The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Storms, Chair
Senator Rich, Vice Chair

MEETING DATE: Wednesday, January 25, 2012
TIME: 3:30 —5:30 p.m.
PLACE: *James E. "Jim" King, Jr. Committee Room,* 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Rich, Vice Chair; Senators Detert, Dockery, Gibson, and Latvala

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 554** Education Pre-K - 12 / Ring (Similar H 589)	Disability Awareness; Requiring each district school board to provide disability history and awareness instruction in all K-12 public schools; requiring the Department of Education to assist in creating the curriculum for the instruction; providing for individual presenters who have disabilities to provide the instruction; requiring the Department of Education to establish a disability history and awareness advisory council; requiring the department to act as the fiscal agent for all financial transactions required by the council; providing responsibilities of the council, etc. ED 01/09/2012 Fav/CS CF 01/25/2012 Temporarily Postponed BC	Temporarily Postponed
2	**SB 1808** Storms (Similar H 1405)	Provision of Psychotropic Medication to Children in Out-of-home Placements; Requiring that children placed in out-of-home care receive a comprehensive behavioral health assessment; specifying eligibility; prescribing duties for the Department of Children and Family Services; requiring that a guardian ad litem be appointed by the court to represent a child in the custody of the Department of Children and Family Services who is prescribed a psychotropic medication; requiring that a court authorize the administration of psychotropic medication to a child who is in shelter care or in foster care and for whom informed consent from the parents or a legal guardian has not been obtained; specifying circumstances under which the department may provide psychotropic medication to a child before court authorization is obtained; requiring that the department inform the court of a child's medical and behavioral status at each judicial hearing, etc. CF 01/25/2012 Favorable HR BC	Favorable Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 370** Wise (Similar H 557)	Supervised Visitation and Exchange Monitoring; Adopting state standards for supervised visitation programs; providing for modification; requiring the standards to be published on the website of the Clearinghouse on Supervised Visitation; requiring each program to annually affirm compliance with the standards to the court; providing that after a specified date only those programs that adhere to the state standards may receive state funding; requiring supervised visitation programs to conduct security background checks of employees and volunteers; requiring that all applicants hired or certified by a program after a specified date undergo a level 2 background screening; authorizing a supervised visitation program to participate in the Volunteer and Employee Criminal History System in order to obtain criminal history information, etc. CF 01/25/2012 Fav/CS JU BC	Fav/CS Yeas 6 Nays 0
4	**SB 1658** Storms (Similar H 1401)	Public Assistance; Restricting the use of an electronic benefit transfer card to prohibit accessing cash from outside the state and purchasing certain products; expanding the list of items that may not be purchased with the federal Supplemental Nutrition Assistance Program funds; prohibiting the use of benefits in restaurants; directing the Department of Children and Family Services to promote the benefits of healthy and nutritious eating habits; requiring the department to seek federal authorization or waiver when necessary; revising the method of payment of temporary cash assistance to include an electronic benefit transfer card; prohibiting a cash assistance recipient from accessing cash benefits through an electronic benefit transfer card from an automatic teller machine located in certain locations, etc. CF 01/25/2012 Favorable BC	Favorable Yeas 4 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 1516** Negron (Compare H 991, S 460)	Agency for Persons with Disabilities; Clarifying provisions relating to eligibility requirements based on citizenship and state residency; requiring the agency to promote partnerships and collaborative efforts to enhance the availability of nonwaiver services; revising provisions relating to eligibility under the Medicaid waiver redesign; providing criteria for calculating a client's initial iBudget; providing that facilities that are accredited by certain organizations must be inspected and reviewed by the agency every 2 years; providing limitations on the amount of cost sharing which may be required of parents for home and community-based services provided to their minor children, etc. CF 01/25/2012 Fav/CS HR BC	Fav/CS Yeas 6 Nays 0
6	**SB 2052** Children, Families, and Elder Affairs (Compare H 1097)	Sexually Violent Predators; Requiring that the Department of Children and Family Services give priority to the assessment of persons who will be released from total confinement at the earliest date under certain circumstances; revising the period within which the department's multidisciplinary team is required to provide an assessment to the state attorney; prohibiting the introduction or attempted introduction of certain items into any facility for the detention of sexually violent predators; creating the Statewide Task Force on the Conditional Release of Sexually Violent Predators, etc. CF 01/25/2012 Fav/CS CJ BC	Fav/CS Yeas 6 Nays 0
7	**SB 2046** Children, Families, and Elder Affairs	Substance Abuse and Mental Health Services; Requiring the Department of Children and Family Services to negotiate a reasonable and appropriate administrative cost rate for the system of behavioral health services with community-based managing entities; requiring that mental health or substance abuse providers currently under contract with the department be offered a contract by the managing entity for 1 year; revising the core functions to be performed by the managing entity; revising the governance structure of the managing entity; revising the requirements relating to the qualification and operational criteria used by the department when selecting a managing entity, etc. CF 01/25/2012 Favorable BC	Favorable Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 2044** Children, Families, and Elder Affairs (Similar CS/H 803, Compare S 384)	Child Protection; Revising the definitions of the term "abandoned" or "abandonment," "institutional child abuse or neglect," and "abandons the child within the context of harm"; revising provisions relating to criminal history records check on persons being considered for placement of a child; requiring that a protective investigation must include an interview with the child's parent or legal guardian; requiring a home study report if a child has been removed from the home and will be remaining with a parent, etc. CF 01/25/2012 Favorable JU BC	Favorable Yeas 6 Nays 0
9	**SB 2054** Children, Families, and Elder Affairs	Domestic Violence; Defining the term "coalition" as it relates to domestic violence; revising provisions relating to certification of domestic violence centers; providing specified additional duties for and authority of the Florida Coalition Against Domestic Violence; providing the duties of the coalition as it manages the delivery of services to the state's domestic violence program; requiring the coalition, rather than the department, to make a specified annual report; requiring the coalition, rather than the department, to perform certain duties relating to certification of domestic violence centers; revising provisions relating to expiration of a center's annual certificate; repealing provisions relating to the certification and monitoring of batterers' intervention programs, etc. CF 01/25/2012 Fav/CS JU BC	Fav/CS Yeas 6 Nays 0
10	**SB 2048** Children, Families, and Elder Affairs (Similar H 1229)	Department of Children and Family Services; Changing the name of the department to the "Department of Children and Families"; requiring that the department be geographically organized into circuits and regions; revising provisions relating to the establishment of the department; revising the services provided by the department and abolishing the program offices; deleting provisions providing an exemption from competitive bids for certain health services; amending provisions relating to the service areas of the Department of Health; amending provisions relating to the State Office on Homelessness within the Department of Children and Families, etc. CF 01/25/2012 Favorable GO BC	Favorable Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 2050** Children, Families, and Elder Affairs	Assisted Living Facilities; Requiring that the case manager assigned to a mental health resident of an assisted living facility that holds a limited mental health license keep a record of the date and time of face-to-face interactions with the mental health resident and make the record available to the Department of Children and Family Services for inspection; requiring that an assisted living facility comply with notice of relocation or termination of residency from the facility when a decision is made to relocate or terminate the residency of a resident; requiring that a newly hired employee or administrator of an assisted living facility attend a preservice orientation provided by the assisted living facility, etc. CF 01/25/2012 Fav/CS HR BC	Fav/CS Yeas 6 Nays 0
12	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	CS/SB 554
INTRODUCER:	Education Pre-K - 12 Committee, Senators Ring and Fasano
SUBJECT:	Disability Awareness in Public Schools
DATE:	January 24, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	deMarsh-Mathues	ED	**Fav/CS**
2.	Daniell	Farmer	CF	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill requires district school boards to provide disability history and awareness instruction in all K-12 public schools. The instruction must be provided by individuals who have a disability, are approved by the Department of Education (DOE or department), and meet existing background screening requirements. The department is tasked with assisting in the development of an appropriate disability curriculum to be used in the school districts.

Under the bill, DOE would be required to establish a disability awareness council (council). The council is tasked with submitting an annual report and ensuring that instructors meet the requirements specified in the bill.

This bill amends section 1003.4205, Florida Statutes.

II. Present Situation:

Disability History and Awareness

According to a U.S. Census Bureau report, one in five United States residents – or around 54 million Americans – reported some level of disability in 2005.[1] Approximately 13 percent of children age 6 to 14 have a disability,[2] and as of 2008, 95 percent of students age 6 to 21 were taught in a general education classroom.[3] According to the Museum of disABILITY History, students:

> benefit from learning about the story of people with disabilities, including how they used to be viewed and treated, how conditions have changed over time and how individuals with disabilities are currently actively involved in self-advocacy and in their communities. Given the context of disability history, students will be equipped with the tools needed to engage in critical thinking and will be more likely to view individuals with disabilities as people deserving of dignity and respect just like everyone else.[4]

On this premise, disability advocates began a campaign to help create understanding and to celebrate the history of individuals with disabilities, and in 2006, West Virginia passed the first Disability History Week bill.[5] Twenty-three other states, including Florida, have since passed similar legislation.[6]

In 2008, the Florida Legislature authorized each district school board to provide disability history and awareness instruction in all K-12 public schools during the first two weeks in October.[7] During "Disability History and Awareness Weeks," students may be provided with instruction to expand their knowledge, understanding, and awareness of individuals with disabilities and the history of disability and the disability rights movement. The instruction may be integrated into the existing school curriculum and may be taught by qualified school personnel or knowledgeable guest speakers.

The Bureau of Exceptional Education and Student Services, within the Department of Education (DOE or department), developed a resource guide to help school districts promote Disability History and Awareness Weeks.[8] The guide includes:

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[1] Disabled World, *New Statistics 54.4 Million Americans with a Disability* (Dec. 20, 2008), http://www.disabled-world.com/disability/statistics/us-disability-stats.php (last visited Jan. 22, 2012).
[2] *Id*.
[3] Nat'l Ctr. for Education Statistics, *Fast Facts*, http://nces.ed.gov/fastfacts/display.asp?id=59 (last visited Jan. 22, 2012).
[4] Museum of disABILITY History, *Disability History Week: Importance*, http://disabilityhistoryweek.org/pages/importance/ (last visited Jan. 22, 2012).
[5] Museum of disABILITY History, *Disability History Week: National Disability History Week Initiative*, http://www.disabilityhistoryweek.org/blogs/read/9 (last visited Jan. 22, 2012).
[6] Museum of disABILITY History, *Disability History Week: Legislation*, http://www.disabilityhistoryweek.org/legislations/ (last visited Jan. 22, 2012).
[7] Chapter 2008-156, s. 1, L.O.F., codified in s. 1003.4205, F.S.
[8] Bureau of Exceptional Education and Student Services, Department of Education, *Disability History and Awareness: A Resource Guide* (2010), *available at* http://www.fldoe.org/ese/pdf/DHA-Resource2010.pdf (last visited Jan. 22, 2012).

- Promotional ideas to help schools promote disability history and awareness;
- Flyers recognizing the contributions of various individuals with disabilities;
- Disability etiquette documents;
- Documents concerning "people first" language;
- A guide to differentiated instruction;
- A copy of "A Legislative History of Florida's Exceptional Student Education Program"; and
- A list of websites that contain a variety of games, activities, and lesson plans that can be integrated into a curriculum for students.[9]

In 2010, the Commissioner of Education (commissioner) was directed to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education for instructional personnel.[10] The commissioner was instructed to address:

- Early identification of, and intervention for, students who have autism spectrum disorder, Down syndrome, or other developmental disabilities;
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques;
- The use of available state and local resources;
- The use of positive behavioral supports to deescalate problem behaviors; and
- Appropriate use of manual physical restraint and seclusion techniques.[11]

Governor's Commission on Disabilities

The Governor's Commission on Disabilities (commission) was designed, by Executive Order, to "advance public policy for Floridians with disabilities and to provide a forum for advocates representing Floridians with disabilities to develop and voice unified concerns and recommendations."[12] The commission made recommendations for strategies to address barriers faced by persons with disabilities in education, employment, transportation, civil rights, health care, and access to technology.[13]

III. Effect of Proposed Changes:

The bill requires district school boards to provide disability history and awareness instruction in all K-12 public schools during the first two weeks in October. This instruction is currently an optional activity.

[9] *Id*. at 1.
[10] Chapter 2010-224, s. 6, Laws of Fla., codified in s. 1012.582, F.S.
[11] Section 1012.582(1), F.S.
[12] Office of the Governor, State of Florida, *Executive Order Number 07-148* (July 26, 2007), and *Executive Order Number 08-193* (Sept. 11, 2008), *available at* http://www.flgov.com/2007-executive-orders/ and http://www.flgov.com/2008-executive-orders/ (last visited Jan. 22, 2012).
[13] Governor's Commission on Disabilities, *2009 Report* (June 2009) and *2010 Report* (July 2010), *available at* http://www.dms.myflorida.com/other_programs/governor_s_commission_on_disabilities and http://fodh.phhp.ufl.edu/files/2011/05/Report_Final_Edited2010-GovReport0902-10.pdf (last visited Jan. 22, 2012).

The Department of Education (DOE or department) is directed to assist in creating the curriculum for the disability history and awareness instruction. Beginning in the 2013-2014 school year, the instruction must be integrated into the existing school curriculum. The bill requires that individuals with disabilities provide the instruction after being approved by DOE. Presumably, DOE would approve an individual whose expertise is determined by the council.

The bill requires DOE to establish a disability awareness council (council), comprised of the Commissioner of Education, a member of the Senate, a member of the House of Representatives, and the Florida Youth Council. The council's responsibilities include:

- Ensuring that presenters have first-hand knowledge and experience pertaining to the challenges facing individuals who have disabilities;
- Ensuring that members of the Florida Youth Council continue to remain involved in leadership development, self-advocacy, peer mentoring, and other activities;
- Ensuring each presenter has met the background requirements of s. 1012.465, F.S.;[14] and
- Submitting an annual report to the Governor, the presiding officers of the Legislature, and superintendent of each school district in the state.

The council must meet at least four times a year and more often as needed.

The bill provides that DOE must provide a liaison to assist the council and shall act as the fiscal agent for all financial transactions required by the council.

The bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[14] Section 1012.465, F.S., relates to background screening for noninstructional school district employees and contractors who are permitted access on school grounds when students are present, who have direct contact with students, or who have access to or control of school funds. The bill does not prohibit instructional personnel who have a disability from providing this instruction. If they provide the instruction, they would be subject to the requirements in ss. 1012.32 and 1012.56, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be some costs associated with requiring the Department of Education (DOE or department) to assist in developing an appropriate disability curriculum to be used in the school districts. However, the costs may be mitigated if the DOE uses or adapts provisions in the existing resource guide, which includes curriculum topics required under the bill.

Additionally, there may be a cost associated to DOE for providing a liaison to assist the disability history and awareness advisory council.

The bill requires the council to meet at least four times per year and more often as needed. The department is required to act as the fiscal agent for the council; however, the bill does not specify a source of funding to support the council.

VI. Technical Deficiencies:

The bill provides that the "Florida Youth Council" is a member on the disability history and awareness advisory council (council). The Florida Youth Council consists of 11 individuals who have disabilities or special health care needs.[15] The bill does not require one member of the Florida Youth Council to be a member on the council, but rather it appears that the bill requires the entire Florida Youth Council to be a member. It is unclear if this means that every member of the Florida Youth Council must attend the quarterly meetings of the council or if the Florida Youth Council can appoint a representative to go to the meetings.

The bill requires the council to submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the superintendent of each school district. The bill does not specify what the council should be reporting on annually.

On lines 30-33, the bill provides that The Department of Education (DOE or department) "shall assist in creating the curriculum for the disability history and awareness instruction." The bill does not direct the council to create the curriculum. Therefore, it is unclear who DOE is supposed to assist in creating the curriculum.

[15] The Florida Youth Council, *What We Are*, http://www.floridayouthcouncil.com/index.php?option=com_content&view=article&id=2:what-we-are&catid=2:about-us&Itemid=3 (last visited Jan. 22, 2012).

Finally, the bill makes it mandatory (rather than discretionary) that each district school board provide disability history and awareness instruction in all K-12 public schools during the first two weeks in October. This means that the instruction must beginning in October 2012. It is unclear if the department will have time to create the curriculum and approve presenters by October 2012. The bill specifies that beginning in the 2013-2014 school year, the instruction must be integrated into the existing school curriculum. The Legislature may wish to amend the bill to require that the required instruction also begin in the 2013-2014 school year.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Education Pre-K – 12 Committee on January 9, 2012:
The committee substitute:

- Requires the council membership to include the Florida Youth Council, in lieu of members appointed by the Commissioner of Education from different regions of the state;
- Requires the disability awareness council to meet at least four times each year; and
- Corrects a technical reference to the background screening requirements in the bill.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senators Ring and Fasano

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A bill to be entitled

An act relating to disability awareness; amending s. 1003.4205, F.S.; requiring each district school board to provide disability history and awareness instruction in all K-12 public schools; requiring the Department of Education to assist in creating the curriculum for the disability history and awareness instruction; providing for individual presenters who have disabilities to provide the disability history and awareness instruction; requiring the Department of Education to establish a disability history and awareness advisory council; providing membership of the council; requiring the department to provide a liaison to assist the council; requiring the department to act as the fiscal agent for all financial transactions required by the council; providing responsibilities of the council; providing meeting times for the council; providing an effective date.

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

Section 1. Section 1003.4205, Florida Statutes, is amended to read:

1003.4205 Disability history and awareness instruction.—

(1) Each district school board shall ~~may~~ provide disability history and awareness instruction in all K-12 public schools in the district during the first 2 weeks in October each year. The district school board shall designate these 2 weeks as

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"Disability History and Awareness Weeks." The Department of Education shall assist in creating the curriculum for the disability history and awareness instruction that will be used in each school district.

(2)(a) During this 2-week period, students shall ~~may~~ be provided intensive instruction to expand their knowledge, understanding, and awareness of individuals who have ~~with~~ disabilities, the history of disability, and the disability rights movement. Disability history must ~~may~~ include the events and timelines of the development and evolution of services to, and the civil rights of, individuals who have ~~with~~ disabilities. Disability history must ~~may~~ also include the contributions of specific individuals who have ~~with~~ disabilities, including the contributions of acknowledged national leaders.

(b) Beginning with the 2013-2014 school year, the instruction shall ~~may~~ be integrated into the existing school curriculum in ways including, but not limited to, supplementing lesson plans, holding school assemblies, or providing other school-related activities. The instruction shall ~~may~~ be delivered by individual presenters who have disabilities and who have been approved by the Department of Education as presenters ~~qualified school personnel or by knowledgeable guest speakers, with a particular focus on including individuals with disabilities~~.

(c)1. The Department of Education shall establish a disability history and awareness advisory council. The council shall consist of the following members:

a. The Commissioner of Education or his or her designee.

b. The Florida Youth Council, a group of young people ages

15 to 17, and emerging young leaders ages 18 to 30, who live in this state and have disabilities or special health care needs.

c. A member of the House of Representatives, appointed by the Speaker of the House of Representatives, or his or her designee.

d. A member of the Senate, appointed by the President of the Senate, or his or her designee.

2. The department shall provide a liaison to assist the council in its operation. The department shall act as the fiscal agent for all financial transactions required by the council.

3. The responsibilities of the council shall be, but are not limited to:

a. Ensuring that each presenter has first-hand knowledge and experience pertaining to the challenges facing individuals who have disabilities;

b. Ensuring that members of the Florida Youth Council in this state continue to remain involved in leadership development, self-advocacy, peer mentoring, and other activities that will improve the quality of life for youth and emerging leaders who have disabilities;

c. Ensuring that each presenter meets the background screening requirements of s. 1012.465; and

d. Submitting an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the superintendent of each school district in this state.

4. The council shall meet at least four times a year and more often as needed.

(3) The goals of disability history and awareness

instruction include:

(a) Better treatment for individuals who have ~~with~~ disabilities, especially for youth in school, and increased attention to preventing the bullying or harassment of students who have ~~with~~ disabilities.

(b) Encouragement to individuals who have ~~with~~ disabilities to develop increased self-esteem, resulting in more individuals who have ~~with~~ disabilities gaining pride in being an individual with a disability, obtaining postsecondary education, entering the workforce, and contributing to their communities.

(c) Reaffirmation of the local, state, and federal commitment to the full inclusion in society of, and the equal opportunity for, all individuals who have ~~with~~ disabilities.

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Budget - Subcommittee on Education Pre-K - 12 Appropriations
Commerce and Tourism
Community Affairs
Higher Education

SENATOR JEREMY RING
32nd District

January 9, 2012

Honorable Senator Ronda Storms
413 Senate Office Building
404 South Monroe Street
Tallahassee, Fl 32399

Dear Chairwoman Storms,

I am writing to respectfully request your cooperation in placing Senate Bill 554, relating to Disability Awareness on the agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

Jeremy Ring

Jeremy Ring
Senator District 32

cc: Renai Farmer, Staff Director

REPLY TO:
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MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	SB 1808
INTRODUCER:	Senators Storms and Gardiner
SUBJECT:	Psychotropic Medication
DATE:	January 24, 2012 REVISED: 01/26/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	**Favorable**
2.			HR	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill makes a number of changes to current law relating to psychotropic medication and children in out-of-home placements, including:

- Providing that every child placed in out-of-home care be provided a comprehensive behavioral health assessment;
- Providing for legislative findings and intent;
- Providing definitions for terms used in a newly created section of law;
- Providing for the appointment of a guardian ad litem (GAL) for every child who is being prescribed a psychotropic medication and providing duties and responsibilities of the GAL;
- Prescribing procedures for obtaining express and informed consent and assent;
- Requiring the development of a mental health treatment plan for children in out-of-home care who need mental health services;
- Providing procedures to be followed for the administration of psychotropic medication to a child in out-of-home care when parental consent has not been obtained and for the administration of psychotropic medication to a child in out-of-home care before court authorization has been obtained;
- Requiring a court finding of a compelling government interest before administering psychotropic medication to certain children; and
- Prohibiting a child in the custody of the Department of Children and Family Services (DCF or department) from participating in clinical trials involving psychotropic medication.

This bill amends sections 39.407 and 743.0645 and creates section 39.4071, of the Florida Statutes.

II. Present Situation:

Psychotropic Medications[1]

Psychotropic medications are one of many treatment interventions that may be used to address mental health problems. Medication may be recommended and prescribed for children with mental, behavioral, or emotional symptoms when the potential benefits of treatment outweigh the risks. This is particularly true when the problems experienced by the child are so severe that there would be serious negative consequences for the child if the child is left untreated and when other treatment interventions have not been effective. However, public concern is growing over reports that very young children are being prescribed psychotropic medications, which is not generally the first option of treatment for a child, that some children are on multiple medications, and that these medications are sometimes used inappropriately to control a child's behavior.

Major categories of psychotropic medications include stimulants, antidepressants, anti-anxiety agents, anti-psychotics, and mood stabilizers. However, effective treatment with psychotropic medication depends on the appropriate diagnosis of the problem. These medications may be used to treat a variety of symptoms, which include:

- **Stimulant medications** that are frequently used to treat Attention Deficit Hyperactivity Disorder (ADHD), the most common behavioral disorder of childhood;
- **Anti-depressants and anti-anxiety medications** which follow the stimulant medications in prevalence among children and adolescents. These medications are commonly used for depression, anxiety, and obsessive compulsive disorders;
- **Anti-psychotic medications**, which are used to treat children with schizophrenia, bipolar disorders, autism, and severe conduct disorders; and
- **Mood stabilizing medications**, which are used to treat bipolar disorders.

Some of the concerns regarding the use of psychotropic medications with children stem from the limited information that is available regarding the efficacy and the potential side effects of these drugs with children. Most clinical trials for these drugs were conducted on an adult population. The same results are not always obtained when these drugs are used with children, and the side effects for children are frequently different than those experienced by adults. The Food and Drug Administration has expressed concern regarding the use of antidepressants in children and established an advisory committee to further study and evaluate the use of such medications.

Use of Psychotropic Medications by Children: Background

Many children in the United States receive psychotropic medications, and this number has increased over time. The use of multiple psychotropic medications has also been reported to have

[1] 1 The information in this portion of this bill analysis is from the analysis for CS/CS/SB 1090 by the Senate Committee on Health and Human Services Appropriations (April 14, 2005). Retrieved January 21, 2012, from http://www.flsenate.gov/data/session/2005/Senate/bills/analysis/pdf/2005s1090.ha.pdf.

increased among children. The efficacy and short-and long-term safety knowledge base for pediatric psychopharmacology has increased in recent years but remains limited.[2]

An issue that has increasingly received national attention over the past decade has been the concern for the overuse of psychotropic medications among our nation's youth in general, with a potentially disproportionate increase among children in foster care.[3] Among community-based populations, children in foster care tend to receive psychotropic medication as much as, or more than, disabled youth and three to four times the rate among children with Medicaid coverage based on family income.[4] Children in foster care and disabled youth have the greatest likelihood of receiving complex, poorly evidenced, high cost medication regimens.[5]

The few research studies available show rates of psychotropic medication use ranging from 13-50 percent among children in foster care, compared with approximately 4 percent in youth in the general population.[6] A 2006 report prepared by the Government Accountability Office found that 15 states identified the overuse of psychotropic medications as one of the leading issues facing their child welfare systems.[7] In her testimony to Congress, Dr. Laurel Leslie, on behalf of the American Academy of Pediatrics, stated:

> It is difficult to know from these preliminary analyses or the multitude of reports that are emerging in the media whether the use of these medications by children in foster care is appropriate, although at the very least the use of combinations of three or more medications remains controversial. Clearly, medication can be helpful to some children, but with the increasing use of these medications among children in general, there comes the added responsibility to ensure that children have access to an array of treatment strategies, from medication to community-based services that may augment or replace the need for medications in many circumstances. Furthermore, the failure to coordinate and provide continuity in services and the absence of clear guidelines and accountability to ensure that treatment decisions are in the child's best interest, create a greater risk that medications will be prescribed to control children's behaviors in the absence of individualized service plans that might offer the best chance for success.[8]

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[2] Alfiee M. Breland-Nobel et al., *Use of Psychotropic Medications by Youths in Therapeutic Foster Care and Group Homes*, PSYCHIATRIC SERVICES, Vol. 55, No. 6., 706 (June 2004), Retrieved January 21, 2012, from http://ps.psychiatryonline.org/cgi/reprint/55/6/706 .

[3] Laurel K. Leslie, MD MPH FAAP, Am. Acad. of Pediatrics, *Hearing on the Utilization of Psychotropic Medication for Children in Foster Care*, 6 (May 8, 2008). Retrieved January 21, 2012, from http://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/HearingontheUtilizationofPsychotropicMedicationforChildreninFosterCare.pdf.

[4] Julie M. Zito, PhD, Professor of Pharmacy and Psychiatry, U. of Maryland, *Prescription Psychotropic Drug Use Among Children in Foster Care*, 2-3 (May 8, 2008). Retrieved January 21, 2012, from http://www.hunter.cuny.edu/socwork/nrcfcpp/teleconferences/2-10-10/Zito%20Medication%20handout.doc.

[5] *Id*. at 2.

[6] Leslie, supra note 3, at 6.

[7] *Id*. (citing U.S. Government Accountability Office, *Child Welfare: Improving Social Service Program, Training, and Technical Assistance Information Would Help Address Long-standing Service-Level and Workforce Challenges*, Report GAO-07-75 (Oct. 2006). Retrieved January 21, 2012, from http://www.gao.gov/new.items/d0775.pdf.

[8] Leslie, supra note 3, at 7.

Use of Psychotropic Medications by Children: Florida

In Florida, prescribing psychotropic medications for children in out-of-home placements has been an issue for at least a decade. The Statewide Advocacy Council (SAC)[9] conducted an investigation in 2001 of the use of psychotropic drugs in foster children, with an emphasis on children under the age of five.[10] When an internal investigation by the department was conducted, it concluded that the use of psychotropic drugs in children in the department's care was not a problem. However, information received from the Agency for Health Care Administration (AHCA) revealed that more than 9,500 children in Florida on Medicaid had received psychotropic drugs in the year 2000.

The SAC published its final report to the Governor in 2003, which found that out of the 1,180 children reviewed, 652 were on one or more psychotropic medications, and that the average age of the children on medication was 12. The final recommendation of the SAC was: "Until there is more information regarding the safety and efficiency of these drugs, Florida's foster care children should be monitored closely. The information in this report should be immediately incorporated into an agenda in order to preserve and protect the health, safety, welfare and rights of children in foster care."[11]

In 2004, the DCF studied the use of psychotropic medications with children in care over a specified period of time. The department determined that 13 percent of all children in state custody were receiving at least one psychotropic medication. Of this group, 8 percent were being treated with three or more medications concurrently. Findings also indicated that 3.5 percent of the children in state custody age five and under received at least one psychotropic medication. An additional finding was that 25 percent of the children living in a foster care setting were being treated with psychotropic medications, a rate five times higher than the general population of Medicaid eligible children. Despite initiatives by DCF to identify children in its care who were on psychotropic medications and to determine the appropriateness of this treatment, limited information existed.[12]

In 2005, the Florida Legislature enacted Senate Bill 1090,[13] which provided a comprehensive statutory framework relating to the use of psychotropic medications with children who are in out-of-home placements. As of June 2011, 1.50 percent of children in care ages 0-5, 19.57 percent of children in care ages 6-12 and 29.61 percent of children in care ages 13-17 are receiving psychotropic medication. The total number of children in care receiving psychotropic

[9] Statewide and local advocacy councils began in 1972 as a consumer protection mechanism for people receiving services from state agencies in Florida. The councils were codified in 1975. The councils investigate complaints about abuse and deprivations of human and constitutional rights; monitor and investigate reports of abuse; monitor programs and facilities that are operated, funded, or contracted by state agencies; review research projects involving human subjects; and generally advocate for the welfare of individuals who are in the care and custody of state agencies in the social service area or private vendors under contract to the state. Senate Staff Analysis and Economic Impact Statement, CS/CS/SB 2718, April 14, 2010.
[10] Senate Staff Analysis and Economic Impact Statement, CS/CS/SB 2718, April 14, 2010.
[11] Florida Statewide Advocacy Council, Red Item Report: Psychotropic Drug Use in Foster Care, 4, 23 (July 2003). . Senate Staff Analysis and Economic Impact Statement, CS/CS/SB 2718, April 14, 2010.
[12] Senate Staff Analysis and Economic Impact Statement, CS/CS/SB 1090, supra note 1.
[13] Chapter 2005-65, L.O.F.

medication is 13.34 percent. This appears to reflect little, if any, change since the 2004 estimates.[14]

Gabriel Myers

Seven-year old Gabriel Myers was adjudicated dependent on September 2, 2008, following the arrest of his mother and the filing of the abuse report that brought him into the care of DCF on June 29, 2008. During the following 10 months, Gabriel was initially sheltered in a licensed foster home until being placed with relatives. When the relative placement failed, he was returned to the licensed home where he was initially placed. When that placement also failed, he was sent to the licensed home in which he resided until he died. This particular home had previously served as a respite for Gabriel, and he was familiar with the surroundings.[15]

In February and March 2009, Gabriel experienced a number of significant life events, including changes in foster homes, therapists, and after-school programs. He lost privileges at home and visitation time with his mother, all of which more than likely contributed to his mental status at the time of his death.[16]

While in care, he received numerous mental health and behavioral assessments and underwent regular treatment from a psychiatrist and two therapists, one of whom documented that "it is clear that this child is overwhelmed with change and possibly re-experiencing trauma."[17] Gabriel demonstrated a number of incidents of destructive behavior and conduct problems and was treated with counseling and several psychotropic medications. On April 16, 2009, Gabriel Myers hanged himself in the residence of his foster parents.[18]

A review of Gabriel's medical records by the Broward County Medical Examiner's office indicates that Gabriel was prescribed Vyvanse and Symbax by Dr. Sohail Punjwani, M.D.[19]

A report issued by DCF on May 20, 2009, stated that the Child Resource Record for Gabriel that contained medical information, including medications, was secured by law enforcement. A timeline of medications that were prescribed to Gabriel, based on the information obtained from the documentation available for review, is provided below:

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[14] Department of Children and Family Services, DCF Quick Facts. December 2011. Retrieved January 22, 2012, from http://www.dcf.state.fl.us/newsroom/docs/quickfacts.pdf.

[15] Department of Children and Family Services., Report of the Gabriel Myers Work Group, 3 (Nov. 19. 2009), Retrieved January 21, 2012, from http://www.dcf.state.fl.us/initiatives/GMWorkgroup/docs/GabrielMyersWorkGroupReport082009Final.pdf.

[16] *Id*. at 3-4.

[17] *Id*. at 3.

[18] *Id*.

[19] Broward County Medical Examiner, Autopsy No. 09-0557 (Apr. 17, 2009). Retrieved January 21, 2012, from http://www.dcf.state.fl.us/initiatives/GMWorkgroup/docs/GM_ME_Report.pdf. Dr. Punjwani was the psychiatrist treating Gabriel at the time of his death. A warning letter from the United States Food and Drug Administration stated that Dr. Punjwani overmedicated children who were enrolled in clinical trials for undisclosed drugs and that her "failure to conduct the requisite safety measures contributed to the unnecessary exposure of pediatric subjects to significant overdoses, which jeopardized the subjects right, safety, and welfare." U.S. Food and Drug Admin., Warning Letter (Feb. 4, 2010). Retrieved January 21, 2012, from http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm202862.htm.

- June 29, 2008, Adderall;
- July 31, 2008, Adderall discontinued;
- August 21, 2008, Dr. Punjwani noted medication was not indicated at that time;
- December 09, 2008, Vyvanse[20] for ADHD prescribed;
- February 03, 2009, Vyvanse continued and Lexapro prescribed;
- March 18, 2009, Vyvanse continued, Lexapro discontinued, Symbyax[21] prescribed.[22]

Gabriel Myers Work Group[23]

The Gabriel Myers Work Group was appointed in April 2009 to analyze and make recommendations relating to Gabriel Myers and the use of psychotropic medication for children in out-of-home care. The work group identified 147 findings in 10 areas, resulting in 90 recommendations for action.[24]

The work group determined that a detailed framework of safeguards for Florida's foster children exists and is articulated in statute, administrative rule, and operating procedures. The core failures in the system, however, stem from lack of compliance with this framework and with failures in communication, advocacy, supervision, monitoring, and oversight.

Of the 90 recommendations contained in the final report (with the exception of five that are related to funding requests), there were 10 recommendations directed to the Legislature:

- The Legislature should amend the requirement for a pre-consent consultation for all children in out-of-home care under age six. The consultation should be expanded to include all children age 11 and younger who are prescribed two or more psychotropic medications.
- The Legislature should review current statutes to ensure that procedural safeguards employed for the use of psychotropic medications are applied to all medications that alter brain function, regardless of the purpose of the prescription, to ensure they are adequate.
- The Legislature should amend s. 39.407, F.S., to change the term "medical report" to "medical treatment plan" so that interventions focus on treatment and the holistic needs of the child.

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[20] Vyvanse is lisdexamfetamine, an amphetamine used for treating attention deficit hyperactivity disorder (ADHD) in certain patients. It is used as a part of a total treatment program that may include psychological, educational, and social therapy. *Lisdexamfetamine* . Retrieved January 21, 2012, from http://www.drugs.com/cdi/lisdexamfetamine.html.

[21] Symbyax contains a combination of fluoxetine and olanzapine. Fluoxetine is an antidepressant in a group of drugs called selective serotonin reuptake inhibitors (SSRIs). Olanzapine is an antipsychotic medication. Symbyax is used to treat depression caused by bipolar disorder (manic depression). Symbyax is also used to treat depression after at least two other medications have been tried without successful treatment of symptoms. It is not known if Symbyax is safe and works in children under 18 years of age. *Symbyax*. Retrieved January 21, 2012, from http://www.drugs.com/symbyax.html.

[22] Department of Children and Family Services., Issue Summary Update, 4 (May 20, 2009). Retrieved January 21, 2012, from http://www.dcf.state.fl.us/initiatives/GMWorkgroup/docs/FinalMyers.pdf.

[23] The information in this portion of this bill analysis is from the Report of the Gabriel Myers Work Group by the Department of Children and Family Services., supra note 14.

[24] In August 2009, a Miami Herald article reporting on the Gabriel Myers Work Group stated that one of the work group's findings was that "[t]he state has failed to implement recommendations from prior task forces that studied the deaths of foster children or the use of psychotropic drugs. Indeed, DCF has failed to even assign "responsibility" or "accountability" for implementing such reports." Carol Marbin Miller, Child-welfare panel: Drugs misused on foster kids, MIAMI HERALD, Aug. 13, 2009, at A-7.

- The Legislature should authorize DCF to develop a single medical treatment plan form with standardized information that can be utilized in all judicial circuits across the state.
- The Legislature should ensure that statutes and department policies, procedures, and practices recognize that children should be fully involved and allowed to participate in court hearings and treatment decisions. As part of this, prescribers should be required to confer with and seek assent from each child and to document the child's position. The department should be required to inform the Court of the child's position.
- The Legislature should review Florida statutes to ensure requirements are practical and clearly defined for:
  - Prescribing psychotropic medications;
  - Obtaining informed consent;
  - Obtaining the child's assent;
  - Requiring a parent, case worker, or other adult responsible for the child's care to attend each medical appointment with the child;
  - Administering and monitoring psychotropic medications;
  - Discontinuing, when appropriate, psychotropic medications. To include a formal plan for discontinuation;
  - Notifying involved parties; and
  - Reporting adverse incidents.
- The Legislature should require all prescribing physicians to report adverse consequences of psychotropic medications; all adverse effects should become a record in the medical file of a child in the care of the state.
- The Legislature should allow Advanced Registered Nurse Practitioners and Physician Assistants to provide information to parents and legal guardians in order to obtain express and informed consent for treatment.
- The Legislature should preclude any participation by children in state care in clinical trials relating to the development of new psychotropic medications.
- In any legislation arising from this report, the Legislature should utilize these guiding principles articulated by the work group as the statement of legislative intent and expected standards of care for children in the care of the state.

III. Effect of Proposed Changes:

This bill addresses many of the recommendations raised by the department's Gabriel Myers Work Group, as well as additional issues that were raised by others. The bill makes a number of changes related to the provision of psychotropic medication to children who are in an out-of-home placement. Specifically, the bill creates s. 39.4071, F.S., which is titled "Use of psychotropic medication for children in out-of-home placement."

The bill provides legislative findings and intent that, due to multiple risk factors, children in out-of-home care are more likely to have behavioral and emotional disorders, receive mental health services, and be provided psychotropic medications at higher rates than other children. The bill states that it is the intent of the Legislature that children in out-of-home care who need psychotropic medications receive them as part of a comprehensive treatment plan monitored by a court-appointed guardian ad litem (GAL).

The bill creates definitions for the following terms:

- "Behavior analysis" means "services rendered by a provider who is certified by the Behavior Analysis Certification Board in accordance with chapter 393."
- "Obtaining assent" means "a process by which a provider of medical services helps a child achieve a developmentally appropriate awareness of the nature of his or her condition, informs the child of what can be expected through tests and treatment, makes a clinical assessment of the child's understanding of the situation and the factors influencing how he or she is responding, and solicits an expression of the child's willingness to adhere to the proposed care. The mere absence of an objection by the child may not be construed as assent."
- "Comprehensive behavior health assessment" means "an in-depth and detailed assessment of the child's emotional, social, behavioral, and developmental functioning within the family home, school, and community. A comprehensive behavioral health assessment must include direct observation of the child in the home, school, and community, as well as in the clinical setting, and must adhere to the requirements contained in the Florida Medicaid Community Behavioral Health Services Coverage and Limitations Handbook."
- "Express and informed consent" means "a process by which a provider of medical services obtains voluntary consent from a parent whose rights have not been terminated or a legal guardian of the child who has received full, accurate, and sufficient information and an explanation about the child's medical condition, medication, and treatment to enable the parent or guardian to make a knowledgeable decision without any element of fraud, deceit, duress, or other form of coercion."
- "Mental health treatment plan" means "a plan which lists the particular mental health needs of the child and the services that will be provided to address those needs." If the plan includes prescribing psychotropic medication to a child in out-of-home placement, the plan must also include certain specified information.
- "Psychotropic medication" means "a prescription medication that is used for the treatment of mental disorders and includes, without limitation, hypnotics, antipsychotics, antidepressants, antianxiety agents, sedatives, stimulants, and mood stabilizers."[25]

The bill provides for the appointment of a GAL at the earliest possible time to represent the best interest of a child in DCF custody who is prescribed a psychotropic medication. The bill provides duties and responsibilities of the GAL and requires the department and its community-based care lead agencies to notify the GAL within 24 hours after any change in the status of the child.

When DCF believes that a child in its custody may need psychiatric treatment, an evaluation must be conducted by a physician licensed under chs. 458 or 459, F.S. If, at the time of removal from his or her home, a child is already being provided prescribed medication, the prescribing physician shall try to obtain express and informed consent of the parent or legal guardian and assent of the child. The bill provides that the prescribing physician must consider the capacity of the child to make an independent decision based on his or her age, maturity, and psychological and emotional state when determining whether or not it is appropriate to obtain assent from the child. The bill provides different instructions for the physician in obtaining assent, depending on

[25] The Florida Rules of Criminal Procedure provide a slightly different definition of psychotropic medication. Specifically, rule 3.215 provides that psychotropic medication is "any drug or compound affecting the mind, behavior, intellectual functions, perception, moods, or emotion and includes anti-psychotic, anti-depressant, anti-manic, and anti-anxiety drugs."

the age of the child. Whether the child assents or refuses to give assent, the physician must document it and place it in the child's mental health treatment plan.

The physician must also attempt to get express and informed consent for the administration of psychotropic medication from the child's parent or legal guardian. Consent may only be given by a parent whose rights have not been terminated or a legal guardian who has received full, accurate, and sufficient information about the child's medical condition, medication, and treatment. A copy of the parent's or legal guardian's consent (or lack thereof) must be documented and placed in the child's mental health treatment plan. The bill requires that when assent or informed consent is obtained, a copy of the assent or consent documents must be placed in the child's mental health treatment plan and filed with the court. Oral assent or informed consent must be documented by the prescribing physician.

Consent may become invalid under certain circumstances and if that happens, DCF must immediately notify all parties and try to obtain consent from the other parent or another legal guardian. If DCF cannot obtain valid consent, then the department must file a motion for administration of psychotropic medication. The child must continue on his or her medication until the court rules on the motion.

The bill provides procedures to be followed by the department and the court in cases where a child is in an out-of-home placement and may need a psychotropic medication, but parental consent has not been obtained. In any case where consent is invalid, the department must file a motion with the court within three working days to authorize the administration of the psychotropic medication before the administration of the medication.

The motion must include:

- A written report by DCF describing the efforts made to obtain express and informed consent, and describing other treatments attempted, considered, and recommended for the child; and
- The prescribing physician's completed and signed mental health treatment plan.

The department must notify all parties within 48 hours of filing the motion with the court. An objection to the motion must be made within two working days after a party is notified of the motion. If an objection is not filed and the motion is legally sufficient, the court may enter an order without a hearing. If an objection is timely filed, the court shall hold a hearing as soon as possible. The court must find a compelling governmental interest that the proposed psychotropic medication is in the child's best interest when issuing its order. The bill provides certain factors for a court to consider when determining if the medication is in the child's best interest.
The bill also outlines procedures to be followed when administering psychotropic medication before a court order has been obtained, including cases when a child receives a one-time dose of medication. Specifically:

- If a child is removed from his or her home and taken into custody, the department may continue to administer a current prescription of psychotropic medication until the shelter hearing, where the department must request court authorization for the continued administration of the medication.

- If it approves, the court may only authorize continued use of the medication until the arraignment hearing on the petition for adjudication. If DCF believes that it needs to continue the medication beyond the time authorized by the court, the department must file a motion at the same time that it files the dependency petition.
- The department must administer the medication to the child immediately if the prescribing physician certifies that a delay in providing the medication would cause significant harm. The bill provides certain requirements if the department immediately administers the medication to the child.
- The department may authorize, in advance of a court order, the administration of psychotropic medication to a child in its custody in a hospital, crisis stabilization unit or receiving facility, therapeutic group home, or in a statewide inpatient psychiatric program. Upon administering the medication, the department must file a motion to seek court authorization for the continued administration of the medication within three working days.
- If a child receives a one-time dose of a psychotropic medication during a crisis, the department must immediately notify all parties and the court of the emergency use.

The bill provides procedures for discontinuing or altering the provision of psychotropic medication to a child and requires the department to ensure destruction of unused medication that is no longer being taken by a child.

The bill requires that any child who needs mental health services must have a mental health treatment plan. This plan must include:

- The name of the child, a statement indicating that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which there is an evidence base for the medication that is being prescribed, a statement indicating the compelling governmental interest in prescribing the psychotropic medication, and the name and range of the dosage of the psychotropic medication.
- A statement indicating that the physician has reviewed all medical information concerning the child which has been provided by the department or community-based care lead agency and briefly listing all such information received.
- A medication profile, including all medications the child is prescribed or will be prescribed, any previously prescribed medications where known, and whether those medications are being added, continued, or discontinued upon implementation of the mental health treatment plan.
- A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms that the medication, at its prescribed dosage, is expected to address.
- An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication, including procedures for reporting adverse effects; drug-interaction precautions; the possible effects of stopping or not initiating the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child if developmentally appropriate and to the child's caregiver.
- Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is

expected to be taking the medication; a plan for the discontinuation of any medication when medically appropriate; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends as part of a comprehensive treatment plan.
- A document describing those observable behaviors warranting psychotropic treatment, the means for obtaining reliable frequency data on these same observable behaviors, and the reporting of this data with sufficient frequency to support medication decisions.

The bill provides that no child under 11 years of age may be prescribed psychotropic medication absent a finding of a compelling governmental interest.[26] The current age requirement for pre-consent review is any child six years old or younger. It is unclear whether the court must find a compelling governmental interest in order for psychotropic medication to be prescribed to a child under the age of 11 if the parent or legal guardian has given consent.

Before psychotropic medication is authorized, a review of the administration must be obtained from a child psychiatrist licensed under chs. 458 or 459, F.S. It is unclear if a child is already being seen by a psychiatrist if that child would need to get a second opinion under this provision, or if the child's current psychiatrist could review the administration.

The department may authorize, in advance of a court order, the administration of psychotropic medications to a child from birth through 10 years of age in its custody in the following levels of residential care:

- Hospital;
- Crisis stabilization unit or receiving facility;
- Therapeutic group home; or
- Statewide inpatient psychiatric program.

If the child is in one of these levels of residential care, the compelling governmental interest requirement is satisfied. The department must still file a motion with the court to seek authorization or continued administration of the medication. If the department authorizes a one-time dose of psychotropic medication during a crisis, the department must immediately notify all parties and the court.

The bill prohibits a child in the custody of the department from participating in clinical trials relating to the development of new psychotropic medications. The bill also provides for additional information relating to psychotropic medication to be added to judicial review hearings.

Finally, the bill provides rulemaking authority to the department to ensure that children receive timely access to mental health services, including, but not limited to, clinically appropriate psychotropic medications.

[26] A compelling governmental interest is a very high burden and is often reserved for situations where a fundamental right is involved. See *A.W. v. Dep't of Children and Families*, 969 So. 2d 496, 504 (Fla. 1st DCA 2007) (citing *North Fla. Women's Health and Counseling Services., Inc. v. State*, 866 So. 2d 612, 625 n. 16 (Fla. 2003).

The bill deletes provisions in s. 39.407, F.S., relating to the provisions of psychotropic medications to children in out-of-home care (similar provisions were included in the newly created s. 39.4071, F.S.). Additionally, the bill amends s. 39.407, F.S., to require that every child placed in out-of-home care receive a comprehensive behavioral health assessment, specify who is eligible for the assessment, and require that the assessment be provided to the physician involved in developing the mental health treatment plan for any child in need of mental health services.

The bill amends s. 743.0645, F.S., to conform to other changes made by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

At the time of this analysis, there were no available analyses from state agencies or other entities. However, an analysis from the department for an identical bill from the 2010 legislative session stated the fiscal impact of the bill on DCF was anticipated to be covered within existing resources. The fiscal impact would have resulted from the increase in the number of pre-consent authorizations. Specifically:

> This cost is based on $160 per authorization, at an average of 3 pre-consent reviews (as medications change) per child for 917 children aged 10 and under and who are on psychotropic medication: $480 x 917 = $440,160. An additional $4,000 to establish an online submission capacity

for pre-consent reviews is added into this recommendation for a total of $444,160.[27]

The Guardian ad Litem Program also anticipated no additional costs as a result of the 2010 bill.[28]

VI. Technical Deficiencies:

On line 497, the bill provides that consent forms for parents and older children must be written at a sixth- to eighth-grade reading level. The portion regarding consent forms for parents may need to be included in paragraph (b) instead (starting at line 503), which deals specifically with obtaining express and informed consent from a child's parent or legal guardian. Currently, it is in the paragraph relating to obtaining assent from the child.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[27] Department of Children and Family Services, Staff Analysis and Economic Impact HB 1567 (SB 2718), (Mar. 5, 2010) (on file with the Senate Committee on Children, Families and Elder Affairs).
[28] E-mail from Nathan Ray, Guardian ad Litem Program, to professional staff of the Senate Committee on Children, Families and Elder Affairs (Apr. 8, 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

By Senator Storms

10-01452-12 20121808__

A bill to be entitled

An act relating to the provision of psychotropic medication to children in out-of-home placements; amending s. 39.407, F.S.; requiring that children placed in out-of-home care receive a comprehensive behavioral health assessment; specifying eligibility; prescribing duties for the Department of Children and Family Services; deleting provisions relating to the provision of psychotropic medications to children in out-of-home care; creating s. 39.4071, F.S.; providing legislative findings and intent; providing definitions; requiring that a guardian ad litem be appointed by the court to represent a child in the custody of the Department of Children and Family Services who is prescribed a psychotropic medication; prescribing the duties of the guardian ad litem; requiring that the department or lead agency notify the guardian ad litem of any change in the status of the child; providing for psychiatric evaluation of the child; requiring that express and informed consent and assent be obtained from a child or the child's parent or guardian; providing requirements for a prescribing physician in obtaining consent and assent; providing for the invalidation of a parent's informed consent; requiring the department to seek informed consent from the legal guardian in certain circumstances; requiring the department to file a motion for the administration of psychotropic medication along with the final judgment of termination of parental rights under

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certain circumstances; requiring that a court authorize the administration of psychotropic medication to a child who is in shelter care or in foster care and for whom informed consent from the parents or a legal guardian has not been obtained; providing requirements for the motion to the court; requiring that any party objecting to the administration of psychotropic medication file its objection within a specified period; authorizing the court to obtain a second opinion regarding the proposed administration; requiring that the court hold a hearing if any party objects to the proposed administration; specifying circumstances under which the department may provide psychotropic medication to a child before court authorization is obtained; requiring that the department seek court authorization for continued administration of the medication; providing for an expedited hearing on such motion under certain circumstances; requiring the department to provide notice to all parties and the court for each emergency use of psychotropic medication under certain conditions; providing for discontinuation, alteration, and destruction of medication; requiring that a mental health treatment plan be developed for each child or youth who needs mental health services; requiring that certain information be included in a mental health treatment plan; requiring the department to develop and administer procedures to require the caregiver and prescribing physician to report any

adverse side effects; requiring documentation of the adverse side effects; prohibiting the prescription of psychotropic medication to certain children who are in out-of-home care absent certain conditions; requiring review by a licensed child psychiatrist before psychotropic medication is administered to certain children who are in out-of-home care under certain conditions; prohibiting authorization for a child in the custody of the department to participate in any clinical trial designed to evaluate the use of psychotropic medication in children; requiring that the department inform the court of a child's medical and behavioral status at each judicial hearing; requiring that the department adopt rules; amending s. 743.0645, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (3) of section 39.407, Florida Statutes, is amended to read:

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

(3)(a) All children placed in out-of-home care shall be provided with a comprehensive behavioral health assessment. The child protective investigator or dependency case manager shall submit a referral for such assessment no later than 7 days after a child is placed in out-of-home care.

