issues relevant to the community and family support system in the local area.

(d) Meet and share information with other local family care councils.

(8) NEW COUNCILS.--When a local family care council is established for the first time in a local area, the Governor shall appoint the first four council members, who shall serve 3-year terms. These members shall submit to the Governor, within 90 days after their appointment, recommendations for at least six additional members, selected by majority vote.

(9) FUNDING; FINANCIAL REVIEW.--The local family care council may apply for, receive, and accept grants, gifts, donations, bequests, and other payments from any public or private entity or person. Each local council is subject to an annual financial review by staff assigned by the agency. Each local council shall exercise care and prudence in the expenditure of funds. The local family care councils shall comply with state expenditure requirements.

History.--s. 4, ch. 93-143; s. 94, ch. 99-8; s. 5, ch. 2000-139; s. 82, ch. 2004-267.

393.503 Respite and family care subsidy expenditures; funding.--The agency shall determine the amount of expenditures per fiscal year for the respite and family care subsidy to families and individuals with developmental disabilities living in their own homes. This information shall be made available to the family care councils and to others requesting the information. The family care councils shall review the expenditures and make recommendations to the agency with respect to any new funds that are made available for family care.

History.--s. 5, ch. 93-143; s. 95, ch. 99-8; s. 6, ch. 2000-139; s. 112, ch. 2004-267.

393.506 Administration of medication.--

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

(2) In order to supervise the self-administration of medication or to administer medications as provided in subsection (1), a direct service provider must satisfactorily complete a training course of not less than 4 hours in medication administration and be found competent to supervise the self-administration of medication by a client or to administer medication to a client in a safe and sanitary manner. Competency must be assessed and validated at least annually in an onsite setting and must include personally observing the direct service provider satisfactorily:

(a) Supervising the self-administration of medication by a client; and

(b) Administering medication to a client.

(3) A direct service provider may supervise the self-administration of medication by a client or may administer medication to a client only if the client, or the client's guardian or legal representative, has given his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service provider. Such informed consent must be based on a description of the medication routes and procedures that the direct service provider is authorized to supervise or administer. Only a provider who has received appropriate training and has been validated as competent may supervise the self-administration of medication by a client or may administer medication to a client.

(4) The determination of competency and annual validation required in this section shall be conducted by a registered nurse licensed pursuant to chapter 464 or a physician licensed pursuant to chapter 458 or chapter 459.

(5) The agency shall establish by rule standards and procedures that a direct service provider must follow when supervising the self-administration of medication by a client and when administering medication to a client. Such rules must, at a minimum, address requirements for labeling medication, documentation and recordkeeping, the storage and disposal of medication, instructions concerning the safe administration of medication or supervision of self-administered medication, informed-consent requirements and records, and the training curriculum and validation procedures.

History.--s. 1, ch. 2003-57; s. 113, ch. 2004-267; s. 1, ch. 2006-37; s. 16, ch. 2006-197.