(b) Any child who has been in out-of-home care for more than 1 year, or who did not receive a comprehensive behavioral health assessment when placed into out-of-home care, is eligible to receive a comprehensive behavioral health assessment. Such assessments evaluate behaviors that give rise to the concern that the child has unmet mental health needs. Any party to the dependency proceeding, or the court on its own motion, may request that an assessment be performed.

(c) The child protective investigator or dependency case manager shall be responsible for ensuring that all recommendations in the comprehensive behavioral health assessment are incorporated into the child's case plan and that the recommended services are provided in a timely manner. If, at a case planning conference, there is a determination made that a specific recommendation should not be included in a child's case plan, the court must be provided with a written explanation as to why the recommendation is not being followed.

(d) This provision does not prevent a child from receiving any other form of psychological assessment when needed.

(e) If it is determined that a child is in need of mental health services, the comprehensive behavioral health assessment must be provided to the physician involved in developing the child's mental health treatment plan, pursuant to s. 39.4071(9).

~~(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(9) and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps~~

~~necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.~~

~~2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.~~

~~(b)1. If a child who is removed from the home under s. 39.401 is receiving prescribed psychotropic medication at the time of removal and parental authorization to continue providing the medication cannot be obtained, the department may take possession of the remaining medication and may continue to provide the medication as prescribed until the shelter hearing, if it is determined that the medication is a current~~

~~prescription for that child and the medication is in its original container.~~

~~2. If the department continues to provide the psychotropic medication to a child when parental authorization cannot be obtained, the department shall notify the parent or legal guardian as soon as possible that the medication is being provided to the child as provided in subparagraph 1. The child's official departmental record must include the reason parental authorization was not initially obtained and an explanation of why the medication is necessary for the child's well-being.~~

~~3. If the department is advised by a physician licensed under chapter 458 or chapter 459 that the child should continue the psychotropic medication and parental authorization has not been obtained, the department shall request court authorization at the shelter hearing to continue to provide the psychotropic medication and shall provide to the court any information in its possession in support of the request. Any authorization granted at the shelter hearing may extend only until the arraignment hearing on the petition for adjudication of dependency or 28 days following the date of removal, whichever occurs sooner.~~

~~4. Before filing the dependency petition, the department shall ensure that the child is evaluated by a physician licensed under chapter 458 or chapter 459 to determine whether it is appropriate to continue the psychotropic medication. If, as a result of the evaluation, the department seeks court authorization to continue the psychotropic medication, a motion for such continued authorization shall be filed at the same time as the dependency petition, within 21 days after the shelter hearing.~~

~~(c) Except as provided in paragraphs (b) and (c), the department must file a motion seeking the court's authorization to initially provide or continue to provide psychotropic medication to a child in its legal custody. The motion must be supported by a written report prepared by the department which describes the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and other treatments considered or recommended for the child. In addition, the motion must be supported by the prescribing physician's signed medical report providing:~~

~~1. The name of the child, the name and range of the dosage of the psychotropic medication, and that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which such medication is being prescribed.~~

~~2. A statement indicating that the physician has reviewed all medical information concerning the child which has been provided.~~

~~3. A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms the medication, at its prescribed dosage, is expected to address.~~

~~4. An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication; drug-interaction precautions; the possible effects of stopping the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child if age appropriate and to the child's caregiver.~~

~~5. Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the medication; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends.~~

~~(d)1. The department must notify all parties of the proposed action taken under paragraph (c) in writing or by whatever other method best ensures that all parties receive notification of the proposed action within 48 hours after the motion is filed. If any party objects to the department's motion, that party shall file the objection within 2 working days after being notified of the department's motion. If any party files an objection to the authorization of the proposed psychotropic medication, the court shall hold a hearing as soon as possible before authorizing the department to initially provide or to continue providing psychotropic medication to a child in the legal custody of the department. At such hearing and notwithstanding s. 90.803, the medical report described in paragraph (c) is admissible in evidence. The prescribing physician need not attend the hearing or testify unless the court specifically orders such attendance or testimony, or a party subpoenas the physician to attend the hearing or provide testimony. If, after considering any testimony received, the court finds that the department's motion and the physician's medical report meet the requirements of this subsection and that it is in the child's best interests, the court may order that~~

~~the department provide or continue to provide the psychotropic medication to the child without additional testimony or evidence. At any hearing held under this paragraph, the court shall further inquire of the department as to whether additional medical, mental health, behavioral, counseling, or other services are being provided to the child by the department which the prescribing physician considers to be necessary or beneficial in treating the child's medical condition and which the physician recommends or expects to provide to the child in concert with the medication. The court may order additional medical consultation, including consultation with the MedConsult line at the University of Florida, if available, or require the department to obtain a second opinion within a reasonable timeframe as established by the court, not to exceed 21 calendar days, after such order based upon consideration of the best interests of the child. The department must make a referral for an appointment for a second opinion with a physician within 1 working day. The court may not order the discontinuation of prescribed psychotropic medication if such order is contrary to the decision of the prescribing physician unless the court first obtains an opinion from a licensed psychiatrist, if available, or, if not available, a physician licensed under chapter 458 or chapter 459, stating that more likely than not, discontinuing the medication would not cause significant harm to the child. If, however, the prescribing psychiatrist specializes in mental health care for children and adolescents, the court may not order the discontinuation of prescribed psychotropic medication unless the required opinion is also from a psychiatrist who specializes in mental health care for children and adolescents.~~

~~The court may also order the discontinuation of prescribed psychotropic medication if a child's treating physician, licensed under chapter 458 or chapter 459, states that continuing the prescribed psychotropic medication would cause significant harm to the child due to a diagnosed nonpsychiatric medical condition.~~

~~2. The burden of proof at any hearing held under this paragraph shall be by a preponderance of the evidence.~~

~~(c)1. If the child's prescribing physician certifies in the signed medical report required in paragraph (c) that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child, the medication may be provided in advance of the issuance of a court order. In such event, the medical report must provide the specific reasons why the child may experience significant harm and the nature and the extent of the potential harm. The department must submit a motion seeking continuation of the medication and the physician's medical report to the court, the child's guardian ad litem, and all other parties within 3 working days after the department commences providing the medication to the child. The department shall seek the order at the next regularly scheduled court hearing required under this chapter, or within 30 days after the date of the prescription, whichever occurs sooner. If any party objects to the department's motion, the court shall hold a hearing within 7 days.~~

~~2. Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, the department must seek~~

~~court authorization as described in paragraph (c).~~

~~(f)1. The department shall fully inform the court of the child's medical and behavioral status as part of the social services report prepared for each judicial review hearing held for a child for whom psychotropic medication has been prescribed or provided under this subsection. As a part of the information provided to the court, the department shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem, attorney, or attorney ad litem who has been appointed to represent the child or the child's interests, the court may review the status more frequently than required in this subsection.~~

~~2. The court may, in the best interests of the child, order the department to obtain a medical opinion addressing whether the continued use of the medication under the circumstances is safe and medically appropriate.~~

~~(g) The department shall adopt rules to ensure that children receive timely access to clinically appropriate psychotropic medications. These rules must include, but need not be limited to, the process for determining which adjunctive services are needed, the uniform process for facilitating the prescribing physician's ability to obtain the express and informed consent of a child's parent or guardian, the procedures for obtaining court authorization for the provision of a psychotropic medication, the frequency of medical monitoring and reporting on the status of the child to the court, how the child's parents will be involved in the treatment-planning~~

~~process if their parental rights have not been terminated, and how caretakers are to be provided information contained in the physician's signed medical report. The rules must also include uniform forms to be used in requesting court authorization for the use of a psychotropic medication and provide for the integration of each child's treatment plan and case plan. The department must begin the formal rulemaking process within 90 days after the effective date of this act.~~

Section 2. Section 39.4071, Florida Statutes, is created to read:

39.4071 Use of psychotropic medication for children in out-of-home placement.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that children in out-of-home placements often have multiple risk factors that predispose them to emotional and behavioral disorders and that they receive mental health services at higher rates and are more likely to be given psychotropic medications than children from comparable backgrounds.

(b) The Legislature also finds that the use of psychotropic medications for the treatment of children in out-of-home placements who have emotional and behavioral disturbances has increased over recent years. While this increased use of psychotropic medications is paralleled by an increase in the rate of the coadministration of two or more psychotropic medications, data on the safety and efficacy of many of the psychotropic medications used in children and research supporting the coadministration of two or more psychotropic medications in this population is limited.

(c) The Legislature further finds that significant challenges are encountered in providing quality mental health care to children in out-of-home placements. Not uncommonly, children in out-of-home placements are subjected to multiple placements and many service providers, with communication between providers often poor, resulting in fragmented medical and mental health care. The dependable, ongoing therapeutic and caregiving relationships these children need are hampered by the high turnover among child welfare caseworkers and care providers. Furthermore, children in out-of-home placements, unlike children from intact families, often have no consistent interested party who is available to coordinate treatment and monitoring plans or to provide longitudinal oversight of care.

(d) The Legislature recognizes the important role the Guardian ad Litem Program has played in this state's dependency system for the past 30 years serving the state's most vulnerable children through the use of trained volunteers, case coordinators, child advocates, and attorneys. The program's singular focus is on the child and its mission is to advocate for the best interest of the child. It is often the guardian ad litem who is the constant in a child's life, maintaining consistent contact with the child, the child's caseworkers, and others involved with the child, including family, doctors, teachers, and service providers. Studies have shown that a child assigned a guardian ad litem will, on average, experience fewer placement changes than a child without a guardian ad litem. It is therefore the intent of the Legislature that children in out-of-home placements who may benefit from psychotropic medications receive those medications safely as part of a comprehensive

mental health treatment plan requiring the appointment of a guardian ad litem whose responsibility is to monitor the plan for compliance and suitability as to the child's best interest.

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

(a) "Behavior analysis" means services rendered by a provider who is certified by the Behavior Analysis Certification Board in accordance with chapter 393.

(b) "Obtaining assent" means a process by which a provider of medical services helps a child achieve a developmentally appropriate awareness of the nature of his or her condition, informs the child of what can be expected through tests and treatment, makes a clinical assessment of the child's understanding of the situation and the factors influencing how he or she is responding, and solicits an expression of the child's willingness to adhere to the proposed care. The mere absence of an objection by the child may not be construed as assent.

(c) "Comprehensive behavioral health assessment" means an in-depth and detailed assessment of the child's emotional, social, behavioral, and developmental functioning within the home, school, and community. A comprehensive behavioral health assessment must include direct observation of the child in the home, school, and community, as well as in the clinical setting, and must adhere to the requirements contained in the Florida Medicaid Community Behavioral Health Services Coverage and Limitations Handbook.

(d) "Express and informed consent" means a process by which a provider of medical services obtains voluntary consent from a parent whose rights have not been terminated or a legal guardian

of the child who has received full, accurate, and sufficient information and an explanation about the child's medical condition, medication, and treatment in order to enable the parent or guardian to make a knowledgeable decision without any element of fraud, deceit, duress, or other form of coercion.

(e) "Mental health treatment plan" means a plan that lists the particular mental health needs of the child and the services that will be provided to address those needs. If the plan includes prescribing psychotropic medication to a child in out-of-home placement, the plan must also include the information required by subsection (9).

(f) "Psychotropic medication" means a prescription medication that is used for the treatment of mental disorders and includes, without limitation, hypnotics, antipsychotics, antidepressants, antianxiety agents, sedatives, stimulants, and mood stabilizers.

(3) APPOINTMENT OF GUARDIAN AD LITEM.—

(a) If not already appointed, a guardian ad litem shall be appointed by the court at the earliest possible time to represent the best interests of a child in out-of-home placement who is prescribed a psychotropic medication or is being evaluated for the initiation of psychotropic medication. Pursuant to s. 39.820, the appointed guardian ad litem is a party to any judicial proceeding as a representative of the child and serves until discharged by the court.

(b) Under the provisions of this section, the guardian ad litem shall participate in the development of the mental health treatment plan, monitor whether all requirements of the mental health treatment plan are being provided to the child, including

counseling, behavior analysis, or other services, medications, and treatment modalities; and notice the court of the child's objections, if any, to the mental health treatment plan. The guardian ad litem shall prepare and submit to the court a written report every 45 days or as directed by the court, advising the court and the parties as to the status of the care, health, and medical treatment of the child pursuant to the mental health treatment plan and any change in the status of the child. The guardian ad litem will immediately notify parties as soon as any medical emergency of the child becomes known. The guardian ad litem shall ensure that the prescribing physician has been provided with all pertinent medical information concerning the child.

(c) The department and the community-based care lead agency shall notify the court and the guardian ad litem, and, if applicable, the child's attorney, in writing within 24 hours after any change in the status of the child, including, but not limited to, a change in placement, a change in school, a change in medical condition or medication, or a change in prescribing physician, other service providers, counseling, or treatment scheduling.

(4) PSYCHIATRIC EVALUATION OF CHILD.—Whenever the department believes that a child in its legal custody may need psychiatric treatment, an evaluation must be conducted by a physician licensed under chapter 458 or chapter 459.

(5) EXPRESS AND INFORMED CONSENT AND ASSENT.—If, at the time of removal from his or her home, a child is being provided, or at any time is being evaluated for the initiation of, prescribed psychotropic medication under this section, express

and informed consent and assent shall be sought by the prescribing physician.

(a) The prescribing physician shall obtain assent from the child, unless the prescribing physician determines that it is not appropriate to obtain assent from the child. In making this assessment, the prescribing physician shall consider the capacity of the child to make an independent decision based on his or her age, maturity, and psychological and emotional state. If the physician determines that it is not appropriate to obtain assent from the child, the physician must document the decision in the mental health treatment plan. If the physician determines it is appropriate to obtain assent from the child and the child refuses to give assent, the physician must document the child's refusal in the mental health treatment plan.

1. Assent from a child shall be sought in a manner that is understandable to the child using a developmentally appropriate assent form. The child shall be provided with sufficient information, such as the nature and purpose of the medication, how it will be administered, the probable risks and benefits, alternative treatments and the risks and benefits thereof, and the risks and benefits of refusing or discontinuing the medication, and when it may be appropriately discontinued. Assent may be oral or written and must be documented by the prescribing physician.

2. Oral assent is appropriate for a child who is younger than 7 years of age. Assent from a child who is 7 to 13 years of age may be sought orally or in a simple form that is written at the second-grade or third-grade reading level. A child who is 14 years of age or older may understand the language presented in

the consent form for parents or legal guardians. If so, the child may sign the consent form along with the parent or legal guardian. Forms for parents and older children shall be written at the sixth-grade to eighth-grade reading level.

3. In each case where assent is obtained, a copy of the assent documents must be provided to the parent or legal guardian and the guardian ad litem, with the original assent documents becoming a part of the child's mental health treatment plan and filed with the court.

(b) Express and informed consent for the administration of psychotropic medication may be given only by a parent whose rights have not been terminated or a legal guardian of the child who has received full, accurate, and sufficient information and an explanation about the child's medical condition, medication, and treatment in order to enable the parent or guardian to make a knowledgeable decision. A sufficient explanation includes, but need not be limited to, the following information, which must be provided and explained in plain language by the prescribing physician to the parent or legal guardian: the child's diagnosis, the symptoms to be addressed by the medication, the name of the medication and its dosage ranges, the reason for prescribing it, and its purpose or intended results; benefits, side effects, risks, and contraindications, including effects of not starting or stopping the medication; method for administering the medication and how it will be monitored; potential drug interactions; alternative treatments to psychotropic medication; a plan to reduce or eliminate ongoing medication when medically appropriate; the counseling, behavioral analysis, or other services used to complement the

use of medication, when applicable; and that the parent or legal guardian may revoke the consent at any time.

1. Express and informed consent may be oral or written and must be documented by the prescribing physician. If the department or the physician is unable to obtain consent from the parent or legal guardian, the reasons must be documented.

2. When express and informed consent is obtained, a copy of the consent documents must be provided to the parent or legal guardian and the guardian ad litem, with the original consent documents becoming a part of the child's mental health treatment plan and filed with the court.

(c) The informed consent of any parent whose whereabouts are unknown for 60 days, who is adjudicated incapacitated, who does not have regular and frequent contact with the child, who later revokes assent, or whose parental rights are terminated after giving consent, is invalid. If the informed consent of a parent becomes invalid, the department may seek informed consent from any other parent or legal guardian. If the informed consent provided by a parent whose parental rights have been terminated is invalid and no other parent or legal guardian gives informed consent, the department shall file a motion for the administration of psychotropic medication along with the motion for final judgment of termination of parental rights.

(d) If consent is revoked or becomes invalid the department shall immediately notify all parties and, if applicable, the child's attorney. Medication shall be continued until such time as the court rules on the motion.

(e) Under no circumstance may a medication be discontinued without explicit instruction from a physician as to how to

safely discontinue the medication.

(6) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN SHELTER CARE OR IN FOSTER CARE WHEN INFORMED CONSENT HAS NOT BEEN OBTAINED.—

(a) *Motion for court authorization for administration of psychotropic medications.*—

1. Any time a physician who has evaluated the child prescribes psychotropic medication as part of the mental health treatment plan and the child's parents or legal guardians have not provided express and informed consent as provided by law or such consent is invalid as set forth in paragraph (5)(c), the department or its agent shall file a motion with the court within 3 working days to authorize the administration of the psychotropic medication before the administration of the medication, except as provided in subsection (7). In each case in which a motion is required, the motion must include:

a. A written report by the department describing the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and describing other treatments attempted, considered, and recommended for the child; and

b. The prescribing physician's completed and signed mental health treatment plan.

2. The department must file a copy of the motion with the court and, within 48 hours after filing the motion with the court, notify all parties in writing, or by whatever other method best ensures that all parties receive notification, of its proposed administration of psychotropic medication to the child.

3. If any party objects to the proposed administration of the psychotropic medication to the child, that party must file its objection within 2 working days after being notified of the department's motion. A party may request an extension of time to object for good cause shown, if such extension would be in the best interests of the child. Any extension shall be for a specific number of days not to exceed the time absolutely necessary.

4. Lack of assent from the child shall be deemed a timely objection from the child.

(b) *Court action on motion for administration of psychotropic medication.*—

1. If no party timely files an objection to the department's motion and the motion is legally sufficient, the court may enter its order authorizing the proposed administration of the psychotropic medication without a hearing. Based on its determination of the best interests of the child, the court may order additional medical consultation, including consultation with the MedConsult line at the University of Florida, if available, or require the department to obtain a second opinion within a reasonable time established by the court, not to exceed 21 calendar days. If the court orders an additional medical consultation or second medical opinion, the department shall file a written report including the results of this additional consultation or a copy of the second medical opinion with the court within the time required by the court, and shall serve a copy of the report on all parties.

2. If any party timely files its objection to the proposed administration of the psychotropic medication to the child, the

court shall hold a hearing as soon as possible on the department's motion.

a. The signed mental health treatment plan of the prescribing physician is admissible in evidence at the hearing.

b. The court shall ask the department whether additional medical, mental health, behavior analysis, counseling, or other services are being provided to the child which the prescribing physician considers to be necessary or beneficial in treating the child's medical condition and which the physician recommends or expects to be provided to the child along with the medication.

3. The court may order additional medical consultation or a second medical opinion, as provided in this paragraph.

4. After considering the department's motion and any testimony received, the court may enter its order authorizing the department to provide or continue to provide the proposed psychotropic medication to the child. The court must find a compelling governmental interest that the proposed psychotropic medication is in the child's best interest. In so determining the court shall consider, at a minimum, the following factors:

a. The severity and likelihood of risks associated with the treatment.

b. The magnitude and likelihood of benefits expected from the treatment.

c. The child's prognosis without the proposed psychotropic medication.

d. The availability and effectiveness of alternative treatments.

e. The wishes of the child concerning treatment

alternatives.

f. The recommendation of the parents or legal guardian.

g. The recommendation of the guardian ad litem.

(7) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN OUT-OF-HOME CARE BEFORE COURT AUTHORIZATION HAS BEEN OBTAINED.—The department may provide continued administration of psychotropic medication to a child before authorization by the court has been obtained only as provided in this subsection.

(a) If a child is removed from the home and taken into custody under s. 39.401, the department may continue to administer a current prescription of psychotropic medication to the child; however, the department shall request court authorization for the continued administration of the medication at the shelter hearing. This request shall be included in the shelter petition.

1. The department shall provide all information in its possession to the court in support of its request at the shelter hearing. The court may authorize the continued administration of the psychotropic medication only until the arraignment hearing on the petition for adjudication, or for 28 days following the date of the child's removal, whichever occurs first.

2. If the department believes, based on the required physician's evaluation, that it is appropriate to continue the psychotropic medication beyond the time authorized by the court at the shelter hearing, the department shall file a motion seeking continued court authorization at the same time that it files the dependency petition, but within 21 days after the shelter hearing.

(b) If the department believes, based on the certification

of the prescribing physician, that delay in providing the prescribed psychotropic medication to the child would, more likely than not, cause significant harm to the child, the department shall administer the medication to the child immediately. The department shall submit a motion to the court seeking continuation of the medication within 3 working days after the department begins providing the medication to the child.

1. The motion seeking authorization for the continued administration of the psychotropic medication to the child must include all information required in this section. The required medical report must also include the specific reasons why the child may experience significant harm, and the nature and the extent of the potential harm, resulting from a delay in authorizing the prescribed medication.

2. The department shall serve the motion on all parties within 3 working days after the department begins providing the medication to the child.

3. The court shall hear the department's motion at the next regularly scheduled court hearing required by law, or within 30 days after the date of the prescription, whichever occurs first. However, if any party files an objection to the motion, the court shall hold a hearing within 7 days.

(c) The department may authorize, in advance of a court order, the administration of psychotropic medications to a child in its custody in a hospital, crisis stabilization unit or receiving facility, therapeutic group home, or statewide inpatient psychiatric program. If the department does so, it must file a motion to seek court authorization for the continued

administration of the medication within 3 working days as required in this section.

(d) If a child receives a one-time dose of a psychotropic medication during a crisis, the department shall provide immediate notice to all parties and to the court of each such emergency use.

(8) DISCONTINUATION OR ALTERATION OF MEDICATION; DESTRUCTION OF MEDICATION.—A party may not alter the provision of prescribed psychotropic medication to a child in any way except upon order of the court or advice of a physician.

(a) On the motion of any party or its own motion, the court may order the discontinuation of a medication already prescribed. Such discontinuation must be performed in consultation with a physician in such a manner as to minimize risk to the child.

(b) The child's repeated refusal to take or continue to take a medication shall be treated as a motion to discontinue the medication and shall be set for hearing as soon as possible but no later than within 7 days after knowledge of such repeated refusal.

(c) Upon any discontinuation of a medication, the department shall document the date and reason for the discontinuation and shall notify all parties. The guardian ad litem must be notified within 24 hours as previously provided herein.

(d) The department shall ensure the destruction of any medication no longer being taken by the prescribed child.

(9) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—Upon the determination that a child needs mental health services, a

mental health treatment plan must be developed which lists the particular mental health needs of the child and the services that will be provided to address those needs. When possible, the plan shall be developed in a face-to-face conference with the child, the child's parents, case manager, physician, therapist, legal guardian, guardian ad litem, and any other interested party. The mental health treatment plan shall be incorporated into the case plan as tasks for the department and may be amended under s. 39.6013.

(a) If the mental health treatment plan involves the provision of psychotropic medication, the plan must include:

1. The name of the child, a statement indicating that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which there is an evidence base for the medication that is being prescribed, a statement indicating the compelling governmental interest in prescribing the psychotropic medication, and the name and range of the dosage of the psychotropic medication.

2. A statement indicating that the physician has reviewed all medical information concerning the child which has been provided by the department or community-based care lead agency and briefly listing all such information received.

3. A medication profile, including all medications the child is prescribed or will be prescribed, any previously prescribed medications where known, and whether those medications are being added, continued, or discontinued upon implementation of the mental health treatment plan.

4. A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the

child's diagnosed medical condition, as well as the behaviors and symptoms that the medication, at its prescribed dosage, is expected to address.

5. An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication, including procedures for reporting adverse effects; drug-interaction precautions; the possible effects of stopping or not initiating the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child if developmentally appropriate and to the child's caregiver.

6. Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the medication; a plan for the discontinuation of any medication when medically appropriate; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends as part of a comprehensive treatment plan.

7. A document describing those observable behaviors warranting psychotropic treatment, the means for obtaining reliable frequency data on these same observable behaviors, and the reporting of this data with sufficient frequency to support medication decisions.

(b) The department shall develop and administer procedures to require the caregiver and prescribing physician to report any adverse side effects of the medication to the department or its designee and the guardian ad litem. Any adverse side effects must be documented in the mental health treatment plan and

medical records for the child.

(10) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME CARE.—

(a) Absent a finding of a compelling governmental interest, a psychotropic medication may not be authorized by the court for any child from birth through 10 years of age who is in out-of-home placement. Based on a finding of a compelling governmental interest but before a psychotropic medication is authorized by the court for any child from birth through 10 years of age who is in an out-of-home placement, a review of the administration must be obtained from a child psychiatrist who is licensed under chapter 458 or chapter 459. The results of this review must be provided to the child and the parent or legal guardian before final express and informed consent is given.

(b) The department may authorize, in advance of a court order, the administration of psychotropic medications to a child from birth through 10 years of age in its custody in the following levels of residential care:

1. Hospital;

2. Crisis stabilization unit or receiving facility;

3. Therapeutic group home; or

4. Statewide inpatient psychiatric program.

These levels of care demonstrate the requirement of compelling governmental interest through the extensive admission criteria being met. If the department does so, it must file a motion to seek court authorization for the continued administration of the medication within 3 working days.

(c) If a child receives a one-time dose of a psychotropic medication during a crisis, the department shall provide immediate notice to all parties and to the court of each such emergency use.

(11) CLINICAL TRIALS.—At no time shall a child in the custody of the department be allowed to participate in a clinical trial that is designed to develop new psychotropic medications or evaluate their application to children.

(12) JUDICIAL REVIEW HEARINGS.—The department shall fully inform the court of the child's medical and behavioral status as part of the social services report prepared for each judicial review hearing held for a child for whom psychotropic medication has been prescribed or provided under this subsection. As a part of the information provided to the court, the department shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem, attorney, or attorney ad litem who has been appointed to represent the child or the child's interests, the court may review the status more frequently than required in this subsection.

(13) ADOPTION OF RULES.—The department shall adopt rules to ensure that children receive timely access to mental health services, including, but not limited to, clinically appropriate psychotropic medications. These rules must include, but need not be limited to, the process for determining which adjunctive services are needed, the uniform process for facilitating the prescribing physician's ability to obtain the express and informed consent of a child's parent or legal guardian, the

procedures for obtaining court authorization for the provision of a psychotropic medication, the frequency of medical monitoring and reporting on the status of the child to the court, how the child's parents will be involved in the treatment-planning process if their parental rights have not been terminated, and how caretakers are to be provided information contained in the physician's signed mental health treatment plan. The rules must also include uniform forms or standardized information to be used statewide in requesting court authorization for the use of a psychotropic medication and provide for the integration of each child's mental health treatment plan and case plan. The department shall begin the formal rulemaking process by October 1, 2012.

Section 3. Paragraph (b) of subsection (1) of section 743.0645, Florida Statutes, is amended to read:

743.0645 Other persons who may consent to medical care or treatment of a minor.—

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

(b) "Medical care and treatment" includes ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order, power of attorney, or informed consent as provided by law is required, except as provided in s. 39.4071 ~~s. 39.407(3)~~.

Section 4. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-25-12
Meeting Date

Topic Foster Children - Psychotropic Meds Bill Number 1808 *(if applicable)*

Name Vince Smith Amendment Barcode *(if applicable)*

Job Title N/A

Address 3905 N. Jefferson St Phone (850) 545-3464
Street

Monticello FL 32344 E-mail Vince.Smith@Hughes.Net
City *State* *Zip*

Speaking: [X] For [ ] Against [X] Information

Representing My Self.

Appearing at request of Chair: [ ] Yes [ ] No Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan. 25, 2012
Meeting Date

Topic Psychotropic Medication Bill Number SB 1808 *(if applicable)*

Name Eric Prutsman Amendment Barcode *(if applicable)*

Job Title Attorney

Address P.O. Box 10448 Phone
Street

Tallahassee, FL 32302 E-mail
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Assn. for Behavior Analysis

Appearing at request of Chair: [ ] Yes [ ] No Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25
Meeting Date

Topic Psychotropic Medications

Bill Number 1808 *(if applicable)*

Name Jim Daughton

Amendment Barcode *(if applicable)*

Job Title Metz, Husband & Daughton

Address 215 S. Monroe St, Ste 505 *Street*

Phone 850-205-9000

Tallahassee *City* FL *State* 32301 *Zip*

E-mail jim.daughton@metzlaw.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Psychiatric Society

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	CS/SB 370
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Wise
SUBJECT:	Supervised Visitation and Exchange Monitoring
DATE:	January 25, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	**Fav/CS**
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill creates additional provisions in Florida's supervised visitation statute. Specifically, a hierarchy for referring cases for supervised visitation or exchange monitoring is created for both non-dependency cases, where the courts are the primary source of referrals, and dependency cases, where referrals are made by child-placing agencies.

Additionally, the bill:

- Provides for standards for programs to follow and requires that programs affirm annually in a written agreement with court that they abide by those standards;
- Provides that programs that have accepted referrals may petition the court in writing when there is a problem with a case;
- Requires background checks to be conducted on all volunteers and employees of a supervised visitation or supervised exchange program;
- Assumes persons providing services at a supervised visitation or exchange monitoring program are acting in good faith and are immune from civil and criminal liability; and
- Provides that after January 1, 2013, only programs that have written agreements with the court may receive state funding.

The effective date of the bill is October 1, 2012.

This bill creates the following sections of the Florida Statutes: 753.06, 753.07, and 753.08.

II. Present Situation:

Supervised visitation programs provide an opportunity for nonresidential parents to maintain contact with their children in safe and neutral settings. Use of a caseworker, relative, or other third party to oversee such contact has long been recognized as essential in child maltreatment cases where the child has been removed from the home. Other purposes of supervised visitation include:

- To prevent child abuse;
- To reduce the potential for harm to victims of domestic violence and their children;
- To facilitate appropriate child-parent interaction during supervised contact;
- To help build safe and healthy relationships between parents and children;
- To provide written factual information to the court relating to supervised contact, where appropriate;
- To reduce the risk of parental kidnapping;
- To assist parents with juvenile dependency case plan compliance; and
- To facilitate reunification, where appropriate.[1]

The first supervised visitation program in Florida opened in 1993.[2] By 1996, there were 15 programs in the state, and by 2004, over 60 programs had been established. Currently, there are more than 70 programs statewide and every judicial circuit in the state has at least one supervised visitation program.[3]

The Clearinghouse on Supervised Visitation (clearinghouse)[4] was created in 1996 through an appropriation from the Office of the State of Courts Administrator (OSCA) to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers, the judiciary, and the Department of Children and Family Services (DCF or department). Since 1996, the clearinghouse has received contracts on an annual basis from the department to continue this provision of technical assistance.[5] Chapter 753, F.S., relating to supervised visitation, was created in 1996.[6]

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[1] 1 Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University, Purposes of Supervised Visitation. Retrieved January 20, 2012, from http://familyvio.csw.fsu.edu/CHVPG.php.
[2] The Family Nurturing Center of Jacksonville.
[3] Karen Oehme and Sharon Maxwell, Florida's Supervised Visitation Programs: The Next Phase, 79 FLA. B.J. 44, 44 (Jan. 2004).
[4] The Clearinghouse on Supervised Visitation is housed within the Institute for Family Violence Studies in the College of Social Work of the Florida State University, and serves as a statewide resource on supervised visitation issues by providing technical assistance, training, and research. Retrieved January 20, 2012, from http://familyvio.csw.fsu.edu/CHV.php.
[5] Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, School of Social Work, Florida State University, History of the Clearinghouse on Supervised Visitation. Retrieved January 20, 2012, from http://familyvio.csw.fsu.edu/CHVH.php.
[6] Chapter 96-402, L.O.F.

The Florida Supreme Court's Family Court Steering Committee (committee) began developing a skeletal set of standards for supervised visitation programs in 1998. In an attempt to create uniformity relating to staff training, terminology, and basic practice norms, the committee presented standards to Chief Justice Harding. Justice Harding endorsed the minimum standards and crafted an administrative order in 1999 mandating that chief judges of each circuit enter into an agreement with local programs to which trial judges referred cases that agreed to comply with the standards.[7]

In 2007, the Florida Legislature created s. 753.03 F.S., to authorize the clearinghouse to develop new standards for Florida supervised visitation programs to ensure the safety and quality of each program.[8] The clearinghouse was also required to recommend a process for phasing in the implementation of the standards and certification procedures, to develop the criteria for distributing funds to eligible programs, and to determine the most appropriate state entity to certify and monitor supervised visitation programs.[9] A final report containing the recommendations of the clearinghouse was received by the legislature in December 2008.

Until standards for supervised visitation programs are developed and a certification and monitoring process is fully implemented, each supervised visitation program must have an agreement with the court and comply with the Minimum Standards for Supervised Visitation Programs Agreement adopted by the Florida Supreme Court on November 17, 1999.[10] In 1999, the chief justice requested that the legislature develop security protocols, certify programs, and monitor them to ensure compliance. Specifically, the chief justice told the Speaker of the House of Representatives and the President of the Senate:

> The lack of guidelines or standards for these programs and lack of oversight of these programs, particularly as to staff and visitor safety and staff training, is of great concern. . . . It does not appear that this is an appropriate function for the chief judge, but, rather, is better suited to an executive branch agency. . . I urge the legislature to consider establishing a certification process, and designate an entity outside of the judicial branch to be responsible for oversight of supervised visitation programs.[11]

III. Effect of Proposed Changes:

The bill provides that the standards contained in the final report submitted to the Legislature as required by s. 753.03(4), F.S., shall be the basis for state standards for supervised visitation and exchange monitoring programs. The standards may only be modified by the advisory board[12] no more than once a year. The clearinghouse is required to publish the standards and the published standards shall be the state standards for supervised visitation programs.

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[7] Oehme and Maxwell, supra note 3, at 44.
[8] Chapter 2007-109, L.O.F.
[9] *Id.*
[10] Chapter 2007-109, L.O.F. The minimum standards can be found at: http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf. (Retrieved January 20, 1012).
[11] Oehme and Maxwell, supra note 3, at 47.
[12] Section 753.03(3), F.S., creates the advisory board to assist in developing standards.

The bill also implements four out of the 10 recommendations contained in the final report to the legislature from the clearinghouse, which was designated in 2007 to develop new standards for Florida supervised visitation programs. Specifically:

- Chapter 753, F.S., is amended to allow programs to alert the court in writing when there are problems with case referrals and to allow the court to set a hearing to address these problems. Programs regularly report that they have difficulty accessing the court to report problems related to the supervised visitation process, including:
  - Children's unwillingness to participate in visits;
  - Parental substance abuse;
  - Parental mental illness issues interfering with visits;
  - Parental misconduct on-site;
  - Parental misconduct off-site reported to visitation staff, including but not limited to, parental arrests, additional litigation in family, dependency, or criminal court, and violations of probation, stalking, and threats; and
  - Parental noncompliance with program rules, including no-shows and cancellations without cause.

- Courts and child-placing agencies are required to adhere to a recommended hierarchy when referring cases to supervised visitation in both dependency and non-dependency cases.

Specifically:

In chs. 61 or 741, F.S., cases, the court is to direct referrals for supervised visitation or exchange monitoring as follows:
- A program that has a written agreement with the court;
- A local licensed mental health professional who has met specified conditions.

In ch. 39, F.S., cases, the child-placing agency is to direct referrals for supervised visitation or exchange monitoring as follows:
- If the agency having primary responsibility determines that there are safety risks present during parent-child contact, the agency shall direct parties to a program that has affirmed in writing that it adheres to the state standards.
- If there are no safety risks present, the child protective investigator or case manager may:
  - Supervise the parent-child contact him or herself;
  - Designate a foster parent or relative to supervise the parent-child visits.
- If a program that adheres to the state standards does not exist and the child protective investigator or case manager cannot supervise the visit, or designate a foster parent or relative to supervise the visit, the agency having primary responsibility over the case may refer the case to other qualified staff within the agency to supervise.
- The agency having primary responsibility for the case may only refer the case to a subcontractor or other agency if the subcontractor or agency has reviewed or received training on the clearinghouse's supervised visitation programs.

A court is still permitted to allow a litigant's relatives or friends to supervise the visits if the court decides such supervision is safe.

- Chapter 753, F.S., is amended to provide a presumption that any person providing services at a supervised visitation or exchange monitoring program, who has affirmed to the court that he or she is abiding by the state standards, is acting in good faith and is therefore immune from liability. This is similar to the immunity provision that currently protects Guardians ad Litem.[13]
- The bill restricts funding so that only programs, that affirm through a written agreement with the court that it abides by the standards, are eligible for state funding after January 1, 2013.

Additionally, the bill requires supervised visitation and supervised exchange programs to conduct a security background investigation on all volunteers and employees prior to hiring an employee or certifying a volunteer to serve. The security background investigation must include:

- Employment history checks;
- Checks of references;
- Local criminal history records checks through local law enforcement agencies; and
- Statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE).

If requested, an employer must submit the personnel file of the employee or former employee who is the subject of the background investigation. The bill provides immunity to an employer who has released a copy of an employee's or former employee's personnel record in good faith.

The purpose of the security background investigation is to ensure that a person is not hired as an employee or certified as a volunteer of a supervised visitation or supervised exchange program if the person has:

- An arrest awaiting final disposition for;
- Been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty to; or
- Has been adjudicated delinquent and the record has not been sealed or expunged for any offense prohibited under s. 435.04, F.S.[14]

The bill provides that all employees hired or volunteers certified after July 1, 2012, must undergo a level 2 background screening.[15] When analyzing the information obtained in the security background investigation, the supervised visitation or supervised exchange program must give particular emphasis to past activities involving children.

Finally, the bill provides that the supervised visitation or supervised exchange program has the sole discretion in determining whether to hire or certify a person based on the person's security background investigation.

[13] Section 39.822(1), F.S.
[14] Section 435.04, F.S., provides that all employees in positions of trust or responsibility must undergo a security background investigation, and the statute lists specific crimes that the employee undergoing the investigation must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty.
[15] Section 435.04, F.S., provides the standards for level 2 background screenings.

The bill's requirement for a security background investigation is substantially similar to the background check requirement for guardians ad litem.[16]

The effective date of the bill is October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, section 21 of the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." The test for assuring the right of access to the courts was established in Kluger v. White, in which the Florida Supreme Court held that:

> Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[17]

Because the bill provides all persons responsible for providing services at a supervised visitation or exchange monitoring program who have affirmed that they are abiding by the state standards immunity, it raises questions about possible infringements on the right of access to the courts. A parent may argue that the limitation denies the person his or her access to courts if the service provider acts negligently. To the extent that such a tort action may be pursued under Florida law, the immunity provision would have to meet the constitutional test established in Kluger v. White. The Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a

[16] See s. 39.821, F.S.
[17] *Kluger v. White*, 281 So. 2d 1, 4 (1973).

legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.[18]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The department reports a potential fiscal impact for costs related to background screening if a supervised visitation program does not subcontract with DCF or a community-based care lead agency is possible. Programs contracting with DCF are already required to adhere to the background screening requirements under Chapters 39, 409, and 435. Any program that does not meet specified standards by January 1, 2013, would be in jeopardy of losing state funding.[19]

C. Government Sector Impact:

Proposed new section 753.07(3) provides that supervised visitation programs may alert the court in writing if there are problems with referred cases and the court may set a hearing to address these problems. Any new hearings that occur as a result of the bill would have an effect on judicial workload, however, the number of instances in which this might occur is not known and therefore the anticipated affect on workload, if any, by this provision is also not known. According to the Office of the State Courts Administrator (OSCA), the bill may have a minimal impact on the judiciary and court staff.[20]

The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.[21]

The department stated that according to the clearinghouse, the screenings are currently accessed through Volunteer and Employee Criminal History System and are the responsibility of the visitation centers. The bill provides the option for DCF to screen the results. With the current increase in screenings and staff reductions at DCF, the Background Screening Units would not be able to absorb a substantial increase in workload within existing resources.[22]

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[18] The Florida Senate. Bill Analysis and Fiscal Impact Statement, CS/CS/SB 1298, March 29, 2010.
[19] Department of Children and Families, Staff Analysis and Economic Impact, SB 370, October 10, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).
[20] Office of the State Courts Administrator Judicial Impact Statement HB 557, November 21, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).
[21] *Id*.
[22] Department of Children and Families, Staff Analysis and Economic Impact, SB 370, October 10, 2011. (on file with the Senate Committee on Children, Families, and Elder Affairs).

The bill requires the department's approval of supervised visitation training materials for foster parents that "may" be developed by the clearinghouse. This review could be accomplished through existing resources such as the Quality Parenting Initiative.[23]

Within existing funds of DCF, the advisory board established under s. 753.03, F.S., developed supervised visitation standards. Newly proposed s. 753.06, F.S., will give the advisory board the authority to modify the standards, but does not obligate DCF funding for this purpose.[24]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires that supervised visitation and supervised exchange programs conduct security background investigations on employees or volunteers prior to hiring or certifying them. The language in the bill is substantially similar to the background check requirement for guardians ad litem found in s. 39.821, F.S. However, s. 39.821, F.S., provides that the information collected on a guardian ad litem pursuant to the background security investigation is confidential and exempt under Florida's public records law. The bill does not provide the same confidential and exempt language for the information collected on employees or volunteers of supervised visitation or supervised exchange programs. To the extent that supervised visitation and supervised exchange programs may be subject to Florida's constitutional and statutory public records requirements, the legislature may wish to explore whether they would need a similar public records exemption.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Children, Families, and Elder Affairs Committee on January 25, 2012:
The committee substitute:

- Amends the bill to require mental health professionals who supervise visitation to be licensed.

B. Amendments:

None.

[23] *Id.*
[24] *Id.*

946218

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment

Delete line 78
and insert:
refer the case to a local licensed mental health professional. Such

By Senator Wise

5-00157-12 2012370__

A bill to be entitled

An act relating to supervised visitation and exchange monitoring; creating s. 753.06, F.S.; adopting state standards for supervised visitation programs; providing for modification; requiring the standards to be published on the website of the Clearinghouse on Supervised Visitation; requiring each program to annually affirm compliance with the standards to the court; providing that after a specified date only those programs that adhere to the state standards may receive state funding; creating s. 753.07, F.S.; providing factors for the court or child-placing agency to consider when referring cases for supervised visitation or exchange monitoring; specifying training requirements for persons providing such services; authorizing supervised visitation programs to alert the court to problems with referred cases; creating s. 753.08, F.S.; requiring supervised visitation programs to conduct security background checks of employees and volunteers; providing requirements for such checks; requiring that an employer furnish a copy of the personnel record for the employee or former employee upon request; providing immunity to employers who provide information for purposes of a background check; requiring that all applicants hired or certified by a program after a specified date undergo a level 2 background screening; delegating responsibility for screening criminal history information and for costs; authorizing a supervised

5-00157-12 2012370__

visitation program to participate in the Volunteer and Employee Criminal History System in order to obtain criminal history information; providing that certain persons providing services at a supervised visitation program are presumed to act in good faith and are immune from civil or criminal liability; providing an effective date.

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

Section 1. Section 753.06, Florida Statutes, is created to read:

753.06 Standards; funding limitations.—

(1) The standards announced in the final report submitted to the Legislature pursuant to s. 753.03(4) shall be the basis for the state's standards for supervised visitation and exchange monitoring, and may be modified only by the advisory board created under s. 753.03(2) after reasonable notice to the programs, but not more often than annually. The clearinghouse shall publish the standards, as modified, on its website. The published standards shall be the state standards for supervised visitation programs.

(2) Each supervised visitation program must annually affirm in a written agreement with the court that it abides by the standards. If the program has a contract with a child-placing agency, that contract must include an affirmation that the program complies with the standards. A copy of the agreement or contract must be made available to any party upon request.

(3) On or after January 1, 2013, only a supervised

visitation program that has affirmed in a written agreement with the court that it abides by and is in compliance with the state standards may receive state funding for supervised visitation or exchange monitoring services.

Section 2. Section 753.07, Florida Statutes, is created to read:

753.07 Referrals.—

(1) Courts and referring child-placing agencies must adhere to the following priorities when determining where to refer cases for supervised visitation or exchange monitoring:

(a) For cases that are filed under chapter 61 or chapter 741 in which the courts are the primary source of referrals, the court shall direct referrals as follows:

1. The order must refer the parties to a supervised visitation program that has a written agreement with the court as provided in s. 753.06(2) if such a program exists in the community.

2. If a program does not exist, or if the existing program is not able to accept the referral for any reason, the court may refer the case to a local mental health professional. Such professional is not required to abide by the state standards established in s. 753.06; however, the professional must affirm to the court in writing that he or she has completed the clearinghouse's free, online supervised visitation training program and has read and understands the state standards.

(b) In cases governed by chapter 39, the referring child-placing agency must adhere to the following:

1. The agency that has primary responsibility for the case must ensure that each family is assessed for problems that could

present safety risks during parent-child contact. If risks are found, agency staff shall consider referring the parties to a local supervised visitation program that has affirmed in writing that it adheres to the state standards if such a program exists in the community.

2. If agency staff determines that there is no need for a supervised visitation, such program does not exist, or the existing program is unable to accept the referral for any reason, the child protective investigator or case manager who has primary responsibility for the case may:

a. Supervise the parent-child contact himself or herself. However, before a child protective investigator or case manager may supervise visits, he or she must review or receive training on the online training manual for the state's supervised visitation programs and affirm in writing to his or her own agency that he or she has received training on, or has reviewed and understands, the state standards.

b. Designate a foster parent or relative to supervise the parent-child visits in those cases that do not warrant the supervision of the child protective investigator or case manager. However, the designated foster parent or relative must first be apprised that the case manager conducted a safety assessment described in subparagraph 1., and must be provided access to free training material on the foster parent's or relative's role in supervised visitation. Such materials may be created by the clearinghouse using existing or new material and must be approved by the department. Such training may be included in any preservice foster parent training conducted by the agency.

3. If a program does not exist, or if the existing program is unable to accept the referral and the child protective investigator or case manager is unable to supervise the parent-child contact or designate a foster parent or relative to supervise the visits as described in subparagraph 2., the agency that has primary responsibility for the case may refer the case to other qualified staff within that agency to supervise the contact. However, before such staff member may supervise any visits, he or she must review or receive training on the online training manual for supervised visitation programs and affirm in writing to his or her own agency that he or she has received training on, or has reviewed and understands, the training manual and the state standards.

4. The agency that has primary responsibility for the case may not refer the case to a subcontractor or other agency to perform the supervised visitation unless that subcontractor's or other agency's child protective investigators or case managers who supervise onsite or offsite visits have reviewed or received training on the clearinghouse's online training manual for supervised visitation programs and affirm to their own agency that they have received training on, or have reviewed and understand, the training manual and the state standards.

(2) This section does not prohibit the court from allowing a litigant's relatives or friends to supervise visits if the court determines that such supervision is safe. However, such informal supervisors must be made aware of the free online clearinghouse materials that they may voluntarily choose to review. These materials must provide information that helps educate the informal supervisors about the inherent risks and

complicated dynamics of supervised visitation.

(3) Supervised visitation programs may alert the court in writing if there are problems with referred cases and the court may set a hearing to address these problems.

Section 3. Section 753.08, Florida Statutes, is created to read:

753.08 Security background checks; immunity.—

(1) Because of the special trust or responsibility placed on volunteers and employees of supervised visitation programs, such program must conduct a security background investigation before hiring an employee or certifying a volunteer.

(a) A security background investigation must include, but need not be limited to, employment history checks, reference checks, local criminal history records checks through local law enforcement agencies, and statewide criminal history records checks through the Department of Law Enforcement.

(b) Upon request, an employer shall furnish a copy of the personnel record for the employee or former employee who is the subject of a security background investigation. The information contained in the record may include, but need not be limited to, disciplinary matters and the reason the employee was terminated from employment, if applicable. An employer who releases a personnel record for purposes of a security background investigation is presumed to have acted in good faith and is not liable for information contained in the record without a showing that the employer maliciously falsified the record.

(c) All employees hired or volunteers certified on or after October 1, 2012, must undergo a state and national criminal history record check. Supervised visitation programs shall

contract with the department, the court administrator, or the clerk of court to conduct level 2 background checks under chapter 435. The cost for the fingerprint processing may be borne by the program or the person subject to the background check. The department, court administrator, or clerk of court shall screen the criminal history results to determine if an applicant meets the minimum requirements and is responsible for payment to the Department of Law Enforcement by invoice to the department, the court administrator, or the clerk of court or via payment from a credit card by the applicant or a vendor on behalf of the applicant. If the department, court administrator, or clerk of court is unable to conduct the background check, the supervised visitation program may participate in the Volunteer and Employee Criminal History System, as authorized by the National Child Protection Act of 1993 and s. 943.0542, to obtain criminal history information.

(d) The security background investigation must ensure that a person is not hired as an employee or certified as a volunteer if the person has an arrest awaiting final disposition for, has been convicted of, regardless of adjudication, has entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under s. 435.04(2).

(e) In analyzing and evaluating the information obtained in the security background investigation, the program must give particular emphasis to past activities involving children, including, but not limited to, child-related criminal offenses or child abuse. The program has sole discretion in determining whether to hire or certify a person based on his or her security

background investigation.

(2) Any person who is providing supervised visitation or exchange monitoring services through a supervised visitation program and who affirms to the court in writing that he or she abides by the state standards described in s. 753.06 is presumed, prima facie, to be acting in good faith and is immune from any liability, civil or criminal, which otherwise might be incurred or imposed with regard to the provision of such services.

Section 4. This act shall take effect October 1, 2012.

The Florida Senate

Committee Agenda Request

To: Senator Ronda Storms, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: January 15, 2012

I respectfully request that **Senate Bill #370**, relating to Supervised Visitation and Exchange Monitoring, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Stephen R. Wise
Florida Senate, District 5

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic SB 370 Supervised Visitation Bill Number 370 *(if applicable)*

Name Karen Oehme Amendment Barcode *(if applicable)*

Job Title Director, Institute for Family Violence Studies

Address C3406 University Center *Street* Phone 644-6303

Tallahassee *City* 32306-2570 *State Zip* E-mail KOehme@fsu.edu

Speaking: ☑ For ☐ Against ☑ Information

Representing

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	SB 1658
INTRODUCER:	Senator Storms
SUBJECT:	Public Assistance
DATE:	January 24, 2012
REVISED:	01/26/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill prohibits a recipient from using his or her electronic benefit transfer (EBT) card to access cash benefits outside this state, to purchase alcohol or tobacco products, or to access automated teller machines located in gambling and adult entertainment establishments. The bill also provides a list of establishments inside the state that a cash assistance recipient may not access cash benefits through an EBT card from an automated teller machine (ATM).

Additionally, the bill requires the Department of Children and Family Services (DCF or department) to add nonstaple, unhealthy foods to the list of items that may not be purchased with federal Supplemental Nutrition Assistance Program funds. The bill also prohibits the use of benefits at restaurants.

This bill amends sections 402.82 and 414.095, Florida Statutes.

II. Present Situation:

History of the Supplemental Nutrition Assistance Program

The idea of the federal government providing food subsidies to low-income families began as early as 1933 when the Roosevelt administration established the Federal Surplus Relief Corporation (FSRC) to "expand markets for agricultural products, and to purchase, store, and process surplus agricultural products so as to relieve the hardship and suffering caused by

unemployment."[1] In 1939, the United States Department of Agriculture (USDA) initiated an experimental food stamp program as a way to help low-income families buy healthy food.[2]

The Food Stamp Act of 1964 authorized a food stamp program to provide eligible households an opportunity to obtain a nutritionally adequate diet through the issuance of coupons.[3] The goal of the program is to "alleviate hunger and malnutrition . . . by increasing food purchasing power for all eligible households who apply for participation."[4] The Hunger Prevention Law of 1988 authorized pilot programs to test whether the use of benefit cards or other electronic benefit delivery systems could enhance the effectiveness of the food stamp program.[5] In 1996, federal law mandated that states implement electronic benefit transfer (EBT) systems by 2002.[6] The EBT system "allows a recipient to authorize transfer of their government benefits from a Federal account to a retailer account to pay for products received."[7] Food assistance benefits are deposited into a food assistance account each month and an EBT card, much like a bank card, is used to buy food.[8]

In 2008, the Food, Conservation, and Energy Act replaced the Food Stamp Act of 1977 and increased the commitment to Federal food assistance programs.[9] As of November 2011, the program serves over 40 million low-income individuals each month.[10] The bill also changed the name of the Federal food stamp program to the Supplemental Nutrition Assistance Program (SNAP), and changed the name of the Food Stamp Act to the Food and Nutrition Act of 2008.[11] According to the USDA, the new name reflects the department's focus on nutrition, putting health food within reach for low income households, and improvement in accessibility.[12] While states are permitted to name the program on their own, the federal government has encouraged states to change the name to SNAP, or another alternative name, as an opportunity to fight stigma and promote messages about healthy eating to consumers.[13] As of March 2011, 29 states had changed the name of their program to SNAP and eight states had changed the name of the program to an alternate name.[14] Seven states were still using the name Food Stamp Program.[15]

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[1] Dennis Roth, Social Science Analyst, *Food Stamps: 1932-1937: From Provisional to Pilot Programs to Permanent Policy*, http://www.nal.usda.gov/ric/ricpubs/foodstamps.htm (last visited Jan. 23, 2012).
[2] *Id*.; *see also* Food and Nutrition Serv., United States Dep't of Agriculture, *Supplemental Nutrition Assistance Program, A Short History of SNAP*, http://www.fns.usda.gov/snap/rules/Legislation/about.htm (last visited Jan. 23, 2012) [hereinafter *A Short History of SNAP*].
[3] Food and Nutrition Serv., United States Dep't of Agriculture, *Supplemental Nutrition Assistance Program, Legislative History*, http://www.fns.usda.gov/snap/rules/Legislation/history/PL_88-525.htm (last visited Jan. 23, 2012).
[4] Food Research and Action Ctr., *SNAP/Food Stamps*, http://frac.org/federal-foodnutrition-programs/snapfood-stamps/ (last visited Jan. 23, 2012) (as stated in the Food Stamp Act of 1977).
[5] *A Short History of SNAP, supra* note 2.
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] Food and Nutrition Serv., United States Dep't of Agriculture, *Supplemental Nutrition Assistance Program*, http://www.fns.usda.gov/snap/snap.htm (last visited Jan. 23, 2012).
[11] *A Short History of SNAP, supra* note 2
[12] Food and Nutrition Serv., *supra* note 10.
[13] *Id*.
[14] Supplemental Nutrition Assistance Program, United States Dep't of Agriculture, *From Food Stamps to SNAP: State Name Change Tracking Chart*, http://www.fns.usda.gov/snap/roll-out/state-chart.pdf (last visited Jan. 23, 2012).
[15] *Id*.

Food and Nutrition Act of 2008

The Food and Nutrition Act (act) defines "eligible food" as "any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption."[16] The term also includes seeds and plants to grow foods for personal consumption, as well as some additional exceptions to allow for hot food products ready for consumption in certain circumstances.[17] For example, eligible food products include:

- Breads and cereals;
- Fruits and vegetables;
- Meats, fish, and poultry;
- Dairy products; and
- Seeds and plants to grow and product food for the household to eat.[18]

Households may not use food assistance benefits to buy:

- Beer, wine, liquor, cigarettes, or tobacco;
- Pet food, soaps, paper products; or household supplies;
- Vitamins and other medicines;
- Food that will be eaten in the store; and
- Hot foods.[19]

Soft drinks, candy, cookies, crackers, ice cream, bakery cakes, and certain energy drinks are eligible for purchase with SNAP benefits under the current definition of "eligible foods."[20]

Since the definition of "eligible foods" is part of a federal act, in order to change the definition it would require federal legislation. Under current law, the Administrator of the Food and Nutrition Service (administrator) may grant a waiver to a state to deviate from specific regulatory provisions of the act. Waivers may only be granted in the following situations:

- The specific regulatory provision cannot be implemented due to extraordinary temporary situations;
- The Food and Nutrition Service (FNS) determines that the waiver would result in a more effective and efficient administration of the program; or
- Unique geographic or climatic conditions within a state preclude effective implementation of the specific regulatory provision and require an alternate procedure.[21]

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[16] 7 C.F.R. s. 271.2.
[17] *Id*.
[18] Food and Nutrition Serv., U.S. Dep't of Agriculture, *Supplemental Nutrition Assistance Program*, http://www.fns.usda.gov/snap/retailers/eligible.htm (last visited Jan. 26, 2012).
[19] *Id*.
[20] *Id*.
[21] 7 C.F.R. s. 272.3(c).

The administrator may not approve requests for waivers when the waiver would be inconsistent with the provisions of the act or the waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.[22]

In 2004, Minnesota submitted a request for a waiver of the definition of eligible foods in order to prohibit the purchase of candy and soft drinks with SNAP (at the time, they were still called food stamp) benefits. The request was denied because the act defines food in a certain manner and the proposed change to the definition of food would be in direct conflict with the statute.[23] Additional concerns related to the waiver included:

- A uniform food stamp program allows FNS and states to implement interoperability. Allowing conflicting definitions of eligible food items would introduce obstacles to continuing interoperability and would undermine the significant benefits that interoperability provides to program recipients;
- Approval of such a waiver could include the reintroduction of a stigma to participants and would perpetuate the myth that participants do not make wise purchasing decisions; and
- Administrative difficulties ranging from what penalties would be brought against retailers for noncompliance and what entity – the state or the USDA – would be responsible for monitoring compliance.[24]

While there is evidence that SNAP benefits may increase the availability of some nutrients in the home food supply, there is little research that addresses the effect of SNAP participation on nutrition-related health outcomes such as height and weight.[25]

According to the USDA, Congress has considered placing limits on the types of foods eligible for purchase with SNAP benefits in the past. However, Congress concluded that designating foods as "luxury or non-nutritious" would be administratively costly and burdensome.[26]

III. Effect of Proposed Changes:

This bill provides that the electronic benefit transfer system shall prevent a recipient from using the electronic benefit transfer (EBT) card to access cash benefits outside this state, to purchase alcohol or tobacco products, or to access automatic teller machines (ATMs) located in gambling and adult entertainment establishments. The bill does provide that it does not prohibit the use of an EBT card to access federal Supplemental Nutrition Assistance Program (SNAP) benefits in any manner authorized by federal law. Essentially, the intent of the bill is to prohibit the use of

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[22] *Id*.
[23] Correspondence from Ollice C. Holden, Regional Admin., Food and Nutrition Servs., U.S. Dep't of Agriculture, to Maria Gomez, Assistant Commissioner, Minnesota Dep't of Human Servs. (May 4, 2004) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[24] *Id*.
[25] Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Serv., U.S. Dep't of Agriculture, *Making America Stronger: A Profile of the Food Stamp Program*, 21 (Sept. 2005), *available at* http://www.fns.usda.gov/ora/menu/Published/snap/FILES/Other/FSPProfile.pdf (last visited Jan. 23, 2012).
[26] Food and Nutrition Serv., *supra* note 18. In 2007, the USDA issued a detailed report relating to the challenges of restricting the use of SNAP benefits. *See* U.S. Dep't of Agriculture, *Implications of Restricting the Use of Food Stamp Benefits* (Mar. 1, 2007), *available at* http://www.fns.usda.gov/ora/menu/Published/snap/FILES/ProgramOperations/FSPFoodRestrictions.pdf (last visited Jan. 26, 2012).

state dollars through the electronic benefit transfer system in certain circumstances, but that an individual may still be able to use federal SNAP funds under the same circumstances if allowed by federal law.

The bill requires the Department of Children and Family Services (DCF or department) to:

- Add nonstaple, unhealthy foods to the list of items that may not be purchased with federal SNAP funds.
- Prohibit the use of benefits at restaurants, including fast-food restaurants; and
- Use culturally sensitive campaigns to promote the modifications made pursuant to the bill, as well as the benefits of healthy and nutritious eating habits.

The bill specifies certain foods that are to be added to the list of items that may not be purchased with federal SNAP funds. These foods include:

- Foods containing trans fats;
- Sweetened beverages, including sodas;
- Jello;
- Candy;
- Ice cream;
- Pudding;
- Popsicles;
- Muffins;
- Sweet rolls;
- Cakes;
- Cupcakes;
- Pies;
- Cobblers;
- Pastries;
- Doughnuts;
- Corn-based salty snacks;
- Pretzels;
- Party mix;
- Popcorn; and
- Potato chips.

The department is authorized to collaborate with any public or nongovernmental organization that promotes the health and well-being of all residents of the state. The department is required to seek all necessary federal approvals to implement this bill.

Finally, the bill provides that a cash assistance recipient may not access cash benefits through an EBT card from an ATM in this state located in:

- An adult entertainment establishment;[27]
- A pari-mutuel facility;[28]
- A gaming facility authorized under a tribal-state gaming compact;
- A commercial bingo facility that is not an authorized bingo establishment;[29]
- A store or establishment in which the principal business is the sale of firearms; and
- A retail establishment licensed to sell malt, vinous, or spirituous liquors under the Beverage law.

The bill has an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill increases the list of foods that may not be purchased using federal Supplemental Nutrition Assistance Program (SNAP) funds. Accordingly, individuals would be required to use private funds to purchase the items listed in the bill.

C. Government Sector Impact:

According to the Department of Children and Family Services (DCF or department), the bill may have an impact on temporary cash assistance recipients regarding successful administration of the Relocation Assistance Program. Pursuant to rule, DCF currently authorizes temporary cash assistance benefits to continue for one month following the

[27] An "adult entertainment establishment" means an adult bookstore, adult theater, special cabaret, and unlicensed massage establishment. Section 847.001, F.S.
[28] A "pari-mutuel facility" is defined as a racetrack, fronton, or other facility used by a permitholder for the conduct of pari-mutuel wagering. Section 550.002(23), F.S.
[29] Section 849.0931, F.S., provides that charitable, nonprofit, or veteran's associations may conduct bingo games or instant bingo under certain conditions.

month of departure from the state if the recipient requests the extension.[30] This bill restricts the use of out-of-state access to cash benefits, which would require DCF to amend its rule.[31]

VI. Technical Deficiencies:

The bill directs the Department of Children and Family Services (DCF or department) to add nonstaple, unhealthy foods to the list of items that may not be purchased with federal SNAP funds. Although the bill provides a list of some items that are prohibited, the bill does not define "nonstaple, unhealthy foods," nor does it provide any guidelines for determining what is unhealthy. It is unclear how the department will determine what is or is not unhealthy for purposes of using SNAP funds.

According to DCF, the cash transaction set does not provide identification codes for business types other than financial institutions. Accordingly, there is currently no standardized or accurate way to gather merchant identification data based on the transaction set data that currently exists in the industry. Any data gathering is reliant on Third Party Processors and terminal operators to provide. The department recommends that effective exclusion of certain terminals would be best managed by the Third Party Processors.[32]

On line 34, the bill provides that the electronic benefit transfer system designed and implemented pursuant to this *chapter* shall prevent a recipient from using the electronic benefit transfer (EBT) card in certain locations. The electronic benefit transfer system is created in s. 402.82, F.S., so the bill may need to be amended to use the term "section" rather than "chapter."

VII. Related Issues:

In 2010, California – through executive order – restricted cash access with the EBT card at certain establishments. These establishments included:

- Bail bonds.
- Bingo halls.
- Cannabis shops.
- Cruise ships.
- Gun and ammunition stores.
- Liquor stores.
- Night clubs, saloons, and taverns.
- Psychic readers.
- Race tracks.
- Smoking shops.

[30] Rule 65A-4.220(6), F.A.C.
[31] Dep't of Children and Families, *Staff Analysis and Economic Impact, SB 1658* (Jan. 11, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[32] *Id*.

- Spa and massage salons.
- Tattoo and piercing shops.[33]

Throughout the process, the state learned:

- ATM blocking is an inexact process.
- Some locations that should be blocked will be missed.
- Some locations that have been blocked should be active.
- Blocking ATMs solely by category is impossible because all ATMs use the same Financial Institution Category Code.
- Intense effort for contractor and state to determine exact locations to be blocked.
- Monitoring is extremely difficult.
- Reactivations due to new processor occur frequently.
- Changes in location name.[34]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[33] *Id*.
[34] *Id*.

By Senator Storms

10-01432B-12 20121658__

A bill to be entitled

An act relating to public assistance; amending s. 402.82, F.S.; restricting the use of an electronic benefit transfer card to prohibit accessing cash from outside the state and purchasing certain products; expanding the list of items that may not be purchased with the federal Supplemental Nutrition Assistance Program funds; prohibiting the use of benefits in restaurants; directing the Department of Children and Family Services to promote the benefits of healthy and nutritious eating habits; requiring the department to seek federal authorization or waiver when necessary; amending s. 414.095, F.S.; revising the method of payment of temporary cash assistance to include an electronic benefit transfer card; prohibiting a cash assistance recipient from accessing cash benefits through an electronic benefit transfer card from an automatic teller machine located in certain locations; providing an effective date.

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

Section 1. Section 402.82, Florida Statutes, is amended to read:

402.82 Electronic benefit transfer program; federal Supplemental Nutrition Assistance Program.—

(1) The Department of Children and Family Services shall establish an electronic benefit transfer program for the dissemination of food assistance benefits and temporary cash

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assistance payments, including refugee cash assistance payments, asylum applicant payments, and child support disregard payments. Except to the extent prohibited by federal law, the electronic benefit transfer system designed and implemented pursuant to this chapter shall prevent a recipient from using the electronic benefit transfer card to access cash benefits outside this state, to purchase alcohol or tobacco products, or to access automatic teller machines located in gambling establishments and adult entertainment establishments. This section does not prohibit the use of an electronic benefit transfer card to access federal Supplemental Nutrition Assistance Program (SNAP) benefits in any manner authorized by federal law.

(2) If the Federal Government does not enact legislation or regulations providing for dissemination of supplemental security income by electronic benefit transfer, the state may include supplemental security income in the electronic benefit transfer program.

(3) ~~(2)~~ The department shall, in accordance with applicable federal laws and regulations, develop minimum program requirements and other policy initiatives for the electronic benefit transfer program.

(4) ~~(3)~~ The department shall enter into public-private contracts for all provisions of electronic transfer of public assistance benefits.

(5) The department shall, in accordance with applicable federal laws and regulations:

(a) Add to the list of items that may not be purchased with federal Supplemental Nutrition Assistance Program funds nonstaple, unhealthy foods. Such prohibited items include, but

are not limited to, foods containing trans fats; sweetened beverages, including sodas; sweets, such as jello, candy, ice cream, pudding, popsicles, muffins, sweet rolls, cakes, cupcakes, pies, cobblers, pastries, and doughnuts; and salty snack foods, such as corn-based salty snacks, pretzels, party mix, popcorn, and potato chips.

(b) Prohibit the use of benefits at restaurants, including fast-food restaurants.

(c) Use culturally sensitive campaigns to promote the modifications made pursuant to this section as well as the benefits of healthy and nutritious eating habits.

(6) For purposes of implementing this section, the department may collaborate with any public or nongovernmental organization that promotes the health and well-being of all residents of this state. The department shall seek all necessary federal approvals to implement this section, which may include a waiver of federal law from the United States Department of Agriculture.

Section 2. Paragraph (a) of subsection (13) of section 414.095, Florida Statutes, is amended to read:

414.095 Determining eligibility for temporary cash assistance.—

(13) METHODS OF PAYMENT OF TEMPORARY CASH ASSISTANCE.— Temporary cash assistance may be paid as follows:

(a) Direct payment through state warrant, electronic transfer of temporary cash assistance, electronic benefit transfer card, or voucher. A cash assistance recipient may not access cash benefits through an electronic benefit transfer card from automated teller machines in this state located in:

1. An adult entertainment establishment as defined in s. 847.001.

2. A pari-mutuel facility as defined in s. 550.002.

3. A gaming facility authorized under a tribal-state gaming compact under part II of chapter 285.

4. A commercial bingo facility that operates outside the provisions of s. 849.0931.

5. A store or establishment in which the principal business is the sale of firearms.

6. A retail establishment licensed to sell malt, vinous, or spirituous liquors under the Beverage Law.

Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic PUBLIC ASSISTANCE Bill Number 1658 *(if applicable)*

Name TODD STEIBLY Amendment Barcode *(if applicable)*

Job Title GOV'T CONSULTANT

Address 301 S. BRONOUGH ST. *Street* Phone 577-9090

TALLAHASSEE *City* FL *State* 32309 *Zip* E-mail tsteibly@gray-robinson.com

Speaking: ☐ For ☑ Against ☐ Information

Representing FL PETROLEUM MARKETERS & CONVENIENCE STORE ASSN

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic Sugar Bill Number 1658 *(if applicable)*

Name John Grant Amendment Barcode *(if applicable)*

Job Title Former Senator

Address 10025 Orange Grove Dr. *Street* Phone 813-787-9900

Tampa *City* FL *State* 33618 *Zip* E-mail john.grant6@jobbing.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Corn Refiners of America

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

Waive speaking pending subsequent amendment

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-25-12
Meeting Date

Topic Public Assistance
Bill Number 1658 *(if applicable)*

Name FELY CURVA
Amendment Barcode *(if applicable)*

Job Title Curva Associates LLC

Address 1212 Piedmont Dr.
Street

Phone (850) 508-2256

City *State* *Zip*

E-mail curva@mindspring.com

Speaking: ☐ For ☑ Against ☐ Information

Representing FL IMPACT

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic SNAP Benefits
Bill Number 1658 *(if applicable)*

Name Martha Kurth Harbin
Amendment Barcode *(if applicable)*

Job Title Executive Director

Address PO Box 4307
Street

Phone (850) 251-2803

Tallahassee FL 32315-4307
City *State* *Zip*

E-mail marthao@flabev.org

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Beverage Assoc

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic _____ Bill Number 1658 *(if applicable)*

Name Mark Anderson Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 121 N. Monroe St. Phone _____
Street

Tallahassee, FL 32301 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Corn Refiner's Association

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	CS/SB 1516
INTRODUCER:	Children, Families, and Elder Affairs Committee, Senator Negron, and others
SUBJECT:	Agency for Persons with Disabilities
DATE:	January 26, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	**Fav/CS**
2.			HR	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill makes significant changes to Florida law relating to the Agency for Persons with Disabilities (APD or agency). Specifically, the bill:

- Provides that it is the intent of the Legislature to prioritize state funds for those services needed to ensure the health and safety of individuals with disabilities, and that other services should be supported through natural supports and community resources, with the Medicaid waiver being the payor of last resort for home and community-based programs;
- Defines "adult day services," "nonwaiver resources," and "waiver"; amends the definition of "adult day training," "personal care services," and "support coordinator"; and deletes the definition of "domicile";
- Requires an individual to be a U.S. citizen or qualified noncitizen in order to receive services;
- Makes the authorization of certain services contingent on available funding;
- Provides that tier eligibility may not be made until a waiver slot and funding become available, and that assignment to a higher tier must be based on crisis criteria;
- Prohibits APD from authorizing a waiver service if that service can be covered by the Medicaid state plan;

- Removes the $150,000 per-client cap for total annual expenditures per year;
- Changes the definitions of tier two and three to include clients whose need for services meets the criteria of the tier above but which can be met within the expenditure of either tier two or three;
- Authorizes APD to collect fees, in addition to premiums or other cost sharing methods, from the parents of children being served by a waiver;
- Establishes a framework to evaluate waiver support coordinators;
- Provides flexibility to a client in determining the type, amount, frequency, duration, and scope of services if the agency determines such services meet the individual's health and safety needs;
- Provides a methodology for the determination of a client's iBudget allocation;
- Provides for an abbreviated inspection and review process if a facility has certain accreditation;
- Authorizes APD to execute a petition for involuntary admission to residential services;
- Authorizes APD to issue a final order at the conclusion of a Medicaid hearing conducted by the Department of Children and Family Services (DCF or department);
- Provides that the welfare of clients includes the establishment, maintenance, and operation of sheltered workshops that include client wages;
- Prohibits the premium, fee, or other cost sharing paid by a parent on behalf of a child under the age of 18 from exceeding the cost of waiver services to the client;
- Provides that a client may not be denied waiver services due to nonpayment by a parent, however, adoptive and foster parents are exempt from payment of any premiums, fees, or other cost-sharing; and
- Makes technical and conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 393.062, 393.063, 393.065, 393.066, 393.0661, 393.0662, 393.067, 393.068, 393.11, 393.125, 393.23, 409.906, and 514.072.

II. Present Situation:

In October 2004, the Developmental Disabilities Program separated from the Department of Children and Family Services (DCF or department) and became the Agency for Persons with Disabilities (APD or agency).[1] The agency was tasked with serving the needs of Floridians with developmental disabilities.[2] The primary purpose of APD is to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served by the agency, and provide assistance in identifying needs and funding to purchase supports and services.[3]

[1] Agency for Persons with Disabilities, *About Us*, http://apdcares.org/about/ (last visited Jan. 23, 2012).
[2] *Id*.
[3] Office of Program Policy Analysis & Gov't Accountability, The Florida Legislature, *Agency for Persons with Disabilities*, http://www.oppaga.state.fl.us/profiles/5060/ (last visited Jan. 23, 2012).

The agency provides services to individuals with developmental disabilities[4] through home and community-based settings, private intermediate care facilities, or state-run developmental services institutions. If an individual needs minimal or limited support, he or she may live in their own home, a family home, or a group home, all of which are considered "home and community-based settings." During fiscal year 2009-10, APD served over 53,000 individuals in the community.[5]

One of the primary goals of APD is to improve the quality of life of persons with disabilities by helping them live and work in the community, rather than being placed in an institution. Toward that end, APD administers the Home and Community-based Services waivers (HCBS waivers) system. This system offers 28 supports and services to assist individuals with developmental disabilities live in their community.[6] The system has four tiers, described below:

- Tier one is limited to individuals with intensive medical or adaptive needs and for whom services are essential to avoid institutionalization, or who posses exceptional behavioral problems. Tier one has a $150,000 per-client annual expenditure cap, unless the individual can show a documented medical necessity requiring intensive behavioral residential habilitation services, intensive behavioral residential habilitation services with medical needs, or special medical home care. Tier one is limited to persons with service needs that can't be met in any of the other tiers.
- Tier two is for individuals who have high-cost residential facility and residential habilitation service needs or supported living needs that are greater than six hours per day. Tier two has a $53,625 per-client annual expenditure cap.
- Tier three has a $34,125 per-client annual expenditure cap and is for individuals who require lower residential placements, independent or supported living situations, and persons who live in their family home.
- Tier four has a $14,422 per-client annual expenditure cap and is for individuals who were formerly enrolled in the Family and Supported Living Waiver. This tier funds 12 services.[7]

For Fiscal Year 2011-2012, APD was appropriated $1,009,499,581 by the Florida Legislature to operate the agency.[8] Out of that, $810 million – or approximately 80 percent – is budgeted for clients on the Medicaid HCBS waivers.[9] In October 2011, 29,641 individuals were served by the HCBS waivers.[10]

Historically, the agency has had problems keeping waiver spending in line with its appropriation. In Fiscal Year 2005-2006, APD was required to provide quarterly reports to the Executive Office

[4] Section 393.063(9), F.S., defines the term "developmental disability" as 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.
[5] Office of Program Policy Analysis & Gov't Accountability, *supra* note 3.
[6] Agency for Persons with Disabilities, *HCBS Waiver Services*, http://apd.myflorida.com/brochures/supports-and-services-brochure.pdf (last visited Jan. 23, 2012).
[7] Office of Program Policy Analysis & Gov't Accountability, *supra* note 3.
[8] *Id*.
[9] Agency for Persons with Disabilities, *2012 Bill Analysis, SB 1516* (Jan. 20, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[10] *Id*.

of the Governor, the chair of the Senate Ways and Means Committee, and the chair of the House Fiscal Council regarding the financial status of the HCBS waivers.[11] In a presentation on its 2009-2010 Legislative Budget Request, the agency reported "significant progress" in managing the waivers.[12] However, in March 2009, the agency requested $26 million to cover the remaining HCBS waivers deficit, and by February 2010, APD's budget recommendation included a request for $100 million to eliminate the projected deficit in the HCBS waivers.[13] The deficit reached nearly $169 million during the 2011 Regular Session,[14] and the agency is facing the same challenges in Fiscal Year 2011-2012, as the agency is projecting $930 million in community-based expenditures which is to be covered with only a $810 million legislative appropriation.[15]

In 2010, the Legislature directed APD to pursue the development and implement a comprehensive redesign of the HCBS waivers delivery system to combat deficit spending. Individual Budgeting, known as iBudget Florida, involves giving each waiver service recipient an annual budget that is based on legislative appropriation and factors that include an individual's abilities, disability, needs, and living situation.[16] The iBudget system will replace the tier structure. The state received federal approval to implement the iBudget system in March 2011, and implementation has begun in North Florida.[17]

III. Effect of Proposed Changes:

This bill makes significant changes to Florida law relating to the Agency for Persons with Disabilities (APD or agency). According to the agency, the changes proposed in this bill will:

> [A]ssist the agency in improving accountability, predicting cost and allocating [scarce] resources. . . The bill continues the evolvement of the basic waiver program structure, and emphasizes a more robust utilization of natural supports and community resources to augment waiver resources. The bill's strategic approach is to make the Medicaid waivers only one of the many strategies employed to address the needs of individuals with disabilities and the waiver as the funding of last resort.[18]

Specifically, the bill provides that it is the intent of the Legislature to prioritize state funds for those services needed to ensure the health and safety of individuals with disabilities, and that other services should be supported through natural supports and community resources. To accomplish this goal, the bill provides that the Medicaid waiver should be the payor of last resort for home and community-based programs.

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[11] Chapter 2005-70 and Chapter 2005-71, Laws of Fla. The next year, the Legislature codified the requirement in s. 393.0611(8), F.S.
[12] Budget Committee, The Florida Senate, *Bill Analysis and Fiscal Impact Statement SB 2148*, at 2 (April 1, 2011), *available at* http://www.flsenate.gov/Session/Bill/2011/2148/Analyses/YX4Y4hiD5jfSJG5bH97TJYAiHoA=%7C7/Public/Bills/2100-2199/2148/Analysis/2011s2148.bc.PDF (last visited Jan. 23, 2012).
[13] *Id*.
[14] *Id*.
[15] Agency for Persons with Disabilities, *supra* note 9.
[16] *Id*.
[17] *Id*.
[18] *Id*.

The bill defines:

- "Adult day services" as services that are provided in a nonresidential setting, separate from the home or facility in which the client resides, unless the client resides in a planned residential community as defined in s. 419.001(1); that are intended to support the participation of clients in daily, meaningful, and valued routines of the community; and that may provide social activities.
- "Nonwaiver resources" as supports or services obtainable through private insurance, the Medicaid state plan, nonprofit organizations, charitable donations from private businesses, other government programs, family, natural supports, community resources, and any other source other than a waiver.
- "Waiver" as a federally approved Medicaid waiver program, including, but not limited to, the Developmental Disabilities Home and Community-Based Services Waivers Tiers 1-4, the Developmental Disabilities Individual Budget Waiver, and the Consumer-Directed Care Plus Program, authorized pursuant to s. 409.906, F.S., and administered by the agency to provide home and community-based services to clients.

The bill also amends the definitions of "adult day training," "developmental disability," "personal care services," and "support coordinator." The bill deletes the definition of "domicile."

The bill limits eligibility for services to U.S. citizens and qualified noncitizens who meet the criteria provided in s. 414.095(3), F.S., and who have established domicile in Florida or are otherwise determined to be legal residents of this state.

The bill amends s. 393.066, F.S., to clearly delineate the agency's goal of providing community services in the most cost-effective manner, to the extent resources are specified in the General Appropriations Act, to avoid institutionalization. The bill revises the list of services allowed by adding adult day services, residential habilitation services, and support coordination. The bill removes from the list of services parent training, recreation, and social services. The bill requires APD to identify and engage in efforts to develop, increase, or enhance the availability of nonwaiver resources to individuals and to promote collaborative efforts with families and organizations. The bill deletes sections of current law relating to the development of day habilitation services.[19]

The bill specifies that tier eligibility may not be made until a waiver slot and funding becomes available. A client who is eligible for a higher tier may only move based on crisis criteria as adopted by rule. The bill authorizes the agency to move a client to a lower tier if the client's service needs change and can be met by services provided in a lower tier. Also, the bill provides that APD may not authorize services that are duplicated by, or above the coverage limits of, the Medicate state plan.

The bill amends the current tier structure. First, the bill removes the $150,000 per-client expenditure cap in tier one. The bill amends tier two to provide that it also includes clients whose needs for services meets the criteria for tier one but which can be met within the expenditure

[19] According to APD, deleting the language in subsection (5) of s. 393.066, F.S., is technical and conforming in nature. Agency for Persons with Disabilities, *supra* note 9.

limit of tier two. Tier three is also amended to provide that the tier includes clients whose needs for services meets the criteria for tier two but which can be met within the expenditure limit of tier three.

The bill authorizes APD to collect fees, in addition to premiums or other cost sharing, from the parents of children younger than 18 years of age being served by the agency through a waiver. The premium, fee, or other cost sharing may not exceed the cost of the services to the client, and for parents who have more than one child, the parent may not be required to pay more than the amount required for the child with the highest expenditures. The bill provides that a client may not be denied services due to nonpayment by a parent; however, adoptive and foster parents are exempt from payment of any premiums, fees, or other cost sharing.

The bill requires APD to review waiver support coordination performance to ensure that the support coordinator meets or exceeds the criteria established by the agency. Criteria for evaluating support coordinator performance include:

- The protection of the health and safety of clients.
- Assisting clients to obtain employment and pursue other meaningful activities.
- Assisting clients to access services that allow them to live in their community.
- The use of family resources.
- The use of private resources.
- The use of community resources.
- The use of charitable resources.
- The use of volunteer resources.
- The use of services from other governmental entities.
- The overall outcome in securing nonwaiver resources.
- The cost-effective use of waiver resources.
- Coordinating all available resources to ensure that clients' outcomes are met.

The agency is authorized to exempt a waiver support coordinator from annual quality assurance reviews if the coordinator consistently has superior performance, and the agency may sanction poor performance.

With respect to the iBudget, the bill provides that a client shall have the flexibility to determine the type, amount, frequency, duration, and scope of the services on his or her cost plan if the agency determines that such services meet his or her health and safety needs, meet the requirements contained in the Coverage and Limitations Handbook, and comply with the other requirements of s. 393.0662, F.S.

Further, the bill provides that during the 2011-2012 and 2012-2013 fiscal years, APD shall determine a client's iBudget by comparing the client's algorithm allocation to the client's existing annual cost plan and the amount for the client's extraordinary needs. A client's allocation is the amount determined by the algorithm, adjusted to APD's appropriation, and any necessary set-asides, such as funding for extraordinary needs. A client's extraordinary needs shall be the annualized sum of any of the following services authorized on the client's cost plan

in the amount, duration, frequency, intensity, and scope determined by the agency to be necessary for the client's health and safety:

- Behavior assessment, behavior analysis services, and behavior assistant services.
- Consumable medical supplies.
- Durable medical equipment.
- In-home support services.
- Nursing services.
- Occupational therapy assessment and occupational therapy.
- Personal care assistance.
- Physical therapy assessment and physical therapy.
- Residential habilitation.
- Respiratory therapy assessment and respiratory therapy.
- Special medical home care.
- Support coordination.
- Supported employment.
- Supported living coaching.

The bill does not reference a client's "significant needs" when determining a client's iBudget allocation, although current law provides that APD may approve an increase in the amount of money allocated based on a client having significant needs (see lines 912-972 of the bill). However, according to APD, both a client's significant needs and extraordinary needs will be considered when calculating a client's iBudget allocation.[20]

The way APD determines a client's initial iBudget allocation is if the client's algorithm allocation is:

- Greater than the client's cost plan, the client's iBudget is equal to the cost plan.
- Less than the client's cost plan but greater than the amount for the client's extraordinary needs, the client's iBudget is equal to the algorithm allocation.
- Less than the amount for the client's extraordinary needs, the client's iBudget is equal to the amount for the client's extraordinary needs.

The bill provides that a client's initial iBudget amount may not be less than 50 percent of that client's existing annualized cost plan. Increases to the client's initial iBudget amount may only be granted if his or her situation meets the crisis criteria.

The bill authorizes APD to inspect and review facilities or programs that have certain accreditation once every two years, rather than annually. Notwithstanding accreditation, APD may continue to monitor the facility or program with respect to:

- Ensuring that services for which the agency is paying are being provided;

[20] E-mail from Chris Coker, Legislative Affairs Director, Agency for Persons with Disabilities, to Senate professional staff of the Committee on Children, Families, and Elder Affairs (Jan. 24, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Investigating complaints, identifying problems that would affect the safety or viability of the facility or program, and monitoring the facility or program's compliance with any resulting negotiated terms and conditions;
- Ensuring compliance with federal and state laws, federal regulations, or state rules; and
- Ensuring Medicaid compliance with federal certification and precertification review requirements.

The bill amends s. 393.11, F.S., authorizing APD to execute a petition for involuntary admission to residential services. In cases of involuntary admission, the individual ("defendant" as changed by this bill) has a right to notice and a hearing. At the hearing, if the defendant's attorney or any other interested party believes that the person's presence at the hearing is not in the person's best interest, or good cause is otherwise shown, the court may order that the defendant be excluded from the hearing.

The bill provides that at the conclusion of the hearing related to Medicaid programs, the Department of Children and Family Services (DCF or department) shall submit its recommended order to APD and the agency shall issue the final order.

The bill provides that the welfare of clients includes the establishment, maintenance, and operation of sheltered workshops that include client wages.

Finally, the bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill spells out the Agency for Persons with Disabilities' (APD or agency) methodology for determining a client's iBudget allocation. The way APD determines a client's initial iBudget allocation is if the client's algorithm allocation is:

- Greater than the client's cost plan, the client's iBudget is equal to the cost plan.
- Less than the client's cost plan but greater than the amount for the client's extraordinary needs, the client's iBudget is equal to the algorithm allocation.
- Less than the amount for the client's extraordinary needs, the client's iBudget is equal to the amount for the client's extraordinary needs.

It appears that in certain situations, a client's iBudget allocation may be less than what they are receiving with their current cost plan.

C. Government Sector Impact:

According to APD, this bill is not expected to have a fiscal impact on the agency.

The bill amends s. 393.125, F.S., specifying that at the conclusion of a Medicaid hearing, the Department of Children and Family Services (DCF or department) shall submit a recommended order to APD, and the agency shall issue the final order. According to DCF, its Office of Appeals Hearings currently issues recommended orders in Medicaid waiver benefits cases. Accordingly, the bill does not appear to have a fiscal impact on DCF.[21]

VI. Technical Deficiencies:

Section 5 of the bill (starting on line 522) removes intent language that APD develop and implement a comprehensive redesign of the home and community-based services delivery system. Reference to the "redesign" is also deleted on line 533. These references are being deleted because the system redesign has already occurred. Accordingly, the Legislature may wish to amend the bill to remove "comprehensive redesign" from the catch-line of the statute.

On lines 1178-79, the bill authorizes APD to execute a petition for involuntary admission to residential services. In current law only a petitioning commission can execute the petition and the "name, age, and present address of the commissioners and their relationship to the person" must be listed in the petition (see lines 1184-1185). The bill does not require similar identifying information to be provided if the agency is the one executing the petition. According to APD, the agency and any agency witnesses are

[21] Dep't of Children and Families, *Staff Analysis and Economic Impact, SB 1516* (Jan. 10, 2012) (on file with the Senate Committee with Children, Families, and Elder Affairs).

easily identified and contacted.[22] However, it may still be beneficial to provide a requirement for the agency to list some contact information in the petition.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Children, Families, and Elder Affairs Committee on January 25, 2012:
The committee substitute:

- Adds the phrase "unless the client resides in a planned residential community as defined in s. 419.001(1)" to both the newly created definition of "adult day services" and to the current definition of "adult day training";
- Removes the prohibition of a client or support coordinator from applying for additional waiver funding unless the client is determined to be in crisis;
- Revises the list of available community services allowed as long as APD has the resources specified in the General Appropriations Act; and
- Reinstates current law relating to the rate structure for reimbursing a provider of services rendered to a persons with developmental disabilities pursuant to a waiver.

B. Amendments:

None.

[22] E-mail from Chris Coker, Legislative Affairs Director, Agency for Persons with Disabilities, to Senate professional staff of the Committee on Children, Families, and Elder Affairs (Jan. 24, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

874258

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment

Delete line 144
and insert:
in which the client resides, unless the client resides in a planned residential community as defined in s. 419.001(1); that are intended to support the

580344

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/26/2012	.	
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment

Delete line 150
and insert:
separate from the home or facility in which the client resides, unless the client resides in a planned residential community as defined in s. 419.001(1);

334848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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The Committee on Children, Families, and Elder Affairs (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 819 - 824
and insert:
agency cost containment initiatives.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 30 - 33
and insert:
support coordinator services; deleting

194354

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Latvala) recommended the following:

Senate Amendment

Delete lines 556 - 565

187182

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/26/2012	.	
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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Substitute for Amendment (194354)

Delete lines 556 - 565
and insert:
(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 in accordance to a uniform rate structure applied to all providers of Intensive Behavioral services regardless of licensure developed by the Agency for Health Care

187182

Administration, in consultation with the agency for Persons with Disabilities, and approved by the Federal Government in accordance with the waiver.

678590

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/26/2012	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Rich) recommended the following:

Senate Amendment

Delete lines 148 - 154

358166

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Substitute for Amendment (678590)

Delete lines 148 - 154
and insert:
(3) ~~(2)~~ "Adult day training" means training services that ~~which~~ take place in a nonresidential setting, separate from the home or facility in which the client resides, unless the client resides in a planned residential community as defined in s. 419.001(1)(d); 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.

568336

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Rich) recommended the following:

Senate Amendment (with title amendment)

Delete lines 451 - 474

and insert:

(3) Community~~-based~~ services that are medically necessary to prevent client institutionalization must be provided in the most cost-effective manner to the extent of the availability of agency resources as specified in the General Appropriations Act. These services may include:~~ shall, to the extent of available resources, include:~~

(a) Adult day training and adult day services.

(b) Family care services.

568336

(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 habilitation ~~facility~~ services.

(i) Respite services.

(j) Support coordination ~~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.

(re-number subsequent sections)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 16 - 17

and insert:

nonwaiver services; amending an express list of services; deleting a requirement that the agency

By Senator Negron

28-01022-12 20121516__

A bill to be entitled

An act relating to the Agency for Persons with Disabilities; amending s. 393.062, F.S.; providing additional legislative findings relating to the provision of services for individuals who have developmental disabilities; reordering and amending s. 393.063, F.S.; revising definitions and providing new definitions for "adult day services," "nonwaiver resources," and "waiver"; amending s. 393.065, F.S.; clarifying provisions relating to eligibility requirements based on citizenship and state residency; amending s. 393.066, F.S.; revising provisions relating to community services and treatment; requiring the agency to promote partnerships and collaborative efforts to enhance the availability of nonwaiver services; deleting an express list of services; deleting a requirement that the agency promote day habilitation services for certain clients; amending s. 393.0661, F.S.; revising provisions relating to eligibility under the Medicaid waiver redesign; providing that final tier eligibility be determined at the time a waiver slot and funding are available; providing criteria for moving a client between tiers; deleting a cap on tier one expenditures for certain clients; authorizing the agency and the Agency for Health Care Administration to adopt rules; deleting certain directions relating to the adjustment of a client's cost plan; providing criteria for reviewing Medicaid waiver provider agreements for

28-01022-12 20121516__

support coordinator services; providing that a client may not apply for additional funding if waiver expenditures are expected to exceed the amount appropriated unless the client is in crisis; deleting obsolete provisions; amending s. 393.0662, F.S.; providing criteria for calculating a client's initial iBudget; deleting obsolete provisions; amending s. 393.067, F.S.; providing that facilities that are accredited by certain organizations must be inspected and reviewed by the agency every 2 years; providing agency criteria for monitoring licensees; amending s. 393.068, F.S.; conforming a cross-reference; amending s. 393.11, F.S.; clarifying eligibility for involuntary admission to residential services; amending s. 393.125, F.S.; requiring the Department of Children and Family Services to submit its hearing recommendations to the agency; amending s. 393.23, F.S.; providing that receipts from the operation of canteens, vending machines, and other activities may be used to pay client wages at sheltered workshops; amending s. 409.906, F.S.; providing limitations on the amount of cost sharing which may be required of parents for home and community-based services provided to their minor children; authorizing the adoption of rules relating to cost sharing; amending s. 514.072, F.S.; conforming a cross-reference; deleting an obsolete provision; providing an effective date.

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

Section 1. Section 393.062, Florida Statutes, is amended to read:

393.062 Legislative findings and declaration of intent.—

(1) 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 therefore 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 should ~~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 to 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 individuals ~~all persons~~ with developmental disabilities who live in licensed community homes ~~shall~~ have a family living environment comparable to that of other state residents ~~Floridians~~ and that such homes must ~~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 who are unrelated to individuals with developmental disabilities receiving care ~~shall~~ be of good moral character.

(2) The Legislature finds that in order to maximize the delivery of services to individuals in the community who have developmental disabilities and remain within appropriated funds, service delivery must blend natural supports, community resources, and state funds. The Legislature also finds that, given the traditional role of state government to ensure the health, safety, and welfare of state residents, state funds, including waiver funds, appropriated to the agency must be reserved and prioritized for those services needed to ensure the health and safety of individuals with disabilities, and that supplemental programs and other services be supported through natural supports and community resources. To achieve this goal, the Legislature intends that the agency implement policies and procedures that establish the Medicaid waiver as the payor of last resort for home and community-based programs and services, and promote partnerships with community resources, including, but not limited to, families, volunteers, nonprofit agencies,

foundations, places of worship, schools, community organizations and clubs, businesses, local governments, and federal and state agencies to provide supplemental programs and services. Further, it is the intent of the Legislature that the agency develop sound fiscal strategies that allow the agency to predict, control, manage, and operate within available funding as provided in the General Appropriations Act in order to ensure that state funds are available for health and safety needs and to maximize the number of clients served. It is further the intent of the Legislature that the agency provide services for clients residing in developmental disability centers which promote the individual's life, health, and safety and enhance their quality of life. Finally, it is the intent of the Legislature that the agency continue the tradition of involving families, stakeholders, and other interested parties as it recasts its role to become a collaborative partner in the larger context of family and community-supported services while developing new opportunities and supports for individuals with developmental disabilities.

Section 2. Section 393.063, Florida Statutes, is reordered and amended to read:

393.063 Definitions.—As used in ~~For the purposes of~~ this chapter, the term:

(1) "Agency" means the Agency for Persons with Disabilities.

(2) "Adult day services" means services that are provided in a nonresidential setting, separate from the home or facility in which the client resides; that are intended to support the participation of clients in daily, meaningful, and valued

routines of the community; and that may provide social activities.

(3) ~~(2)~~ "Adult day training" means training services that are provided ~~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~~.

(4) ~~(3)~~ "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders and which has an ~~with~~ age of onset during infancy or childhood. Individuals who have ~~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.

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

(6) ~~(5)~~ "Client" means an individual ~~any person~~ determined eligible by the agency for services under this chapter.

(7) ~~(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.

(8) ~~(7)~~ "Comprehensive assessment" means the process used to determine eligibility for services under this chapter.

(9) ~~(8)~~ "Comprehensive transitional education program" means the program established under ~~in~~ s. 393.18.

(11) ~~(9)~~ "Developmental disability" means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, Down syndrome, 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 center" means a state-owned and state-operated facility, formerly known as a "Sunland Center," providing for the care, habilitation, and rehabilitation of clients who have ~~with~~ developmental disabilities.

(12) ~~(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 that ~~the~~ client or who 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) "Down syndrome" means a disorder caused by the

presence of an extra copy of chromosome 21.

(14) "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.

(15) "Family care program" means the program established under ~~in~~ s. 393.068.

(16) "Foster care facility" means a residential facility licensed under this chapter which provides a family living environment and includes ~~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.

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

(18) "Guardian advocate" means a person appointed by a written order of the court to represent an individual who has ~~a person with~~ developmental disabilities under s. 393.12.

(19) "Habilitation" means the process by which a client is assisted to acquire and maintain those life skills that ~~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.

(20) "High-risk child" means, for the purposes of this chapter, a child from 3 to 5 years of age who has ~~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, if ~~when~~ funds are specifically appropriated.

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

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

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

(22) "Medical/dental services" means medically necessary services that ~~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.

(23) "Nonwaiver resources" means supports or services obtainable through private insurance, the Medicaid state plan, nonprofit organizations, charitable donations from private

businesses, other government programs, family, natural supports, community resources, and any other source other than a waiver.

(24)~~(23)~~ "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 are essential, and that are provided in the amount, duration, frequency, intensity, and scope determined by the agency to be necessary for the client's health and safety ~~to the health, safety, and welfare of the client~~ when there is no one else available or able to perform those services.

(25)~~(24)~~ "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.

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

(27)~~(26)~~ "Resident" means an individual who has ~~any person with~~ developmental disabilities and who resides ~~residing~~ at a residential facility, whether or not such person is a client of the agency.

(28)~~(27)~~ "Residential facility" means a facility providing room and board and personal care for an individual who has ~~persons with~~ developmental disabilities.

(29)~~(28)~~ "Residential habilitation" means supervision and

training in ~~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.

(30) ~~(29)~~ "Residential habilitation center" means a community residential facility licensed under this chapter which provides habilitation services. The capacity of such ~~a~~ facility may ~~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.

(31) ~~(30)~~ "Respite service" means appropriate, short-term, temporary care that is provided to an individual who has ~~a person with~~ developmental disabilities in order to meet the planned or emergency needs of the individual ~~person~~ or the family or other direct service provider.

(32) ~~(31)~~ "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.

(33) ~~(32)~~ "Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifest ~~that manifests~~ before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of this definition, the term:

(a) "Significantly subaverage general intellectual functioning~~,~~" ~~for the purpose of this definition,~~ means performance that ~~which~~ is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

(b) "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.

(34) ~~(33)~~ "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.

(35)~~(34)~~ "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 those ~~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 who have ~~with~~ a developmental disability are treated equally.

(36)~~(35)~~ "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.

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

(38)~~(37)~~ "Support coordinator" means a person who is contracting with ~~designated by~~ the agency to assist clients ~~individuals~~ and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; locating or developing employment opportunities; coordinating the delivery of supports and services; advocating on behalf of the client ~~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 client ~~individual~~, family, and others who participated in the development of the support plan.

(39)~~(38)~~ "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.

(40)~~(39)~~ "Supported living" means a category of individually determined services designed and coordinated in ~~such~~ a manner that provides ~~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.

(41)~~(40)~~ "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.

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

(43) "Waiver" means a federally approved Medicaid waiver program, including, but not limited to, the Developmental Disabilities Home and Community-Based Services Waivers Tiers 1-4, the Developmental Disabilities Individual Budget Waiver, and the Consumer-Directed Care Plus Program, authorized pursuant to s. 409.906 and administered by the agency to provide home and community-based services to clients.

Section 3. Subsections (1) and (6) of section 393.065,

Florida Statutes, are amended to read:

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. If ~~When~~ necessary to definitively identify individual conditions or needs, the agency shall provide a comprehensive assessment. Eligibility is limited to United States citizens and to qualified noncitizens who meet the criteria provided in s. 414.095(3), and who have established domicile in Florida pursuant to s. 222.17 or are otherwise determined to be legal residents of this state. ~~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 if ~~in this process when~~ available.

(6) The client, the client's guardian, or the client's family must ensure that accurate, up-to-date contact information is provided to the agency at all times. The agency shall remove from the wait list an ~~any~~ individual who cannot be located using the contact information provided to the agency, fails to meet eligibility requirements, or no longer qualifies as a legal resident of this state ~~becomes domiciled outside the state~~.

Section 4. Section 393.066, Florida Statutes, is amended to read:

393.066 Community services and treatment.—

(1) The agency shall plan, develop, organize, and implement

its programs of services and treatment for individuals who have ~~persons with~~ developmental disabilities in order to assist them in living ~~allow clients to live~~ as independently as possible in their own homes or communities and avoid institutionalization ~~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 that are not available through nonwaiver resources or not donated ~~needed~~ shall be purchased instead of provided directly by the agency if~~, when~~ such arrangement is more cost-efficient than having those services provided directly. All purchased services must be approved by the agency. Authorization for such services is dependent on the availability of agency funding.

(3) Community-based services ~~that are medically~~ necessary to prevent client institutionalization must be provided in the most cost-effective manner to the extent of the availability of agency resources as specified in the General Appropriations Act ~~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 or the agency's agents shall identify and engage in efforts to develop, increase, or enhance the availability of nonwaiver resources to individuals who have developmental disabilities. The agency shall promote partnerships and collaborative efforts with families and organizations, such as nonprofit agencies, foundations, places of worship, schools, community organizations and clubs, businesses, local governments, and state and federal agencies. The agency shall implement policies and procedures that establish waivers as the payor of last resort for home and community-based services and supports ~~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 center. 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.~~

(5) ~~(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.

(6) ~~(7)~~ For the purpose of making needed community-based residential facilities available at the least possible cost to the state, the agency may ~~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.

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

Section 5. Section 393.0661, Florida Statutes, is amended

to read:

393.0661 Home and community-based services delivery system; comprehensive redesign.—The Legislature finds that the home and community-based services delivery system for individuals who have ~~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 must ~~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, and a ~~redefined~~ role for support coordinators which ~~that~~ avoids conflicts of interest and ensures that the client's needs for critical services are addressed ~~potential conflicts of interest and ensures that family/client budgets are linked to levels of need~~.

(a) The agency shall use the Questionnaire for Situational Information, or other ~~an~~ assessment instruments deemed by ~~instrument that~~ the agency ~~deems~~ to be reliable and valid~~, including, but not limited to, the Department of Children and Family Services' Individual Cost Guidelines or the agency's Questionnaire for Situational Information~~. 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 clients ~~persons with developmental disabilities~~ pursuant to a ~~federally approved~~ waiver shall be reimbursed in accordance with rates adopted ~~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) The Agency for Health Care Administration, in consultation with the agency, shall seek federal approval and implement a four-tiered waiver system to serve eligible clients ~~through the developmental disabilities and family and supported living waivers~~. For the purpose of the ~~this~~ waiver program, eligible clients ~~shall~~ include individuals who have ~~with a diagnosis of Down syndrome or~~ a developmental disability ~~as defined in s. 393.063~~. The agency shall assign all clients receiving services through the ~~developmental disabilities~~ waiver to a tier based on the ~~Department of Children and Family Services' Individual Cost Guidelines, the~~ agency's Questionnaire for Situational Information, or another such assessment instrument deemed ~~to be~~ valid and reliable by the agency; client characteristics, including, but not limited to, age; and other appropriate assessment methods. Final determination of tier

eligibility may not be made until a waiver slot and funding become available and only then may the client be enrolled in the appropriate tier. If a client is later determined eligible for a higher tier, assignment to the higher tier must be based on crisis criteria as adopted by rule. The agency may also later move a client to a lower tier if the client's service needs change and can be met by services provided in a lower tier. The agency may not authorize the provision of services that are duplicated by, or above the coverage limits of, the Medicaid state plan.

(a) Tier one is limited to clients who have intensive medical or adaptive service needs that cannot be met in tier two, three, or four ~~for intensive medical or adaptive needs and that are essential for avoiding institutionalization~~, or who possess behavioral problems that are exceptional in intensity, duration, or frequency and present a substantial risk of harm to themselves or others. ~~Total annual expenditures under tier one may not exceed $150,000 per client each year, provided that expenditures for clients in tier one with a documented medical necessity requiring intensive behavioral residential habilitation services, intensive behavioral residential habilitation services with medical needs, or special medical home care, as provided in the Developmental Disabilities Waiver Services Coverage and Limitations Handbook, are not subject to the $150,000 limit on annual expenditures.~~

(b) Tier two is limited to clients whose service needs include a licensed residential facility and who are authorized to receive a moderate level of support for standard residential habilitation services or a minimal level of support for behavior

focus residential habilitation services, or clients in supported living who receive more than 6 hours a day of in-home support services. Tier two also includes clients whose need for authorized services meets the criteria for tier one but which can be met within the expenditure limit of tier two. Total annual expenditures under tier two may not exceed $53,625 per client each year.

(c) Tier three includes, but is not limited to, clients requiring residential placements, clients in independent or supported living situations, and clients who live in their family home. Tier three also includes clients whose need for authorized services meet the criteria for tiers one or two but which can be met within the expenditure limit of tier three. Total annual expenditures under tier three may not exceed $34,125 per client each year.

(d) Tier four includes clients ~~individuals~~ who were enrolled in the family and supported living waiver on July 1, 2007, who were ~~shall be~~ assigned to this tier without the assessments required by this section. Tier four also includes, but is not limited to, clients in independent or supported living situations and clients who live in their family home. Total annual expenditures under tier four may not exceed $14,422 per client each year.

(e) The Agency for Health Care Administration shall also seek federal approval to provide a consumer-directed option for clients ~~persons with developmental disabilities which corresponds to the funding levels in each of the waiver tiers~~. ~~The agency shall implement the four-tiered waiver system beginning with tiers one, three, and four and followed by tier~~

~~two. The agency and the Agency for Health Care Administration may adopt rules necessary to administer this subsection.~~

(f) The agency shall seek federal waivers and amend contracts as necessary to make changes to services defined in ~~federal~~ waiver programs administered by the agency as follows:

1. Supported living coaching services may not exceed 20 hours per month for clients ~~persons~~ who also receive in-home support services.

2. Limited support coordination services is the only type of support coordination service that may be provided to clients ~~persons~~ under the age of 18 who live in the family home.

3. Personal care assistance services are limited to 180 hours per calendar month and may not include rate modifiers. Additional hours may be authorized for clients ~~persons~~ who have intensive physical, medical, or adaptive needs if such hours are essential for avoiding institutionalization.

4. Residential habilitation services are limited to 8 hours per day. Additional hours may be authorized for clients ~~persons~~ who have intensive medical or adaptive needs and if such hours are essential for avoiding institutionalization, or for clients ~~persons~~ who possess behavioral problems that are exceptional in intensity, duration, or frequency and present a substantial risk of harming themselves or others. This restriction shall be in effect until the four-tiered waiver system is fully implemented.

~~5. Chore services, nonresidential support services, and homemaker services are eliminated. The agency shall expand the definition of in-home support services to allow the service provider to include activities previously provided in these eliminated services.~~

~~6. Massage therapy, medication review, and psychological assessment services are eliminated.~~

5.~~7.~~ The agency shall conduct supplemental cost plan reviews to verify the medical necessity of authorized services for plans that have increased by more than 8 percent during either of the 2 preceding fiscal years.

6.~~8.~~ The agency shall implement a consolidated residential habilitation rate structure to increase savings to the state through a more cost-effective payment method and establish uniform rates for intensive behavioral residential habilitation services.

~~9. Pending federal approval, the agency may extend current support plans for clients receiving services under Medicaid waivers for 1 year beginning July 1, 2007, or from the date approved, whichever is later. Clients who have a substantial change in circumstances which threatens their health and safety may be reassessed during this year in order to determine the necessity for a change in their support plan.~~

7.~~10.~~ The agency shall develop a plan to eliminate redundancies and duplications between in-home support services, companion services, personal care services, and supported living coaching by limiting or consolidating such services.

8.~~11.~~ The agency shall develop a plan to reduce the intensity and frequency of supported employment services to clients in stable employment situations who have a documented history of at least 3 years' employment with the same company or in the same industry.

(g) The agency and the Agency for Health Care Administration may adopt rules as necessary to administer this

subsection.

(4) The geographic differential for Miami-Dade, Broward, and Palm Beach Counties for residential habilitation services is ~~shall be~~ 7.5 percent.

(5) The geographic differential for Monroe County for residential habilitation services is ~~shall be~~ 20 percent.

~~(6) Effective January 1, 2010, and except as otherwise provided in this section, a client served by the home and community-based services waiver or the family and supported living waiver funded through the agency shall have his or her cost plan adjusted to reflect the amount of expenditures for the previous state fiscal year plus 5 percent if such amount is less than the client's existing cost plan. The agency shall use actual paid claims for services provided during the previous fiscal year that are submitted by October 31 to calculate the revised cost plan amount. If the client was not served for the entire previous state fiscal year or there was any single change in the cost plan amount of more than 5 percent during the previous state fiscal year, the agency shall set the cost plan amount at an estimated annualized expenditure amount plus 5 percent. The agency shall estimate the annualized expenditure amount by calculating the average of monthly expenditures, beginning in the fourth month after the client enrolled, interrupted services are resumed, or the cost plan was changed by more than 5 percent and ending on August 31, 2009, and multiplying the average by 12. In order to determine whether a client was not served for the entire year, the agency shall include any interruption of a waiver-funded service or services lasting at least 18 days. If at least 3 months of actual~~

~~expenditure data are not available to estimate annualized expenditures, the agency may not rebase a cost plan pursuant to this subsection. The agency may not rebase the cost plan of any client who experiences a significant change in recipient condition or circumstance which results in a change of more than 5 percent to his or her cost plan between July 1 and the date that a rebased cost plan would take effect pursuant to this subsection.~~

(6) ~~(7)~~ The agency shall collect premiums, fees, or other cost sharing from the parents of children being served by the agency through a waiver pursuant to s. 409.906(13)(d).

(7) In determining whether to continue a Medicaid waiver provider agreement for support coordinator services, the agency shall review waiver support coordination performance to ensure that the support coordinator meets or exceeds the criteria established by the agency. The support coordinator is responsible for assisting the client in meeting his or her service needs through nonwaiver resources, as well as through the client's budget allocation or cost plan under the waiver. The waiver is the funding source of last resort for client services. The waiver support coordinator provider agreements and performance reviews shall be conducted and managed by the agency's area offices.

(a) Criteria for evaluating support coordinator performance must include, but is not limited to:

1. The protection of the health and safety of clients.

2. Assisting clients to obtain employment and pursue other meaningful activities.

3. Assisting clients to access services that allow them to

live in their community.

4. The use of family resources.

5. The use of private resources.

6. The use of community resources.

7. The use of charitable resources.

8. The use of volunteer resources.

9. The use of services from other governmental entities.

10. The overall outcome in securing nonwaiver resources.

11. The cost-effective use of waiver resources.

12. Coordinating all available resources to ensure that clients' outcomes are met.

(b) The agency may recognize consistently superior performance by exempting a waiver support coordinator from annual quality assurance reviews or other mechanisms established by the agency. The agency may issue sanctions for poor performance, including, but not limited to, a reduction in caseload size, recoupment or other financial penalties, and termination of the waiver support coordinator's provider agreement. The agency may adopt rules to administer this subsection.

(8) This section or related rule does not 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 in the General Appropriations Act.

(9) The agency ~~for Persons with Disabilities~~ shall submit

quarterly status reports to the Executive Office of the Governor and~~,~~ the chairs of the legislative appropriations committees ~~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 waiver ~~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, including ~~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 are not ~~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 (8) to the Executive Office of the Governor and the chairs of the legislative appropriations committees~~, the chair of the 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. The agency shall work with the Agency for Health Care Administration to implement the plan so as to remain within the appropriation.

(10) Implementation of ~~Medicaid~~ waiver programs and services authorized under this chapter is limited by the funds appropriated for the individual budgets pursuant to s. 393.0662 and the four-tiered waiver system pursuant to subsection (3). Contracts with independent support coordinators and service providers must include provisions requiring compliance with agency cost containment initiatives. Unless a client is determined to be in crisis based on criteria adopted by rule, neither the client nor the support coordinator may apply for additional waiver funding if the agency has determined pursuant to s. 393.0661(9) that the total cost of waiver services for agency clients is expected to exceed the amount appropriated. The agency shall implement monitoring and accounting procedures necessary to track actual expenditures and project future spending compared to available appropriations for Medicaid waiver programs. If ~~When~~ necessary, based on projected deficits, the agency shall ~~must~~ establish specific corrective action plans that incorporate corrective actions for ~~of~~ contracted providers which ~~that~~ are sufficient to align program expenditures with annual appropriations. If deficits continue during the 2012-2013 fiscal year, the agency in conjunction with the Agency for Health Care Administration shall develop a plan to redesign the waiver program and submit the plan to the President of the Senate and the Speaker of the House of Representatives by September 30, 2013. At a minimum, the plan must include the following elements:

(a) *Budget predictability.*—Agency budget recommendations must include specific steps to restrict spending to budgeted amounts based on alternatives to the iBudget and four-tiered

~~Medicaid~~ waiver models.

(b) *Services.*—The agency shall identify core services that are essential to provide for client health and safety and recommend the elimination of coverage for other services that are not affordable based on available resources.

(c) *Flexibility.*—The redesign must ~~shall~~ be responsive to individual needs and to the extent possible encourage client control over allocated resources for their needs.

(d) *Support coordination services.*—The plan must ~~shall~~ modify the manner of providing support coordination services to improve management of service utilization and increase accountability and responsiveness to agency priorities.

(e) *Reporting.*—The agency shall provide monthly reports to the President of the Senate and the Speaker of the House of Representatives on plan progress and development on July 31, 2013, and August 31, 2013.

(f) *Implementation.*—The implementation of a redesigned program is subject to legislative approval and must ~~shall~~ occur by ~~no later than~~ July 1, 2014. The Agency for Health Care Administration shall seek federal waivers as needed to implement the redesigned plan approved by the Legislature.

Section 6. Section 393.0662, Florida Statutes, is amended to read:

393.0662 Individual budgets for delivery of home and community-based services; iBudget system established.—The Legislature finds that improved financial management of the existing home and community-based ~~Medicaid~~ waiver program is necessary to avoid deficits that impede the provision of services to individuals who are on the waiting list for

enrollment in the program. The Legislature further finds that clients and their families should have greater flexibility to choose the services that best allow them to live in their community within the limits of an established budget. Therefore, the Legislature intends that the agency, in consultation with the Agency for Health Care Administration, develop and implement a comprehensive redesign of the service delivery system using individual budgets as the basis for allocating the funds appropriated for the ~~home and community-based services Medicaid~~ waiver program among eligible enrolled clients. The service delivery system that uses individual budgets shall be called the iBudget system.

(1) The agency shall establish an individual budget, to be referred to as an iBudget, for each client ~~individual~~ served by the home and community-based services ~~Medicaid~~ waiver program. The funds appropriated to the agency shall be allocated through the iBudget system to eligible, Medicaid-enrolled clients who have~~. For the iBudget system, Eligible clients shall include individuals with a diagnosis of Down syndrome or~~ a developmental disability ~~as defined in s. 393.063~~. The iBudget system shall be designed to provide ~~for:~~ enhanced client choice within a specified service package; appropriate assessment strategies; an efficient consumer budgeting and billing process that includes reconciliation and monitoring components; a redefined role for support coordinators which ~~that~~ avoids potential conflicts of interest; a flexible and streamlined service review process; and a methodology and process that ensures the equitable allocation of available funds to each client based on the client's level of need, as determined by the variables in the allocation

algorithm.

(2)~~(a)~~ In developing each client's iBudget, the agency shall use an allocation algorithm and methodology.

(a) The algorithm shall use variables that have been determined by the agency to have a statistically validated relationship to the client's level of need for services provided through the ~~home and community-based services Medicaid~~ waiver program. The algorithm ~~and methodology~~ may consider individual characteristics, including, but not limited to, a client's age and living situation, information from a formal assessment instrument that the agency determines is valid and reliable, and information from other assessment processes.

(b) The allocation methodology shall provide the algorithm that determines the amount of funds allocated to a client's iBudget. The agency may approve an increase in the amount ~~of funds~~ allocated~~, as determined~~ by the algorithm, based on the client having one or more of the following needs that cannot be accommodated within the ~~funding as determined by the~~ algorithm allocation and having no other resources, supports, or services available to meet such needs ~~the need~~:

1. An extraordinary need that would place the health and safety of the client, the client's caregiver, or the public in immediate, serious jeopardy unless the increase is approved. An extraordinary need may include, but is not limited to:

a. A documented history of significant, potentially life-threatening behaviors, such as recent attempts at suicide, arson, nonconsensual sexual behavior, or self-injurious behavior requiring medical attention;

b. A complex medical condition that requires active

intervention by a licensed nurse on an ongoing basis that cannot be taught or delegated to a nonlicensed person;

c. A chronic comorbid condition. As used in this subparagraph, the term "comorbid condition" means a medical condition existing simultaneously but independently with another medical condition in a patient; or

d. A need for total physical assistance with activities such as eating, bathing, toileting, grooming, and personal hygiene.

However, the presence of an extraordinary need alone does not warrant an increase in the amount of funds allocated to a client's iBudget as determined by the algorithm.

2. A significant need for one-time or temporary support or services that, if not provided, would place the health and safety of the client, the client's caregiver, or the public in serious jeopardy, unless the increase is approved. A significant need may include, but is not limited to, the provision of environmental modifications, durable medical equipment, services to address the temporary loss of support from a caregiver, or special services or treatment for a serious temporary condition when the service or treatment is expected to ameliorate the underlying condition. As used in this subparagraph, the term "temporary" means less ~~a period of fewer~~ than 12 continuous months. However, the presence of such significant need for one-time or temporary supports or services alone does not warrant an increase in the amount of funds allocated to a client's iBudget as determined by the algorithm.

3. A significant increase in the need for services after

the beginning of the service plan year which ~~that~~ would place the health and safety of the client, the client's caregiver, or the public in serious jeopardy because of substantial changes in the client's circumstances, including, but not limited to, permanent or long-term loss or incapacity of a caregiver, loss of services authorized under the state Medicaid plan due to a change in age, or a significant change in medical or functional status which requires the provision of additional services on a permanent or long-term basis which ~~that~~ cannot be accommodated within the client's current iBudget. As used in this subparagraph, the term "long-term" means ~~a period of~~ 12 or more continuous months. However, such significant increase in need for services of a permanent or long-term nature alone does not warrant an increase in the amount of funds allocated to a client's iBudget as determined by the algorithm.

The agency shall reserve portions of the appropriation for the ~~home and community-based services Medicaid~~ waiver program for adjustments required pursuant to this paragraph and may use the services of an independent actuary in determining the amount of the portions to be reserved.

(c) A client's iBudget shall be the total of the amount determined by the algorithm and any additional funding provided pursuant to paragraph (b).

(d) A client shall have the flexibility to determine the type, amount, frequency, duration, and scope of the services on his or her cost plan if the agency determines that such services meet his or her health and safety needs, meet the requirements contained in the Coverage and Limitations Handbook for each

service included on the cost plan, and comply with the other requirements of this section.

(e) A client's annual expenditures for ~~home and community-based services Medicaid~~ waiver services may not exceed the limits of his or her iBudget. The total of all clients' projected annual iBudget expenditures may not exceed the agency's appropriation for waiver services.

(3) ~~(2)~~ The Agency for Health Care Administration, in consultation with the agency, shall seek federal approval to amend current waivers, request a new waiver, and amend contracts as necessary to implement the iBudget system to serve eligible, enrolled clients through the home and community-based services ~~Medicaid~~ waiver program and the Consumer-Directed Care Plus Program.

(4) ~~(3)~~ The agency shall transition all eligible, enrolled clients to the iBudget system. The agency may gradually phase in the iBudget system.

(a) During the 2011-2012 and 2012-2013 fiscal years, the agency shall determine a client's initial iBudget by comparing the client's algorithm allocation to the client's existing annual cost plan and the amount for the client's extraordinary needs. The client's algorithm allocation shall be the amount determined by the algorithm, adjusted to the agency's appropriation and any set-asides determined necessary by the agency, including, but not limited to, funding for extraordinary needs. The amount for the client's extraordinary needs shall be the annualized sum of any of the following services authorized on the client's cost plan in the amount, duration, frequency, intensity, and scope determined by the agency to be necessary

for the client's health and safety:

1. Behavior assessment, behavior analysis services, and behavior assistant services.

2. Consumable medical supplies.

3. Durable medical equipment.

4. In-home support services.

5. Nursing services.

6. Occupational therapy assessment and occupational therapy.

7. Personal care assistance.

8. Physical therapy assessment and physical therapy.

9. Residential habilitation.

10. Respiratory therapy assessment and respiratory therapy.

11. Special medical home care.

12. Support coordination.

13. Supported employment.

14. Supported living coaching.

(b) If the client's algorithm allocation is:

1. Greater than the client's cost plan, the client's initial iBudget is equal to the cost plan.

2. Less than the client's cost plan but greater than the amount for the client's extraordinary needs, the client's initial iBudget is equal to the algorithm allocation.

3. Less than the amount for the client's extraordinary needs, the client's initial iBudget is equal to the amount for the client's extraordinary needs.

However, the client's initial annualized iBudget amount may not be less than 50 percent of that client's existing annualized

cost plan.

(c) During the 2011-2012 and 2012-2013 fiscal years, increases to a client's initial iBudget amount may be granted only if his or her situation meets the crisis criteria provided under agency rule.

(d) ~~(a)~~ While the agency phases in the iBudget system, the agency may continue to serve eligible, enrolled clients under the four-tiered waiver system established under s. 393.065 while those clients await transitioning to the iBudget system.

~~(b) The agency shall design the phase in process to ensure that a client does not experience more than one half of any expected overall increase or decrease to his or her existing annualized cost plan during the first year that the client is provided an iBudget due solely to the transition to the iBudget system.~~

(5) ~~(4)~~ A client must use all available nonwaiver services ~~authorized under the state Medicaid plan, school-based services, private insurance and other benefits, and any other resources~~ that may be available to the client before using funds from his or her iBudget to pay for support and services.

(6) ~~(5)~~ The service limitations in s. 393.0661(3)(f)1., 2., and 3. do not apply to the iBudget system.

(7) ~~(6)~~ Rates for any or all services established under rules of the Agency for Health Care Administration must ~~shall~~ be designated as the maximum rather than a fixed amount for clients ~~individuals~~ who receive an iBudget, except for services specifically identified in those rules that the agency determines are not appropriate for negotiation, which may include, but are not limited to, residential habilitation

services.

(8) ~~(7)~~ The agency must ~~shall~~ ensure that clients and caregivers have access to training and education that informs ~~to inform~~ them about the iBudget system and enhances ~~enhance~~ their ability for self-direction. Such training must be provided ~~shall be offered~~ in a variety of formats and, at a minimum, must ~~shall~~ address the policies and processes of the iBudget system; the roles and responsibilities of consumers, caregivers, waiver support coordinators, providers, and the agency; information that is available to help the client make decisions regarding the iBudget system; and examples of nonwaiver ~~support and~~ resources that may be available in the community.

(9) ~~(8)~~ The agency shall collect data to evaluate the implementation and outcomes of the iBudget system.

(10) ~~(9)~~ The agency and the Agency for Health Care Administration may adopt rules specifying the allocation algorithm and methodology; criteria and processes that allow ~~for~~ clients to access reserved funds for extraordinary needs, temporarily or permanently changed needs, and one-time needs; and processes and requirements for the selection and review of services, development of support and cost plans, and management of the iBudget system as needed to administer this section.

Section 7. Subsection (2) of section 393.067, Florida Statutes, is amended to read:

393.067 Facility licensure.—

(2) The agency shall conduct annual inspections and reviews of facilities and programs licensed under this section unless the facility or program is currently accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation

Facilities, or the Council on Accreditation. Facilities or programs that are operating under such accreditation must be inspected and reviewed by the agency once every 2 years. If, upon inspection and review, the services and service delivery sites are not those for which the facility or program is accredited, the facilities and programs must be inspected and reviewed in accordance with this section and related rules adopted by the agency. Notwithstanding current accreditation, the agency may continue to monitor the facility or program as necessary with respect to:

(a) Ensuring that services for which the agency is paying are being provided.

(b) Investigating complaints, identifying problems that would affect the safety or viability of the facility or program, and monitoring the facility or program's compliance with any resulting negotiated terms and conditions, including provisions relating to consent decrees which are unique to a specific service and are not statements of general applicability.

(c) Ensuring compliance with federal and state laws, federal regulations, or state rules if such monitoring does not duplicate the accrediting organization's review pursuant to accreditation standards.

(d) Ensuring Medicaid compliance with federal certification and precertification review requirements.

Section 8. Subsections (2) and (4) of section 393.068, Florida Statutes, are amended to read:

393.068 Family care program.—

(2) Services and support authorized under the family care program shall, to the extent of available resources, include the

services listed under s. 393.0662(4) ~~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 client ~~individual~~.

(4) All existing nonwaiver ~~community~~ resources available to the client must be used ~~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 may ~~is authorized to~~ accept gifts and grants in order to carry out the program.

Section 9. Subsections (1) through (3), paragraph (b) of subsection (4), paragraphs (f) and (g) of subsection (5), subsection (6), paragraphs (d) and (e) of subsection (7), and paragraph (b) of subsection (12) of section 393.11, Florida

Statutes, are amended to read:

393.11 Involuntary admission to residential services.—

(1) JURISDICTION.—If ~~When~~ a person is determined to be eligible to receive services from the agency ~~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 for ~~that~~ the person to ~~may~~ receive the care, treatment, habilitation, and rehabilitation that he or she ~~which the person~~ needs. For the purpose of identifying mental retardation or autism, diagnostic capability shall be established by the agency. Except as otherwise specified, the proceedings under this section are ~~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 or the agency.

(b) The petitioning commission shall consist of three persons. One of whom ~~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 who is the subject of the petition ~~with mental retardation or autism~~;

2. State the name, age, county of residence, and present address of the person who is the subject of the petition ~~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 who is the subject of the petition ~~with mental retardation or autism~~ resides.

(3) NOTICE.—

(a) Notice of the filing of the petition shall be given to the defendant ~~individual~~ and his or her legal guardian. The notice shall be given both verbally and in writing in the language of the defendant ~~client~~, or in other modes of communication of the defendant ~~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) If ~~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 defendant ~~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 defendant ~~individual with mental retardation or autism~~ has the right to be represented by counsel of his or her own choice and that, if the defendant ~~person~~ cannot afford an attorney, the court shall appoint one.

(4) AGENCY PARTICIPATION.—

(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 defendant ~~person with mental retardation~~, and the defendant's ~~person's~~ attorney at the time the report is filed with the court.

(5) EXAMINING COMMITTEE.—

(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 defendant ~~person with mental retardation~~, the defendant's ~~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 defendant ~~person with mental retardation~~ resided when the petition was filed.

(6) COUNSEL; GUARDIAN AD LITEM.—

(a) The defendant must ~~person with mental retardation shall~~ be represented by counsel at all stages of the judicial proceeding. If ~~In the event~~ the defendant ~~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 defendant's ~~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 defendant ~~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 defendant ~~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.—

(d) The defendant may ~~person with mental retardation shall~~ be ~~physically~~ present throughout all or part of the ~~entire~~ proceeding. If the defendant's ~~person's~~ attorney or any other interested party believes that the person's presence at the hearing is not in the person's best interest, or good cause is otherwise shown, ~~the person's presence may be waived once~~ the court may order that the defendant be excluded from the hearing ~~has seen the person and the hearing has commenced~~.

(e) The defendant ~~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.

(12) APPEAL.—

(b) The filing of an appeal by the person ordered to be involuntarily admitted under this section ~~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.

Section 10. Paragraph (a) of subsection (1) of section 393.125, Florida Statutes, is amended to read:

393.125 Hearing rights.—

(1) REVIEW OF AGENCY DECISIONS.—

(a) For Medicaid programs administered by the agency, any developmental services applicant or client, or his or her parent, guardian advocate, or authorized representative, may request a hearing in accordance with federal law and rules applicable to Medicaid cases and has the right to request an administrative hearing pursuant to ss. 120.569 and 120.57. The hearing ~~These hearings~~ shall be provided by the Department of Children and Family Services pursuant to s. 409.285 and shall follow procedures consistent with federal law and rules applicable to Medicaid cases. At the conclusion of the hearing, the department shall submit its recommended order to the agency as provided in s. 120.57(1)(k) and the agency shall issue final orders as provided in s. 120.57(1)(i).

Section 11. Subsection (1) of section 393.23, Florida Statutes, is amended to read:

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

(1) Moneys in the trust account must be expended for the benefit, education, or welfare of clients. However, if specified, moneys that are donated to the center must be expended in accordance with the intentions of the donor. Trust account money may not be used for the benefit of agency employees or to pay the wages of such employees. The welfare of 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 that include client wages, activity centers, farming projects, or other like facilities or programs established at the center for the benefit of clients.

Section 12. Paragraph (d) of subsection (13) of section 409.906, Florida Statutes, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security

Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(13) HOME AND COMMUNITY-BASED SERVICES.—

(d) The agency shall ~~request federal approval to~~ develop a system to require payment of premiums, fees, or other cost sharing by the parents of a child younger than 18 years of age who is being served by a waiver under this subsection if the adjusted household income is greater than 100 percent of the federal poverty level. The amount of the premium, fee, or cost sharing shall be calculated using a sliding scale based on the size of the family, the amount of the parent's adjusted gross income, and the federal poverty guidelines. The premium, fee, or

other cost sharing paid by a parent may not exceed the cost of waiver services to the client. Parents who have more than one child receiving services may not be required to pay more than the amount required for the child who has the highest expenditures. Parents who do not live with each other remain responsible for paying the required contribution. The client may not be denied waiver services due to nonpayment by a parent. Adoptive and foster parents are exempt from payment of any premiums, fees, or other cost-sharing for waiver services. The agency shall request federal approval as necessary to implement the program. ~~The premium and cost-sharing system developed by the agency shall not adversely affect federal funding to the state.~~ Upon receiving ~~After the agency receives~~ federal approval, if required, the agency, the Agency for Persons with Disabilities, and the Department of Children and Family Services may implement the system and collect income information from parents of children who will be affected by this paragraph. The parents must provide information upon request. The agency shall prepare a report to include the estimated operational cost of implementing the premium, fee, and cost-sharing system and the estimated revenues to be collected from parents of children in the waiver program. The report shall be delivered to the President of the Senate and the Speaker of the House of Representatives by June 30, 2012. The agency, the Department of Children and Family Services, and the Agency for Persons with Disabilities may adopt rules to administer this paragraph.

Section 13. Section 514.072, Florida Statutes, is amended to read:

514.072 Certification of swimming instructors for people

who have developmental disabilities ~~required~~.~~—~~Any person working at a swimming pool who holds himself or herself out as a swimming instructor specializing in training people who have a developmental disability ~~developmental disabilities~~, as defined in s. 393.063(11) ~~393.063(10)~~, may be certified by the Dan Marino Foundation, Inc., in addition to being certified under s. 514.071. The Dan Marino Foundation, Inc., must develop certification requirements and a training curriculum for swimming instructors for people who have developmental disabilities and must submit the certification requirements to the Department of Health for review ~~by January 1, 2007~~. ~~A person certified under s. 514.071 before July 1, 2007, must meet the additional certification requirements of this section before January 1, 2008. A person certified under s. 514.071 on or after July 1, 2007, must meet the additional certification requirements of this section within 6 months after receiving certification under s. 514.071.~~

Section 14. This act shall take effect July 1, 2012.

SENATOR JOE NEGRON
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on Health and Human Services Appropriations, *Chair*
Budget, *Vice Chair*
Banking and Insurance
Communications, Energy, and Public Utilities
Higher Education
Reapportionment
Rules

SELECT COMMITTEE:
Protecting Florida's Children, *Chair*

JOINT COMMITTEE:
Legislative Budget Commission

January 18, 2012

The Honorable Ronda Storms, Chair
Committee on Children, Families and Elder Affairs
520 Knott Building
404 S Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 1516

Dear Chairman Storms:

I would like to request Senate Bill 1516 relating to the Agency for Persons with Disabilities be placed on the agenda for the next scheduled committee meeting.

Thank you, in advance, for your consideration of this request.

Sincerely yours,

Joe Negron
State Senator
District 28

JN/hd
c: Renai Farmer, Staff Director ✓

REPLY TO:
❒ 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665
❒ 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5088

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2012
Meeting Date

Topic Agency for Persons with Disabilities Bill Number SB 1516 *(if applicable)*

Name Deborah Linton Amendment Barcode 568336 *(if applicable)*

Job Title Executive Director

Address 2898 Mahan Drive Phone 850-921-0460
Street

Tallahassee FL 32308 E-mail deborah@arcflorida.org
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing The Arc of Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2012
Meeting Date

Topic The Agency for Persons with Disabilities Bill Number SB 1516 *(if applicable)*

Name Deborah Linton Amendment Barcode 678590 *(if applicable)*

Job Title Executive Director

Address 2898 Mahan Drive Phone 850-921-0460
Street

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City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing The Arc of Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2012
Meeting Date

Topic Agency for Persons with Disabilities Bill Number SB 1516 *(if applicable)*

Name Deborah Linton Amendment Barcode 334848 *(if applicable)*

Job Title Executive Director

Address 2898 Mahan Drive Phone 850-921-0460
Street

Tallahassee FL 32308 E-mail deborah@arcflorida.org
City *State* *Zip*

Speaking: ☒ For ☐ Against ☒ Information

Representing The Arc of Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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1/25/2012
Meeting Date

Topic Agency for Persons with Disabilities Bill Number SB 1516 *(if applicable)*

Name Deborah Linton Amendment Barcode 194354 *(if applicable)*

Job Title Executive Director

Address 2898 Mahan Drive Phone 850-921-0460
Street

Tallahassee FL 32308 E-mail deborah@arcflorida.org
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing The Arc of Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic Information on SB 1516.

Bill Number SB 1516. *(if applicable)*

Name Michael P. Hansen

Amendment Barcode ~~/~~ *(if applicable)*

Job Title Director

Address 4030 Esplanade Way, Suite 380. *Street*

Tallahassee, FL. 32399 *City State Zip*

Phone (850) 487-1558.

E-mail michael_hansen@apd.state.fl.us

Speaking: ☐ For ☐ Against ☑ ~~Information~~

Representing Agency for Persons with Disabilities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ ~~Yes~~ ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic

Bill Number 1516 *(if applicable)*

Name Meghan Hoza

Amendment Barcode [redacted] *(if applicable)*

Job Title

Address 10521 SW Village Center Dr. #101 *Street*

Port St Lucie FL 34987 *City State Zip*

Phone (772) 485-0093

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Carlton Palms Educational Center

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date

Topic Restructing of APD

Bill Number 1516 *(if applicable)*

Name Susan Goldstein

Amendment Barcode *(if applicable)*

Job Title Parent Advocate

Address 3158 Inverness *Street*
Weston FL 33332 *City State Zip*

Phone 954 830-6300

E-mail skgoldstein@hotmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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1/25/12 *Meeting Date*

Topic APD

Bill Number SB 1516 *(if applicable)*

Name Diana Flenard

Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 6800 Maloney Ave #44 *Street*
Key West, FL 33040 *City State Zip*

Phone 305-294-9526

E-mail MARChousedir@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic SB 1516 - Amended
Bill Number SB 1516 Amend (if applicable)

Name Suzanne Sewell
Amendment Barcode (if applicable)

Job Title President & CEO

Address 2475 Apalachee PKway
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone 877-4816 (#123)
E-mail ssewell@floridaarf.org

Speaking: ☐ For ☐ Against ☐ Information

Representing FL. Association of Rehabilitation Facilities

Appearing at request of Chair: ☐ Yes ☑ No
Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic SB 1516
Bill Number SB 1516 (if applicable)

Name Katie Porta
Amendment Barcode (if applicable)

Job Title Pres/CEO

Address 1835 Palm Lane
Street
Orlando
City *State* *Zip*

Phone 407 218-4371
E-mail KPorta@questinc.org

Speaking: ☐ For ☐ Against ☒ Information

Representing Quest, Inc.

Appearing at request of Chair: ☐ Yes ☒ No
Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Bill [as amended]

1-25-2012
Meeting Date

Topic SB 1516 Agency Persons w/DD Bill Number SB1516 *(if applicable)*

Name Margaret J. Hooper Amendment Barcode *(if applicable)*

Job Title Public Policy Coordinator

Address 124 Marriot Dr. #203 Phone 850-921-7263
Street

Tallahassee FL 32311 E-mail MargaretD@FDDC.org
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Developmental Disabilities Council

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2012
Meeting Date

Topic The Arc of Persons with Disabilities Bill Number SB1516 *(if applicable)*

Name Deborah Linton Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 2898 Mahan Drive Phone 850-921-0460
Street

Tallahassee FL 32308 E-mail deborl@arcflorida.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information

Representing The Arc of Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-25-12
Meeting Date

Topic APD
Bill Number SB 1516 *(if applicable)*

Name Gary Morin
Amendment Barcode *(if applicable)*

Job Title Corp. Asst Director

Address 110 Timberlachen Circle *Street*
Phone (407) 688-9992

Lake Mary FL 32746 *City State Zip*
E-mail Gary.Morin@rhd.org

Speaking: ☐ For ☒ Against ☐ Information

Representing Resources for Human Development

Appearing at request of Chair: ☐ Yes ☒ No
Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	CS/SB 2052
INTRODUCER:	Children, Families, and Elder Affairs Committee and Children, Families, and Elder Affairs Committee
SUBJECT:	Sexually Violent Predators
DATE:	January 25, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Farmer	Farmer	CF	**Fav/CS**
2.			CJ	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill amends Florida law related to the Involuntary Civil Commitment of Sexually Violent Predators ("Jimmy Ryce Act") by:

- Excluding sexually motivated misdemeanor acts from the definition of "sexually violent offense";
- Requiring the Department of Children and Families (department) to prioritize written assessments and recommendations of persons convicted of a sexually violent offense who will be released from total confinement within one year;
- Extending the deadline in which the department's multidisciplinary team is required to complete its assessment to the state attorney;
- Extending the deadline for the state attorney to file a petition to the circuit court alleging that a person is a sexually violent predator;
- Removing language related to the deportation of a sexually violent predator;
- Prohibiting the introduction, attempted introduction, or removal of certain items classified as contraband into any Jimmy Ryce facility;

- Subjecting an individual or vehicle entering the grounds of any Jimmy Ryce facility under these provisions to reasonable search and seizure of any contraband materials introduced into or upon the grounds of such facility for purposes of enforcement;
- Creating a third-degree felony for the commission of such acts.

The bill also creates the Statewide Workgroup Force (workgroup) on the Conditional Release of Sexually Violent Predators. The purpose of the workgroup is to assess the appropriateness of placing sexually violent predators on conditional release and, based upon its assessment, make policy recommendations to the Governor and the Legislature. Duties of the workgroup include: collecting and organizing data concerning the practice of placing sexually violent predators on conditional release in Florida; identifying issues related to the use of conditional release in this state; and identifying procedures, if any, used by other states to release sexually violent predators into the community and the issue of supervising such persons while in the community.

This bill provides an effective date of July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 394.912, 394.913, 394.9135, and 394.917. The bill creates section 394.933, Florida Statutes and creates an unnumbered section of the Florida Statute.

II. Present Situation:

Sexually Violent Predators[1]

A sexually violent predator is a person who has been convicted of a sexually violent offense and who also suffers from a mental abnormality or personality disorder that makes him or her likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.[2] The Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act (Act), was enacted in 1998 to address the treatment needs of these offenders.[3] The Act creates a civil commitment process for sexually violent predators that is similar to Baker Act procedures for involuntary commitment and treatment of mentally ill persons.

Referring agencies identify offenders who have been convicted of specified sexually violent offenses and notify the department's Sexually Violent Predator Program and the state attorney who prosecuted the offender. The Department of Corrections (DOC) makes the majority of these referrals, with others coming from the Department of Juvenile Justice (DJJ) and the department itself.
After a referral is made, a clinical specialist reviews information provided by the referring agency and gathers any additional information that is needed to complete the case file. Two licensed psychologists employed by the department independently screen the case file to

[1] Much of the information in this section was derived from the Office of Program Policy Analysis & Government Accountability, Florida Legislature, *The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced*, Report No. 08-10, p.2. (Feb. 2008)
[2] Section 394.912, F.S.
[3] Sections 394.910-394.932, F.S.

determine if the offender meets the statutory sexually violent predator criteria. If the department psychologists find that the offender meets the criteria, an independent, contracted evaluator also reviews the case file and provides a recommendation to the department.

A multidisciplinary team that includes at a minimum two persons who are either a licensed psychiatrist or a licensed psychologist reviews the evaluation reports. From this review, they render an opinion as to whether the offender meets the sexually violent predator criteria. The department must then provide a written assessment and written recommendation to the state attorney within 180 days of receiving notice from the referring agency. The recommendation must include the multidisciplinary team's report.[4]

The timeframes for this process are drastically accelerated when a person who has been convicted of a sexually violent offense is to be immediately released for some reason. A person who has been released ahead of scheduled release is transferred to the custody of the department by the referring agency. The multidisciplinary team has 72 hours after the transfer to provide its written assessment and recommendation to the state attorney. In turn, the state attorney has 48 hours to petition the court for a determination that the person is a sexually violent predator.[5]

After receiving the department's assessment and recommendation, the state attorney can initiate commitment proceedings by filing a probable cause petition seeking a determination that the offender meets statutory criteria to be a sexually violent predator.[6] There is no prescribed time limit for filing other than in an immediate release situation. If the judge finds that the petition sets forth probable cause, a civil trial must be conducted within 30 days. A decision that an offender is a sexually violent predator must be made by the judge or a unanimous jury based upon clear and convincing evidence.[7]

An offender who is found to be a sexually violent predator is committed to the department's custody upon completion of his or her criminal sentence and transferred to the Florida Civil Commitment Center in Arcadia. If the commitment process is not completed prior to the end of an offender's prison sentence, the offender is detained by court order and transferred to the commitment center to await the outcome of commitment proceedings. On June 30, 2011, the commitment center housed 677 civilly committed predators and 147 detainees awaiting completion of commitment procedures.[8]

Sexually violent predators who are committed to the state under the Jimmy Ryce Act are detained at the commitment center until the court determines that they are no longer a threat to public safety. The department currently contracts with GEO Group, Inc., to operate the center and provide all treatment and security services. The treatment program consists of four levels of

[4] Section 394.913(3), F.S.
[5] Section 394.9135, F.S.
[6] Section 394.914, F.S.
[7] Sections 394.916 and 394.917, F.S.
[8] Criminal Justice Estimating Conference, *Involuntary Civil Commitment of Sexually Violent Predators – History and Forecast*, (Dec. 14, 2011), *available at* http://edr.state.fl.us/Content/conferences/criminaljustice/workpapers.pdf *(last visited Jan. 17, 2012)*

cognitive behavior modification and takes a minimum of six years to complete, with progress assessed annually by program staff.[9]

Federal Deportation Detainers

According to the department, Florida law does not permit the courts to allow disposition of federal deportation detainers before proceeding with commitment. This situation creates the possibility that the state must bear the expense of providing long-term care and treatment to undocumented persons who can be safely deported.[10]

Contraband

According to the department, part V of ch. 394, F.S., does not currently criminalize the unauthorized introduction or removal of dangerous contraband from the Florida Civil Commitment Center. The facility has instituted its own operating procedures to prohibit such activities, but these policies do not have the same deterrent effect achieved by the possibility of criminal sanction. Statutes governing correctional and state hospital settings already include contraband provisions.[11]

Conditional Release and Stipulated Agreements [12]

In October 2011, a review was conducted, at the request of the Legislature, by the Office of Program Policy Analysis and Government Accountability (OPPAGA) regarding the practice of stipulated agreements for the conditional diversion or release of offenders from the Sexually Violent Predator Program.

Stipulated agreements are negotiated civil contracts between a state attorney and an offender that allow the offender to be released into the community under specified terms and conditions. State attorneys' offices use these agreements in an effort to maintain public safety by providing some measure of accountability when an offender meets sexually violent predator criteria but it is unlikely that the state will prevail at the commitment trial or annual hearing.

As of September 2011, OPPAGA identified 153 stipulated agreements approved by Florida state courts. State attorneys' offices that use these agreements cite their broad prosecutorial discretion and authority to negotiate civil contracts as the legal basis for these agreements.

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[9] Office of Program Policy Analysis & Government Accountability, Florida Legislature, *The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced*, Report No. 08-10, p.2.(Feb. 2008), http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0810rpt.pdf (last visited Jan. 18, 2012)

[10] Department of Children and Families, *Staff Analysis and Economic Impact for HB 1097* (Jan. 4, 2012), p. 2, (on file with the Senate Committee on Children, Families, and Elder Affairs). A department analysis was not available for this SPB at the time the Senate Committee analysis was completed.

[11] *Id.*

[12] Information contained in this portion of this bill analysis is replicated from the Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Conditional Release of Sexually Violent Predators Through Stipulated Agreements*, Research Memorandum (Oct. 21, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs)

Sometimes state attorneys' offices use the agreements to require conditions for release from the Sexually Violent Predator Program because there is no re-entry phase to provide community-based treatment and supervision. Preempting trials also reduces court costs. However, some stakeholders question the legal basis and enforceability of the agreements. State attorneys' offices are typically responsible for providing supervision to sexually violent predators released into the community under stipulated agreements; however, they do not have the ability to enforce many of the provisions of the agreements.

Almost half of sexually violent predators also had some type of Department of Corrections supervision at the time of their release. Of the 140 offenders released via stipulated agreement and in the community for at least one year, 31 have been convicted of new criminal charges, including 5 that were convicted of a felony sex offense and 3 others that were convicted of violent felonies. The remaining 23 were convicted of various misdemeanors and non-violent felonies.[13]

In addition, 18 offenders had been returned to the Florida Civil Commitment Center due to contract revocation. In 7 of these cases this was due to a new criminal conviction; in the other 11 cases it was due to a new criminal charge or a material violation of the stipulated agreement, such as non-compliance with the treatment plan or having unsupervised visitation with a minor.[14]

III. Effect of Proposed Changes:

SB 2052 revises the Jimmy Ryce Act as described below.

Definition of Sexually Violent Offense

The bill amends s. 394.912, F.S., to exclude sexually motivated misdemeanor acts from the definition of "sexually violent offense".

Prioritization of Assessment of Persons Convicted of a Sexually Violent Offense

The proposed bill amends s. 394.913, F.S., to require the Department of Children and Family Services (department) to prioritize the assessment of persons convicted of a sexually violent offense for a recommendation as to whether the person meets the definition of a sexually violent predator based on when such persons will be released. Specifically, of the persons convicted of a sexually violent offense and who have less than 365 days until their anticipated release, the department must give priority to the completion of the assessment and recommendation for the person having the earliest release date.

Extension of Deadlines

The bill amends s. 394.9135, F.S. to extend the deadlines for the department to provide its written assessment and recommendation to the state attorney and for the state attorney to file a

[13] *Id*.
[14] *Id*.

commitment petition. The bill provides that if the 72-hour deadline for providing the recommendation to the state attorney falls after 5 p.m. on a work day or during a weekend or holiday, the recommendation may be provided by 5 p.m. the next work day. Similarly, if the state attorney's 48-hour petition filing deadline falls on after 5 p.m. or on a weekend or holiday, the commitment petition may be filed by 5 p.m. the next work day.

Use of the term "work day" could create some confusion in the application of the timeframes. Although it appears that the intent is to suggest after 5 p.m. on a weekday, some individuals "work" on Saturday or Sunday. The Legislature may wish to use another term such as "weekday."[15]

Detainers for Deportation

The bill amends s. 394.917, F.S., to delete a requirement that a sexually violent predator be committed to the department for treatment before the person may be deported.

Contraband

The bill creates s. 394.933, F.S. to prohibit the introduction or removal of certain articles to or from a Jimmy Ryce facility; and to impose penalties for the commission of such acts. Specifically, the bill provides that, unless authorized by law or as specifically authorized by the person in charge of a Jimmy Ryce facility, a person is prohibited from introducing into, or take or attempt to take or send any of the following articles, which are declared to be contraband:

- An intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- A controlled substance as defined by chapter 893, F.S.;[16]
- A firearm or deadly weapon; or
- Any other item designated by written facility policy to be hazardous to the welfare of clients or staff or to the operation of the facility.

This section also prohibits a person from transmitting to, attempting to transmit to, or attempting to cause to be transmitted to or received by any client of any facility under the supervision or control of the department or agency, any item declared to be contraband at any place that is outside the grounds of the facility. An exception is made if the action is authorized by law or specifically authorized by the person in charge of the facility.

In addition, the bill subjects an individual or vehicle entering the grounds of any Jimmy Ryce facility to reasonable search and seizure of any contraband materials introduced into or upon the grounds of a facility. Under the bill, reasonable search and seizure may be enforced by institutional security personnel or by a law enforcement officer.

A person who introduces or attempts to introduce contraband into a facility or transmits or attempts to transmit contraband to a client of a facility is subject to punishment of a third-degree felony.[17]

[15] CS/SB 1314 (2010 Regular Session).
[16] Chapter 893, F.S., includes numerous controlled substances that are listed in Schedules I, II, III, IV, and V.

Statewide Workgroup on the Conditional Release of Sexually Violent Predators

The bill creates the Statewide Workgroup on the Conditional Release of Sexually Violent Predators for the purpose of assessing the appropriateness of placing sexually violent predators on conditional release. Based upon the workgroup assessment, it will make policy recommendations to the Governor and the Legislature. The workgroup will be required to:

- Collect and organize data concerning the practice of placing sexually violent predators on conditional release in this state;
- Identify issues related to the use of conditional release in this state;
- Identify the procedures, if any, used by other states to release sexually violent predators into the community and the attendant issue of supervising sexually violent predators while in the community;
- Ascertain the costs of monitoring sexually violent predators in the community;
- Prepare policy recommendations for presentation to the Governor and the Legislature regarding the conditional release of sexually violent predators; and
- Complete its work by December 1, 2012 July 1, 2013 and submit its report and recommendations by February 1, 2013 to the Governor and the Legislature.

The workgroup will be comprised of the following members:
- A representative from the Department of Children and Families who shall be appointed by the Secretary of the department;
- A representative from the Department of Corrections who shall be appointed by the secretary of the department; and
- A representative from the Florida Prosecuting Attorneys Association;
- A representative from the Florida Public Defender Association;
- A representative from the Florida Association for the Treatment of Sexual Abusers; and
- A representative from the Florida Parole Commission.

Under the bill, members of the workgroup will serve without compensation but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S, for their actual and necessary expenses incurred in the performance of their duties. The Department of Children and Families will provide the workgroup with staff support necessary to assist the workgroup in the performance of its duties.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[17] A felony of the third-degree is punishable by a fine not to exceed $5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined to be an habitual offender, the term of imprisonment is not to exceed 10 years.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Children and Families (department), the proposed changes in this bill will protect vulnerable citizens by helping to lower the chance that extremely dangerous sexual predators will "slip through the cracks" and avoid commitment because of technical violations of the statute as currently written. The revisions in this bill will also help prevent the introduction of dangerous contraband onto the grounds of any facility designated by the department to house and treat persons detained or committed. The prohibition of dangerous contraband and possible prosecution of persons violating these provisions will help safeguard staff members, visitors, and residents of such facilities.[18]

The following comments were provided by the department in its staff analysis for a similar measure (HB 1097, dated January 4, 2012) filed for this legislative session.[19] A department analysis for this SPB was not available at the time the committee staff analysis was prepared:

[18] Department of Children and Families, *2012 Agency Proposal* (received via email on August 24, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs)

[19] Department of Children and Families, *Staff Analysis and Economic Impact for HB 1097* (January 4, 2012), p.2, (on file with the Senate Committee on Children, Families, and Elder Affairs). A department analysis was not available for this bill at the time the Senate Committee Analysis was completed.

Limiting sexually violent offenses to felony criminal acts will make statutory definitions consistent with legislative intent by improving efficiency in identifying only those offenders who are extremely dangerous sexual predators.

Allowing the department to prioritize assessments by release date for persons within one year of release ensures adequate time for processing referrals and filing commitment petitions.

Extending deadlines to the next working day when statutory time limits related to immediate release referrals end past business hours on a work day or on weekends or holidays would ensure there is sufficient time for making recommendations and filing commitment petitions. This prevents sexual predators from being released for technical reasons unrelated to public safety.

Facilitating deportation of committed sexually violent predators that are in the country illegally saves the state the expense of providing long-term care and treatment to undocumented persons who can be safely deported. Courts would still be permitted to proceed with commitment if deportation is unlikely to be successful.

An argument against the deletion of provisions allowing for the commitment of a person before the person may be deported is that the change may create a weakness in the custody safety net. Prosecutors handling sexually violent predator civil commitments have sometimes been reluctant to consider allowing individuals to be deported, rather than civilly committed, because of the potential for an individual to unlawfully and secretly return to the United States and to Florida after being deported. Additionally, some prosecutors have expressed reluctance to facilitate what may amount to the unsupervised release of a sexually violent predator in his country of origin.

Providing criminal sanctions for the unauthorized introduction or removal of dangerous contraband items to or from the sexually violent predator civil commitment facility enhances the safety and security of residents and staff members at those facilities.

According to the department, there are no apparent opposition arguments to proposed modifications related to technical revisions and contraband rules.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Children, Families, and Elder Affairs Committee on January 25, 2012:
The committee substitute:

- Changes the "task force" to "workgroup";
- Changes the date of the workgroup's organizational session from September 1, 2012 to August 1, 2012;
- Changes the completion deadline for the report from September 1, 2012 to December 1, 2012;
- Changes the due date of the required report to the Governor and the Legislature from January 1, 2014 to February 1, 2013; and
- Adds the Florida Parole Commission to the membership of the workgroup.

B. Amendments:

None.

443924

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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	.	
	.	

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete lines 190 - 244
and insert:

Section 6. Statewide Workgroup on the Conditional Release of Sexually Violent Predators.—

(1) The Statewide Workgroup on the Conditional Release of Sexually Violent Predators is created.

(2) The workgroup is created for the purposes of assessing the appropriateness of placing sexually violent predators on conditional release and, based upon its assessment, making

443924

policy recommendations to the Governor and the Legislature.

(a) The workgroup shall consist of five members, including:

1. A representative of the Department of Children and Family Services who shall be appointed by the secretary of the department.

2. A representative of the Department of Corrections who shall be appointed by the secretary of the department.

3. A representative from the Florida Prosecuting Attorneys Association.

4. A representative from the Florida Public Defender Association.

5. A representative from the Florida Association for the Treatment of Sexual Abusers.

(b) The workgroup shall elect a chair from among its members.

(c) Members of the workgroup shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes, for their actual and necessary expenses incurred in the performance of their duties.

(d) The Department of Children and Family Services shall provide the workgroup with staff support necessary to assist the workgroup in the performance of its duties.

(3) The workgroup shall hold its organizational session by August 1, 2012. Thereafter, the workgroup shall meet at least four times. Additional meetings may be held at the request of the chair. A majority of the members of the workgroup constitutes a quorum.

(4) The workgroup shall:

443924

(a) Collect and organize data concerning the practice of placing sexually violent predators on conditional release in this state;

(b) Identify issues related to the use of conditional release in this state;

(c) Identify the procedures, if any, used by other states to release sexually violent predators into the community and the attendant issue of supervising sexually violent predators while in the community;

(d) Ascertain the costs of monitoring sexually violent predators in the community; and

(e) Prepare policy recommendations for presentation to the Governor and the Legislature regarding the conditional release of sexually violent predators.

(5) The workgroup shall complete its work by December 1, 2012, and submit its report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2013.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 32 - 45

and insert:

Statewide Workgroup on the Conditional Release of Sexually Violent Predators; providing that the workgroup is created for the purposes of assessing the appropriateness of placing sexually violent predators

443924

on conditional release in the community and, based upon its assessment, making policy recommendations to the Governor and the Legislature; providing for membership on the workgroup; providing for the payment of per diem and travel expenses; requiring the Department of Children and Family Services to provide support to the workgroup; requiring the workgroup to hold its organizational meeting by a specified date; describing the duties and responsibilities of the workgroup; requiring the workgroup to submit its report

520814

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment to Amendment (443924)

Between lines 25 and 26
insert:

6. A representative from the Florida Parole Commission.

By the Committee on Children, Families, and Elder Affairs

586-02092-12 20122052__

A bill to be entitled

An act relating to sexually violent predators; amending s. 394.912, F.S.; clarifying the definition of the term "sexually violent offense" to include only a felony criminal act that has been determined beyond a reasonable doubt to have been sexually motivated; amending s. 394.913, F.S.; requiring that the Department of Children and Family Services give priority to the assessment of persons who will be released from total confinement at the earliest date under certain circumstances; amending s. 394.9135, F.S.; revising the period within which the department's multidisciplinary team is required to provide an assessment to the state attorney; revising the period within which the state attorney may file a petition with the circuit court alleging that an offender is a sexually violent predator; amending s. 394.917, F.S.; deleting a provision relating to the deportation of a sexually violent predator; creating s. 394.933, F.S.; prohibiting the introduction or attempted introduction of certain items into any facility for the detention of sexually violent predators; prohibiting the transmission or attempted transmission of prohibited items to a person incarcerated in the facility; providing that a person or vehicle entering the grounds of the facility is subject to reasonable search for and seizure of prohibited items; subjecting a person to criminal penalties for introducing or attempting to introduce a

586-02092-12 20122052__

prohibited item on the grounds of a facility for the detention of sexually violent predators; creating the Statewide Task Force on the Conditional Release of Sexually Violent Predators; providing that the task force is created for the purposes of assessing the appropriateness of placing sexually violent predators on conditional release in the community and, based upon its assessment, making policy recommendations to the Governor and the Legislature; providing for membership on the task force; providing for the payment of per diem and travel expenses; requiring the Department of Children and Family Services to provide support to the task force; requiring the task force to hold its organizational meeting by a specified date; describing the duties and responsibilities of the task force; requiring the task force to submit its report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by a specified date; providing an effective date.

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

Section 1. Subsection (9) of section 394.912, Florida Statutes, is amended to read:

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

(9) "Sexually violent offense" means:

(a) Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2.;

(b) Kidnapping of a child under the age of 13 and, in the

course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(c) Committing the offense of false imprisonment upon a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(d) Sexual battery in violation of s. 794.011;

(e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04 or s. 847.0135(5);

(f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;

(g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or

(h) Any felony criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

Section 2. Paragraph (e) of subsection (3) of section 394.913, Florida Statutes, is amended to read:

394.913 Notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing

multidisciplinary teams; information to be provided to multidisciplinary teams.—

(3)

(e)1. Within 180 days after receiving notice, there shall be a written assessment as to whether the person meets the definition of a sexually violent predator and a written recommendation, which shall be provided to the state attorney. The written recommendation shall be provided by the Department of Children and Family Services and shall include the written report of the multidisciplinary team.

2. Notwithstanding the timeframes in this section, if the written assessment and recommendation have not been completed for more than one person who will be released from total confinement in less than 365 days, the department shall give priority to the assessment of the person who will be released at the earliest date.

Section 3. Subsections (2) and (3) of section 394.9135, Florida Statutes, are amended to read:

394.9135 Immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold in custody; filing petition after release.—

(2) Within 72 hours after transfer, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator. If the multidisciplinary team determines that the person does not meet the definition of a sexually violent predator, that person shall be immediately released. If the multidisciplinary team determines that the person meets the definition of a sexually violent predator, the

team shall provide the state attorney, as designated by s. 394.913, with its written assessment and recommendation within the 72-hour period or, if the 72-hour period ends after 5 p.m. on a work day or on a weekend or holiday, within the next working day thereafter.

(3) ~~Within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team,~~ The state attorney, as designated in s. 394.913, may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team or by 5 p.m. of the next work day if the 48-hour period ends after 5 p.m. on a work day or on a weekend or holiday. If a petition is not timely filed ~~within 48 hours~~ after receipt of the written assessment and recommendation by the state attorney, the person shall be immediately released. If a petition is filed pursuant to this section and the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order the person be maintained in custody and held in an appropriate secure facility for further proceedings in accordance with this part.

Section 4. Subsection (2) of section 394.917, Florida Statutes, is amended to read:

394.917 Determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases.—

(2) If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition

of any detainers ~~other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services~~, the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, persons who are detained or committed under this part shall be kept in a secure facility segregated from patients of the department who are not detained or committed under this part.

Section 5. Section 394.933, Florida Statutes, is created to read:

394.933 Introduction or removal of certain articles unlawful; penalty.—

(1)(a) Except as authorized by law or as specifically authorized by the person in charge of a facility, a person may not introduce into any facility for commitment or detention of sexually violent predators under this part, or take or attempt to take or send therefrom, any of the following articles, which are declared to be contraband for the purposes of this section:

1. An intoxicating beverage or a beverage that causes or may cause an intoxicating effect;

2. A controlled substance as defined in chapter 893;

3. A firearm or deadly weapon; or

4. Any other item designated by written facility policy to be hazardous to the welfare of clients or staff or to the operation of the facility.

(b) A person may not transmit to, attempt to transmit to, or cause or attempt to cause to be transmitted to or received by

any client of any facility under the supervision or control of the department or agency any article or thing declared by this section to be contraband, at any place that is outside the grounds of such facility, except as authorized by law or as specifically authorized by the person in charge of the facility.

(2)(a) An individual or vehicle entering the grounds of any facility to which this section applies is subject to reasonable search and seizure of any contraband materials introduced into or upon the grounds of such facility for the purpose of enforcing this section. This paragraph shall be enforced by institutional security personnel or by a law enforcement officer as defined in s. 943.10.

(b) A person who violates subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Statewide Task Force on the Conditional Release of Sexually Violent Predators.—

(1) The Statewide Task Force on the Conditional Release of Sexually Violent Predators is created.

(2) The task force is created for the purposes of assessing the appropriateness of placing sexually violent predators on conditional release and, based upon its assessment, making policy recommendations to the Governor and the Legislature.

(a) The task force shall consist of five members, including:

1. A representative of the Department of Children and Family Services who shall be appointed by the secretary of the department.

2. A representative of the Department of Corrections who

shall be appointed by the secretary of the department.

3. A representative from the Florida Prosecuting Attorneys Association.

4. A representative from the Florida Public Defender Association.

5. A representative from the Florida Association for the Treatment of Sexual Abusers.

(b) The task force shall elect a chair from among its members.

(c) Members of the task force shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes, for their actual and necessary expenses incurred in the performance of their duties.

(d) The Department of Children and Family Services shall provide the task force with staff support necessary to assist the task force in the performance of its duties.

(3) The task force shall hold its organizational session by September 1, 2012. Thereafter, the task force shall meet at least four times. Additional meetings may be held at the request of the chair. A majority of the members of the task force constitutes a quorum.

(4) The task force shall:

(a) Collect and organize data concerning the practice of placing sexually violent predators on conditional release in this state;

(b) Identify issues related to the use of conditional release in this state;

(c) Identify the procedures, if any, used by other states

to release sexually violent predators into the community and the attendant issue of supervising sexually violent predators while in the community;

(d) Ascertain the costs of monitoring sexually violent predators in the community; and

(e) Prepare policy recommendations for presentation to the Governor and the Legislature regarding the conditional release of sexually violent predators.

(5) The task force shall complete its work by July 1, 2013, and submit its report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014.

Section 7. This act shall take effect July 1, 2012.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	SB 2046
INTRODUCER:	Children, Families, and Elder Affairs Committee
SUBJECT:	Substance Abuse and Mental Health Services
DATE:	January 24, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	**Favorable**
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill makes changes relating to behavioral health managing entities by allowing providers of substance abuse and mental health services to comprise up to 25 percent of the managing entity's governance structure.

The bill requires the Department of Children and Family Services (DCF) to negotiate a reasonable cost for the entire system of care, rather than just the administrative costs, and the bill modifies and clarifies DCF's responsibilities and makes technical and conforming changes.

This bill substantially amends section 394.9082, Florida Statutes.

II. Present Situation:

History of Substance Abuse and Mental Health Managing Entities

The publicly funded substance abuse and mental health services in Florida are primarily provided through the Department of Children and Family Services (DCF or department). In 2001, the Legislature created s. 394.9082, F.S., and directed DCF and the Agency for Health Care Administration (AHCA or agency) to develop service delivery strategies to improve the coordination, integration, and management of the delivery of mental health and substance abuse services.[1] The department and AHCA were directed to contract with managing entities in at least two geographic areas to test the service delivery strategies.[2] The 2003 Legislature established

[1] Chapter 2001-191, s. 6, Laws of Fla. (creating s. 394.9082, F.S.).
[2] *Id*.

separate Substance Abuse and Mental Health program offices within DCF. The services from these programs are provided statewide through a district structure.[3]

In 2008, the Legislature amended s. 394.9082, F.S., authorizing the department to implement Behavioral Health Managing Entities. The goal in doing so was to promote improved access to care and service continuity by creating a more efficient and effective management system of substance abuse and mental health services.[4] Since 2008, the department has:

- Aligned managing entity contract areas with the Medicaid regions to better integrate the health services networks between the agencies;
- Contract with three managing entities, reducing the number of contracts the department is responsible for in these areas from 172 to three:
  - SunCoast – one contract / $138 million,
  - Southern – one contract / $57 million, and
  - Circuit 1 – one contract / $27 million;
- Released three intents to negotiate (ITNs) to solicit managing entities in the Northeast, Central, and Southeastern regions. The selection and negotiation process was initiated on July 15, 2011, and was anticipated to be complete by December 1, 2011;
- Amended the SunCoast Region contract to cover Polk, Highland, and Hardee counties and align the new procurements by April 1, 2012; and
- Amended the Southern Region contract to align with new procurements by April 1, 2012.[5]

According to a 2011 Senate Interim Report, DCF is still in the process of contracting with behavioral health managing entities to administer and oversee the state's community health and substance abuse services. As of September 2011, three managing entities were operating (Lakeview Center, Central Florida Behavioral Health Network, and South Florida Behavioral Health Network), and the remaining three were scheduled to be operating by July 1, 2012.[6] When the transition is complete, the department will have six contracts rather than nearly 400 contracts with 137 community mental health and substance abuse providers.[7]

Section 394.9082, Florida Statutes

A managing entity is defined as "a corporation organized in this state, is designated or filed as a nonprofit organization under s. 501(c)3 of the Internal Revenue Service, and is under contract with the department to manage the day-to-day operational delivery of behavioral health services through an organized system of care."[8] This structure places responsibility for management

[3] Comm. on Healthy Families, The Florida House of Representatives, *House of Representatives Staff Analysis, HB 1429* (Mar. 24, 2008), *available at* http://archive.flsenate.gov/data/session/2008/House/bills/analysis/pdf/h1429.HF.pdf (last visited Jan. 14, 2012).
[4] Chapter 2008-243, s. 1, Laws of Fla.
[5] Dep't of Children and Families, *Staff Analysis and Economic Impact, SB 7164* (Jan. 16, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[6] Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Crisis Stabilization Units*, 4-5 (Interim Report 2012-109) (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-109bha.pdf (last visited Jan. 14, 2012).
[7] *Id*. at 5.
[8] Section 394.9082(2)(d), F.S.

services within a single nonprofit entity at the local level.[9] Some of the stated benefits associated with this type of management system include structured oversight, efficient and effective use of limited resources, and a comprehensive, continuous, and integrated system of care in a defined geographic region.[10] Furthermore, managing entities can enhance the ability of DCF and its regional and circuit offices to focus on broad systematic substance abuse and mental health system development rather than the current daily operational requirements.[11]

In addition to providing a design for effective coordination, integration, and management for delivering behavioral health services, additional goals of the service delivery strategies are:

- Improving accountability for a local system of behavioral health care services to meet performance outcomes and standards through the use of reliable and timely data;
- Enhancing the continuity of care for all children, adolescents, and adults who enter the publicly funded behavioral health service system;
- Preserving the "safety net" of publicly funded behavioral health services and providers by establishing locally designed and community-monitored systems of care;
- Providing early diagnosis and treatment interventions to enhance recovery and prevent hospitalization;
- Improving the assessment of local needs for behavioral health services;
- Improving the overall quality of behavioral health services through the use of evidence-based, best practices, and promising practice models;
- Demonstrating improved service integration between behavioral health programs and other programs;
- Providing for additional testing of creative and flexible strategies for financing behavioral health services;
- Promoting cost-effective quality care;
- Working with the state to coordinate admissions and discharges from state civil and forensic hospitals as well as from residential treatment centers;
- Improving the integration, accessibility, and dissemination of behavioral health data;
- Promoting specialized behavioral health services to residents of assisted living facilities;
- Working with the state to reduce the admissions and the length of stay for dependent children in residential treatment centers;
- Providing services to adults and children with co-occurring disorders of mental illnesses and substance abuse problems; and
- Providing services to elder adults in crisis or at-risk for placement in a more restrictive setting due to a serious mental illness or substance abuse.[12]

The statute provides direction to the department regarding its contracts with the managing entities. The operating costs of the managing entity contract is to be funded through funds from

[9] Fla. Dep't of Children and Families, *Substance Abuse and Mental Health, Managing Entities*, http://www.dcf.state.fl.us/programs/samh/managingEntities.shtml (last visited Jan. 14, 2012).
[10] Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Bill Analysis and Fiscal Impact Statement, SB 2002* (Mar. 25, 2010), *available at* http://archive.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s2002.cf.pdf (last visited Jan. 14, 2012).
[11] Fla. Dep't of Children and Families, *supra* note 9.
[12] Section 394.9082(5), F.S.

DCF and the department is required to negotiate a reasonable and appropriate administrative cost rate with the managing entity.[13] The statute also spells out specific core functions that DCF can contract with the managing entities to provide.[14]

Section 394.9082, F.S., requires governance of managing entities by a community board of directors that includes consumers, community stakeholders and organizations, and providers of mental health and substance abuse services.[15] According to DCF representatives, in 2010, certain managing entities' governance structure was comprised 100 percent of providers of mental health and substance abuse services.[16] In a 2011 Senate Interim Report, it was recommended that since managing entities are responsible for contracting with and overseeing mental health and substance abuse providers, representatives of these providers should not be on the board of directors for the managing entity. Specifically, the report stated that "[t]he Legislature should consider amending s. 394.9082(7), Florida Statutes, to require representatives of community mental health providers to be ex-officio members of the managing entity board of directors, rather than be voting members, to avoid the possibility or appearance of conflicts of interest."[17]

III. Effect of Proposed Changes:

This bill makes changes relating to behavioral health managing entities by allowing providers of substance abuse and mental health services to comprise up to 25 percent of the managing entity's governance structure. By limiting the number of providers allowed on the board, the bill addresses concerns raised in a 2011 Senate Interim Report about possible conflicts of interest on the board of directors.[18]

The bill also amends the definition of "provider networks" to remove the requirement that the direct service agencies be under contract with a managing entity. According to the Department of Children and Family Services (DCF or department), other sections of law allow provider networks that aren't under contract with the managing entity. This change in the bill conforms the language to other statutes.[19]

The bill requires DCF to negotiate a reasonable cost for the entire system of care, rather than just the administrative costs, and it requires DCF to eliminate duplication within the provider network.

The bill requires that a mental health or substance abuse provider currently under contract with DCF be offered a contract by the managing entity for one year. This is current practice in order to maintain as much continuity as possible for consumers, but still let the managing entity make changes if the provider is not working out.[20]

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[13] Section 394.9082(4)(b), F.S.
[14] Section 394.9082(6)(d), F.S.
[15] Section 394.9082(7)(a), F.S.
[16] Conversation with representatives from the Department of Children and Family Services (Nov. 4, 2011).
[17] Budget Subcommittee on Health and Human Services Appropriations, *supra* note 6, at 5.
[18] *Id*.
[19] Conversation with representatives from the Department of Children and Family Services (Nov. 4, 2011).
[20] *Id*.

The bill amends the statutorily listed core functions that may be provided by a managing entity. Under current law, the listed functions are very specific; however, the specifics of such core functions are generally provided for by contract and therefore do not need to be spelled out in statute.[21]

The bill provides a due date of June 30, 2013, for certain managing entities to move from their current governance structure to the new structure that prohibits providers of substance abuse and mental health services from being a part of the governance structure.

Finally, the bill provides that the ultimate responsibility of accountability for the expenditure of substance abuse and mental health public funds resides with DCF.

The bill makes additional technical or conforming changes.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

[21] *Id*.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-02070-12 20122046__

A bill to be entitled

An act relating to substance abuse and mental health services; amending s. 394.9082, F.S.; redefining the term "provider networks"; requiring the Department of Children and Family Services to negotiate a reasonable and appropriate administrative cost rate for the system of behavioral health services with community-based managing entities; requiring that mental health or substance abuse providers currently under contract with the department be offered a contract by the managing entity for 1 year; revising the core functions to be performed by the managing entity; revising the governance structure of the managing entity; revising the requirements relating to the qualification and operational criteria used by the department when selecting a managing entity; revising the responsibilities of the department; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 394.9082, Florida Statutes, is amended to read:

394.9082 Behavioral health managing entities.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that untreated behavioral health disorders constitute major health problems for residents of this state, are a major economic burden to the citizens of this state, and substantially

586-02070-12 20122046__

increase demands on the state's juvenile and adult criminal justice systems, the child welfare system, and health care systems. The Legislature finds that behavioral health disorders respond to appropriate treatment, rehabilitation, and supportive intervention. The Legislature finds that it has made a substantial long-term investment in the funding of the community-based behavioral health prevention and treatment service systems and facilities in order to provide critical emergency, acute care, residential, outpatient, and rehabilitative and recovery-based services. The Legislature finds that local communities have also made substantial investments in behavioral health services, contracting with safety net providers who by mandate and mission provide specialized services to vulnerable and hard-to-serve populations and have strong ties to local public health and public safety agencies. The Legislature finds that a management structure that places the responsibility for publicly financed behavioral health treatment and prevention services within a single private, nonprofit entity at the local level will promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. The Legislature finds that streamlining administrative processes will create cost efficiencies and provide flexibility to better match available services to consumers' identified needs.

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

(a) "Behavioral health services" means mental health services and substance abuse prevention and treatment services as defined in this chapter and chapter 397 which are provided

using state and federal funds.

(b) "Decisionmaking model" means a comprehensive management information system needed to answer the following management questions at the federal, state, regional, circuit, and local provider levels: who receives what services from which providers with what outcomes and at what costs?

(c) "Geographic area" means a county, circuit, regional, or multiregional area in this state.

(d) "Managing entity" means a corporation that is organized in this state, is designated or filed as a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code, and is under contract to the department to manage the day-to-day operational delivery of behavioral health services through an organized system of care.

(e) "Provider networks" mean the direct service agencies ~~that are under contract with a managing entity and~~ that together constitute a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services.

(3) SERVICE DELIVERY STRATEGIES.—The department may work through managing entities to develop service delivery strategies that will improve the coordination, integration, and management of the delivery of behavioral health services to people who have mental or substance use disorders. It is the intent of the Legislature that a well-managed service delivery system will increase access for those in need of care, improve the coordination and continuity of care for vulnerable and high-risk populations, and redirect service dollars from restrictive care settings to community-based recovery services.

(4) CONTRACT FOR SERVICES.—

(a) The department may contract for the purchase and management of behavioral health services with community-based managing entities. The department may require a managing entity to contract for specialized services that are not currently part of the managing entity's network if the department determines that to do so is in the best interests of consumers of services. The secretary shall determine the schedule for phasing in contracts with managing entities. The managing entities shall, at a minimum, be accountable for the operational oversight of the delivery of behavioral health services funded by the department and for the collection and submission of the required data pertaining to these contracted services. A managing entity shall serve a geographic area designated by the department. The geographic area must be of sufficient size in population and have enough public funds for behavioral health services to allow for flexibility and maximum efficiency.

(b) The operating costs of the managing entity contract shall be funded through funds from the department and any savings and efficiencies achieved through the implementation of managing entities when realized by their participating provider network agencies. The department recognizes that managing entities will have infrastructure development costs during start-up so that any efficiencies to be realized by providers from consolidation of management functions, and the resulting savings, will not be achieved during the early years of operation. The department shall negotiate a reasonable and appropriate administrative cost rate <u>for the system of care managed by</u> ~~with~~ the managing entity. The Legislature intends

that reduced local and state contract management and other administrative duties passed on to the managing entity allows funds previously allocated for these purposes to be proportionately reduced and the savings used to purchase the administrative functions of the managing entity. Policies and procedures of the department for monitoring contracts with managing entities shall include provisions for eliminating duplication within the provider network and between ~~of~~ the department's and the managing entities' contract management and other administrative activities in order to achieve the goals of cost-effectiveness and regulatory relief. To the maximum extent possible, provider-monitoring activities shall be assigned to the managing entity.

(c) Contracting and payment mechanisms for services must promote clinical and financial flexibility and responsiveness and must allow different categorical funds to be integrated at the point of service. The contracted service array must be determined by using public input, needs assessment, and evidence-based and promising best practice models. The department may employ care management methodologies, prepaid capitation, and case rate or other methods of payment which promote flexibility, efficiency, and accountability.

(5) GOALS.—The goal of the service delivery strategies is to provide a design for an effective coordination, integration, and management approach for delivering effective behavioral health services to persons who are experiencing a mental health or substance abuse crisis, who have a disabling mental illness or a substance use or co-occurring disorder, and require extended services in order to recover from their illness, or who

need brief treatment or longer-term supportive interventions to avoid a crisis or disability. Other goals include:

(a) Improving accountability for a local system of behavioral health care services to meet performance outcomes and standards through the use of reliable and timely data.

(b) Enhancing the continuity of care for all children, adolescents, and adults who enter the publicly funded behavioral health service system.

(c) Preserving the "safety net" of publicly funded behavioral health services and providers, and recognizing and ensuring continued local contributions to these services, by establishing locally designed and community-monitored systems of care.

(d) Providing early diagnosis and treatment interventions to enhance recovery and prevent hospitalization.

(e) Improving the assessment of local needs for behavioral health services.

(f) Improving the overall quality of behavioral health services through the use of evidence-based, best practice, and promising practice models.

(g) Demonstrating improved service integration between behavioral health programs and other programs, such as vocational rehabilitation, education, child welfare, primary health care, emergency services, juvenile justice, and criminal justice.

(h) Providing for additional testing of creative and flexible strategies for financing behavioral health services to enhance individualized treatment and support services.

(i) Promoting cost-effective quality care.

(j) Working with the state to coordinate admissions and discharges from state civil and forensic hospitals and coordinating admissions and discharges from residential treatment centers.

(k) Improving the integration, accessibility, and dissemination of behavioral health data for planning and monitoring purposes.

(l) Promoting specialized behavioral health services to residents of assisted living facilities.

(m) Working with the state and other stakeholders to reduce the admissions and the length of stay for dependent children in residential treatment centers.

(n) Providing services to adults and children with co-occurring disorders of mental illnesses and substance abuse problems.

(o) Providing services to elder adults in crisis or at-risk for placement in a more restrictive setting due to a serious mental illness or substance abuse.

(6) ESSENTIAL ELEMENTS.—It is the intent of the Legislature that the department may plan for and enter into contracts with managing entities to manage care in geographical areas throughout the state.

(a) The managing entity must demonstrate the ability of its network of providers to comply with the pertinent provisions of this chapter and chapter 397 and to ensure the provision of comprehensive behavioral health services. The network of providers must include, but need not be limited to, community mental health agencies, substance abuse treatment providers, and best practice consumer services providers.

(b) The department shall terminate its mental health or substance abuse provider contracts for services to be provided by the managing entity at the same time it contracts with the managing entity.

(c) The managing entity shall ensure that its provider network is broadly conceived. ~~All~~ Mental health or substance abuse ~~treatment~~ providers currently under contract with the department shall be offered a contract by the managing entity for 1 year.

(d) The department may contract with managing entities to provide the following core functions:

1. System-of-care development and management. ~~Financial accountability.~~

2. Utilization management. ~~Allocation of funds to network providers in a manner that reflects the department's strategic direction and plans.~~

3. Network and subcontract management. ~~Provider monitoring to ensure compliance with federal and state laws, rules, and regulations.~~

4. Quality improvement. ~~Data collection, reporting, and analysis.~~

5. Technical assistance and training. ~~Operational plans to implement objectives of the department's strategic plan.~~

6. Data collection, reporting, and analysis. ~~Contract compliance.~~

7. Financial ~~Performance~~ management.

8. Planning. ~~Collaboration with community stakeholders, including local government.~~

9. Board development and governance. ~~System of care through~~

~~network development.~~

10. Disaster planning and responsiveness. ~~Consumer care coordination.~~

~~11. Continuous quality improvement.~~

~~12. Timely access to appropriate services.~~

~~13. Cost-effectiveness and system improvements.~~

~~14. Assistance in the development of the department's strategic plan.~~

~~15. Participation in community, circuit, regional, and state planning.~~

~~16. Resource management and maximization, including pursuit of third-party payments and grant applications.~~

~~17. Incentives for providers to improve quality and access.~~

~~18. Liaison with consumers.~~

~~19. Community needs assessment.~~

~~20. Securing local matching funds.~~

(e) The managing entity shall ensure that written cooperative agreements are developed and implemented among the criminal and juvenile justice systems, the local community-based care network, and the local behavioral health providers in the geographic area which define strategies and alternatives for diverting people who have mental illness and substance abuse problems from the criminal justice system to the community. These agreements must also address the provision of appropriate services to persons who have behavioral health problems and leave the criminal justice system.

(f) Managing entities must collect and submit data to the department regarding persons served, outcomes of persons served, and the costs of services provided through the department's

contract. The department shall evaluate managing entity services based on consumer-centered outcome measures that reflect national standards that can dependably be measured. The department shall work with managing entities to establish performance standards related to:

1. The extent to which individuals in the community receive services.

2. The improvement of quality of care for individuals served.

3. The success of strategies to divert jail, prison, and forensic facility admissions.

4. Consumer and family satisfaction.

5. The satisfaction of key community constituents such as law enforcement agencies, juvenile justice agencies, the courts, the schools, local government entities, hospitals, and others as appropriate for the geographical area of the managing entity.

(g) The Agency for Health Care Administration may establish a certified match program, which must be voluntary. Under a certified match program, reimbursement is limited to the federal Medicaid share to Medicaid-enrolled strategy participants. The agency may take no action to implement a certified match program unless the consultation provisions of chapter 216 have been met. The agency may seek federal waivers that are necessary to implement the behavioral health service delivery strategies.

(7) MANAGING ENTITY REQUIREMENTS.—The department may adopt rules and standards and a process for the qualification and operation of managing entities which are based, in part, on the following criteria:

(a) A managing entity's governance structure shall be

representative and shall~~, at a minimum,~~ include consumers, ~~and~~ family members, and appropriate community stakeholders and organizations. In addition, up to 25 percent of the members of a managing entity's board of directors may include~~, and~~ providers of substance abuse and mental health services as defined in this chapter and chapter 397. If there are one or more private-receiving facilities in the geographic coverage area of a managing entity, the managing entity shall have one representative for the private-receiving facilities as an ex officio member of its board of directors.

~~(b) A managing entity that was originally formed primarily by substance abuse or mental health providers must present and demonstrate a detailed, consensus approach to expanding its provider network and governance to include both substance abuse and mental health providers.~~

~~(c) A managing entity must submit a network management plan and budget in a form and manner determined by the department. The plan must detail the means for implementing the duties to be contracted to the managing entity and the efficiencies to be anticipated by the department as a result of executing the contract. The department may require modifications to the plan and must approve the plan before contracting with a managing entity. The department may contract with a managing entity that demonstrates readiness to assume core functions, and may continue to add functions and responsibilities to the managing entity's contract over time as additional competencies are developed as identified in paragraph (g). Notwithstanding other provisions of this section, the department may continue and expand managing entity contracts if the department determines that the managing entity meets the requirements specified in this section.~~

(b) ~~(d) Notwithstanding paragraphs (b) and (c),~~ A managing entity that is currently a fully integrated system providing mental health and substance abuse services, Medicaid, and child welfare services is permitted to continue operating under its current governance structure until June 30, 2013, as long as the managing entity can demonstrate to the department that consumers, other stakeholders, and network providers are included in the planning process.

(c) ~~(e)~~ Managing entities shall operate in a transparent manner, providing public access to information, notice of meetings, and opportunities for broad public participation in decisionmaking. ~~The managing entity's network management plan must detail policies and procedures that ensure transparency.~~

(d) ~~(f)~~ Before contracting with a managing entity, the department must perform an onsite readiness review of a managing entity to determine its operational capacity to satisfactorily perform the duties to be contracted.

(e) ~~(g)~~ The department shall engage community stakeholders, ~~including~~ providers, and managing entities under contract with the department~~,~~ in the development of objective standards to measure the competencies of managing entities and their readiness to assume the responsibilities described in this section~~,~~ and measure the outcomes to hold them accountable.

(8) DEPARTMENT RESPONSIBILITIES.~~—~~With the introduction of managing entities to monitor department-contracted providers' day-to-day operations, the department and its regional ~~and circuit~~ offices will have increased ability to focus on broad

systemic substance abuse and mental health issues. After the department enters into a managing entity contract in a geographic area, the regional ~~and circuit~~ offices of the department in that area shall direct their efforts primarily to monitoring the managing entity and its system of care; ~~contract, including negotiation of~~ system quality improvement, cost management, and outcomes requirements; ~~goals each contract year, and~~ review of the managing entity's plans to execute department strategic plans; carrying out statutorily mandated licensure functions; conducting community and regional substance abuse and mental health planning; ~~communicating to the department the local needs assessed by the managing entity; preparing department strategic plans;~~ coordinating with other state and local agencies; ~~assisting the department in assessing local trends and issues and advising departmental headquarters on local priorities;~~ and providing leadership in disaster planning and preparation. The ultimate responsibility of accountability for the expenditure of substance abuse and mental health public funds resides with the department.

(9) REPORTING.—Reports of the department's activities, progress, and needs in achieving the goal of contracting with managing entities in each circuit and region statewide must be submitted to the appropriate substantive and appropriations committees in the Senate and the House of Representatives on January 1 and July 1 of each year until the full transition to managing entities has been accomplished statewide.

(10) RULES.—The department may ~~shall~~ adopt rules to administer this section ~~and, as necessary, to further specify requirements of managing entities~~.

Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1 25 12
Meeting Date

Topic managing entities
Bill Number 2046 *(if applicable)*

Name Dan Hendrickson
Amendment Barcode _____ *(if applicable)*

Job Title Asst Public Defender, 2d Circuit

Address 301 S Monroe St, 4th floor N
Street
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City *State* *Zip*

Phone 850-606-1037
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Speaking: ☐ For ☑ Against ☐ Information

Representing Fla Public Defender Assn

Appearing at request of Chair: ☐ Yes ☐ No
Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-25-12
Meeting Date

Topic Sub: Abuse & Mental Health SVCS
Bill Number SB 2046 *(if applicable)*

Name MARK P. FONTAINE
Amendment Barcode _____ *(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 2868 MAHAN DRIVE
Street
TALLAHASSEE FL 32308
City *State* *Zip*

Phone (850) 878-2196
E-mail _____

Speaking: ☐ For ☐ Against ☑ Information

Representing FLORIDA ALCOHOL + DRUG ABUSE ASSOCIATION

Appearing at request of Chair: ☑ Yes ☐ No
Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	SB 2044
INTRODUCER:	Children, Families, and Elder Affairs Committee
SUBJECT:	Child Protection
DATE:	January 24, 2012
REVISED:	01/26/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	**Favorable**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill makes changes to numerous provisions in Chapter 39, F.S., relating to the central abuse hotline, child protective investigations, and the dependency process. Specifically, the bill does the following:

- Amends the central abuse hotline procedures to specify that the hotline may accept a call from a parent or legal custodian seeking assistance for themselves when the call does not meet the statutory requirement of abuse, abandonment or neglect;
- Allows the Department of Children and Family Services (DCF or department) to discontinue an investigation if it is determined that a false report of abuse, abandonment or neglect has been filed;
- Requires the department to maintain one electronic child welfare case file for each child;
- Requires child protective investigators (CPIs) to determine the need for immediate consultation with law enforcement, child protection teams, and others prior to the commencement of an investigation;
- Eliminates the current bifurcated investigative process and provides for a single procedure for every case accepted for investigation; and
- Requires that monitoring of protective investigation reports are used to determine the quality and timeliness of safety assessments, and teamwork with other professionals and engagement with families.

In addition, the bill makes changes to the chapter 39 protective injunction process to prevent child abuse and to mirror language in the civil injunction process in Chapter 741, F.S.; amends requirements relating to criminal background and records checks for individuals being

considered for placement of a child; and amends provisions relating to termination of parental rights that apply to incarcerated parents. Finally, the bill provides specific circumstances in which the court may order maintaining and strengthening families as a permanency goal in the child's case plan when the child resides with a parent and revises the number of times the Children and Youth Cabinet must meet annually.

The bill substantially amends ss. 39.01, 39.013, 39.0138, 39.201, 39.205, 39.301, 39.302, 39.307, 39.502, 39.504, 39.521, 39.6011, 39.621, 39.701, 39.8055, 39.806, 39.823, 39.828 and 402.56 of the Florida Statutes:

II. Present Situation:

Background

Chapter 39, F.S., provides direction for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.[1] The central abuse hotline and the child protective investigation comprise the "front-end" of the child protection system in Florida.[2]

Florida Abuse Hotline

The department operates the central abuse hotline (hotline), a 24 hour a day 7 day a week reporting system that serves as a point of contact for individuals who reasonably suspect or believe that a child has been abused, abandoned or neglected[3] by a parent, legal custodian, caregiver, or other person responsible for the child's welfare[4] or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.[5,6]

Callers to the hotline may remain anonymous, however, various professionals are required to provide their name as part of the permanent report.[7] Once a call has been made to the hotline, hotline counselors enter all information into the Florida Safe Families Network (FSFN), and determine if the call meets the statutory definition of child abuse, abandonment or neglect by a caregiver.[8] If the call meets one of those definitions, it is accepted as a report and referred to the appropriate child investigative office.[9] DCF is required to maintain a master file for each child whose report is accepted by the hotline.[10]

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[1] s. 39.001(1)(a), F.S.
[2] ss. 39.201 and 39.301, F.S.
[3] As defined by s. 39.01(1), (2), and (44), F.S.
[4] As defined by s. 39.01(10), (47) and (49), F.S.
[5] s. 39.201(1)(a), F.S.
[6] In 2008, the department was authorized to accept reports to the central abuse hotline by fax or web-based report. Ch. 2008-245, L.O.F.
[7] s. 39.201, F.S.
[8] *Id.*
[9] *Id*.
[10] *Id*.

In 2007 the department authorized the central abuse hotline to begin implementing new procedures related to calls that do not meet the criteria to be accepted as a report, but may indicate situations in which a family needs help. These have at various points in time been referred to as "prevention referrals," "parent needs assistance referrals," and "special condition referrals," and the expectation was for circuits to utilize local resources to prevent a child from being placed at risk.[11,12]

Child Protective Investigations

The department's approach to child protective investigations has historically been marked by change:

- In 1992, the Florida House of Representatives Aging and Human Services Committee decided that incremental changes made in the past relating to child protective investigations had not remedied perceived problems with the process and wanted a more systematic approach to reforming the child protection system.[13]Legislation was enacted that directed the department to prepare a strategic plan to establish a clear and consistent direction for policy and programs for the child protection system, including goals, objectives, and strategies.[14]Recommendations in the completed strategic plan included creating the statutory authority for developing and demonstrating the efficacy of a service-oriented response system to reports of child abuse and neglect.[15]
- With the creation of Part III of chapter 415, F.S., entitled Family Services Response System (FSRS)[16] in 1993, Florida was one of the first two states to implement a differential response system. The provisions in Florida law relating to the FSRS constitute the assessment response of a differential response system. The approach provided for a nonadversarial response to reports of abuse and neglect by assessing for and delivering services to remove any determined risk, while providing support for the family. The legislation allowed local service districts the flexibility to design the FSRS to meet local community needs[17] and required an ongoing community planning effort to include the approval of the recently established Health and Human Service Boards.[18]

[11] Department of Children and Family Services. Prevention Referral Guidance Memorandum, December 1, 2009.
[12] Early problems included circuits and lead agencies providing inconsistent responses to these referrals. A subsequent memorandum provided some clarification for the referral process. Department of Children and Family Services. Child Prevention Referral Guidance and Clarification Memorandum. January 19, 2010.
[13] Final Bill Analysis and Economic Impact Statement, CS/HB 593, Florida House of Representatives, Committee on Aging and Human Services, April 3, 1993.
[14] Ch. 92-58, L.O.F. In developing the plan, the department was required to engage a broad spectrum of individuals and groups and look at the child protection system in its entirety.
[15] Final Bill Analysis and Economic Impact Statement, CS/HB 593, Florida House of Representatives, Committee on Aging and Human Services, April 3, 1993.
[16] Chapter 93-25, L.O.F. The legislation not only created Part III of chapter 415, F.S., entitled Family Services Response System, but also created Part IV, entitled Protective Investigations which resulted in a clear statutory delineation between the two types of responses to reports of child abuse and neglect. The legislation also required an outcome evaluation and three annual status reports to be submitted to the legislature beginning January 1, 1995.
[17] s. 415.5018, F.S. (1993).
[18] *Id*.

- The department began steps toward the implementation of FSRS in districts statewide. Despite some positive findings reported in subsequent outcome evaluations, difficulties identified during the course of the evaluation had a negative effect on the viability and support for FSRS.[19] In addition to problems identified in the outcome evaluation, an assessment of dependency cases by Florida's Dependency Court Improvement Program (DCIP)[20] revealed enough judicial concern with the inconsistent implementation of the FSRS, and compromised child safety as a result of decisions being made by department staff, that the DCIP recommended that Florida return to the use of a traditional protective investigation for all reports.[21]
- During the 1998 session, legislation was enacted that incorporated all of the recommendations of the DCIP, as well as the mandated provisions of the newly enacted federal Adoption and Safe Families Act, and Florida's version of a differential response system was repealed.[22] As a result, all districts returned to the investigation of all child protective reports culminating in a finding associated with a child victim and perpetrator. Currently, Florida law does not allow for the use of a differential response system.
- In 2003, the Protective Investigation Retention Workgroup (PIRW) was formed under the direction of DCF for the purpose of examining a number of the issues relating to retention of protective investigators.[23] The product of the workgroup was a comprehensive set of recommendations, including development of a framework for a differential response system to be piloted in multiple sites.[24,25]Recommendations of the workgroup also resulted in legislation creating two types of investigative response: onsite and enhanced onsite.[26]

[19] Alternative Response System Design Report, Prepared for the Florida Department of Children and Family Services by the Child Welfare Institute, December 2006.

[20] Florida's Dependency Court Improvement Program (DCIP) was established in 1995 when Congress funded a comprehensive research initiative to assess judicial management of foster care and adoption proceedings. The mandate to the highest court in every state was to assess the court's management of dependency cases to determine the level of compliance with the Adoption Assistance and Child Welfare Act and to develop an action plan to effect positive change in legislation, policy, judicial oversight, representation, and practice and procedure.

[21] The Florida Senate. Differential Response To Reports Of Child Abuse And Neglect. Interim Report 2011-105, October 2010.

[22] Ch. 98-403, L.O.F. CS/HB 1019. Part III of chapter 39, F.S., entitled Protective Investigations, was created and all calls accepted by the hotline as reports were required to be investigated.

[23] See Interim Project Report 2003-110, Retention of Protective Investigators and Protective Investigative Supervisors, Committee on Children and Families, The Florida Senate, January 2003. Available at: http://www.flsenate.gov/data/Publications/2003/Senate/reports/interim_reports/pdf/2003-110cf.pdf. (Last visited August 13, 2010.) and 24 Interim Project Report 2003-110, Retention of Protective Investigators Phase II, Committee on Children and Families, The Florida Senate, January 2003. Available at: http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-113cf.pdf. (Last visited August 13, 2010.)

[24] Protective Investigator Retention Workgroup, Report to the Legislature, Department of Children and Family Services, December 31, 2003.

[25] In 2005, the DCF Family Safety program office issued a Request for Proposal (RFP) for assistance in designing a differential response system pilot project in Florida. The program office limited the scope of the project to Bay, Duval, and Seminole counties. The pilots ran for six months, beginning in mid 2008, with mixed results. Florida's Alternative Response Pilot Final Summary Report, Florida Department of Children and Family Services, Family Safety Program Office, February, 2009.

[26] Ch. 2003-127, L.O.F.

- The department proposed legislation to implement a statewide differential response system for responding to reports of child abuse and neglect during the 2009 and 2010 legislative sessions.[27]

Chapter 39 Protective Injunctions

Current law permits a court to issue an injunction to prevent an act of child abuse including protection from acts of domestic violence at any time after a protective investigation has been initiated, and there is reasonable cause for the injunction.[28] An injunction issued pursuant to chapter 39, F.S., may order an alleged or actual offender to:

- Refrain from further abuse or acts of domestic violence;
- Participate in a specialized treatment program;
- Limit contact or communication with the child victim, other children in the home, or any other child;
- Refrain from contacting the child at home, school, work, or wherever the child may be found;
- Have limited or supervised visitation with the child.;
- Pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members; and
- Vacate the home in which the child resides.[29]

The injunction will remain in effect until modified or dissolved by the court, and is enforceable in all counties in the state, allowing law enforcement to exercise arrest powers in the enforcement of the injunction, if necessary.[30]

The department has reported that some judges do not interpret the law to allow for jurisdiction to attach to the dependency courts, when an injunction for protection under s. 39.504, F.S., is filed prior to, or in lieu of, a shelter or dependency petition. Judges are reluctant to advance a petition for injunction unless a dependency action is also filed because of this jurisdictional issue. Current law does not allow for a warrantless arrest.[31]

Termination of Parental Rights

Current law provides that grounds for the termination of parental rights may be established under a number of circumstances, including when the parent of a child is incarcerated in a state or federal correctional institution and either:

- The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

[27] See SB 2288 (2009) and SB 2676 (2010).
[28] s. 39.504, F.S.
[29] *Id*.
[30] *Id*.
[31] Department of Children and Families. Staff Analysis and Economic Impact. HB 803. December 5, 2011. At the time of this analysis HB 803 and PSB 7166 were identical.

- The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph;[32] or
- The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

The measurement of the child's remaining minority runs from the date the TPR petition is filed. The court is limited to relying solely on the length of the parent's sentence and may not consider the quality of that time in the child's development.[33] The court must consider whether the time for which a parent is expected to be incarcerated in the future constitutes a substantial portion of the time before the child reaches eighteen, not whether the time the parent has been incarcerated in the past was a substantial portion of the child's life to that point.[34]

Currently the courts interpret "substantial portion of the child's remaining minority" as a mathematical formula. In determining what constitutes a substantial portion of the child's remaining minority, the courts have found that 25 percent, 26 percent, 28.6 percent and 32 percent of the child's remaining minority was not substantial:

- W.W. v. Department of Children and Families, 811 So. 2d 791 (Fla. 4th DCA 2002) held that incarceration for a period constituting twenty-five percent of the child's minority was not a substantial portion of the child's minority. See also B.C. v. Department of Children and Families, 887 So. 2d 1046 (Fla. 2004).
- A.W., 816 So. 2d at 1264 held that remaining incarceration constituting twenty-six percent and thirty-two percent of the remaining minority of the children did not constitute a substantial portion of child's minority.

Children and Youth Cabinet

The Children and Youth Cabinet was created in 2007 for the purpose of ensuring that the public policy of the state relating to children and youth is developed to promote interdepartmental collaboration and program implementation in order that services designed for children and youth are planned, managed, and delivered in a holistic and integrated manner to improve the children's self-sufficiency, safety, economic stability, health, and quality of life.[35] The cabinet is currently required to meet at least six times each year in different regions of the state in order to

[32] As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction.
[33] In re *A.W.*, 816 So. 2d 1261 (Fla. 2d DCA 2002).
[34] In re *J.D.C.*, 819 So. 2d 264 (Fla. 2d DCA 2002).
[35] Ch. 2007-151, L.O.F.

solicit input from the public and any other individual offering testimony relevant to the issues considered. Each meeting must include a public comment session.[36]

III. Effect of Proposed Changes:

Central Abuse Hotline

The department is currently making referrals known as "Special Condition Referrals" without statutory authority. The bill authorizes the department to refer calls to the central abuse hotline from parents or legal custodians who seek help, to voluntary community services after it is determined that the call does not meet the statutory threshold for a child protective investigation.

Child Protective Investigations

This bill proposes substantial changes to the child protective investigation process with the intent to strengthen the investigation process, streamline investigative activities, and provide a more focused framework for on-going services to be provided.[37] Current law provides for two types of investigative responses; "enhanced" and "onsite".[38] The abbreviated "onsite" investigative process, with the exception of minor requirement exemptions, mirrors the "enhanced" or "traditional" investigative process, and essentially renders them indistinguishable.[39] The department reports that due to the prescriptive nature of the current statute, child protective investigators are inhibited in developing different criteria and response protocols to effectively engage families. The department also reports that the current statute does not provide for differentiation between risk and safety that guides a child protective investigator's determination of response and service provision.[40]

The bill contains the following provisions related to child protective investigations:

- Provides DCF with discretion as to whether to file a dependency petition to the court when a child is in need of protection and supervision. Current law is deleted which requires that a dependency petition be filed when the child needs protection and supervision of the court and when the case is determined to be high risk;
- Requires that the case record for each child be electronic and include all information from reports called into the hotline and all services the child and the family has received;
- Removes several provisions from current law which provided conditions as to when a child protective investigation is to be performed. This is replaced with a general directive that each report from the hotline which is accepted, will be investigated and provides the following list of activities to be performed, some of which are already in current law:

[36] s. 402.56, F.S.
[37] Following the death of Nubia Barahona, Secretary Wilkins convened the Child Protection Improvement Advisory Board to draft an "overhaul of the way DCF investigators handle child abuse cases, of the hotline that filters thousands of abuse calls annually and of the community agencies that serve foster families." Valdes, A. *Barahona death to spur Florida child protection overhaul.* Palm Beach Post. June 16, 2011. It is unclear whether the changes proposed in the bill are a result of the work of the advisory board.
[38] s. 39.301, F.S.
[39] *Id.*
[40] Department of Children and Families. Staff Analysis and Economic Impact. HB 803. December 5, 2011. At the time of this analysis HB 803 and PSB 7166 were identical.

- Review all available information specific to the child and family and the alleged maltreatment including past family child welfare history, criminal records checks, and requests for law enforcement assistance provided by the hotline;
- Interview collateral contacts, which may include professionals who know the child;
- Conduct face-to-face interviews, including with the child's parent or caregiver; and
- Assess the child's residence.

The bill contains the following new provisions related to the investigative process that require the department to:

- Determine the need for immediate consultation with law enforcement, child protection teams, domestic violence shelters and substance abuse and mental health professionals; and
- Document impending dangers to the child based on safety assessment instruments as opposed to a risk assessment instrument which is required in current law. Neither the bill or current law defines "safety" or "risk". It is, therefore, not clear what change is intended by a safety assessment versus a risk assessment.
- Allows DCF or its authorized agent to discontinue all investigative activities at the point it is determined that a false report has been referred;
- Establishes the Statewide Automated Child Welfare Information System as the single standard electronic case file on a child for centralized documentation and maintenance on services provided to child and family;
- Requires the child protection investigator to determine the need for immediate consultation with law enforcement, child protection team, domestic violence shelter or advocate, and substance abuse or mental health resources prior to commencement of an investigation;
- Authorizes the child protection investigator to close a case at various stages of an investigation when it is determined that a child is safe and there are no signs of impending danger;
- Outlines the activities, training requirements and qualitative reviews that must be performed to enhance the skills of staff and improve the region's overall child protection system; and
- Provides conditions under which an investigator may close a case and makes changes to the case review process to identify family strengths and weaknesses.

Chapter 39 Protective Injunctions

The bill makes improvements and changes to the protective injunction process to prevent child abuse in s.39.504, F.S., and mirrors language in the civil injunction process in Chapter 741, F.S. The bill contains the following provisions related to protective injunctions under chapter 39, F.S.:

- Amends 39.013, F.S., related to court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued pursuant to s. 39.504, F.S. Current law provides that court jurisdiction attaches to a case when petitions for shelter, dependency or termination of parental rights are filed or the child is taken into DCF custody. DCF reports that some courts will not recognize or hear an injunction unless a shelter, dependency or termination of parental rights petition has already

been filed. This change will assist DCF by not requiring one of these other petitions when all that may be needed to resolve a situation is an injunction to protect the child;
- Establishes jurisdiction to enable courts to accept a domestic violence injunction filed by the department rather than the victim of such violence; and
- Effectuates the legislative intent of 2008 by creating a process similar to the procedures in adult domestic violence cases under Chapter 741, F.S., for the entry of an immediate injunction, which also protects the constitutionally-protected due process rights of the respondent. The department reports these changes are essential to providing a consistent and positive application of Chapter 39, F.S., injunctions.[41]

Termination of Parental Rights

The Guardian Ad Litem Program reports that using a purely mathematical formula to determine termination of parental rights of an incarcerated parent does not support the provisions of chapter 39, F.S., where the primary consideration is for permanency and best interest of child.[42] The bill authorizes termination upon a "significant portion of the child's minority" and replaces the forward mathematical time calculation with a qualitative review of the significance of the incarceration to a child's life. The judicial review would begin on the date the parent entered the correctional institution rather than at the time of the filing of the TPR petition.

The bill also contains the following provisions related to termination of parental rights:

- Amends the timeframe for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law that already specify 12 months;[43]and
- Amends the definitions of the terms "abandoned" and "harm" to conform with changes made by the bill related to termination of parental rights when a parent is incarcerated;

Additional Provisions

The bill also does the following:

- The department reports that there are inconsistent interpretations around the state related to the background screening requirements for parents who are being considered for placement of a child and whether children who are 12 to 18 years of age should be fingerprinted. The bill clarifies that a criminal history records check on all persons, being considered by the department for placement of a child includes parents of the child and all members of the household 12 years of age or older; requires submission of fingerprints to the Florida Department of Law Enforcement (FDLE) on household members 18 years of age and older and on other visitors; and requires an out-of-state criminal history records check on any person 18 years of age or older who resided in another state if that state allows the release of such records;

[41] *Id*.
[42] Communication from Alan Abramowitz, Executive Director, Florida Statewide Guardian ad Litem Office, November 21, 2011. On file with the Committee on Children, Families, and Elder Affairs.
[43] See ss. 39.401, 39.6011, 39.621, 39.701, 39.8055, F.S.

- Requires the protective investigation of an institution to include an interview with the child's parent or legal guardian rather than an on-site visit of the child's place of residence;
- Eliminates the seven day requirement for an assessment of service and treatment needs regarding child-on-child sexual abuse reports, recognizing that assessments often can take longer than seven days;
- Clarifies that maintaining and strengthening families is a statutorily authorized case plan goal for children who remain in their homes under protective supervision; and
- Requires that the Children and Youth Cabinet must meet at least four times annually.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-02078-12 20122044__

A bill to be entitled

An act relating to child protection; amending s. 39.01, F.S.; revising the definitions of the term "abandoned" or "abandonment," "institutional child abuse or neglect," and "abandons the child within the context of harm"; amending s. 39.013, F.S.; specifying when jurisdiction attaches for a petition for an injunction to prevent child abuse issued pursuant to specified provisions; amending s. 39.0138, F.S.; revising provisions relating to criminal history records check on persons being considered for placement of a child; requiring a records check through the State Automated Child Welfare Information System; providing for an out-of-state criminal history records check of certain persons who have lived out of state if such records may be obtained; amending s. 39.201, F.S.; providing procedures for calls from a parent or legal custodian seeking assistance for himself or herself which do not meet the criteria for being a report of child abuse, abandonment, or neglect, but show a potential future risk of harm to a child and requiring a referral if a need for community services exists; specifying that the central abuse hotline is the first step in the safety assessment and investigation process; amending s. 39.205, F.S.; permitting discontinuance of an investigation of child abuse, abandonment, or neglect during the course of the investigation if it is determined that the report was false; amending s. 39.301, F.S.; substituting

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references to a standard electronic child welfare case for a master file; revising requirements for such a file; revising requirements for informing the subject of an investigation; deleting provisions relating to a preliminary determination as to whether an investigation report is complete; revising requirements for child protective investigation activities to be performed to determine child safety; specifying uses for certain criminal justice information accesses by child protection investigators; requiring documentation of the present and impending dangers to each child through use of a standardized safety assessment; revising provisions relating to required protective, treatment, and ameliorative services; revising requirements for the Department of Children and Family Service's training program for staff responsible for responding to reports accepted by the central abuse hotline; requiring the department's training program at the regional and district levels to include results of qualitative reviews of child protective investigation cases handled within the region or district; revising requirements for the department's quality assurance program; amending s. 39.302, F.S.; requiring that a protective investigation must include an interview with the child's parent or legal guardian; amending s. 39.307, F.S.; requiring the department, contracted sheriff's office providing protective investigation services, or contracted case management personnel

responsible for providing services to adhere to certain procedures relating to reports of child-on-child sexual abuse; deleting a requirement that an assessment of service and treatment needs to be completed within a specified period; amending s. 39.504, F.S.; revising provisions relating to the process for seeking a child protective injunction; providing for temporary ex parte injunctions; providing requirements for service on an alleged offender; revising provisions relating to the contents of an injunction; providing for certain relief; providing requirements for notice of a hearing on a motion to modify or dissolve an injunction; providing that a person against whom an injunction is entered does not automatically become a party to a subsequent dependency action concerning the same child unless he or she was a party to the action in which the injunction was entered; amending s. 39.521, F.S.; requiring a home study report if a child has been removed from the home and will be remaining with a parent; substituting references to the State Automated Child Welfare Information System for the Florida Abuse Hotline Information System applicable to records checks; authorizing submission of fingerprints of certain household members; authorizing requests for national criminal history checks and fingerprinting of any visitor to the home known to the department; amending s. 39.6011, F.S.; providing additional options for the court with respect to case plans;

providing for expiration of a child's case plan no later than 12 months after the date the child was adjudicated dependent; conforming a cross-reference to changes made by the act; amending s. 39.621, F.S.; revising terminology relating to permanency determinations; amending s. 39.701, F.S.; providing that a court must schedule a judicial review hearing if the citizen review panel recommends extending the goal of reunification for any case plan beyond 12 months from the date the child was adjudicated dependent, unless specified other events occurred earlier; conforming a cross-reference to changes made by the act; amending s. 39.8055, F.S.; requiring the department to file a petition to terminate parental rights within a certain number of days after the completion of a specified period after the child was sheltered or adjudicated dependent, whichever occurs first; amending s. 39.806, F.S.; providing additional criteria for the court to consider when deciding whether to terminate the parental rights of a parent or legal guardian because the parent or legal guardian is incarcerated; increasing the number of months of failure of the parent or parents to substantially comply with a child's case plan in certain circumstances that constitutes evidence of continuing abuse, neglect, or abandonment and grounds for termination of parental rights; revising a cross-reference; clarifying applicability of certain amendments made by the act; amending ss. 39.502,

39.823, and 39.828, F.S.; conforming cross-references to changes made by the act; amending s. 402.56, F.S.; directing the Children and Youth Cabinet to meet at least four times per year rather than six times per year; providing an effective date.

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

Section 1. Subsection (1), paragraph (e) of subsection (32), and subsection (33) of section 39.01, Florida Statutes, are amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(1) "Abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made ~~makes~~ no significant contribution to the child's care and maintenance or ~~provision for the child's support and~~ has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term does not include a surrendered newborn infant as described in s. 383.50, a "child

in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(32) "Harm" to a child's health or welfare can occur when any person:

(e) Abandons the child. Within the context of the definition of "harm," the term "abandoned the child" or "abandonment of the child" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made ~~makes~~ no significant contribution to the child's care and maintenance or ~~provision for the child's support and~~ has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this paragraph, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term "abandoned" does not include a surrendered newborn infant as described in s. 383.50, a child in need of services as defined in chapter 984, or a family in need of services as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may

support a finding of abandonment.

(33) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (47).

Section 2. Subsection (2) of section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.—

(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition, or a petition for an injunction to prevent child abuse issued pursuant to s. 39.504, is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was not in the physical or legal custody of any ~~no~~ person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless

relinquished by its order, until the child reaches 18 years of age. However, if a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Program, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

Section 3. Section 39.0138, Florida Statutes, is amended to read:

39.0138 Criminal history and other records checks ~~check~~;

limit on placement of a child.—

(1) The department shall conduct a records check through the State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal history records check on all persons, including parents, being considered by the department for placement of a child ~~subject to a placement decision~~ under this chapter, including all nonrelative placement decisions, and all members of the household, 12 years of age and older, of the person being considered~~, and frequent visitors to the household~~. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies of all household members 18 years of age and older and other visitors to the home. An out-of-state criminal history records check must be initiated for any person 18 years of age or older who resided in another state if that state allows the release of such records. ~~A criminal history records check must also include a search of the department's automated abuse information system.~~ The department shall establish by rule standards for evaluating any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision.

(2) The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has been convicted of any felony that falls within any of the following categories:

(a) Child abuse, abandonment, or neglect;

(b) Domestic violence;

(c) Child pornography or other felony in which a child was a victim of the offense; or

(d) Homicide, sexual battery, or other felony involving violence, other than felony assault or felony battery when an adult was the victim of the assault or battery.

(3) The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has, within the previous 5 years, been convicted of a felony that falls within any of the following categories:

(a) Assault;

(b) Battery; or

(c) A drug-related offense.

(4) The department may place a child in a home that otherwise meets placement requirements if a name check of state and local criminal history records systems does not disqualify the applicant and if the department submits fingerprints to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the state and national criminal history records check.

(5) Persons with whom placement of a child is being considered or approved must disclose to the department any prior or pending local, state, or national criminal proceedings in which they are or have been involved.

(6) The department may examine the results of any criminal history records check of any person, including a parent, with whom placement of a child is being considered under this

section. The complete criminal history records check must be considered when determining whether placement with the person will jeopardize the safety of the child being placed.

(7)(a) The court may review a decision of the department to grant or deny the placement of a child based upon information from the criminal history records check. The review may be upon the motion of any party, the request of any person who has been denied a placement by the department, or on the court's own motion. The court shall prepare written findings to support its decision in this matter.

(b) A person who is seeking placement of a child but is denied the placement because of the results of a criminal history records check has the burden of setting forth sufficient evidence of rehabilitation to show that the person will not present a danger to the child if the placement of the child is allowed. Evidence of rehabilitation may include, but is not limited to, the circumstances surrounding the incident providing the basis for denying the application, the time period that has elapsed since the incident, the nature of the harm caused to the victim, whether the victim was a child, the history of the person since the incident, whether the person has complied with any requirement to pay restitution, and any other evidence or circumstances indicating that the person will not present a danger to the child if the placement of the child is allowed.

Section 4. Paragraph (a) of subsection (2) and subsection (4) of section 39.201, Florida Statutes, are amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(2)(a) Each report of known or suspected child abuse,

abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter. Any call received from a parent or legal custodian seeking assistance for himself or herself which does not meet the criteria for being a report of child abuse, abandonment, or neglect may be accepted by the hotline for response to ameliorate a potential future risk of harm to a child. If it is determined by a child welfare professional that a need for community services exists, the department shall refer the parent or legal custodian for appropriate voluntary community services.

(4) The department shall operate ~~establish~~ and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week. The central abuse hotline is the first step in the

safety assessment and investigation process. The central abuse hotline shall be operated in such a manner as to enable the department to:

(a) Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system.

(b) Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical and other information.

(c) Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.

(d) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect. The department shall collect and analyze child-on-child sexual abuse reports and include the information in aggregate statistical reports.

(e) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect.

(f) Initiate and enter into agreements with other states for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.

Section 5. Subsections (3) and (5) of section 39.205, Florida Statutes, are amended to read:

39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.—

(3) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as provided in this chapter, commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If the department or its authorized agent has determined during the course of ~~after~~ its investigation that a report is a false report, the department may discontinue all investigative activities and shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01. During the pendency of the investigation, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

Section 6. Section 39.301, Florida Statutes, is amended to read:

39.301 Initiation of protective investigations.—

(1) Upon receiving a report of known or suspected child

abuse, abandonment, or neglect, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care, the central abuse hotline shall determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline shall immediately notify the department's designated district staff responsible for protective investigations to ensure that an onsite investigation is promptly initiated. For reports not requiring an immediate onsite protective investigation, the central abuse hotline shall notify the department's designated district staff responsible for protective investigations in sufficient time to allow for an investigation. At the time of notification, the central abuse hotline shall also provide information to district staff on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports.

(2)(a) The department shall immediately forward allegations of criminal conduct to the municipal or county law enforcement agency of the municipality or county in which the alleged conduct has occurred.

(b) As used in this subsection, the term "criminal conduct" means:

1. A child is known or suspected to be the victim of child abuse, as defined in s. 827.03, or of neglect of a child, as defined in s. 827.03.

2. A child is known or suspected to have died as a result of abuse or neglect.

3. A child is known or suspected to be the victim of aggravated child abuse, as defined in s. 827.03.

4. A child is known or suspected to be the victim of sexual battery, as defined in s. 827.071, or of sexual abuse, as defined in s. 39.01.

5. A child is known or suspected to be the victim of institutional child abuse or neglect, as defined in s. 39.01, and as provided for in s. 39.302(1).

6. A child is known or suspected to be a victim of human trafficking, as provided in s. 787.06.

(c) Upon receiving a written report of an allegation of criminal conduct from the department, the law enforcement agency shall review the information in the written report to determine whether a criminal investigation is warranted. If the law enforcement agency accepts the case for criminal investigation, it shall coordinate its investigative activities with the department, whenever feasible. If the law enforcement agency does not accept the case for criminal investigation, the agency shall notify the department in writing.

(d) The local law enforcement agreement required in s. 39.306 shall describe the specific local protocols for implementing this section.

(3) The department shall maintain a single, standard electronic child welfare case ~~master~~ file for each child whose report is accepted by the central abuse hotline for investigation. Such file must contain information concerning all reports received by the abuse hotline concerning that child and all services received by that child and family. The file must be made available to any department staff, agent of the department,

or contract provider given responsibility for conducting a protective investigation.

(4) To the extent practical, all protective investigations involving a child shall be conducted or the work supervised by a single individual in order for there to be broad knowledge and understanding of the child's history. When a new investigator is assigned to investigate a second and subsequent report involving a child, a multidisciplinary staffing shall be conducted which includes new and prior investigators, their supervisors, and appropriate private providers in order to ensure that, to the extent possible, there is coordination among all parties. The department shall establish an internal operating procedure that ensures that all required investigatory activities, including a review of the child's complete investigative and protective services history, are completed by the investigator, reviewed by the supervisor in a timely manner, and signed and dated by both the investigator and the supervisor.

(5)(a) Upon commencing an investigation under this part, the child protective investigator shall inform any subject of the investigation of the following:

1. The names of the investigators and identifying credentials from the department.

2. The purpose of the investigation.

3. The right to obtain his or her own attorney and ways that the information provided by the subject may be used.

4. The possible outcomes and services of the department's response ~~shall be explained to the parent or legal custodian~~.

5. The right of the parent or legal custodian to be engaged ~~involved~~ to the fullest extent possible in determining the

nature of the allegation and the nature of any identified problem and the remedy.

6. The duty of the parent or legal custodian to report any change in the residence or location of the child to the investigator and that the duty to report continues until the investigation is closed.

(b) The investigator shall ~~department's training program shall ensure that protective investigators know how to~~ fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of investigators' interviews with parents or legal custodians or children.

(6) Upon commencing an investigation under this part, if a report was received from a reporter under s. 39.201(1)(b), the protective investigator must provide his or her contact information to the reporter within 24 hours after being assigned to the investigation. The investigator must also advise the reporter that he or she may provide a written summary of the report made to the central abuse hotline to the investigator which shall become a part of the electronic child welfare case ~~master~~ file.

(7) An assessment of safety ~~risk~~ and the perceived needs for the child and family shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family. This assessment must include a face-to-face interview with the child, other siblings, parents, and other adults in the household and an onsite assessment of the child's residence.

(8) Protective investigations shall be performed by the

department or its agent.

~~(9) The person responsible for the investigation shall make a preliminary determination as to whether the report is complete, consulting with the attorney for the department when necessary. In any case in which the person responsible for the investigation finds that the report is incomplete, he or she shall return it without delay to the person or agency originating the report or having knowledge of the facts, or to the appropriate law enforcement agency having investigative jurisdiction, and request additional information in order to complete the report; however, the confidentiality of any report filed in accordance with this chapter shall not be violated.~~

~~(a) If it is determined that the report is complete, but the interests of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and the parents or legal custodians, the protective investigator may refer the parent or legal custodian and child for such care or other treatment.~~

~~(b) If it is determined that the child is in need of the protection and supervision of the court, the department shall file a petition for dependency. A petition for dependency shall be filed in all cases classified by the department as high-risk. Factors that the department may consider in determining whether a case is high-risk include, but are not limited to, the young age of the parents or legal custodians; the use of illegal drugs; the arrest of the parents or legal custodians on charges of manufacturing, processing, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893; or domestic violence.~~

~~(c) If a petition for dependency is not being filed by the department, the person or agency originating the report shall be advised of the right to file a petition pursuant to this part.~~

(9) ~~(10)~~ (a) For each report received from the central abuse hotline and accepted for investigation ~~that meets one or more of the following criteria~~, the department or the sheriff providing child protective investigative services under s. 39.3065, shall perform the following ~~an onsite~~ child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person making the report should be contacted before the face-to-face interviews with the child and family members. ~~A report for which there is obvious compelling evidence that no maltreatment occurred and there are no prior reports containing some indicators or verified findings of abuse or neglect with respect to any subject of the report or other individuals in the home. A prior report in which an adult in the home was a victim of abuse or neglect before becoming an adult does not exclude a report~~

~~otherwise meeting the criteria of this subparagraph from the onsite child protective investigation provided for in this subparagraph. The process for an onsite child protective investigation stipulated in this subsection may not be conducted if an allegation meeting the criteria of this subparagraph involves physical abuse, sexual abuse, domestic violence, substance abuse or substance exposure, medical neglect, a child younger than 3 years of age, or a child who is disabled or lacks communication skills.~~

2. Conduct ~~A report concerning an incident of abuse which is alleged to have occurred 2 or more years prior to the date of the report and there are no other indicators of risk to any child in the home.~~

~~(b) The onsite child protective investigation to be performed shall include a~~ face-to-face interviews ~~interview~~ with the child; other siblings, if any; and the parents, legal custodians, or caregivers.~~; and other adults in the household and an onsite assessment of the child's residence in order to:~~

3.~~1.~~ Assess the child's residence, including a determination of ~~Determine~~ the composition of the family and ~~or~~ household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

4.~~2.~~ Determine whether there is any indication that any child in the family or household has been abused, abandoned, or neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination

as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

5.~~3.~~ Complete assessment of immediate child safety for ~~Determine the immediate and long-term risk to~~ each child based on available records, interviews, and observations with all persons named in subparagraph 2. and appropriate collateral contacts, which may include other professionals ~~by conducting state and federal records checks, including, when feasible, the records of the Department of Corrections, on the parents, legal custodians, or caregivers, and any other persons in the same household. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and shall not be further disseminated or used for any other purpose.~~ The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and may not be further disseminated or used for any other purpose.

6.~~4.~~ Document the present and impending dangers ~~Determine the immediate and long-term risk~~ to each child based on the

identification of inadequate protective capacity through utilization of a standardized safety ~~risk~~ assessment instrument ~~instruments~~.

(b) Upon completion of the immediate safety assessment, the department shall determine the additional activities necessary to assess impending dangers, if any, and close the investigation.

~~5. Based on the information obtained from available sources, complete the risk assessment instrument within 48 hours after the initial contact and, if needed, develop a case plan.~~

(c)~~6.~~ For each report received from the central abuse hotline, the department or the sheriff providing child protective investigative services under s. 39.3065, shall determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the child's safety and well-being and development, and cause the delivery of those services through the early intervention of the department or its agent. As applicable, ~~The training provided to staff members who conduct~~ child protective investigators ~~investigations~~ must inform parents and caregivers ~~include instruction on~~ how and when to use the injunction process under ~~s. 39.504 or~~ s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

1. If the department or the sheriff providing child protective investigative services determines that the interests of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and the parents or legal custodians, the parent or legal custodian and child may be referred for such care, case

management, or other community resources.

2. If the department or the sheriff providing child protective investigative services determines that the child is in need of protection and supervision, the department may file a petition for dependency.

3. If a petition for dependency is not being filed by the department, the person or agency originating the report shall be advised of the right to file a petition pursuant to this part.

~~(c) The determination that a report requires an investigation as provided in this subsection and does not require an enhanced onsite child protective investigation pursuant to subsection (11) must be approved in writing by the supervisor with documentation specifying why additional investigative activities are not necessary.~~

~~(d) A report that meets the criteria specified in this subsection is not precluded from further investigative activities. At any time it is determined that additional investigative activities are necessary for the safety of the child, such activities shall be conducted.~~

(10)~~(11)~~(a) The department's training program for staff responsible for responding to reports accepted by the central abuse hotline must also ensure that child protective responders:

1. Know how to fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of child protective responder interviews with parents or legal custodians or children.

2. Know how and when to use the injunction process under s. 39.504 or s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

(b) To enhance the skills of individual staff members and to improve the region's and district's overall child protection system, the department's training program at the regional and district levels must include results of qualitative reviews of child protective investigation cases handled within the region or district in order to identify weaknesses as well as examples of effective interventions which occurred at each point in the case. ~~For each report that meets one or more of the following criteria, the department shall perform an enhanced onsite child protective investigation:~~

~~1. Any allegation that involves physical abuse, sexual abuse, domestic violence, substance abuse or substance exposure, medical neglect, a child younger than 3 years of age, or a child who is disabled or lacks communication skills.~~

~~2. Any report that involves an individual who has been the subject of a prior report containing some indicators or verified findings of abuse, neglect, or abandonment.~~

~~3. Any report that does not contain compelling evidence that the maltreatment did not occur.~~

~~4. Any report that does not meet the criteria for an onsite child protective investigation as set forth in subsection (10).~~

~~(b) The enhanced onsite child protective investigation shall include, but is not limited to:~~

~~1. A face-to-face interview with the child, other siblings, parents or legal custodians or caregivers, and other adults in the household;~~

~~2. Collateral contacts;~~

~~3. Contact with the reporter as required by rule;~~

~~4. An onsite assessment of the child's residence in~~

~~accordance with paragraph (10)(b); and~~

~~5. An updated assessment.~~

(c) For all reports received, detailed documentation is required for the investigative activities.

(11) ~~(12)~~ The department shall incorporate into its quality assurance program the monitoring of ~~the determination of~~ reports that receive a ~~an onsite~~ child protective investigation to determine the quality and timeliness of safety assessments, engagements with families, teamwork with other experts and professionals, and appropriate investigative activities that are uniquely tailored to the safety factors associated with each child and family ~~and those that receive an enhanced onsite child protective investigation~~.

(12) ~~(13)~~ If the department or its agent is denied reasonable access to a child by the parents, legal custodians, or caregivers and the department deems that the best interests of the child so require, it shall seek an appropriate court order or other legal authority before ~~prior to~~ examining and interviewing the child.

(13) ~~(14)~~ Onsite visits and face-to-face interviews with the child or family shall be unannounced unless it is determined by the department or its agent or contract provider that such unannounced visit would threaten the safety of the child.

(14) ~~(15)~~ (a) If the department or its agent determines that a child requires immediate or long-term protection through:

1. Medical or other health care; or

2. Homemaker care, day care, protective supervision, or other services to stabilize the home environment, including intensive family preservation services through the Intensive

Crisis Counseling Program,

such services shall first be offered for voluntary acceptance unless there are high-risk factors that may impact the ability of the parents or legal custodians to exercise judgment. Such factors may include the parents' or legal custodians' young age or history of substance abuse or domestic violence.

(b) The parents or legal custodians shall be informed of the right to refuse services, as well as the responsibility of the department to protect the child regardless of the acceptance or refusal of services. If the services are refused, a collateral contact ~~required under subparagraph (11)(b)2.~~ shall include a relative, if the protective investigator has knowledge of and the ability to contact a relative. If the services are refused and the department deems that the child's need for protection so requires, the department shall take the child into protective custody or petition the court as provided in this chapter. At any time after the commencement of a protective investigation, a relative may submit in writing to the protective investigator or case manager a request to receive notification of all proceedings and hearings in accordance with s. 39.502. The request shall include the relative's name, address, and phone number and the relative's relationship to the child. The protective investigator or case manager shall forward such request to the attorney for the department. The failure to provide notice to either a relative who requests it pursuant to this subsection or to a relative who is providing out-of-home care for a child may ~~shall~~ not result in any previous action of the court at any stage or proceeding in dependency or

termination of parental rights under any part of this chapter being set aside, reversed, modified, or in any way changed absent a finding by the court that a change is required in the child's best interests.

(c) The department, in consultation with the judiciary, shall adopt by rule criteria that are factors requiring that the department take the child into custody, petition the court as provided in this chapter, or, if the child is not taken into custody or a petition is not filed with the court, conduct an administrative review. If after an administrative review the department determines not to take the child into custody or petition the court, the department shall document the reason for its decision in writing and include it in the investigative file. For all cases that were accepted by the local law enforcement agency for criminal investigation pursuant to subsection (2), the department must include in the file written documentation that the administrative review included input from law enforcement. In addition, for all cases that must be referred to child protection teams pursuant to s. 39.303(2) and (3), the file must include written documentation that the administrative review included the results of the team's evaluation. Factors that must be included in the development of the rule include noncompliance with the case plan developed by the department, or its agent, and the family under this chapter and prior abuse reports with findings that involve the child or caregiver.

(15) ~~(16)~~ When a child is taken into custody pursuant to this section, the authorized agent of the department shall request that the child's parent, caregiver, or legal custodian

disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin, so far as are known.

(16)~~(17)~~ The department shall complete its protective investigation within 60 days after receiving the initial report, unless:

(a) There is also an active, concurrent criminal investigation that is continuing beyond the 60-day period and the closure of the protective investigation may compromise successful criminal prosecution of the child abuse or neglect case, in which case the closure date shall coincide with the closure date of the criminal investigation and any resulting legal action.

(b) In child death cases, the final report of the medical examiner is necessary for the department to close its investigation and the report has not been received within the 60-day period, in which case the report closure date shall be extended to accommodate the report.

(c) A child who is necessary to an investigation has been declared missing by the department, a law enforcement agency, or a court, in which case the 60-day period shall be extended until the child has been located or until sufficient information exists to close the investigation despite the unknown location of the child.

(17)~~(18)~~ Immediately upon learning during the course of an investigation that:

(a) The immediate safety or well-being of a child is endangered;

(b) The family is likely to flee;

(c) A child died as a result of abuse, abandonment, or neglect;

(d) A child is a victim of aggravated child abuse as defined in s. 827.03; or

(e) A child is a victim of sexual battery or of sexual abuse,

the department shall ~~orally~~ notify the jurisdictionally responsible state attorney, and county sheriff's office or local police department, and, within 3 working days, transmit a full written report to those agencies. The law enforcement agency shall review the report and determine whether a criminal investigation needs to be conducted and shall assume lead responsibility for all criminal fact-finding activities. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding an offense described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate.

(18)~~(19)~~ In a child protective investigation or a criminal investigation, when the initial interview with the child is conducted at school, the department or the law enforcement agency may allow, notwithstanding ~~the provisions of~~ s. 39.0132(4), a school staff member who is known by the child to be present during the initial interview if:

(a) The department or law enforcement agency believes that the school staff member could enhance the success of the interview by his or her presence; and

(b) The child requests or consents to the presence of the school staff member at the interview.

School staff may be present only when authorized by this subsection. Information received during the interview or from any other source regarding the alleged abuse or neglect of the child is ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1), except as otherwise provided by court order. A separate record of the investigation of the abuse, abandonment, or neglect may ~~shall~~ not be maintained by the school or school staff member. Violation of this subsection is ~~constitutes~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(19)~~(20)~~ When a law enforcement agency conducts a criminal investigation into allegations of child abuse, neglect, or abandonment, photographs documenting the abuse or neglect shall ~~will~~ be taken when appropriate.

(20)~~(21)~~ Within 15 days after the case is reported to him or her pursuant to this chapter, the state attorney shall report his or her findings to the department and shall include in such report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

~~(22) In order to enhance the skills of individual staff and to improve the district's overall child protection system, the department's training program at the district level must include periodic reviews of cases handled within the district in order to identify weaknesses as well as examples of effective interventions that occurred at each point in the case.~~

(21)~~(23)~~ When an investigation is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers, except that a previous report may be used to determine whether a child is safe and what the known risk is to the child at any stage of a child protection proceeding.

(22)~~(24)~~ If, after having been notified of the requirement to report a change in residence or location of the child to the protective investigator, a parent or legal custodian causes the child to move, or allows the child to be moved, to a different residence or location, or if the child leaves the residence on his or her own accord and the parent or legal custodian does not notify the protective investigator of the move within 2 business days, the child may be considered to be a missing child for the purposes of filing a report with a law enforcement agency under s. 937.021.

Section 7. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges

that an employee or agent of the department, or any other entity or person covered by s. 39.01(33) or (47), acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and ~~orally~~ notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations ~~onsite~~ or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian ~~an onsite visit of the child's place of residence~~. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall

include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 8. Subsection (2) of section 39.307, Florida Statutes, is amended to read:

39.307 Reports of child-on-child sexual abuse.—

(2) The department, contracted sheriff's office providing protective investigation services, or contracted case management personnel responsible for providing services ~~District staff~~, at a minimum, shall adhere to the following procedures:

(a) The purpose of the response to a report alleging juvenile sexual abuse behavior shall be explained to the caregiver.

1. The purpose of the response shall be explained in a manner consistent with legislative purpose and intent provided in this chapter.

2. The name and office telephone number of the person responding shall be provided to the caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

3. The possible consequences of the department's response, including outcomes and services, shall be explained to the caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

(b) The caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver shall be involved to the fullest extent possible in determining the nature of the sexual behavior

concerns ~~allegation~~ and the nature of any problem or risk to other children.

(c) The assessment of risk and the perceived treatment needs of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers shall be conducted by the district staff, the child protection team of the Department of Health, and other providers under contract with the department to provide services to the caregiver of the alleged offender, the victim, and the victim's caregiver.

(d) The assessment shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.

(e) If necessary, the child protection team of the Department of Health shall conduct a physical examination of the victim, which is sufficient to meet forensic requirements.

(f) Based on the information obtained from the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, his or her caregiver, the victim, and the victim's caregiver, an assessment of service and treatment needs ~~report~~ must be completed ~~within 7 days~~ and, if needed, a case plan developed within 30 days.

(g) The department shall classify the outcome of the report as follows:

1. Report closed. Services were not offered because the department determined that there was no basis for intervention.

2. Services accepted by alleged juvenile sexual offender. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and

accepted by the caregiver.

3. Report closed. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, but were rejected by the caregiver.

4. Notification to law enforcement. The risk to the victim's safety and well-being cannot be reduced by the provision of services or the caregiver rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.

5. Services accepted by victim. Services were offered to the victim and accepted by the caregiver.

6. Report closed. Services were offered to the victim but were rejected by the caregiver.

Section 9. Section 39.504, Florida Statutes, is amended to read:

39.504 Injunction pending disposition of petition; penalty.—

(1) At any time after a protective investigation has been initiated pursuant to part III of this chapter, the court, upon the request of the department, a law enforcement officer, the state attorney, or other responsible person, or upon its own motion, may, if there is reasonable cause, issue an injunction to prevent any act of child abuse. Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act.

(2) The petitioner seeking the injunction shall file a verified petition, or a petition along with an affidavit,

setting forth the specific actions by the alleged offender from which the child must be protected and all remedies sought. Upon filing the petition, the court shall set a hearing to be held at the earliest possible time. Pending the hearing, the court may issue a temporary ex parte injunction, with verified pleadings or affidavits as evidence. The temporary ex parte injunction pending a hearing is effective for up to 15 days and the hearing must be held within that period unless continued for good cause shown, which may include obtaining service of process, in which case the temporary ex parte injunction shall be extended for the continuance period. The hearing may be held sooner if the alleged offender has received reasonable notice. ~~Notice shall be provided to the parties as set forth in the Florida Rules of Juvenile Procedure, unless the child is reported to be in imminent danger, in which case the court may issue an injunction immediately. A judge may issue an emergency injunction pursuant to this section without notice if the court is closed for the transaction of judicial business. If an immediate injunction is issued, the court must hold a hearing on the next day of judicial business to dissolve the injunction or to continue or modify it in accordance with this section.~~

(3) Before the hearing, the alleged offender must be personally served with a copy of the petition, all other pleadings related to the petition, a notice of hearing, and, if one has been entered, the temporary injunction. Following the hearing, the court may enter a final injunction. The court may grant a continuance of the hearing at any time for good cause shown by any party. If a temporary injunction has been entered, it shall be continued during the continuance.

(4) ~~(3)~~ If an injunction is issued under this section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.

(a) The injunction applies ~~shall apply~~ to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the court, which ~~conditions~~ may include ordering the alleged or actual offender to:

1. Refrain from further abuse or acts of domestic violence.

2. Participate in a specialized treatment program.

3. Limit contact or communication with the child victim, other children in the home, or any other child.

4. Refrain from contacting the child at home, school, work, or wherever the child may be found.

5. Have limited or supervised visitation with the child.

~~6. Pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members.~~

6. ~~7.~~ Vacate the home in which the child resides.

(b) Upon proper pleading, the court may award the following relief in a temporary ex parte or final injunction ~~If the intent of the injunction is to protect the child from domestic violence, the conditions may also include~~:

1. ~~Awarding the~~ Exclusive use and possession of the dwelling to the caregiver or exclusion of ~~excluding~~ the alleged or actual offender from the residence of the caregiver.

~~2. Awarding temporary custody of the child to the~~

~~caregiver.~~

2.~~3.~~ ~~Establishing~~ Temporary support for the child or other family members.

3. The costs of medical, psychiatric, and psychological treatment for the child incurred due to the abuse, and similar costs for other family members.

This paragraph does not preclude an ~~the~~ adult victim of domestic violence from seeking protection for himself or herself under s. 741.30.

(c) The terms of the final injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Notice of hearing on the motion to modify or dissolve the injunction must be provided to all parties, including the department. The injunction is valid and enforceable in all counties in the state.

(5)~~(4)~~ Service of process on the respondent shall be carried out pursuant to s. 741.30. The department shall deliver a copy of any injunction issued pursuant to this section to the protected party or to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in s. 901.15(6) to enforce the terms of the injunction.

(6)~~(5)~~ Any person who fails to comply with an injunction issued pursuant to this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The person against whom an injunction is entered under

this section does not automatically become a party to a subsequent dependency action concerning the same child.

Section 10. Paragraph (r) of subsection (2) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(2) The predisposition study must provide the court with the following documented information:

(r) If the child has been removed from the home and will be remaining with a relative, parent, or other adult approved by the court, a home study report concerning the proposed placement shall be included in the predisposition report. Before ~~Prior to~~ recommending to the court any out-of-home placement for a child other than placement in a licensed shelter or foster home, the department shall conduct a study of the home of the proposed legal custodians, which must include, at a minimum:

1. An interview with the proposed legal custodians to assess their ongoing commitment and ability to care for the child.

2. Records checks through the State Automated Child Welfare Information System (SACWIS) ~~Florida Abuse Hotline Information System (FAHIS)~~, and local and statewide criminal and juvenile records checks through the Department of Law Enforcement, on all household members 12 years of age or older. In addition, the fingerprints of any household members who are 18 years of age or older may be submitted to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information. The department has the discretion to request State Automated Child Welfare Information System (SACWIS) and local, statewide, and

national criminal history checks and fingerprinting of any other visitor to the home who is made known to the department ~~and any other persons made known to the department who are frequent visitors in the home~~. Out-of-state criminal records checks must be initiated for any individual ~~designated above~~ who has resided in a state other than Florida if ~~provided~~ that state's laws allow the release of these records. The out-of-state criminal records must be filed with the court within 5 days after receipt by the department or its agent.

3. An assessment of the physical environment of the home.

4. A determination of the financial security of the proposed legal custodians.

5. A determination of suitable child care arrangements if the proposed legal custodians are employed outside of the home.

6. Documentation of counseling and information provided to the proposed legal custodians regarding the dependency process and possible outcomes.

7. Documentation that information regarding support services available in the community has been provided to the proposed legal custodians.

The department may ~~shall~~ not place the child or continue the placement of the child in a home under shelter or postdisposition placement if the results of the home study are unfavorable, unless the court finds that this placement is in the child's best interest.

Any other relevant and material evidence, including other written or oral reports, may be received by the court in its

effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Except as otherwise specifically provided, nothing in this section prohibits the publication of proceedings in a hearing.

Section 11. Subsections (2) and (4) of section 39.6011, Florida Statutes, are amended to read:

39.6011 Case plan development.—

(2) The case plan must be written simply and clearly in English and, if English is not the principal language of the child's parent, to the extent possible in the parent's principal language. Each case plan must contain:

(a) A description of the identified problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by the department.

(b) The permanency goal.

(c) If concurrent planning is being used, a description of the permanency goal of reunification with the parent or legal custodian in addition to a description of one of the remaining permanency goals described in s. 39.01.

1. If a child has not been removed from a parent, but is found to be dependent, even if adjudication of dependency is withheld, the court may leave the child in the current placement with maintaining and strengthening the placement as a permanency option.

2. If a child has been removed from a parent and is placed with a parent from whom the child was not removed, the court may leave the child in the placement with the parent from whom the

child was not removed with maintaining and strengthening the placement as a permanency option.

3. If a child has been removed from a parent and is subsequently reunified with that parent, the court may leave the child with that parent with maintaining and strengthening the placement as a permanency option.

(d) The date the compliance period expires. The case plan must be limited to as short a period as possible for accomplishing its provisions. The plan's compliance period expires no later than 12 months after the date the child was initially removed from the home, the child was adjudicated dependent, or the date the case plan was accepted by the court, whichever occurs first ~~sooner~~.

(e) A written notice to the parent that failure of the parent to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the compliance period set forth in the case plan.

(4) The case plan must describe:

(a) The role of the foster parents or legal custodians when developing the services that are to be provided to the child, foster parents, or legal custodians;

(b) The responsibility of the case manager to forward a relative's request to receive notification of all proceedings and hearings submitted pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~ to the attorney for the department;

(c) The minimum number of face-to-face meetings to be held each month between the parents and the department's family

services counselors to review the progress of the plan, to eliminate barriers to progress, and to resolve conflicts or disagreements; and

(d) The parent's responsibility for financial support of the child, including, but not limited to, health insurance and child support. The case plan must list the costs associated with any services or treatment that the parent and child are expected to receive which are the financial responsibility of the parent. The determination of child support and other financial support shall be made independently of any determination of indigency under s. 39.013.

Section 12. Subsection (1) of section 39.621, Florida Statutes, is amended to read:

39.621 Permanency determination by the court.—

(1) Time is of the essence for permanency of children in the dependency system. A permanency hearing must be held no later than 12 months after the date the child was removed from the home or within ~~no later than~~ 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. A permanency hearing must be held at least every 12 months for any child who continues to be supervised by ~~receive supervision from~~ the department or awaits adoption.

Section 13. Paragraph (b) of subsection (3), subsection (6), and paragraph (e) of subsection (10) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(3)

(b) If the citizen review panel recommends extending the goal of reunification for any case plan beyond 12 months from the date the child was removed from the home, ~~or~~ the case plan was adopted, or the child was adjudicated dependent, whichever date came first, the court must schedule a judicial review hearing to be conducted by the court within 30 days after receiving the recommendation from the citizen review panel.

(6) The attorney for the department shall notify a relative who submits a request for notification of all proceedings and hearings pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~. The notice shall include the date, time, and location of the next judicial review hearing.

(10)

(e) Within ~~No later than~~ 6 months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review the child's permanency goal as identified in the case plan. At the hearing the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If~~, at this hearing,~~ the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file with the court, and serve on all parties, a motion to amend the case plan under s. 39.6013 and declare that it will use concurrent planning for the case plan. The department must file the motion within ~~no later than~~ 10 business

days after receiving the written finding of the court. The department must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the case plan must document the efforts the department is taking to complete the concurrent goal.

Section 14. Subsection (1) of section 39.8055, Florida Statutes, is amended to read:

39.8055 Requirement to file a petition to terminate parental rights; exceptions.—

(1) The department shall file a petition to terminate parental rights within 60 days after any of the following if:

(a) The ~~At the time of the 12-month judicial review hearing, a~~ child is not returned to the physical custody of the parents 12 months after the child was sheltered or adjudicated dependent, whichever occurs first;

(b) A petition for termination of parental rights has not otherwise been filed, and the child has been in out-of-home care under the responsibility of the state for 12 of the most recent 22 months, calculated on a cumulative basis, but not including any trial home visits or time during which the child was a runaway;

(c) A parent has been convicted of the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child of the parent, or a felony battery that resulted in serious bodily injury to the child or to another child of the parent; or

(d) A court determines that reasonable efforts to reunify the child and parent are not required.

Section 15. Paragraphs (d), (e), and (k) of subsection (1)

and subsection (2) of section 39.806, Florida Statutes, are amended to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(d) When the parent of a child is incarcerated ~~in a state or federal correctional institution and either~~:

1. The period of time for which the parent is expected to be incarcerated will constitute a significant ~~substantial~~ portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration ~~period of time before the child will attain the age of 18 years~~;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or

any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child. When determining harm, the court shall consider the following factors:

a. The age of the child;

b. The relationship between the child and the parent;

c. The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs;

d. The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration; and

e. Any other factor the court deems relevant.

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. The failure of the parent or parents to substantially comply with the case plan for a period of 12 ~~9~~ months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. The 12-month ~~9-month~~

period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the court's approval of a case plan having the goal of reunification with the parent, whichever occurs first; or

2. The parent or parents have materially breached the case plan. Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents have materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents are unlikely or unable to substantially comply with the case plan before time to comply with the case plan expires.

(k) A test administered at birth that indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant, and the biological mother of the child is the biological mother of at least one other child who was adjudicated dependent after a finding of harm to the child's health or welfare due to exposure to a controlled substance or alcohol as defined in s. 39.01~~(32)(g)~~, after which the biological mother had the opportunity to participate in substance abuse treatment.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)-(d) or (f)-(l) ~~(1)(c)-(l)~~ have occurred.

Section 16. The amendments made by this act to paragraph

(d) of subsection (1) of section 39.806, Florida Statutes, do not apply to any cause of action that accrued before July 1, 2012.

Section 17. Subsections (1) and (19) of section 39.502, Florida Statutes, are amended to read:

39.502 Notice, process, and service.—

(1) Unless parental rights have been terminated, all parents must be notified of all proceedings or hearings involving the child. Notice in cases involving shelter hearings and hearings resulting from medical emergencies must be that most likely to result in actual notice to the parents. In all other dependency proceedings, notice must be provided in accordance with subsections (4)-(9), except when a relative requests notification pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~, in which case notice shall be provided pursuant to subsection (19).

(19) In all proceedings and hearings under this chapter, the attorney for the department shall notify, orally or in writing, a relative requesting notification pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~ of the date, time, and location of such proceedings and hearings, and notify the relative that he or she has the right to attend all subsequent proceedings and hearings, to submit reports to the court, and to speak to the court regarding the child, if the relative so desires. The court has the discretion to release the attorney for the department from notifying a relative who requested notification pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~ if the relative's involvement is determined to be impeding the dependency process or detrimental to the child's well-being.

Section 18. Section 39.823, Florida Statutes, is amended to read:

39.823 Guardian advocates for drug dependent newborns.—The Legislature finds that increasing numbers of drug dependent children are born in this state. Because of the parents' continued dependence upon drugs, the parents may temporarily leave their child with a relative or other adult or may have agreed to voluntary family services under s. 39.301(14) ~~39.301(15)~~. The relative or other adult may be left with a child who is likely to require medical treatment but for whom they are unable to obtain medical treatment. The purpose of this section is to provide an expeditious method for such relatives or other responsible adults to obtain a court order which allows them to provide consent for medical treatment and otherwise advocate for the needs of the child and to provide court review of such authorization.

Section 19. Subsection (1) of section 39.828, Florida Statutes, is amended to read:

39.828 Grounds for appointment of a guardian advocate.—

(1) The court shall appoint the person named in the petition as a guardian advocate with all the powers and duties specified in s. 39.829 for an initial term of 1 year upon a finding that:

(a) The child named in the petition is or was a drug dependent newborn as described in s. 39.01~~(32)(g)~~;

(b) The parent or parents of the child have voluntarily relinquished temporary custody of the child to a relative or other responsible adult;

(c) The person named in the petition to be appointed the

guardian advocate is capable of carrying out the duties as provided in s. 39.829; and

(d) A petition to adjudicate the child dependent under this chapter has not been filed.

Section 20. Subsection (3) of section 402.56, Florida Statutes, is amended to read:

402.56 Children's cabinet; organization; responsibilities; annual report.—

(3) ORGANIZATION.—There is created the Children and Youth Cabinet, which is a coordinating council as defined in s. 20.03.

(a) The cabinet shall ensure that the public policy of this state relating to children and youth is developed to promote interdepartmental collaboration and program implementation in order that services designed for children and youth are planned, managed, and delivered in a holistic and integrated manner to improve the children's self-sufficiency, safety, economic stability, health, and quality of life.

(b) The cabinet is created in the Executive Office of the Governor, which shall provide administrative support and service to the cabinet.

(c) ~~The cabinet shall meet for its organizational session no later than October 1, 2007. Thereafter,~~ The cabinet shall meet at least four ~~six~~ times each year in different regions of the state in order to solicit input from the public and any other individual offering testimony relevant to the issues considered. Each meeting must include a public comment session.

Section 21. This act shall take effect July 1, 2012.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	CS/SB 2054
INTRODUCER:	Children, Families, and Elder Affairs Committee and Children, Families, and Elder Affairs Committee
SUBJECT:	Domestic Violence
DATE:	January 25, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	**Fav/CS**
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill makes statutory changes to conform to proviso included in the FY 2011-2012 General Appropriations Act (GAA)[1].

The bill revises the duties and functions of the Department of Children and Family Services (DCF or department) relating to the domestic violence program including the following:

- Limits the department's role in certification of domestic violence shelters to initial certification, suspension and revocation. Ongoing certification of domestic violence shelters will be performed by the Florida Coalition Against Domestic Violence (FCADV or coalition);
- Requires the department to partner with the FCADV to coordinate and administer the statewide activities related to the prevention of domestic violence;
- Requires the department to contract with the coalition for the delivery and management of services for the state's domestic violence program; and

[1] SB 2000 (2011).

- Eliminates certification of batterers' intervention programs as well as the authority for the department to collect fees associated with the certification program.

This bill substantially amends ss. 39.902, 39.903, 39.904, 39.905, 381.006, 381.0072, 741.281, 741.2902, 741.30, 741.316, 741.32, 741.325, 948.038, and 938.01, creates s. 39.9035, and repeals s.741.327 of the Florida Statutes:

II. Present Situation:

The initiative to transfer multiple functions related to domestic violence from the department to the FCADV was first introduced in the Governor's budget recommendations for FY 2011-12. The bill to carry out the transfer failed adoption during the 2011 legislative session.[2] Proviso was added to the GAA giving the coalition funding and authority to implement statutory directives contained in Chapter 39, F.S., relating to the domestic violence program. The department negotiated a contract with the coalition to perform these tasks effective July 1, 2011.

Domestic violence program

The department has historically been responsible for the statewide domestic violence program, which provides supervision, direction, coordination, and administration of activities related to domestic violence prevention and intervention services.[3] Specifically, the department was required to:

- Develop criteria for the approval or rejection of certification or funding of domestic violence centers;
- Develop minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers;
- Receive and approve or reject applications for certification of domestic violence centers;
- Evaluate each certified domestic violence center annually to ensure compliance with the minimum standards. The department has the right to enter and inspect the premises of certified domestic violence centers at any reasonable hour in order to effectively evaluate the state of compliance of these centers;
- Promote the involvement of certified domestic violence centers in the coordination, development, and planning of domestic violence programming in the districts and the state;
- Serve as a clearinghouse for information relating to domestic violence;
- Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent domestic violence and to treat persons engaged in or subject to domestic violence; and
- Develop and provide educational programs on domestic violence for the benefit of the general public, persons engaged in or subject to domestic violence, professional persons, or others who care for or may be engaged in the care and treatment of persons engaged in or subject to domestic violence.[4]

[2] HB 5309 was heard only in the House Health Care Appropriations Subcommittee and the House Appropriations Committee; a bill addressing these issues was not filed in the Senate.
[3] s.39.903, F.S.
[4] *Id.*

Florida Coalition Against Domestic Violence

The department was also required to contract with a statewide association whose primary purpose is to represent and provide technical assistance to certified domestic violence centers. This association implements, administers, and evaluates all services provided by the certified domestic violence centers.[5]

The coalition serves as the professional association for the state's 42 certified domestic violence centers and is the primary representative of battered women and their children in the public policy arena.[6] Funding sources for the coalition have included the federal Family Violence Prevention Services Act, the federal Violence Against Women Act, membership fees, private donations, and funds from the state. The coalition administers state and federal funding earmarked to the 42 domestic violence centers in the state.

Effective January 1, 2004, the coalition became responsible for approving or rejecting applications for funding and contracting with certified centers. In order to receive state funds, a center must obtain certification by the State of Florida; however, the issuance of certification does not obligate the coalition to provide state funding. The coalition monitors the centers fiscally and programmatically under their new authority to administer funds. This review process also includes compliance with rule and law.

Domestic violence centers

Domestic Violence centers are community-based agencies that provide services to the victims of domestic violence. Minimum services include temporary emergency shelter; information and referrals; safety planning, counseling and case management; a 24-hour emergency hotline; educational services for community awareness; assessment and appropriate referral of resident children; and training for law enforcement and other professionals.[7]

Domestic violence centers have been required to be certified since 1978.[8] The department is responsible for monitoring certification on an annual basis to ensure that the certified centers continue to remain in compliance with the standards for certification.[9] A domestic violence center must be certified in order to receive funding.[10]

Batterers' intervention programs

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[5] *Id.*
[6] In 1977, 14 shelters in Florida formed a network of battered women's advocates known as the Refuge Information Network. Several years later, this initial organization was incorporated as the Florida Coalition Against Domestic Violence. The Coalition, like the Network, was founded on principles of cooperation and unity among shelters. Members share the goal of ending domestic violence through community education, public policy development and services for victims. Retrieved January 9, 2012 from http://www.fcadv.org/
[7] s.39.905, F.S.
[8] Ch.78-281, L.O.F.
[9] s.39.903(1)(d), F.S.
[10] s.39.905(6)(a), F.S.

The department has been responsible for certifying batterers' intervention programs since 2001.[11] The Office for Certification and Monitoring of Batterers' Intervention Programs was created in the Department of Corrections in 1995 and transferred to the department in 2001.[12] for the purpose of uniformly and systematically standardizing programs to hold those who perpetrate acts of domestic violence responsible for those acts and to ensure safety for victims of domestic violence.[13]

Section 741.325, requires the department to promulgate guidelines setting forth certain requirements of the programs. Those guidelines require:

- The primary purpose of the programs to be victim safety and the safety of the children, if present;
- The batterer to be held accountable for acts of domestic violence;
- The programs to be at least 29 weeks in length and shall include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming;
- The programs be a psychoeducational model that employs a program content based on tactics of power and control by one person over another; and
- The programs and those who are facilitators, supervisors, and trainees be certified and that standards for rejection and suspension for failure to meet certification standards are established.

Several sections of statute authorize or require judges to order an offender to participate in a batterers' intervention program. For example, section 948.038, F.S. provides that as a condition of probation, community control, or any other court-ordered community supervision, a judge must, with certain exceptions, order a person convicted of an offense of domestic violence to attend and successfully complete a batterers' intervention program. This section requires that the batterers' intervention program be certified under s. 741.32, F.S., and the offender must pay the cost of attending the program.

Fees

The department was authorized to assess and collect fees for the certification of batterers' intervention programs as follows:[14]

- An annual certification fee not to exceed $300 for the certification and monitoring of batterers' intervention programs; and
- An annual certification fee not to exceed $200 for the certification and monitoring of assessment personnel providing direct services to persons who:
  - Are ordered by the court to participate in a domestic violence prevention program;
  - Are adjudged to have committed an act of domestic violence as defined in s. 741.28;
  - Have an injunction entered for protection against domestic violence; or

[11] s.741.325, F.S.
[12] Ch. 95-195, L.O.F. created the office in the Department of Corrections. Ch. 2001-183, L.O.F., transferred the office to the department by a type two transfer as defined in s. 20.06(2), F.S.
[13] s.741.325, F.S.
[14] s.741.327, F.S.

- Agree to attend a program as part of a diversion or pretrial intervention agreement by the offender with the state attorney.[15]

In addition, all persons required by the court to attend domestic violence programs certified by the department are required to pay an additional $30 fee for each program to the department.[16] The fees assessed and collected under this section are deposited in the Executive Office of the Governor's Domestic Violence Trust Fund[17] and directed to the department to fund the cost of certifying and monitoring batterers' intervention programs.[18]

III. Effect of Proposed Changes:

The bill maintains the department's operation of the domestic violence program, but requires the department to contract with the coalition to perform specific duties currently performed by the department.

Responsibilities of the department now include:

- Developing criteria for the approval, suspension, or rejection of certification of domestic violence centers;
- Developing minimum standards for domestic violence centers;
- Receiving and approving or rejecting applications for **initial** certification of domestic violence centers;[19]
- Having the authorization to enter and inspect at any reasonable hour the premises of domestic violence centers applying for initial certification;
- Coordinating with state agencies that have health, education, or criminal justice responsibilities to raise awareness of domestic violence and promote consistent policy implementation;
- Entering into partnerships with the coalition to coordinate and administer statewide activities related to the prevention of domestic violence; and
- Considering and awarding applications from certified domestic violence centers for capital improvement grants pursuant to s. 39.9055, F.S.

Responsibilities of the coalition now include:

- Having the authorization to enter and inspect the premises of certified domestic violence centers for monitoring purposes;
- Delivering and managing services for the state's domestic violence program;[20]

[15] *Id*.
[16] *Id*. The intent that the programs be user-fee funded with fees from the batterers who attend the program as payment for programs is important to the batterer taking responsibility for the act of violence. Exception shall be made for those local, state, or federal programs that fund batterers' intervention programs in whole or in part.
[17] s.741.01, F.S.
[18] The department has indicated that the current fee collections do not support the cost associated with the certifying and monitoring batterers' intervention programs.
[19] Certification will be renewed annually by the department upon a favorable monitoring report by the coalition.
[20] Services include, but are not limited to, the administration of contracts and grants.

- Implementing, administering, and evaluating all domestic violence services provided by the certified domestic violence centers;
- Receiving and approving or rejecting applications for funding of certified domestic violence centers; and
- Evaluating certified domestic violence centers in order to determine compliance with minimum certification standards.

When approving funding for a newly certified domestic violence center, the coalition is required to make every effort to minimize any adverse economic impact on existing certified domestic violence centers or services provided within the same service area. In order to minimize duplication of services, the coalition must make every effort to encourage subcontracting relationships with existing certified domestic violence centers within the same service area. In distributing funds allocated for certified domestic violence centers, the coalition is required to use a formula approved by the department as specified in s. 39.905(7)(a).

Additional provisions of the bill include:

- Creating a definition for the term "Coalition" to mean the Florida Coalition Against Domestic Violence;
- Requiring the annual report on the status of domestic violence in the state that is required to be submitted to the legislature be submitted by the coalition rather than the department;[21]
- Requiring a new center applying for certification in an area where a center already exists to demonstrate the unmet need by the existing center and describe efforts to reduce duplication of services;
- Requiring information relating to domestic violence advocates who are employed or who volunteer at a domestic violence center and may claim a privilege to refuse to disclose confidential communications to be reported to the coalition rather than the department;
- Specifying that the coalition rather than the department will conduct annual food service inspection functions for domestic violence shelters and that the coalition will not apply the term "food service establishment" if the center does not prepare and serve food; and
- Eliminating the requirement that a batterers' intervention program must be a certified program under s.741.32, F.S.[22] The bill contains additional provisions related to batterers' intervention programs including:

    - Amending legislative intent relating to certifying batterers' intervention programs;
    - Eliminating the role of the department related to the certification of these programs;
    - Eliminating statutory references to certified batterers' intervention programs;
    - Requiring that batterers' intervention programs meet the requirements currently in law but removing the authority for the department to promulgate rules to establish these requirements; and

[21] s.39.905, F.S.

[22] Due to previous budget cuts, the department suspended the acceptance and approval of new applicants for certification as a batterer intervention program or as an assessor. Certifications for all currently certified programs and assessors in good standing were extended for one year. Retrieved January 6, 2012, from http://www.dcf.state.fl.us/programs/domesticviolence/bip/bip.shtml.

- Retaining references to batterers' intervention programs in statute but eliminating references to the programs being certified by the department.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill repeals the requirement for providers of batterers' intervention programs to submit an initial application fee and annual certification fee to the department. Currently, the application fee is $300 and the annual renewal fee is $150 for batterers' intervention programs, and there is a $100 application fee and a $74 annual renewal fee for assessors. The bill also repeals the requirement for persons court-ordered to attend batterers' intervention to pay an additional $30 fee to the department.

B. Private Sector Impact:

See Tax/Fee Issues above.

C. Government Sector Impact:

The department reports that the GAA for FY2011-12 transferred $951,851 of budget from the department to the coalition to perform certain duties rather than the department. The bill repeals the department's authority to collect fees; however, there is no fiscal impact because the department's budget for the batterer intervention program was not approved in the FY 2011-12 GAA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Children, Families, and Elder Affairs Committee on January 25, 2012:
The committee substitute:

- It removes the phrase "as directed by the department" because this function is no longer a responsibility of the department;
- It clarifies that the coalition also delivers some services; and
- It narrows the scope of services to be implemented, administered, and evaluated by the coalition from "all" services to "domestic violence" services.

B. Amendments:

None.

842202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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	.	
	.	

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment

Delete lines 123 - 124

and insert:

not limited to, the administration of contracts and grants. ~~a statewide association whose~~

289178

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment

Delete line 153
and insert:
to domestic violence. - As part of its delivery and management

424090

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment

Delete line 156
and insert:
(1) Implement, administer, and evaluate all domestic violence services

By the Committee on Children, Families, and Elder Affairs

586-02095-12 20122054__

A bill to be entitled

An act relating to domestic violence; amending s. 39.902, F.S.; defining the term "coalition" as it relates to domestic violence; amending s. 39.903, F.S.; revising provisions relating to certification of domestic violence centers; providing specified additional duties for and authority of the Florida Coalition Against Domestic Violence; revising the duties of the Department of Children and Family Services; requiring the department to contract with coalition for specified purposes; creating s. 39.9035, F.S.; providing the duties of the coalition as it manages the delivery of services to the state's domestic violence program; amending s. 39.904, F.S.; requiring the coalition, rather than the department, to make a specified annual report; revising the contents of the report; amending s. 39.905, F.S.; requiring the coalition, rather than the department, to perform certain duties relating to certification of domestic violence centers; revising provisions relating to certification of domestic violence centers; requiring a demonstration of need for certification of a new domestic violence center; providing the grant, denial, suspension, or revocation of certification of a domestic violence center is not agency action for purposes of appeal under ch. 120, F.S.; revising provisions relating to expiration of a center's annual certificate; prohibiting a domestic violence center from receiving funding from the

586-02095-12 20122054__

coalition for services that are exempted from certification; amending ss. 381.006, 381.0072, 741.281, 741.2902, 741.30, and 741.316, F.S.; conforming provisions to changes made by the act; amending s. 741.32, F.S.; deleting provisions relating to the certification of batterers' intervention programs; amending s. 741.325, F.S.; revising the requirements for batters' intervention programs; repealing s. 741.327, F.S., relating to the certification and monitoring of batterers' intervention programs; amending ss. 948.038 and 938.01, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (1), (2), and (3) of section 39.902, Florida Statutes, are redesignated as subsections (2), (3), and (4), respectively, and a new subsection (1) is added to that section, to read:

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

(1) "Coalition" means the Florida Coalition Against Domestic Violence.

Section 2. Section 39.903, Florida Statutes, is amended to read:

39.903 Duties and functions of the department with respect to domestic violence.—The department shall:

(1) Operate the domestic violence program and, in collaboration with the coalition, shall coordinate and

administer statewide activities related to the prevention of domestic violence. ~~The department shall:~~

~~(a) Develop by rule criteria for the approval or rejection of certification or funding of domestic violence centers.~~

~~(b) Develop by rule minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.~~

(2) ~~(c)~~ Receive and approve or reject applications for initial certification of domestic violence centers. The department shall annually renew the certification thereafter upon receipt of a favorable monitoring report by the coalition. ~~If any of the required services are exempted from certification by the department under s. 39.905(1)(c), the center shall not receive funding for those services~~.

(3) ~~(d)~~ Have ~~Evaluate each certified domestic violence center annually to ensure compliance with the minimum standards. The department has~~ the right to enter and inspect the premises of domestic violence centers that are applying for an initial certification or facing potential suspension or revocation of certification ~~certified domestic violence centers at any reasonable hour in order~~ to effectively evaluate the state of compliance with minimum standards ~~of these centers with this part and rules relating to this part~~.

~~(c) Adopt rules to implement this part.~~

(4) ~~(f)~~ Promote the involvement of certified domestic violence centers in the coordination, development, and planning of domestic violence programming in the circuits ~~districts and the state~~.

~~(2) The department shall serve as a clearinghouse for~~

~~information relating to domestic violence.~~

~~(3) The department shall operate the domestic violence program, which provides supervision, direction, coordination, and administration of statewide activities related to the prevention of domestic violence.~~

(5) ~~(4)~~ Coordinate with state agencies that have health, education, or criminal justice responsibilities to raise awareness of domestic violence and promote consistent policy implementation. ~~The department shall enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent domestic violence and to treat persons engaged in or subject to domestic violence. With the assistance of these agencies, the department, within existing resources, shall formulate and conduct a research and evaluation program on domestic violence. Efforts on the part of these agencies to obtain relevant grants to fund this research and evaluation program must be supported by the department.~~

~~(5) The department shall develop and provide educational programs on domestic violence for the benefit of the general public, persons engaged in or subject to domestic violence, professional persons, or others who care for or may be engaged in the care and treatment of persons engaged in or subject to domestic violence.~~

(6) ~~The department shall~~ Cooperate with, assist in, and participate in, programs of other properly qualified state agencies, including any agency of the Federal Government, schools of medicine, hospitals, and clinics, in planning and conducting research on the prevention of domestic violence and

the provision of services to clients~~, care, treatment, and rehabilitation of persons engaged in or subject to domestic violence~~.

(7) ~~The department shall~~ Contract with the coalition for the delivery and management of services for the state's domestic violence program. Services under this contract include, but are not limited to, the administration of contracts and grants as directed by the department. ~~a statewide association whose primary purpose is to represent and provide technical assistance to certified domestic violence centers. This association shall implement, administer, and evaluate all services provided by the certified domestic violence centers. The association shall receive and approve or reject applications for funding of certified domestic violence centers. When approving funding for a newly certified domestic violence center, the association shall make every effort to minimize any adverse economic impact on existing certified domestic violence centers or services provided within the same service area. In order to minimize duplication of services, the association shall make every effort to encourage subcontracting relationships with existing certified domestic violence centers within the same service area. In distributing funds allocated by the Legislature for certified domestic violence centers, the association shall use a formula approved by the department as specified in s. 39.905(7)(a).~~

(8) Consider applications from certified domestic violence centers for capital improvement grants and award those grants pursuant to s. 39.9055.

(9) Adopt by rule procedures to administer this section,

including developing criteria for the approval, suspension, or rejection of certification of domestic violence centers and developing minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.

Section 3. Section 39.9035, Florida Statutes, is created to read:

39.9035 Duties and functions of the coalition with respect to domestic violence.—As part of its management of the delivery of services for the state's domestic violence program, the coalition shall:

(1) Implement, administer, and evaluate all services provided by the certified domestic violence centers.

(2) Receive and approve or reject applications for funding of certified domestic violence centers. When approving funding for a newly certified domestic violence center, the coalition shall make every effort to minimize any adverse economic impact on existing certified domestic violence centers or services provided within the same service area. In order to minimize duplication of services, the coalition shall make every effort to encourage subcontracting relationships with existing certified domestic violence centers within the same service area. In distributing funds allocated by the Legislature for certified domestic violence centers, the coalition shall use a formula approved by the department as specified in s. 39.905(7)(a).

(3) Evaluate certified domestic violence centers in order to determine compliance with minimum certification standards.

(4) Have the right to enter and inspect the premises of certified domestic violence centers for monitoring purposes.

Section 4. Section 39.904, Florida Statutes, is amended to read:

39.904 Report to the Legislature on the status of domestic violence cases.—On or before January 1 of each year, the coalition ~~department~~ shall furnish to the President of the Senate and the Speaker of the House of Representatives a report on the status of domestic violence in this state, which must ~~report shall~~ include, but need ~~is~~ not be limited to, the following:

(1) The incidence of domestic violence in this state.

(2) An identification of the areas of the state where domestic violence is of significant proportions, indicating the number of cases of domestic violence officially reported, as well as an assessment of the degree of unreported cases of domestic violence.

(3) An identification and description of the types of programs in the state which ~~that~~ assist victims of domestic violence or persons who commit domestic violence, including information on funding for the programs.

(4) The number of persons who receive services from ~~are treated by or assisted by~~ local certified domestic violence programs that receive funding through the coalition ~~department~~.

(5) The incidence of domestic violence homicides in the state, including information and data collected from state and local domestic violence fatality review teams. ~~A statement on the effectiveness of such programs in preventing future domestic violence.~~

~~(6) An inventory and evaluation of existing prevention programs.~~

~~(7) A listing of potential prevention efforts identified by the department; the estimated annual cost of providing such prevention services, both for a single client and for the anticipated target population as a whole; an identification of potential sources of funding; and the projected benefits of providing such services.~~

Section 5. Paragraphs (c), (g), and (i) of subsection (1), subsections (2), (3), and (5), paragraph (a) of subsection (6), and paragraph (b) of subsection (7) of section 39.905, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

39.905 Domestic violence centers.—

(1) Domestic violence centers certified under this part must:

(c) Provide minimum services that ~~which~~ include, but are not limited to, information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness relative to the incidence of domestic violence, the prevention of such violence, and the services available ~~care, treatment, and rehabilitation~~ for persons engaged in or subject to domestic violence. If a 24-hour hotline, professional training, or community education is already provided by a certified domestic violence center within its designated service area ~~a district~~, the department may exempt such certification requirements for a new center serving the same service area ~~district~~ in order to avoid duplication of services.

(g) File with the coalition ~~department~~ a list of the names of the domestic violence advocates who are employed or who volunteer at the domestic violence center who may claim a privilege under s. 90.5036 to refuse to disclose a confidential communication between a victim of domestic violence and the advocate regarding the domestic violence inflicted upon the victim. The list must include the title of the position held by the advocate whose name is listed and a description of the duties of that position. A domestic violence center must file amendments to this list as necessary.

(i) If its center is a new center applying for certification, demonstrate that the services provided address a need identified in the most current statewide needs assessment approved by the department. If the center applying for initial certification proposes providing services in an area that has an existing certified domestic violence center, the center applying for initial certification must demonstrate the unmet need in that service area and describe its efforts to avoid duplication of services.

(2) If the department finds that there is failure by a center to comply with the requirements established under this part or with the rules adopted pursuant thereto, the department may deny, suspend, or revoke the certification of the center. The grant, denial, suspension, or revocation of certification does not constitute agency action under chapter 120.

(3) The annual certificate ~~shall~~ automatically expires ~~expire~~ on June 30 of each state fiscal year unless the certification is temporarily extended to allow the center to implement a corrective action plan ~~the termination date shown on~~

~~the certificate~~.

(5) Domestic violence centers may be established throughout the state when private, local, state, or federal funds are available and a need is demonstrated.

(6) In order to receive state funds, a center must:

(a) Obtain certification pursuant to this part. However, the issuance of a certificate does ~~will~~ not obligate the coalition ~~department~~ to provide funding.

(7)

(b) A contract between the coalition ~~statewide association~~ and a certified domestic violence center shall contain provisions ensuring ~~assuring~~ the availability and geographic accessibility of services throughout the service area ~~district~~. For this purpose, a center may distribute funds through subcontracts or to center satellites, if ~~provided~~ such arrangements and any subcontracts are approved by the coalition ~~statewide association~~.

(8) If any of the required services are exempted from certification by the department under this section, the center may not receive funding from the coalition for those services.

Section 6. Subsection (18) of section 381.006, Florida Statutes, is amended to read:

381.006 Environmental health.—The department shall conduct an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. The environmental health program shall include, but not be limited to:

(18) A food service inspection function for domestic

violence centers that are certified by department and monitored by the coalition ~~Department of Children and Family Services~~ under part XII of chapter 39 and group care homes as described in subsection (16), which shall be conducted annually and be limited to the requirements in department rule applicable to community-based residential facilities with five or fewer residents.

The department may adopt rules to carry out the provisions of this section.

Section 7. Paragraph (b) of subsection (1) of section 381.0072, Florida Statutes, is amended to read:

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

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

(b) "Food service establishment" means detention facilities, public or private schools, migrant labor camps, assisted living facilities, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment facilities, homes for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental

disabilities, boarding schools, civic or fraternal organizations, bars and lounges, vending machines that dispense potentially hazardous foods at facilities expressly named in this paragraph, and facilities used as temporary food events or mobile food units at any facility expressly named in this paragraph, where food is prepared and intended for individual portion service, including the site at which individual portions are provided, regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term does not include any entity not expressly named in this paragraph; nor does the term include a domestic violence center certified by the department and monitored by the coalition ~~Department of Children and Family Services~~ under part XII of chapter 39 if the center does not prepare and serve food to its residents and does not advertise food or drink for public consumption.

Section 8. Section 741.281, Florida Statutes, is amended to read:

741.281 Court to order batterers' intervention program attendance.—If a person is found guilty of, has ~~had~~ adjudication withheld on, or pleads ~~has pled~~ nolo contendere to a crime of domestic violence, as defined in s. 741.28, that person shall be ordered by the court to a minimum term of 1 year's probation and the court shall order that the defendant attend a batterers' intervention program as a condition of probation. The court must impose the condition of the batterers' intervention program for a defendant under this section, but the court, in its discretion, may determine not to impose the condition if it states on the record why a batterers' intervention program might

be inappropriate. The court must impose the condition of the batterers' intervention program for a defendant placed on probation unless the court determines that the person does not qualify for the batterers' intervention program pursuant to s. 741.325. ~~Effective July 1, 2002, the batterers' intervention program must be a certified program under s. 741.32.~~ The imposition of probation under this section does ~~shall~~ not preclude the court from imposing any sentence of imprisonment authorized by s. 775.082.

Section 9. Paragraph (g) of subsection (2) of section 741.2902, Florida Statutes, is amended to read:

741.2902 Domestic violence; legislative intent with respect to judiciary's role.—

(2) It is the intent of the Legislature, with respect to injunctions for protection against domestic violence, issued pursuant to s. 741.30, that the court shall:

(g) Consider requiring the perpetrator to complete a batterers' intervention program. It is preferred that such program meet the requirements specified in s. 741.325 ~~be certified under s. 741.32~~.

Section 10. Paragraphs (a) and (e) of subsection (6) of section 741.30, Florida Statutes, are amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(6)(a) Upon notice and hearing, when it appears to the court that the petitioner is either the victim of domestic violence as defined by s. 741.28 or has reasonable cause to

believe he or she is in imminent danger of becoming a victim of domestic violence, the court may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.

2. Awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

3. On the same basis as provided in chapter 61, providing the petitioner with 100 percent of the time-sharing in a temporary parenting plan that remains ~~shall remain~~ in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

4. On the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner. An order of temporary support remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting child support.

5. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent. When the court orders the respondent to participate in a batterers' intervention program, the court, or any entity designated by the court, must provide the respondent with a list of ~~all certified~~ batterers' intervention programs ~~and all programs which have submitted an application to the Department~~

~~of Children and Family Services to become certified under s. 741.32,~~ from which the respondent must choose a program in which to participate. ~~If there are no certified batterers' intervention programs in the circuit, the court shall provide a list of acceptable programs from which the respondent must choose a program in which to participate.~~

6. Referring a petitioner to a certified domestic violence center. The court must provide the petitioner with a list of certified domestic violence centers in the circuit which the petitioner may contact.

7. Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as provided in this section.

(e) An injunction for protection against domestic violence entered pursuant to this section, on its face, may order that the respondent attend a batterers' intervention program as a condition of the injunction. Unless the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why batterers' intervention programs would be inappropriate, the court shall order the respondent to attend a batterers' intervention program if:

1. It finds that the respondent willfully violated the ex parte injunction;

2. The respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence; or

3. The respondent, in this state or any other state, has

had at any time a prior injunction for protection entered against the respondent after a hearing with notice.

~~It is mandatory that such programs be certified under s. 741.32.~~

Section 11. Subsection (5) of section 741.316, Florida Statutes, is amended to read:

741.316 Domestic violence fatality review teams; definition; membership; duties.—

(5) The domestic violence fatality review teams are assigned to the Florida Coalition Against Domestic Violence ~~Department of Children and Family Services~~ for administrative purposes.

Section 12. Section 741.32, Florida Statutes, is amended to read:

741.32 ~~Certification of~~ Batterers' intervention programs.—

~~(1)~~ The Legislature finds that the incidence of domestic violence in this state ~~Florida~~ is disturbingly high~~,~~ and that, despite the efforts of many to curb this violence, ~~that~~ one person dies at the hands of a spouse, ex-spouse, or cohabitant approximately every 3 days. Further, a child who witnesses the perpetration of this violence becomes a victim as he or she hears or sees it occurring. This child is at high risk of also being the victim of physical abuse by the parent who is perpetrating the violence and, to a lesser extent, by the parent who is the victim. These children are also at a high risk of perpetrating violent crimes as juveniles and, later, becoming perpetrators of the same violence that they witnessed as children. The Legislature finds that there should be standardized programming available to the justice system to

protect victims and their children and to hold the perpetrators of domestic violence accountable for their acts. Finally, the Legislature recognizes that in order for batterers' intervention programs to be successful in protecting victims and their children, all participants in the justice system as well as social service agencies and local and state governments must coordinate their efforts at the community level.

~~(2) There is hereby established in the Department of Children and Family Services an Office for Certification and Monitoring of Batterers' Intervention Programs. The department may certify and monitor both programs and personnel providing direct services to those persons who are adjudged to have committed an act of domestic violence as defined in s. 741.28, those against whom an injunction for protection against domestic violence is entered, those referred by the department, and those who volunteer to attend such programs. The purpose of certification of programs is to uniformly and systematically standardize programs to hold those who perpetrate acts of domestic violence responsible for those acts and to ensure safety for victims of domestic violence. The certification and monitoring shall be funded by user fees as provided in s. 741.327.~~

Section 13. Section 741.325, Florida Statutes, is amended to read:

741.325 Requirements for batterers' intervention programs ~~Guideline authority.~~—

(1) A batterers' intervention program must meet the following requirements ~~The Department of Children and Family Services shall promulgate guidelines to govern purpose,~~

~~policies, standards of care, appropriate intervention approaches, inappropriate intervention approaches during the batterers' program intervention phase (to include couples counseling and mediation), conflicts of interest, assessment, program content and specifics, qualifications of providers, and credentials for facilitators, supervisors, and trainees. The department shall, in addition, establish specific procedures governing all aspects of program operation, including administration, personnel, fiscal matters, victim and batterer records, education, evaluation, referral to treatment and other matters as needed. In addition, the rules shall establish~~:

(a) ~~(1) That~~ The primary purpose of the program ~~programs~~ shall be victim safety and the safety of ~~the~~ children, if present.

(b) ~~(2) That~~ The batterer shall be held accountable for acts of domestic violence.

(c) ~~(3) That~~ The program ~~programs~~ shall be at least 29 weeks in length and ~~shall~~ include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming.

(d) ~~(4) That~~ The program content shall be based on ~~be~~ a psychoeducational model that addresses ~~employs a program content based on~~ tactics of power and control by one person over another.

~~(5) That the programs and those who are facilitators, supervisors, and trainees be certified to provide these programs through initial certification and that the programs and personnel be annually monitored to ensure that they are meeting specified standards.~~

(e) ~~(6) The intent that~~ The program shall ~~programs~~ be ~~user-~~

~~fee~~ funded by user ~~with~~ fees paid by ~~from~~ the batterers who attend the program, which allows them to take ~~as payment for programs is important to the batterer taking~~ responsibility for their acts ~~the act~~ of violence~~, and from those seeking certification~~. An exception shall be made for ~~those~~ local, state, or federal programs that fund batterers' intervention programs in whole or in part.

~~(7) Standards for rejection and suspension for failure to meet certification standards.~~

(2)~~(8)~~ The requirements of this section ~~That these standards shall~~ apply only to programs that address the perpetration of violence between intimate partners, spouses, ex-spouses, or those who share a child in common or who are cohabitants in intimate relationships for the purpose of exercising power and control by one over the other. It will endanger victims if courts and other referral agencies refer family and household members who are not perpetrators of the type of domestic violence encompassed by these requirements ~~standards~~. Accordingly, the court and others who make referrals should refer perpetrators only to programming that appropriately addresses the violence committed.

Section 14. Section 741.327, Florida Statutes, is repealed.

Section 15. Section 948.038, Florida Statutes, is amended to read:

948.038 Batterers' intervention program as a condition of probation, community control, or other court-ordered community supervision.—As a condition of probation, community control, or any other court-ordered community supervision, the court shall order a person convicted of an offense of domestic violence, as

defined in s. 741.28, to attend and successfully complete a batterers' intervention program unless the court determines that the person does not qualify for the batterers' intervention program pursuant to s. 741.325. The ~~batterers' intervention program must be a program certified under s. 741.32, and the~~ offender must pay the cost of attending the program.

Section 16. Paragraph (a) of subsection (1) of section 938.01, Florida Statutes, is amended to read:

938.01 Additional Court Cost Clearing Trust Fund.—

(1) All courts created by Art. V of the State Constitution shall, in addition to any fine or other penalty, require every person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal or county ordinance to pay $3 as a court cost. Any person whose adjudication is withheld pursuant to the provisions of s. 318.14(9) or (10) shall also be liable for payment of such cost. In addition, $3 from every bond estreature or forfeited bail bond related to such penal statutes or penal ordinances shall be remitted to the Department of Revenue as described in this subsection. However, no such assessment may be made against any person convicted for violation of any state statute, municipal ordinance, or county ordinance relating to the parking of vehicles.

(a) All costs collected by the courts pursuant to this subsection shall be remitted to the Department of Revenue in accordance with administrative rules adopted by the executive director of the Department of Revenue for deposit in the Additional Court Cost Clearing Trust Fund. These funds and the funds deposited in the Additional Court Cost Clearing Trust Fund

pursuant to s. 318.21(2)(c) shall be distributed as follows:

1. Ninety-two percent to the Department of Law Enforcement Criminal Justice Standards and Training Trust Fund.

2. Six and three-tenths percent to the Department of Law Enforcement Operating Trust Fund for the Criminal Justice Grant Program.

3. One and seven-tenths percent to the Department of Children and Family Services Domestic Violence Trust Fund for the domestic violence program pursuant to s. 39.903(1) ~~(3)~~.

Section 17. This act shall take effect July 1, 2012.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	SB 2048
INTRODUCER:	Children, Families, and Elder Affairs Committee
SUBJECT:	Department of Children and Family Services
DATE:	January 24, 2012
REVISED:	01/26/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	**Favorable**
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This legislation reenacts and authorizes the Department of Children and Family Services (DCF or the department) to reorganize. The bill changes the name of the agency to "Department of Children and Families" and establishes organizational units called "circuits" and "regions." The bill removes provisions related to program offices and directors, and removes obsolete language related to service districts and a prototype region. The bill changes the membership of community alliances.

This bill substantially amends ss. 20.04, 20.19, 20.43, 39.01, 394.78 and 420.622 of the Florida Statutes.

II. Present Situation:

Background

The department has undergone major reorganizations and divestitures over the years. In 2002, the Governor's Blue Ribbon Panel on Child Protection found that the Florida Legislature had mandated some form of reorganization for the department 22 times in the preceding 33 years.[1]

In 1975, the department was reorganized to transfer operational responsibilities to a local service district level under a single administrator in an effort to resolve the problems associated with providing and coordinating health and human services to a multi-problem client. Divisions were

[1] Governor's Blue Ribbon Panel on Child Protection (May 27, 2002) Retrieved January 3, 2012 from http://archives.cnn.com/2002/US/05/27/florida.child.report/index.html.

abolished and program offices were created. Eleven service districts were established with a district administrator having line authority over all programs and services within that district.[2] In 1992, four additional service districts were created for a total of 15.[3]

In 2000, significant reorganization was mandated, including the establishment of a prototype region and community alliances.[4] The goal of creating a prototype region was to improve the efficiency and effectiveness of operation as well as to provide a model for the subsequent regionalization of the remainder of the department. The SunCoast region was implemented in 2001 and consisted of Pasco, Pinellas, Hillsborough, Manatee, Sarasota, and De Soto counties. The law stipulated that:

> …The department shall evaluate the efficiency and effectiveness of the operation of the prototype region and upon a determination that there has been a demonstrated improvement in management and oversight of services or cost savings from more efficient administration of services, the secretary may consolidate management and administration of additional areas of the state…[5]

Unless the legislature provides authorization, any such consolidation must conform to the districts and subdistricts established in s. 20.19(5), F.S. To date, no additional regions have been established in law. However, the department is currently operating six regions in accordance with temporary legislative authority.[6,7]

Community alliances of stakeholders, community leaders, client representatives and funders of human services were required to be established in each county to provide a focal point for community participation and governance of community-based services. According to the department, community alliances were never developed in some areas, while in other areas they are active and effective.[8]

The department is responsible for planning, evaluating, and implementing comprehensive statewide substance abuse and mental health programs. These programs include adult community mental health, children's mental health, receiving and treatment facilities, and substance abuse prevention, intervention, and treatment services for adults and children.

Prior to 2003, the department's substance abuse and mental health programs operated within the decentralized district structure. The department's central office performed administrative functions, while the 13 districts and one region operated somewhat autonomously and controlled their own budgets, personnel, purchasing, contracting, and operations. A major issue that emerged as a result of this organizational structure was that staff reported to two separate chains of command. Local program supervisors reported to their district administrators, who reported to

[2] Chapter 75-48, L.O.F.
[3] Chapter 92-58, L.O.F.
[4] Chapter 2000-139, L.O.F.
[5] *Id.*
[6] Chapter 2007-174, L.O.F.
[7] The SunCoast region now consists of Pasco, Pinellas, Manatee, Sarasota, De Soto, Hillsborough, Charlotte, Glades, Hendry, Lee and Collier counties.
[8] Department of Children and Families, Staff Analysis and Economic Impact Statement, SB 1214, (March 3, 2011).

the department's Deputy Secretary for Operations. In the central office, substance abuse and mental health each had a separate director who answered to the department's Deputy Secretary for Programs. The central office had little influence with regard to district personnel and performance issues.[9]

In response to these issues and related concerns, the Florida Legislature mandated significant restructuring of the program in 2003.[10] To increase visibility and focus, a new program structure was created which gave the central office more control over policy, programs, and budget. The legislature also required the secretary to appoint an Assistant Secretary of Substance Abuse and Mental Health as well as a Director for Substance Abuse and a Director for Mental Health. Each of these program directors exerts direct line authority over all district substance abuse and mental health programs, including state hospital and institutional staff and control of program budgets and contracts. The Assistant Secretary for Substance Abuse and Mental Health is also required to enter into a memorandum of understanding with each district or region administrator describing their working relationship.[11] As a result of flexibility provided by the legislature to reorganize in 2007, the statutory organizational structure is no longer consistent with the working organizational structure.[12]

According to a 2005 evaluation of the reorganization by the Office of Program Policy Analysis and Government Accountability (OPPAGA), the more centralized structure offered a number of benefits including:[13]

- Greater visibility and program support;
- Greater intradepartmental cohesion due to bringing mental health and substance abuse programs together;
- Faster decision-making;
- Increased standardization of policies and practices; and
- Enhanced accountability.

There have also been significant challenges associated with increased centralization which have prompted the department to initiate changing the structure again. The OPPAGA report identified two major issues:[14]

- Difficulty for both district and central office staff to maintain communication with other programs, both inside and outside the department; and
- Difficulty for central office staff to become familiar with local substance abuse and mental health issues.

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[9] The Florida Senate. *Agency Sunset Review of the Department of Children and Family Services*. Committee on Children, Families, and Elder Affairs. Issue Brief 2009-304, January2009.
[10] Chapter 2003-279, L.O.F.
[11] *Id*.
[12] DCF, *Reorganization of the Department of Children and Families, Report to the Legislature*. (January 1, 2008). Retrieved January 3, 2012, from http://www.dcf.state.fl.us/publications/docs/ReorgReport013108.pdf.
[13] Office of program Policy Analysis and Government Accountability, *Centralizing DCF Substance Abuse and Mental Health Programs Provides Benefits But Also Challenges.* Report No. 05-07, February 2005.
[14] *Id*.

An additional concern has been that substance abuse and mental health programs were not included in the 2004 department restructuring that consolidated its districts into six large zones for administrative purposes. Although the department's rationale for keeping substance abuse and mental health programs at the district level was to retain the community-based nature of these programs, one consequence has been that they must work within a different administrative structure.[15]

Current Statutory Organizational Requirements

The department is created and organizationally structured pursuant to s. 20.19, F.S., with the express mission "to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served." Although the department name established in statute is the Department of Children and Family Services, the department is authorized to use the name Department of Children and Families.[16]

The department is headed by a Secretary appointed by the Governor, subject to confirmation by the Senate. The Secretary is directed by current law to appoint the following specified positions:[17]

- Deputy Secretary who shall act in the absence of the Secretary;
- Assistant Secretary for Substance Abuse and Mental Health;
- Program Director for Mental Health and Program Director for Substance Abuse;
- Program directors to whom the Secretary may delegate responsibilities for the management, policy, program, and fiscal functions of the department; and
- District administrators for each of the service districts delineated in s. 20.19(5), F.S.

Section 20.19(7), F.S., provides for one prototype regional operational structure for the counties in the third, twelfth and thirteenth judicial circuits (SunCoast Region). The service districts and prototype region are statutorily responsible for all service delivery operations in their respective areas, with the exception of substance abuse and mental health services.[18]

Section 20.04(4), F.S., provides that within the department "there are organizational units called 'program offices,' headed by program directors." Section 20.19(4)(b), F.S., establishes the following program offices for the department:

- Adult Services;
- Child Care Services;
- Domestic Violence;
- Economic Self-Sufficiency Services;
- Family Safety;

[15] The Florida Senate. *Agency Sunset Review of the Department of Children and Family Services*. Committee on Children, Families, and Elder Affairs. Issue Brief 2009-304, January 2009.
[16] Chapter 2007-174, L.O.F.
[17] ss. 20.19(2) and (3), F.S. and s. 20.19(5)(b), F.S.
[18] Pursuant to section 20.19(2)(c)1., F.S., the Program Director for Substance Abuse and the Program Director for Mental Health have direct line authority over all district substance abuse and mental health staff. Mental health institutions report to the Program Director for Mental Health.

- Mental Health;
- Refugee Services; and
- Substance Abuse.

The Secretary is authorized to consolidate, restructure, or rearrange program and support offices in consultation with the Executive Office of the Governor, provided that any such changes are capable of meeting the functions, activities, and outcomes delineated in law. The Secretary is likewise authorized to appoint additional managers and administrators at his or her discretion. However, DCF is one of three executive agencies for which any additional offices may only be established by statutory enactment.[19]

Departmental Organization Work Group

On January 17, 2007, Secretary Butterworth established a Department Organizational Review Work Group to examine the organizational structure of DCF. As a result of its review, the Work Group made multiple recommendations including the following:[20]

Regionalization of Services
- Adopt a regional structure for field operations.
- Implement a circuit-based model for the provision of community services and ensure a departmental leadership presence in each of Florida's 20 judicial circuits.

Organizational Structure
- Adopt a standardized template for the provision of community and administrative services and support at the regional and community level.

Assistant Secretary for Operations
- Modify the table of organization for the Office of the Assistant Secretary for Operations to reflect the changes in field services delivery.

Assistant Secretary for Programs
- Realign the table of organization for the Office of the Assistant Secretary for Programs to parallel the three elements of the Department's formal Mission Statement.
- Expand the role of the existing Office of Provider Relations.
- Reassign Headquarters Substance Abuse and Mental Health (SAMH) staff and treatment facilities to the Office of the Assistant Secretary for Programs and SAMH field personnel to the appropriate regional reporting structure.[21]
- Establish an ombudsman position.

[19] Section 20.04(7)(b), F.S. The Departments of Transportation and Corrections are also subject to this restriction.
[20] *Organizational Review of the Department of Children and Families, Final Report of the Organizational Review Work Group* (DRAFT)(April 2, 2007).
[21] In reviewing the organization of Substance Abuse and Mental Health, the Work Group concluded that "the creation of the position of Assistant Secretary for Substance Abuse and Mental Health (SAMH) with a separate chain of command for SAMH personnel in the field, albeit necessary at one time to assure proper attention to the issue, has created a silo which impedes both communication and effective management of Departmental field resources."

Office of Strategic Planning and Innovation

- Create and staff an Office of Strategic Planning and Innovation.

Quality Management

- Designate the Office of Strategic Planning and Innovation as the entity responsible for setting quality and training standards, identifying appropriate resources to support Headquarters and field activities, and maintaining centralized databases on techniques and training standards.
- Transfer the Contract Oversight Unit to the Assistant Secretary for Programs to assure integration of efforts and to maximize communication.
- Distribute quality functions within regions, rather than reporting to Central Office.
- Move responsibility for strategic planning at the regional level to performance and planning teams.
- Adopt a regional model for Quality Assurance and Quality Improvement.

Current Organizational Structure of DCF

In 2007, the Legislature authorized the department to reorganize its administrative structure.[22,23] Pursuant to this authority, and consistent with the recommendations of the Work Group, the department now plans, administers, and delivers most of its services to target groups through offices in six regions and 20 circuits aligned to match the state's 20 judicial circuits.[24] The regional offices are responsible for support services, contract management, and local program office functions. The circuits are responsible for field operations, such as protective investigations for children and adults and public assistance eligibility determination.[25]
An additional administrative change is the reintegration of the substance abuse and mental health programs into the administrative structure of the department. These programs now report to the deputy secretary and no longer have direct line authority over regional program supervisors. Community alliances, comprised of community leaders, clients, and human service organizations, are responsible for establishing community priorities for service delivery, setting community-level outcome goals, promoting prevention and early intervention services, and serving as a catalyst for community resource development. The department is also permitted to establish additional community partnerships at the request of local communities to improve the delivery of services, and state level advisory groups to ensure and enhance communication among stakeholders, community leaders, and clients.

[22] Chapter 2007-174, L.O.F. Prior to passage of ch. 2007-174, L.O.F., services were provided by DCF in 13 operating districts and one prototype region (SunCoast), supported by six administrative zones and the Central Office Headquarters. Each district had a district administrator or, in the case of the SunCoast region, a regional director appointed by and responsible to the Secretary. The district administrator or regional director assumed responsibility for fiscal accountability in his or her district or region. In each zone, one designated district administrator acted as zone manager.
[23] The 2007 legislation provided the flexibility to the department to continue the process of making organizational changes notwithstanding the structural requirements of s. 20.19, F.S., to better serve the needs of citizens of Florida through additional improvements to the social services system in the State. That flexibility was extended through proviso in the 2008, 2009, 2010, and 2011 legislative sessions.
[24] DCF, *Reorganization of the Department of Children and Families, Report to the Legislature*, January 1, 2008. Retrieved January 3, 2012, from http://www.dcf.state.fl.us/publications/docs/ReorgReport013108.pdf. Circuits were made consistent with the geographic boundaries of judicial circuits, because of the department's ongoing and regular interaction with the State's court system.
[25] *Id*.

According to the department, prior to reorganization, local district administrators had authority over child welfare, economic self-sufficiency, and adult services. After reorganization, the circuit administrators (formerly known as district administrators) also have direct authority over substance abuse and mental health services, homelessness, domestic violence and refugee programs. The objective of moving decision-making to the circuit level is to allow the circuit administrators more opportunities for focusing resources as needed in the community:[26]

> In its reorganization, the Department has pushed decision-making to the lowest appropriate level. Circuit Administrators have more authority over the entire array of Department services than in previous years… This allows Circuit Administrators the ability to focus resources as needed for direct services in their communities.[27]

To assure consistency and efficiency of operations throughout the state, the department has also adopted a standardized template for the provision of administrative services and support at the regional and circuit level.

In order to integrate Substance Abuse and Mental Health (SAMH) into the department's overall approach to the delivery of services, and to further align substance abuse and mental health services with the specific needs of the community, the department has:

- Appointed an Assistant Secretary for SAMH;
- Aligned the SAMH programs with the department's overall approach to circuit-based service delivery;
- Revised the organizational structure of the SAMH programs, so that SAMH activities in each circuit are being led by a SAMH Program Supervisor who reports to the circuit administrator;
- Taken action to more closely align SAMH programs statewide, by combining the SAMH Contract and Data Units in the central office; and
- Continued oversight for the State Mental Health Treatment Facilities, which report to the Assistance Secretary for SAMH with assistance from the Mental Health Chief of Facilities and the Director of Mental Health.[28]

III. Effect of Proposed Changes:

The bill re-enacts the Department of Children and Family Services and places in statute the reorganization plans already accomplished by DCF in response to direction given during the 2007 legislative session.[29] The bill amends s. 20.04, F.S., and substantially rewords s. 20.19, F.S., as follows:

Department Reorganization

- Renames the "Department of Children and Family Services" to "Department of Children and Families;"

[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Chapter 2007-174, L.O.F.

- Removes the statutory responsibilities of the director for Substance Abuse and Mental Health, including but not limited to line authority over district staff;
- Deletes the directive for the director for Substance Abuse and Mental Health to have direct authority over mental health institutions;
- Requires the appointment of the Assistant Secretary for Substance Abuse and Mental Health;
- Provides authorization for the department to provide certain specified services;
- Amends current law changing service districts to organizational units to be called "circuits" and "regions". Circuits must conform to the geographic boundaries of judicial circuits prescribed in s. 26.021, F.S., and regions are to be comprised of multiple circuits; and
- Deletes the prototype region structure in current law, s. 20.19(7), F.S.

Community Alliances

- Specifies changes to the membership of a community alliance; .

The bill also amends s. 20.43, F.S., relating to the Department of Health (DOH), s. 39.01, F.S., relating to definitions, and s. 394.78. F.S., relating to operation and administration, to conform cross-references, and amends s. 420.622, relating to the State Office on Homelessness, to delete the requirement for the Governor to appoint an executive director of the office.

The bill provides for legislation during the 2013 regular legislative session to conform the Florida Statutes to changes made by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-02087-12 20122048__

A bill to be entitled

An act relating to the Department of Children and Family Services; amending s. 20.04, F.S.; changing the name of the department to the "Department of Children and Families"; requiring that the department be geographically organized into circuits and regions; amending s. 20.19, F.S.; revising provisions relating to the establishment of the department; providing for a Director for Substance Abuse and Mental Health, appointed by the secretary of the department; revising the services provided by the department and abolishing the program offices; deleting provisions establishing service districts; revising the membership requirements for community alliances; deleting provisions providing for a prototype region; deleting provisions providing an exemption from competitive bids for certain health services; amending s. 20.43, F.S., relating to the service areas of the Department of Health; conforming provisions to the abolishment of the service districts of the Department of Children and Family Services; amending s. 39.01, F.S.; conforming a cross-reference; amending s. 394.78, F.S.; removing an obsolete reference to health and human services boards; amending s. 420.622, F.S., relating to the State Office on Homelessness within the Department of Children and Families; removing a requirement that the executive director of the office be appointed by the Governor; providing for legislation to conform the Florida Statutes to changes

586-02087-12 20122048__

made by the act; providing an effective date.

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

Section 1. Subsection (4) of section 20.04, Florida Statutes, is amended to read:

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

(4) Within the Department of Children and Families ~~Family Services~~ there are organizational units called "circuits" and "regions." ~~"program offices," headed by program directors.~~ Each circuit is aligned geographically with each of the state's judicial circuits, and each region is comprised of multiple circuits that are in geographical proximity to each other.

Section 2. Section 20.19, Florida Statutes, is amended to read:

20.19 Department of Children and Families ~~Family Services~~.—There is created a Department of Children and Families ~~Family Services~~.

(1) MISSION AND PURPOSE.—

(a) The mission of the Department of Children and Family Services is to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served.

(b) The department shall develop a strategic plan for fulfilling its mission and establish a set of measurable goals, objectives, performance standards, and quality assurance requirements to ensure that the department is accountable to the people of Florida.

(c) To the extent allowed by law and within specific appropriations, the department shall deliver services by contract through private providers.

(2) SECRETARY OF CHILDREN AND FAMILIES ~~FAMILY SERVICES~~; DEPUTY SECRETARY.—

(a) The head of the department is the Secretary of Children and Families ~~Family Services~~. The secretary is appointed by the Governor, subject to confirmation by the Senate. The secretary serves at the pleasure of the Governor.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary is directly responsible to the secretary, performs such duties as are assigned by the secretary, and serves at the pleasure of the secretary.

(c)1. The secretary shall appoint an Assistant Secretary for Substance Abuse and Mental Health. The assistant secretary shall serve at the pleasure of the secretary and must have expertise in both areas of responsibility.

2. The secretary shall appoint a ~~Program~~ Director for Substance Abuse and ~~a Program Director for~~ Mental Health who has ~~have~~ the requisite expertise and experience ~~in their respective fields~~ to head the state's Substance Abuse and Mental Health Program Office ~~programs~~.

~~a. Each program director shall have line authority over all district substance abuse and mental health program management staff.~~

~~b. The assistant secretary shall enter into a memorandum of understanding with each district or region administrator, which must be approved by the secretary or the secretary's designee,~~

~~describing the working relationships within each geographic area.~~

~~c. The mental health institutions shall report to the Program Director for Mental Health.~~

~~d. Each program director shall have direct control over the program's budget and contracts for services. Support staff necessary to manage budget and contracting functions within the department shall be placed under the supervision of the program directors.~~

~~(d) The secretary has the authority and responsibility to ensure that the mission of the department is fulfilled in accordance with state and federal laws, rules, and regulations.~~

~~(3) PROGRAM DIRECTORS.—The secretary shall appoint program directors who serve at the pleasure of the secretary. The secretary may delegate to the program directors responsibilities for the management, policy, program, and fiscal functions of the department.~~

(3) ~~(4)~~ SERVICES PROVIDED ~~PROGRAM OFFICES AND SUPPORT OFFICES~~.—

(a) The department shall provide the following services: ~~is authorized to establish program offices and support offices, each of which shall be headed by a director or other management position who shall be appointed by and serves at the pleasure of the secretary.~~

~~(b) The following program offices are established:~~

1. Adult Protection ~~Services~~.

2. Child Care Regulation ~~Services~~.

3. Child Welfare.

4.~~3.~~ Domestic Violence.

5.4. Economic Self-Sufficiency ~~Services~~.

~~5. Family Safety.~~

6. Mental Health.

7. Refugee Services.

8. Substance Abuse.

(b) ~~(c) Program~~ Offices ~~and support offices~~ may be consolidated, restructured, or rearranged by the secretary, in consultation with the Executive Office of the Governor, if ~~provided any~~ such consolidation, restructuring, or rearranging is capable of meeting functions and activities and achieving outcomes as delineated in state and federal laws, rules, and regulations. The secretary may appoint additional managers and administrators as he or she determines are necessary for the effective management of the department.

~~(5) SERVICE DISTRICTS.—~~

~~(a) The department shall plan and administer its programs of family services through service districts and subdistricts composed of the following counties:~~

~~1. District 1.—Escambia, Santa Rosa, Okaloosa, and Walton Counties.~~

~~2. District 2, Subdistrict A.—Holmes, Washington, Bay, Jackson, Calhoun, and Gulf Counties.~~

~~3. District 2, Subdistrict B.—Gadsden, Liberty, Franklin, Leon, Wakulla, Jefferson, Madison, and Taylor Counties.~~

~~4. District 3. Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, and Alachua Counties.~~

~~5. District 4.—Baker, Nassau, Duval, Clay, and St. Johns Counties.~~

~~6. District 5.—Pasco and Pinellas Counties.~~

~~7. District 6.—Hillsborough and Manatee Counties.~~

~~8. District 7, Subdistrict A.—Seminole, Orange, and Osceola Counties.~~

~~9. District 7, Subdistrict B.—Brevard County.~~

~~10. District 8, Subdistrict A.—Sarasota and DeSoto Counties.~~

~~11. District 8, Subdistrict B.—Charlotte, Lee, Glades, Hendry, and Collier Counties.~~

~~12. District 9. Palm Beach County.~~

~~13. District 10. Broward County.~~

~~14. District 11, Subdistrict A.—Miami-Dade County.~~

~~15. District 11, Subdistrict B.—Monroe County.~~

~~16. District 12.—Flagler and Volusia Counties.~~

~~17. District 13.—Marion, Citrus, Hernando, Sumter, and Lake Counties.~~

~~18. District 14.—Polk, Hardee, and Highlands Counties.~~

~~19. District 15.—Indian River, Okeechobee, St. Lucie, and Martin Counties.~~

~~(b) The secretary shall appoint a district administrator for each of the service districts. The district administrator shall serve at the pleasure of the secretary and shall perform such duties as assigned by the secretary.~~

(c) Each fiscal year the secretary shall, in consultation with the relevant employee representatives, develop projections of the number of child abuse and neglect cases and shall include in the department's legislative budget request a specific appropriation for funds and positions for the next fiscal year in order to provide an adequate number of full-time equivalent:

1. Child protection investigation workers so that caseloads do not exceed the Child Welfare League Standards by more than two cases; and

2. Child protection case workers so that caseloads do not exceed the Child Welfare League Standards by more than two cases.

(4) ~~(6)~~ COMMUNITY ALLIANCES.—

(a) The department shall, in consultation with local communities, establish a community alliance of the stakeholders, community leaders, client representatives, and funders of human services in each county to provide a focal point for community participation and governance of community-based services. An alliance may cover more than one county when such arrangement is determined to provide for more effective representation. The community alliance shall represent the diversity of the community.

(b) The duties of the community alliance shall include, but not necessarily be limited to:

1. Joint planning for resource utilization in the community, including resources appropriated to the department and any funds that local funding sources choose to provide.

2. Needs assessment and establishment of community priorities for service delivery.

3. Determining community outcome goals to supplement state-required outcomes.

4. Serving as a catalyst for community resource development.

5. Providing for community education and advocacy on issues related to delivery of services.

6. Promoting prevention and early intervention services.

(c) The department shall ensure, to the greatest extent possible, that the formation of each community alliance builds on the strengths of the existing community human services infrastructure.

(d) The ~~initial~~ membership of the community alliance in a county shall be composed of the following:

1. A representative from the department. ~~The district administrator.~~

2. A representative from county government.

3. A representative from the school district.

4. A representative from the county United Way.

5. A representative from the county sheriff's office.

6. A representative from the circuit court corresponding to the county.

7. A representative from the county children's board, if one exists.

(e) At any time after the initial meeting of the community alliance, the community alliance shall adopt bylaws and may increase the membership of the alliance to include ~~the state attorney for the judicial circuit in which the community alliance is located, or his or her designee, the public defender for the judicial circuit in which the community alliance is located, or his or her designee, and~~ other individuals and organizations who represent funding organizations, are community leaders, have knowledge of community-based service issues, or otherwise represent perspectives that will enable them to accomplish the duties listed in paragraph (b), if, in the judgment of the alliance, such change is necessary to adequately

represent the diversity of the population within the community alliance service circuits ~~districts~~.

(f) A member of the community alliance, other than a member specified in paragraph (d), may not receive payment for contractual services from the department or a community-based care lead agency.

(g) Members of the community alliances shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses, as provided in s. 112.061. Payment may also be authorized for preapproved child care expenses or lost wages for members who are consumers of the department's services and for preapproved child care expenses for other members who demonstrate hardship.

(h) Members of a community alliance are subject to the provisions of part III of chapter 112, the Code of Ethics for Public Officers and Employees.

(i) Actions taken by a community alliance must be consistent with department policy and state and federal laws, rules, and regulations.

(j) Alliance members shall annually submit a disclosure statement of services interests to the department's inspector general. Any member who has an interest in a matter under consideration by the alliance must abstain from voting on that matter.

(k) All alliance meetings are open to the public pursuant to s. 286.011 and the public records provision of s. 119.07(1).

~~(7) PROTOTYPE REGION.—~~

~~(a) Notwithstanding the provisions of this section, the department may consolidate the management and administrative~~

~~structure or function of the geographic area that includes the counties in the sixth, twelfth, and thirteenth judicial circuits as defined in s. 26.021. The department shall evaluate the efficiency and effectiveness of the operation of the prototype region and upon a determination that there has been a demonstrated improvement in management and oversight of services or cost savings from more efficient administration of services, the secretary may consolidate management and administration of additional areas of the state. Any such additional consolidation shall comply with the provisions of subsection (5) unless legislative authorization to the contrary is provided.~~

~~(b) Within the prototype region, the budget transfer authority defined in paragraph (5)(b) shall apply to the consolidated geographic area.~~

~~(c) The department is authorized to contract for children's services with a lead agency in each county of the prototype area, except that the lead agency contract may cover more than one county when it is determined that such coverage will provide more effective or efficient services. The duties of the lead agency shall include, but not necessarily be limited to:~~

~~1. Directing and coordinating the program and children's services within the scope of its contract.~~

~~2. Providing or contracting for the provision of core services, including intake and eligibility, assessment, service planning, and case management.~~

~~3. Creating a service provider network capable of delivering the services contained in client service plans, which shall include identifying the necessary services, the necessary volume of services, and possible utilization patterns and~~

~~negotiating rates and expectations with providers.~~

~~4. Managing and monitoring of provider contracts and subcontracts.~~

~~5. Developing and implementing an effective bill payment mechanism to ensure all providers are paid in a timely fashion.~~

~~6. Providing or arranging for administrative services necessary to support service delivery.~~

~~7. Utilizing departmentally approved training and meeting departmentally defined credentials and standards.~~

~~8. Providing for performance measurement in accordance with the department's quality assurance program and providing for quality improvement and performance measurement.~~

~~9. Developing and maintaining effective interagency collaboration to optimize service delivery.~~

~~10. Ensuring that all federal and state reporting requirements are met.~~

~~11. Operating a consumer complaint and grievance process.~~

~~12. Ensuring that services are coordinated and not duplicated with other major payors, such as the local schools and Medicaid.~~

~~13. Any other duties or responsibilities defined in s. 409.1671 related to community-based care.~~

(5) ~~(8)~~ CONSULTATION WITH COUNTIES ON MANDATED PROGRAMS.—It is the intent of the Legislature that when county governments are required by law to participate in the funding of programs, the department shall consult with designated representatives of county governments in developing policies and service delivery plans for those programs.

~~(9) PROCUREMENT OF HEALTH SERVICES.—Nothing contained in~~

~~chapter 287 shall require competitive bids for health services involving examination, diagnosis, or treatment.~~

Section 3. Subsection (5) of section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(5) The department shall plan and administer its public health programs through its county health departments and may, for administrative purposes and efficient service delivery, establish up to 15 service areas to carry out such duties as may be prescribed by the State Surgeon General. The boundaries of the service areas shall ~~be the same as, or combinations of, the service districts of the Department of Children and Family Services established in s. 20.19 and, to the extent practicable,~~ ~~shall~~ take into consideration the boundaries of the jobs and education regional boards.

Section 4. Subsection (27) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(27) "District administrator" means the chief operating officer of each service district of the department as defined in s. 20.19 ~~(5)~~ and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.

Section 5. Subsection (5) of section 394.78, Florida Statutes, is amended to read:

394.78 Operation and administration; personnel standards; procedures for audit and monitoring of service providers;

resolution of disputes.—

~~(5) In unresolved disputes regarding this part or rules established pursuant to this part, providers and district health and human services boards shall adhere to formal procedures specified under s. 20.19(8)(n).~~

Section 6. Subsection (1) of section 420.622, Florida Statutes, is amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(1) The State Office on Homelessness is created within the Department of Children and Families ~~Family Services~~ to provide interagency, council, and other related coordination on issues relating to homelessness. ~~An executive director of the office shall be appointed by the Governor.~~

Section 7. During the 2013 regular legislative session, the Legislature shall adopt legislation to conform the Florida Statutes to the provisions of this act.

Section 8. This act shall take effect July 1, 2012.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	CS/SB 2050
INTRODUCER:	Children, Families, and Elder Affairs Committee and Children, Families, and Elder Affairs Committee
SUBJECT:	Assisted Living Facilities
DATE:	January 26, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	**Fav/CS**
2.			HR	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill makes substantial revisions to state law relating to assisted living facilities. Specifically, the bill:

- Requires case managers to maintain records of face-to-face interaction with a mental health resident;
- Requires adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements;
- Requires an assisted living facility (ALF or facility) to provide notice to residents of the confidentiality of certain information when making a complaint to the long-term care ombudsman;
- Specifies that an employee or agent of an agency that has regulatory responsibilities concerning persons in state-licensed facilities are mandatory reporters of abuse, neglect, or exploitation of the elderly;
- Defines “mental health professional”;
- Requires an assisted living facility that serves any mental health resident to obtain a limited mental health license;

- Provides requirements for a facility to follow when relocating or terminating the residency of a resident;
- Provides a process for a resident to challenge a facility's notice to relocate or terminate the residency of the resident;
- Requires a preservice orientation for all employees or administrators hired on or after July 1, 2012;
- Requires every ALF to be under the management of a licensed administrator by July 1, 2013, and provides educational and training requirements for an applicant to become an ALF administrator (applicant);
- Provides for a provisional license and inactive status in certain circumstances;
- Requires the Department of Elder Affairs (DOEA or department), in conjunction with other agencies, to develop a standardized curriculum for core training and competency tests related to the core training, and to develop curricula for continuing education;
- Requires applicants to have 40 hours of core training and successfully pass the competency test with a minimum score of 80;
- Requires applicants to complete 10 hours of supplemental training on certain topics;
- Requires staff members of an ALF who provide regular or direct care to residents to have 20 hours of core training and successfully pass the competency test with a minimum score of 70;
- Requires administrators and certain staff members of a limited mental health ALF to complete 8 hours of mental health training within 30 days after employment and pass a competency test;
- Requires administrators to have 18 hours every two years of continuing education and certain staff members to have 10 hours every two years of continuing education;
- Creates a certification process for trainers using a third-party credentialing entity approved by DOEA;
- Authorizes a resident to submit a request to a facility to have electronic monitoring devices in the resident's room and requires certain notices and consents to be given; and
- Makes technical and conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 394.4574, 400.0078, 415.103, 415.1034, 429.02, 429.075, 429.176, 429.178, 429.28, and 429.52.

This bill creates the following sections of the Florida Statutes: 429.281, 429.50, 429.512, 429.521, 429.522, and 429.55.

II. Present Situation:[1]

Assisted Living Facilities

An assisted living facility (ALF or facility) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[2]

[1] Information contained in the Present Situation of this bill analysis is from an interim report by the Committee on Health Regulation of the Florida Senate. See Comm. on Health Reg., The Florida Senate, *Review Regulatory Oversight of Assisted Living Facilities in Florida* (Interim Report 2012-128) (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-128hr.pdf (last visited Jan. 17, 2012).

[2] Section 429.02(5), F.S.

The ALFs are licensed by the Agency for Health Care Administration (AHCA or agency), pursuant to part I of ch. 429, F.S., relating to assisted living facilities, and part II of ch. 408, F.S., relating to the general licensing provisions for health care facilities. The ALFs are also subject to regulation under Chapter 58A-5, Florida Administrative Code (F.A.C.). These rules are adopted by the Department of Elder Affairs (DOEA or department) in consultation with AHCA, the Department on Children and Family Services (DCF), and the Department of Health (DOH).[3]

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility. The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on an assessment of the strengths, needs, and preferences of the individual; the health assessment; the preliminary service plan; the facility's residency criteria; services offered or arranged for by the facility to meet resident needs; and the ability of the facility to meet the uniform fire-safety standards.[4] If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.[5]

As of June 1, 2011, there were 2,956 licensed ALFs in Florida.[6] In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide limited nursing services (LNS),[7] limited mental health (LMH) services,[8] and extended congregate care (ECC) services.[9] Out of the 2,956 licensed ALFs, 1,062 have LNS licenses, 1,100 have LMH licenses, and 278 have ECC licenses.[10]

Limited Nursing Services Specialty License

An LNS specialty license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license.

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,[11] may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general

[3] Section 429.41(1), F.S.
[4] Section 429.26, F.S., and Rule 58A-5.030, F.A.C.
[5] Section 429.28, F.S.
[6] Agency for Health Care Administration, *Assisted Living Directory*, http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/pdf/Directory_ALF.pdf (last visited July 15, 2011).
[7] Section 429.07(3)(c), F.S.
[8] An ALF that serves three or more mental health residents must obtain a limited mental health specialty license. A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives optional state supplementation (OSS). *See* ss. 429.075 and 429.02(15), F.S.
[9] Section 429.07(3)(b), F.S.
[10] Agency for Health Care Administration, *Directories*, http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/alf.shtml (last visited July 15, 2011).
[11] Rule 58A-5.031, F.A.C.

status of the resident's health, is required to be conducted at least monthly on each resident who receives a limited nursing service.[12]

Extended Congregate Care Specialty License

An ECC specialty license enables an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services[13] to persons who otherwise would be disqualified from continued residence in an ALF.[14]

The primary purpose of ECC services is to allow residents, as they become more impaired with physical or mental limitations, to remain in a familiar setting. An ALF licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the ECC facility. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, the facility may not serve residents who require 24-hour nursing supervision.[15]

Facilities holding an ECC license must also:

- Ensure that the administrator of the facility and the ECC supervisor, if separate from the administrator, has a minimum of 2 years of managerial, nursing, social work, therapeutic recreation, or counseling experience in a residential, long-term care, or acute care setting or agency serving elderly or disabled persons. A baccalaureate degree may be substituted for 1 year of the required experience and a nursing home administrator is considered to be qualified for the position.
- Provide enough qualified staff to meet the needs of ECC residents considering the amount and type of services established in each resident's service plan.
- Immediately provide additional or more qualified staff, when the AHCA determines that service plans are not being followed or that residents' needs are not being met because of the lack of sufficient or adequately trained staff.
- Ensure and document that staff receive required ECC training.

Limited Mental Health Specialty License

An ALF that serves three or more mental health residents must obtain an LMH specialty license.[16] A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives optional state supplementation (OSS).[17,18] The DCF is responsible for ensuring that

[12] Section 429.26, F.S., and Rule 58A-5.031(3)(c), F.A.C.
[13] Supportive services include social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. *See* Rule 58A-5.030(8)(a), F.A.C.
[14] Section 429.07(3)(b), F.S., and Rule 58A-5.030, F.A.C.
[15] Section 429.07(3)(b), F.S.
[16] Section 429.075, F.S.
[17] Section 429.02(15), F.S.

a mental health resident is assessed and determined able to live in the community in an ALF with an LMH license.[19]

The LMH licensee must execute a cooperative agreement between the ALF and the mental health care services provider. The cooperative agreement specifies, among other things, directions for the ALF accessing emergency and after-hours care for the mental health resident.

Additionally, according to Rule 58A-5.029, F.A.C., facilities holding an LMH license must:

- Provide an opportunity for private face-to-face contact between the mental health resident and the resident's mental health case manager or other treatment personnel of the resident's mental health care provider.
- Observe resident behavior and functioning in the facility, and record and communicate observations to the resident's mental health case manager or mental health care provider regarding any significant behavioral or situational changes which may signify the need for a change in the resident's professional mental health services, supports and services described in the community living support plan, or that the resident is no longer appropriate for residency in the facility.
- Ensure that designated staff has completed the required LMH training.
- Maintain facility, staff, and resident records in accordance with the requirements of the law.

ALF Staffing Requirements

Every ALF must be under the supervision of an administrator, who is responsible for the operation and maintenance of the facility, including the management of all staff and the provision of adequate care to all residents. An ALF administrator must be at least 21 years of age and, if employed on or after August 15, 1990, must have a high school diploma or general equivalency diploma (G.E.D.), or have been an operator or administrator of a licensed ALF in Florida for at least 1 of the past 3 years in which the facility has met minimum standards. However, all administrators employed on or after October 30, 1995, must have a high school diploma or G.E.D. An administrator must be in compliance with level 2 background screening standards and complete a core training requirement.[20]

Administrators may supervise a maximum of either three ALFs or a combination of housing and health care facilities or agencies on a single campus. However, administrators who supervise more than one facility must appoint in writing a separate "manager" for each facility who must be at least 21 years old and complete a core training requirement.[21]

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[18] Optional State Supplementation is a cash assistance program. Its purpose is to supplement a person's income to help pay for costs in an assisted living facility, mental health residential treatment facility, or adult family care home, but it is not a Medicaid program. Department of Elder Affairs, *Florida Affordable Assisted Living: Optional State Supplementation (OSS)*, http://elderaffairs.state.fl.us/faal/operator/statesupp.html (last visited Aug. 17, 2011).

[19] Section 394.4574, F.S., requires a mental health resident to be assessed by a psychiatrist, clinical psychologist, clinical social worker, psychiatric nurse, or an individual who is supervised by one of these professionals to determine whether it is appropriate for the person to reside in an ALF.

[20] Section 429.174, F.S., and Rule 58A-5.019, F.A.C.

[21] *Id.*

All staff, who are employed by or contracted with the ALF to provide personal services to residents, must receive a level 2 background screening.[22]

ALF Staff Training

Administrators and other ALF staff must meet minimum training and education requirements established by the DOEA by rule.[23] This training and education is intended to assist facilities appropriately respond to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.[24]

The ALF core training requirements established by the DOEA consist of a minimum of 26 hours of training and a competency test. Administrators and managers are required to successfully complete the ALF core training requirements within 3 months from the date of becoming a facility administrator or manager. Successful completion of the core training requirements includes passing the competency test.[25] The minimum passing score for the competency test is 75 percent.[26]

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every 2 years. A newly hired administrator or manager, who has successfully completed the ALF core training and continuing education requirements, is not required to retake the core training. An administrator or manager, who has successfully completed the core training but has not maintained the continuing education requirements, is considered a new administrator or manager for the purposes of the core training requirements. He or she must retake the ALF core training and retake and pass the competency test.[27]

Facility administrators or managers are required to provide or arrange for the following in-service training to facility staff:

- Staff who provide direct care to residents, other than nurses, certified nursing assistants, or home health aides must receive a minimum of 1-hour in-service training in infection control, including universal precautions, and facility sanitation procedures before providing personal care to residents.[28]
- Staff who provide direct care to residents must receive a minimum of 1-hour in-service training within 30 days of employment that covers the reporting of major incidents, reporting of adverse incidents, and facility emergency procedures including chain-of-command and staff roles relating to emergency evacuation.

[22] Section 408.809(1)(e), F.S. and s. 429.174, F.S.
[23] Rule 58A-5.0191, F.A.C.
[24] Section 429.52(1), F.S.
[25] Rule 58A-5.0191, F.A.C.
[26] Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.
[27] Rule 58A-5.0191, F.A.C.
[28] Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

- Staff who provide direct care to residents, who have not taken the core training program, must receive a minimum of 1-hour in-service training within 30 days of employment that covers resident rights in an ALF and recognizing and reporting resident abuse, neglect, and exploitation.
- Staff who provide direct care to residents, other than nurses, CNAs, or home health aides must receive 3 hours of in-service training within 30 days of employment that covers resident behavior and needs and providing assistance with the activities of daily living.
- Staff who prepare or serve food and who have not taken the ALF core training, must receive a minimum of 1-hour in-service training within 30 days of employment in safe food handling practices.
- All facility staff are required to receive in-service training regarding the facility's resident elopement response policies and procedures within 30 days of employment, must be provided with a copy of the facility's resident elopement response policies and procedures, and must demonstrate an understanding and competency in the implementation of the elopement response policies and procedures.[29]

The administrator, managers, and staff, who have direct contact with mental health residents in a licensed LMH facility, must receive the following training:[30]

- A minimum of 6 hours of specialized training in working with individuals with mental health diagnoses.
- A minimum of 3 hours of continuing education, which may be provided by the ALF administrator or through distance learning, biennially thereafter in subjects dealing with mental health diagnoses or mental health treatment.

Facilities are required to conduct a minimum of two resident elopement prevention and response drills per year. All administrators and direct care staff must participate in the drills, which must include a review of procedures to address resident elopement. Facilities must document the implementation of the drills and ensure that the drills are conducted in a manner consistent with the facility's resident elopement policies and procedures.[31]

Trainers

Training for administrators must be performed by trainers registered with the DOEA. The trainer must provide the DOEA with proof that he or she has completed the minimum core training education requirements, successfully passed the competency test, and complied with continuing education requirements (12 contact hours of continuing education in topics related to assisted living every 2 years), and meet one of the following requirements:

- Provide proof of completion of a 4-year degree from an accredited college or university and have worked in a management position in an ALF for 3 years after being core certified;

[29]Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.
[30] Section 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.
[31] Section 429.41(1)(a)3., F.S.

- Have worked in a management position in an ALF for 5 years after being core certified and have 1 year of teaching experience as an educator or staff trainer for persons who work in ALFs or other long-term care settings;
- Have been previously employed as a core trainer for the DOEA;
- Have a minimum of 5 years of employment with the AHCA, or formerly the Department of Health and Rehabilitative Services, as a surveyor of ALFs;
- Have a minimum of 5 years of employment in a professional position in the AHCA Assisted Living Unit;
- Have a minimum of 5 years employment as an educator or staff trainer for persons working in an ALF or other long-term care settings;
- Have a minimum of 5 years of employment as an ALF core trainer, which was not directly associated with the DOEA; or
- Have a minimum of a 4-year degree from an accredited college or university in the areas of healthcare, gerontology, social work, education or human services, and a minimum of 4 years experience as an educator or staff trainer for persons working in an ALF or other long-term care settings after core certification.[32]

Adult Protective Services

The Department of Children and Family Services (DCF) is required under s. 415.103, F.S., to establish and maintain a central abuse hotline to receive reports, in writing or through a single statewide toll-free telephone number, of known or suspected abuse, neglect, or exploitation of a vulnerable adult[33] at any hour of the day or night, any day of the week.

Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation of a vulnerable adult, the central abuse hotline must determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the DCF's designated district staff responsible for protective investigations to ensure prompt initiation of an onsite investigation. For reports not requiring an immediate onsite protective investigation, the central abuse hotline must notify the DCF's designated district staff responsible for protective investigations in sufficient time to allow for an investigation to be commenced within 24 hours. If the report is of known or suspected abuse of a vulnerable adult by someone other than a relative, caregiver, or household member, the report shall be immediately transferred to the appropriate county sheriff's office.[34]

The following persons, who know, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited are required to immediately report such knowledge or suspicion to the central abuse hotline:

[32] Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

[33] "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(27), F.S.

[34] Section 415.103, F.S.

- A physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;
- A health professional or mental health professional;
- A practitioner who relies solely on spiritual means for healing;
- Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;
- A state, county, or municipal criminal justice employee or law enforcement officer;
- An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments;
- A Florida advocacy council member or long-term care ombudsman council member; or
- An officer, trustee, or employee of a bank, savings and loan, or credit union.[35]

Florida's Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program to be eligible to receive funding associated with programs under the OAA.[36] In Florida, the program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, including residents of nursing homes, ALFs, and adult family-care homes. The Office of State Long-Term Care Ombudsman (Office) is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by and serves at the pleasure of the Secretary of Elderly Affairs.[37] The program is supported with both federal and state funding.[38]

The Office is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of nursing homes, ALFs and adult family care homes. Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the purpose of the State Program, the statewide toll-free telephone number for receiving complaints, and other relevant information regarding how to contact the State Program. Residents or their representatives must be furnished additional copies of this information upon request.[39]

The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, are confidential and exempt from Florida's public records laws, unless the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure in writing; the complainant or resident consents orally and the consent is documented contemporaneously in

[35]Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.
[36] 42 U.S.C. 3058; s*ee also* s. 400.0061(1), F.S.
[37] Section 400.0063, F.S.
[38] According to *Florida's Long-Term Care Ombudsman Program 2009-2010 Annual Report*, in fiscal year 2009-2010, the program received a total of $3,242,586 in funding; the state contribution totaled $1,452,977. Florida's Long-Term Care Ombudsman Program, *2009-2010 Annual Report, available at* http://ombudsman.myflorida.com/publications/ar/2009-2010%20Annual%20Report.pdf (last visited Aug. 17, 2011).
[39] Section 400.0078, F.S.

writing by the ombudsman council requesting such consent; or the disclosure is required by court order.[40]

The Miami Herald Investigative Series on Assisted Living Facilities

Beginning on April 30, 2011, the Miami Herald published a three-part series, titled "Neglected to Death," which exposed several examples of abuses occurring in ALFs and the state regulatory responses to such cases. According to the publication, the Miami Herald spent a year examining thousands of state inspections, police reports, court cases, autopsy files, e-mails, and death certificates and conducting dozens of interviews with operators and residents throughout Florida. The three-part investigative series gives several examples of abuses or neglect that took place at facilities in Florida, including:[41]

- The administrator of an ALF in Caryville punished his disabled residents by refusing to give them food and drugs, threatened the residents with a stick, doped the residents with powerful tranquilizers, beat residents who broke the facilities rules, forced residents to live without air conditioning even when temperatures reached 100 degrees Fahrenheit, and fell asleep on the job while a 71-year-old woman with mental illness wandered outside the facility and drowned in a nearby pond.
- In an ALF in Kendall, a 74-year-old woman was bound for more than 6 hours, the restraints pulled so tightly that they ripped into her skin and killed her.
- In an ALF in Hialeah, a 71-year-old man with mental illness died from burns after he was left in a bathtub filled with scalding water.
- In an ALF in Clearwater, a 75-year-old Alzheimer's patient was torn apart by an alligator after he wandered from his ALF for the fourth time.
- In an ALF in Haines City, a 74-year-old suffering from diabetes and depression died after going 13 days without crucial antibiotics and several days without food or water.
- An ALF in Miami-Dade County had a door alarm and video cameras in disrepair, an unlocked back gate on the premises, and an attendant who had fallen asleep, which enabled an 85-year-old to wander from the facility and drown in a pond.
- The administrator of an ALF in Dunedin drove a male resident with a criminal history to a pharmacy to fill a prescription for powerful narcotics but failed to collect the drugs from the resident. The resident fed the drugs to a 20-year-old female resident with mental illness, raped her, and caused her to die of an overdose.
- In an ALF in Tampa, a 55-year-old man died after his caretakers failed to give him food, water, or medicine.
- An ALF in Orlando failed to give an 82-year-old woman critical heart medication for 4 days, failed to read her medical chart, and gave her the wrong drugs on the day she died.
- An ALF in West Melbourne shut off the facility's exit alarm when it was triggered without doing a head count or calling 911 as a 74-year-old man slipped out the door and drowned in a nearby pond.

[40] Section 400.0077(1)(b), F.S.

[41] Rob Barry, Michael Sallah, and Carol Marbin Miller, *Neglected to Death, Part 1*, THE MIAMI HERALD, April 30, 2011, *available at* http://www.miamiherald.com/2011/04/30/2194842/once-pride-of-florida-now-scenes.html. See Part II of the series here: http://www.miamiherald.com/2011/05/03/2199747/key-medical-logs-doctored-missing.html (see left side of article to access weblinks to the three-part series) (last visited Jan. 18, 2012).

- An ALF in Deerfield Beach did not provide protections to a 98-year-old woman who fell 11 times and died of resulting injuries, including a fractured neck.
- A caretaker in an ALF in Miami-Dade County strapped down a 74-year-old woman for at least 6 hours so tightly that she lost circulation in her legs and as a result a blood clot formed which killed her.

The investigative series decried the state's regulatory and law enforcement agencies responses to the alleged egregious acts claiming:[42]

- Nearly once a month residents die from abuse and neglect, with some caretakers altering and forging records to conceal evidence, but law enforcement agencies almost never make arrests.
- Facilities are routinely caught using illegal restraints, including powerful tranquilizers, locked closets, and ropes, but the state rarely punishes them.
- State regulators could have shut down 70 facilities in the past 2 years for a host of severe violations, but only seven facilities were closed.
- Although the number of ALFs has increased substantially over the last 5 years, the state has dropped critical inspections by 33 percent.
- Although the state has the authority to fine ALFs that break the law, the penalties are routinely decreased, delayed, or dropped altogether.
- The state's lack of enforcement has prompted other government agencies to cut off funding and in some cases the agencies refuse to send clients to live in certain ALFs.
- In at least one case, an investigation was never performed by the AHCA, although a woman drowned after wandering off the premises.
- It took the AHCA inspectors an average of 37 days to complete a complaint investigation in 2009, which was 10 days longer than 5 years earlier.
- At least five times, other state agencies were forced to take the lead in shutting down homes when the AHCA did not act.

Governor Rick Scott's ALF Task Force

In response to the Miami Herald Investigative Series on ALFs, Governor Rick Scott announced in his veto message of HB 4045 (2011),[43] that he was going to form an ALF task force for the purpose of examining current assisted living regulations and oversight. Governor Scott directed the task force to develop recommendations to improve the state's ability to monitor quality and safety in ALFs and ensure the well-being of their residents.[44]

The task force, which has also been referred to as the "Assisted Living Workgroup," consisted of 14 members. These members represented the following entities:

[42] *Id.*
[43] HB 4045 (2011) repealed a requirement for the annual dissemination of a list of ALFs that had been sanction or fined, a requirement for an ALF to report monthly any liability claims filed against it, a requirement to disseminate the results of the inspection of each ALF, provisions concerning rule promulgation for ALFs by the DOEA, provisions concerning the collection of information regarding the cost of care in ALFs, and the authority for local governments or organizations to contribute to the cost of care of local facility residents.
[44] Governor Rick Scott, *Veto Message - HB 4045* (June 27, 2011), *available at* http://www.flgov.com/wp-content/uploads/2011/06/hb4045.pdf (last visited Jan. 18, 2012).

- Florida Association of Homes and Services for the Aging.
- Eastside Care, Inc.
- Palm Breeze Assisted Living Facility.
- Long Term Care Ombudsman.
- Florida House of Representatives.
- Lenderman and Associates.
- The Florida Bar, Elder Law Section.
- Florida State University, the Pepper Center.
- The Villa at Carpenters.
- Florida Council for Community Mental Health.
- Florida Assisted Living Association.
- Villa Serena I-V.
- Florida Senate.
- Florida Health Care Association.[45]

The task force held meetings on August 8, 2011, in Tallahassee, September 23, 2011, in Tampa, and November 7 and 8, 2011, in Miami. In addition to public testimony and presentations, the task force focused on ALF regulation, consumer protection and choice, and long-term care services and access. The task force supported several recommendations including:

- Increased administrator qualifications;
- Expanded and improved training for administrators and staff;
- Increased survey and inspection activity with a focus on facilities with poor track records;
- A systematic appeal process for residents who want to contest a notice of eviction;
- Increased reporting of resident data by facilities;
- Enhanced enforcement capacity by state agencies;
- Creation of a permanent policy review and oversight council with members representing all stakeholder groups;
- Requiring all facilities with at least one resident receiving mental health care to be licensed as a LMH facility; and
- Providing greater integration of information from all agencies involved in ALF regulation in order to identify potential problems sooner.[46]

The task force also noted that several other issues may need more time to evaluate and recommended that those issues be examined and addressed by a Phase II task force (or workgroup). Finally, there were some issues addressed by the task force that ended up not passing as part of a Phase I or Phase II recommendation.[47]

[45]Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.
[46]Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.
[47] *Id*.

Committee on Health Regulation's Interim Report

In addition to the task force, the Senate Committee on Health Regulation (committee) was directed by the Senate President to review the regulatory oversight of ALFs in Florida.[48] Based on this review, the committee recommended several options for the Legislature to consider to improve regulatory oversight of ALFs. Some of the recommendations made by the committee included:

- Improving the current system of training administrators;
- Returning responsibility of core training to DOEA or providing DOEA with specific authority to oversee the core training activities;
- Expanding the core training curriculum to include financial planning, day-to-day administration of an ALF, elopement, emergency procedures, and the appropriate use of physical or chemical restraints;
- Requiring that the competency test be updated annually;
- Increasing the minimum passing score for the competency test from 75 percent to 80 percent;
- Requiring additional qualifications of administrators, such as requiring a 2 or 4-year degree that includes some coursework in gerontology or health care;
- Requiring administrators of an LMH facility to have completed some mental health coursework;
- Requiring staff members of an ALF to take a short exam after their requisite training to document receipt and comprehension of the training;
- Increasing elopement training requirements;
- Requiring an LMH specialty license for an ALF that accepts any mental health resident;
- Requiring professional development training by mental health providers or professionals for direct care staff of LMH facilities;
- Ensuring consistency in the monitoring of community living support plans and cooperative agreements;
- Requiring certain staff to immediately report the knowledge or suspicion that a vulnerable adult has been or is being abused, neglected, or exploited to the central abuse hotline operated by DCF; and
- Requiring facilities to notify residents that the complainant's identification and the substance of their complaints are confidential and exempt from Florida's public-record laws.[49]

III. Effect of Proposed Changes:

This bill makes substantial revisions to state law relating to assisted living facilities (ALF or facility).

[48] The Florida Senate, *Senate Interim Work Plan, 2012 Session*, 121 (2011-12), *available at* http://www.flsenate.gov/Committees/InterimReports/2012/workplan.pdf (last visited Jan. 17, 2012).

[49] Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

Limited Mental Health ALFs (sections 1 and 6 of the bill)

This bill amends s. 394.4574, F.S., relating to the Department of Children and Family Services' (DCF) responsibilities for a mental health resident who resides in an ALF with a limited mental health (LMH) license. First, the bill requires that the community living support plan be updated annually in order to ensure that the ongoing needs of the resident are addressed. The bill also requires that a case manager must keep a record of the date and time of any face-to-face interaction with a mental health resident. The record must be made available to DCF for inspection and be maintained for two years following the date of the interaction. Finally, the bill requires DCF to ensure there is adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements.

According to DCF, some residents may opt to not have mental health services at all, others may opt to have a private provider, and even some ALFs provide mental health services to residents.[50] Accordingly, the department will not be able to ensure there is adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements for the residents for whom DCF does not provide services.

The bill amends s. 429.075, F.S., to require that an ALF obtain a LMH license if the ALF serves any mental health resident. The bill also specifies that staff members who provide regular or direct care to residents and administrators of an LMH facility must meet the limited mental health training requirements established by the bill in addition to any other training or education requirements.

Long-Term Care Ombudsman (sections 2 and 9)

The bill requires a long-term care facility to provide information regarding the confidentiality of a complainant's name and identity and of the subject matter of a complaint upon admission to the facility.

Additionally, the bill amends the statute relating to the resident's bill of rights to require that written notice be given to residents of a facility that states that the names or identities of the complainants, or residents involved in a complaint, and the subject matter of a complaint made to the Office of State Long-Term Care Ombudsman or a local long-term care ombudsman council are confidential.

Reporting of Abuse (sections 3 and 4)

This bill amends s. 415.1034, F.S., to include an employee or agent of any state or local agency that has regulatory responsibilities concerning, or provides services to, persons in state-licensed facilities to the list of persons who are required to report abuse, neglect, or exploitation of vulnerable adults.

[50] Communication with representatives from the Dep't of Children and Family Services (Jan. 19, 2012).

The bill also amends s. 415.103, F.S., requiring DCF to maintain a central abuse hotline that receives reports made pursuant to the section of law created by the bill relating to the electronic monitoring of a resident's room.

Resident Relocation or Termination of Residency (sections 9 and 10)

This bill creates s. 429.281, F.S., requiring a facility to give a resident 30 days notice prior to relocation or termination of residency, except in certain circumstances. The notice must be in writing and include the following:

- Information on how a resident may request that the local long-term care ombudsman council review the notice;
- The reason that the resident is being relocated or the residency is being terminated and an explanation supporting the action;
- The effective date of the relocation or termination of residency and the location to which the resident is being relocated, if known; and
- Information describing the resident's challenge rights and the procedures for filing a challenge.

This notice must be given to the resident, the resident's legal guardian or representative, and the local long-term care ombudsman council within five business days after signature by the resident.

The bill provides a resident the right to a hearing to challenge a facility's proposed relocation or termination of residency. If requested, the local long-term care ombudsman council must assist the resident with filing the challenge. The resident may request a hearing at any time within 10 days after the resident's receipt of the facility's notice. If a hearing is requested, it shall stay the proposed relocation or termination of residency pending a decision from the hearing officer.

The hearings are to be conducted by the Office of Appeals Hearings of DCF (office) and the office must notify the facility of a resident's request for a hearing. The resident, or the resident's legal guardian or representative, and the facility administrator, or the facility's legal representative or designee, are required to be present at the hearing. A representative of the local long-term care ombudsman council may be present at the hearing. The burden of proof at the hearing is by the preponderance of the evidence and a hearing officer must render a decision within 15 days after receipt of request for a hearing, unless:

- The facility and the resident, or the resident's legal guardian or representative, agree to extend the deadline; or
- Good cause to extend the deadline is given by either party.

An aggrieved party may appeal the hearing officer's decision to the district court of appeal in the district where the facility is located.

The bill provides for an emergency relocation or termination of residency if pursuant to state or federal law. Notice of an emergency relocation or termination of residency must be made by telephone or in person and given to the resident, the resident's legal guardian or representative,

and the local long-term care ombudsman council, if requested. The notice must be given before relocation, if possible, or as soon thereafter as practical. The resident's file must include documentation showing who was contacted, the method of contact, and the date and time of the contact. Written notice must be given to the resident the next business day.

The bill defines the terms "relocation" and "termination of residency." Relocation means "to move a resident from the facility to another facility that is responsible for the resident's care." Termination of residency means "to release a resident from the facility and the releasing facility ceases to be responsible for the resident's care."

The bill also grants rulemaking authority to DCF to administer this section.

Finally, the bill amends s. 429.28, F.S., to include reference to a resident's right to challenge the notice of relocation or termination of residency in the resident's bill of rights.

ALF Administrator Licensure (sections 12 and 13)

This bill requires that by July 1, 2013, every ALF in the state to be under the management of an assisted living facility administrator (administrator) who holds a valid license or provisional license. To be eligible to be an administrator, an applicant must:

- Be at least 21 years old;
- Have a 4-year baccalaureate degree that includes some coursework in health care, gerontology, or geriatrics; have a 4-year baccalaureate degree and provided at least two years of direct care in an ALF or nursing home; or have a 2-year associate degree and provided at least two years of direct care in an ALF or nursing home;
- Complete all required training and pass all required competency tests with a minimum score of 80;
- Complete background screening; and
- Otherwise meet the requirements of part I of ch. 429, F.S.

An administrator who has been employed continuously for at least the two years immediately before July 1, 2012, does not have to meet the educational, core training, and competency test requirements as long as the administrator submits proof to the Department of Health (DOH) of compliance with continuing education requirements and the administrator has not been an administrator of a facility that was cited for a class I or class II violation within the previous two years. Additionally, an administrator who is licensed in accordance with part II of ch. 468, F.S., is also exempt from the educational, core training, and competency test requirements as long as the administrator submits proof to DOH of compliance with continuing education requirements. However, administrators exempted from the educational, core training, and competency test requirements must still complete the mental health training and pass the associated competency test if the administrator is employed at an LMH facility, and the administrator must complete supplemental training required in s. 429.521(2)(b), F.S.,[51] prior to licensure.

[51] Section 429.521, F.S., is created in this bill and relates to training requirements. See "Training Requirements" in the Effect of Proposed Changes section of this analysis.

The bill provides that DOH shall establish licensure fees, which shall be renewed biennially and may not exceed $250 for the initial licensure or $250 for each licensure renewal.

The bill creates s. 429.512, F.S., providing provisional licensure and inactive status requirements. A provisional license may only be issued to fill a position that unexpectedly becomes vacant and may be issued to a person who does not meet all of the licensure requirements established in s. 429.50, F.S. A provisional license is only good for one period, which may not exceed six months. The agency may set an application fee for a provisional license which may not exceed $500.

An administrator's license becomes inactive if the administrator does not complete the required number of continuing education courses and pass the corresponding tests, or if the administrator does not timely pay the licensure renewal fee. An administrator may also apply for inactive status. The agency may not reactivate a license unless the inactive or delinquent licensee has completed the requisite continuing education and passed the corresponding tests or has paid any applicable renewal or delinquency fees, and paid the reactivation fee. The Department of Health shall establish by rule all required fees.

Training Requirements (sections 11 and 14)

Generally

The bill requires each employee and administrator of an ALF who is newly hired on or after July 1, 2012, to attend a preservice orientation which covers topics that enable an employee to relate and respond to the population of that facility. The orientation must be at least two hours and, at a minimum, cover the following topics:

- Care of persons who have Alzheimer's disease;
- Deescalation techniques;
- Elopement prevention; and
- Behavior management.

Upon completion of the orientation, the employee and administrator shall sign an affidavit, under penalty of perjury, stating that he or she has completed the orientation. This affidavit must be placed in the employee's work file.

The bill creates s. 429.521, F.S., to provide training requirements for administrators, applicants to become an ALF administrator (applicants), and staff members of an ALF. The Department of Elder Affairs (DOEA or department) is charged with the responsibility to establish a standardized core training curriculum for applicants and for staff members who provide regular or direct care to residents. The curricula must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices.

The curriculum for applicants must cover, at a minimum, the following topics:

- State law and rules relating to ALFs.

- Resident's rights and procedures for identifying and reporting abuse, neglect, and exploitation.
- Special needs of elderly persons, persons who have mental illness, and persons who have developmental disabilities.
- Nutrition and food service.
- Medication management, recordkeeping, and proper techniques for assisting residents who self-administer medication.
- Firesafety requirements.
- Care of persons who have Alzheimer's disease and related disorders.
- Elopement prevention.
- Aggression and behavior management, deescalation techniques, and Baker Act protocols and procedures.
- Do not resuscitate orders.
- Infection control.
- Admission, continuing residency, and best practices in the industry.
- Phases of care and interacting with residents.

The department must also develop a supplemental course consisting of topics related to extended congregate care, limited mental health, and business operations, which must be completed by an applicant.

The curriculum for staff members who provide regular or direct care to residents must cover, at a minimum, the following topics:

- The reporting of major incidents.
- The reporting of adverse incidents.
- Emergency procedures.
- Residents' rights.
- The recognition and reporting of resident abuse, neglect, and exploitation.
- Resident behavior and needs.
- Assistance with the activities of daily living.
- Infection control.
- Aggression and behavior management and deescalation techniques.

The department must create two competency tests, one for applicants and one for staff members, which tests the individual's comprehension of the required training. These tests must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. The tests may be made available through testing centers.

The department, in conjunction with DCF, must develop a comprehensive, standardized training curriculum and competency test for administrators and certain staff members of an LMH facility. This test must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. The test may be made available online or through testing centers.

Finally, the department must establish curricula for continuing education (CE) for administrators

and staff members. The CE must include topics similar to that of the core training required for staff members and applicants. At a minimum, CE must cover:

- Elopement prevention;
- Deescalation techniques; and
- Phases of care and interacting with residents.

The department must ensure that all CE curricula include a test upon completion of the training which demonstrates comprehension of the training. The training and test must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. The CE and test may be offered through online courses and any fees associated to the online service are borne by the participant or the participant's employer.

Applicants and Administrators

An applicant for licensure as an assisted living facility administrator (applicant) must complete a minimum of 40 hours of core training. In addition to the 40 hours, each applicant must complete at least 10 hours of supplemental training related to extended congregate care, limited mental health, and business operations, including, but not limited to, human resources, financial management, and supervision of staff. Upon completion of the training, an applicant must pass a competency test with a minimum score of 80.

If the applicant fails a competency test, the individual must wait 10 days before retaking it. If the applicant fails a competency test three times, the individual must retake the applicable training before retaking the test.

A licensed administrator must take at least one hour of inservice training regarding the facility's policies regarding resident elopement response within 30 days after employment at the facility. Additionally, each administrator of an LMH facility must complete a minimum of eight hours of mental health training and pass a competency test related to the training within 30 days after employment at the facility. A minimum score of 80 is required to show successful pass of the mental health competency test. If an administrator does not pass the mental health competency test within six months after completing the training, the administrator is ineligible to be an administrator at an LMH facility until the individual passes the test.

An administrator of an ECC facility must complete six hours of ECC training within 30 days after employment, and an administrator of an LNS facility must complete four hours of training related to special needs and care of those persons who require limited nursing services within 30 days after employment.

An administrator must participate in continuing education (CE) for a minimum of 18 contact hours every two years and pass the corresponding test upon completion of the CE course with a minimum score of 80. The administrator must take the CE and pass any corresponding tests before license renewal.

Staff Training

Each staff member hired on or after July 1, 2012, who provides regular or direct care to residents, must complete a minimum of 20 hours of core training within 90 days after employment. The department may exempt certain persons who can demonstrate completion of training substantially similar to the core training. Upon completion of the training, the staff member must pass a competency test with a minimum score of 70. If a staff member fails the competency test, the individual must wait 10 days before retaking the test. If a staff member fails the test three times, the individual must retake the initial core training before retaking the test. If a staff member does not pass the test within one year after employment, the individual may not provide regular or direct care to residents until the individual successfully passes the test.

Additionally, each staff member of an LMH facility who provides regular or direct care to residents must complete a minimum of eight hours of mental health training and pass a competency test related to the training within 30 days after employment at the facility. A minimum score of 70 is required to show successful pass of the mental health competency test. If a staff member does not pass the mental health competency test, the staff member is ineligible to provide regular or direct care to residents until the individual passes the test.

Each staff member of an ALF must receive at least one hour of inservice training regarding the facility's policies related to resident elopement response within 30 days after employment at the facility. A staff member who prepares or serves food must receive a minimum of one hour of inservice training in safe food handling practices within 30 days after employment. Additionally, a staff member who manages medications and assists with the self-administration of medications must complete four additional hours of training provided by a registered nurse, licensed pharmacist, or department staff within 30 days after employment.

Finally, each staff member who provides regular or direct care to residents must participate in continuing education for a minimum of 10 contact hours every two years and pass the corresponding test upon completion of the CE course with a minimum score of 70. If an individual does not complete all required CE and pass the corresponding tests, the individual may not provide regular or direct care to residents until the individual does so.

Training Certification (section 15)

Section 429.522, F.S., is created to provide a certification process for individuals wishing to become a trainer. The Department of Elder Affairs (DOEA or department) is directed to approve and provide oversight for one or more third-party credentialing entities[52] for the purpose of developing and administering trainer certification programs for persons providing training to applicants for licensure of an ALF, to administrators of an ALF, and to staff members of an ALF. In order to obtain approval from DOEA, the third-party credentialing entity shall:

- Establish professional requirements and standards. At a minimum a trainer applicant must meet one of the following requirements:

[52] The bill defines a third-party credentialing entity as a "department-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs."

  - Provide proof of completion of a 4-year baccalaureate degree from an accredited college or university and have worked in a management position in an ALF for at least three years;
  - Have worked in a management position in an ALF for at least five years and have at least one year of teaching experience as an educator or staff trainer for persons working in an ALF or other long-term care setting;
  - Have been previously certified as a core trainer for DOEA;
  - Have a minimum of five years of employment with AHCA as a surveyor of ALFs;
  - Have a minimum of five years of employment in a professional position in AHCA's assisted living unit;
  - Have a minimum of five years of employment as an educator or staff trainer for persons working in an ALF or other long-term care setting;
  - Have a minimum of five years of employment as a core trainer for an ALF, which employment was not directly associated with DOEA; or
  - Have a minimum of a 4-year baccalaureate degree from an accredited college or university in the areas of health care, gerontology, social work, education, or human services, and a minimum of four years of experience as an educator or staff trainer for persons working in an ALF or other long-term care setting.
- Apply core competencies according to DOEA's standards;
- Maintain a professional code of ethics and establish a disciplinary process and a decertification process;
- Maintain a database, accessible to the public, of all persons who have trainer certification, including any history of violations;
- Require annual continuing education for trainers; and
- Administer a continuing education provider program to ensure that only qualified providers offer CE opportunities for certificateholders.

Minimum requirements for an individual seeking trainer certification[53] are:
- Completion of the minimum core training requirements for an applicant for licensure as an ALF administrator and successful passage of the corresponding competency tests with a minimum score of 80;
- Compliance with the continuing education requirements for administrators of an ALF; and
- Compliance with the professional requirements and standards set forth above.

Electronic Monitoring (sections 9 and 16)

This bill provides that a resident has the right to have an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative in the resident's room.

The bill creates s. 429.55, F.S., and provides the following definitions:

[53] The bill defines core trainer certification as "a professional credential awarded to individuals demonstrating core competency in the assisted living facility practice area by a department-approved third-party credentialing entity." The bill also defines "core competency" and "core curriculum."

- "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an ALF and the making of tapes or recordings through the use of the device after making a request to the facility and obtaining all necessary consent to allow electronic monitoring.
- "Electronic monitoring device" means video surveillance cameras or audio devices installed in the room of a resident which are designed to acquire communications or other sounds occurring in the room.
- "Covert use of electronic monitoring device" means the placement and use of the electronic monitoring device is not open and obvious, and the facility and AHCA are not informed about the device. The agency and the facility are not civilly liable in connection with the covert placement or use of an electronic monitoring device.

Upon admission to an ALF, a resident must sign a form that states:

- That a person who places an electronic monitoring device in the room of a resident or uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;
- That a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device has waived any privacy right the person may have in connection with images or sounds that may be acquired by the device;
- That a resident is entitled to conduct authorized electronic monitoring and that the resident should contact AHCA if the facility refuses to allow electronic monitoring;
- The basic procedures that must be followed in order to request authorized electronic monitoring;
- That the electronic monitoring device and all installation and maintenance costs must be paid for by the resident;
- The legal requirement to report abuse or neglect when electronic monitoring is being conducted; and
- Any other pertinent information.

Only a resident may request authorized electronic monitoring, unless the resident does not have capacity, in which case the resident's guardian or legal representative may request it. The agency shall prescribe a form for a resident to request authorized electronic monitoring, which must require the resident to:

- Release the facility from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;
- If the electronic monitoring device is a video surveillance camera, choose whether the camera will always be unobstructed or not;
- Obtain consent of the other residents in the room.

Consent can only be given by the other resident in the room, or the resident's guardian or legal representative, and it must require the other resident to release the facility from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device. The other resident may provide certain conditions upon issuing consent.

If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented, authorized electronic monitoring must cease until the new resident has consented.

A resident who conducts authorized electronic monitoring must post and maintain a conspicuous notice at the entrance of the resident's room which states that the room is being monitored by an electronic monitoring device. Additionally, each facility must post a notice at the entrance to the facility stating that the rooms of some residents may be monitored electronically. A facility may not refuse to admit an individual to residency in the facility and may not remove a resident from the facility because of a request to conduct authorized electronic monitoring. The facility must also make reasonable physical accommodations for authorized electronic monitoring. The facility may require that the device be installed in a manner that is safe and that the electronic monitoring be conducted in plain view. A facility may place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

The bill creates a mandatory reporting requirement on anyone who views or listens to a tape or recording by an electronic monitoring device that acquired an incident of abuse or neglect.

The bill provides requirements for use of the tape or recording in a court of law, enforcement provisions, and rulemaking authority to AHCA.

Other (sections 5, 7, 8, and 17)

The bill defines "mental health professional" in s. 429.02, F.S., to mean an individual licensed under chs. 458, 459, 464, 490, or 491, F.S.,[54] who provides mental health services as defined under s. 394.67, F.S.,[55] or an individual who has a four-year baccalaureate degree from an accredited college or university and at least five years of experience providing services that improve an individual's mental health or treat mental illness.

The bill amends ss. 429.176 and 429.178, F.S., to conform to other changes made by the bill.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[54] Chapter 458, F.S., is the regulation of the medical practice. Chapter 459, F.S., is the regulation of osteopathic medicine. Chapter 464, F.S., is the regulation of nursing. Chapter 490, F.S., is the regulation of psychological services. Chapter 491, F.S., is the regulation of psychotherapy services.

[55] Mental health services is defined as "therapeutic interventions and activities that help to eliminate, reduce, or manage symptoms or distress for persons who have severe emotional distress or a mental illness and to effectively manage the disability that often accompanies a mental illness so that the person can recover from the mental illness, become appropriately self-sufficient for his or her age, and live in a stable family or in the community." Section 394.67(15), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The federal right to privacy extends to fundamental interests such as marriage, procreation, contraception, family relationships, and the rearing and educating of children.[56] The Supreme Court has held that a right to privacy shall be upheld unless the government's policy meets the strict scrutiny test, meaning that the government's action may only be justified by a compelling state interest which is narrowly tailored to carry out the legitimate state interest at stake.

Florida's constitutional privacy clause, pursuant to article I, section 23 of the Florida Constitution, provides greater protection than the federal constitution. The Florida Supreme Court has stated that if an individual makes a constitutional challenge under the privacy clause, the individual must first establish that there was government action and that the individual has a "legitimate expectation of privacy."[57] If a legitimate expectation of privacy exists then the state must demonstrate not only a compelling interest for intruding on one's privacy, but also that the least intrusive means were used in accomplishing its goal.[58]

This proposed committee bill may implicate the right to privacy as constitutionally protected under s. 23 of article I of the Florida Constitution. This bill provides that a resident has the right to have an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative in the resident's room. Looking at the constitutionality of "granny cams" within the context of nursing homes, Florida law explicitly protects the privacy of nursing home residents.[59] Additionally, Florida courts have acknowledged privacy rights afforded to dwellers of semi-permanent residences, such as nursing homes and motels, compared to the privacy of those in public places, such as emergency rooms.[60] Since Florida courts have upheld a resident's privacy rights within the context of a nursing home, there is an argument that the courts would also uphold the privacy rights of a resident in an assisted living facility. The privacy analysis is further affected by the party involved. For example, nursing home employees and residents, as compared to visitors, may be afforded a larger zone of acceptable invasion of privacy.[61] Residents have an expectation of privacy in certain areas of the facility. However, a resident may choose to waive his or her privacy rights. Also, in Florida, the right to privacy is considered to be retained by a person who has

[56] *City of North Miami v. Kurtz*, 653 So. 2d 1025, 1027 (Fla. 1995).
[57] *Id*. at 1028.
[58] *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So. 2d 544, 547 (Fla. 1985).
[59] Section 400.022(1)(n), F.S.
[60] Elizabeth Adelman, *Video Surveillance in Nursing Homes*, 12 ALB. L.J. SCI. & TECH. 821, 827 (2002).
[61] *Id*. at 828.

been adjudicated as incompetent.[62] However, Florida law authorizes a guardian to make decisions regarding the person's residential environment. "As the decision to impose video surveillance implicates both of these rules, the courts might ultimately be left with the decision as to whether a legal guardian may waive the privacy rights of her charge in this context."[63]

The same analysis that applies to residents would apply to the privacy rights of roommates. A resident seeking to monitor a shared room would therefore be required to obtain written consent from the roommate.[64] In the case of visitors to the facility, providing visitors with notice that the facility is monitored by video cameras may negate any reasonable expectation of privacy. Courts have repeatedly held that where notice of video surveillance is clearly displayed in a public place, a person cannot expect privacy.[65] This bill complies with the requirements stated above. It requires a resident to waive his or her privacy rights in order to conduct authorized electronic monitoring in the resident's room. If the resident is in a shared room, the other resident in the room must also provide consent prior to allowing authorized electronic monitoring. Additionally, the assisted living facility must post a notice at the entrance to the facility stating that some of the rooms may be monitored electronically, and a resident conducting authorized electronic monitoring must post and maintain a conspicuous notice at the entrance of the resident's room which states that the room is being monitored by an electronic monitoring device.

Although the use of electronic monitoring has not been widely used in assisted living facilities, a few states across the nation have authorized it in nursing home settings. The first state to enact a law directly addressing the use of "granny cams" was Texas in 2001. It does not appear that Texas' law has been challenged as unconstitutionally intruding on a person's right to privacy. The language in this bill relating to the use of authorized electronic monitoring was modeled after the Texas law. Although this bill implicates the right to privacy, the bill may pass constitutional muster.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Applicants for licensure to be an assisted living facility administrator, administrators, and certain staff members of an ALF may incur costs to take the required training, continuing education, and tests required in this bill. However, the exact fiscal impact is unknown at this time.

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[62] Tracey Kohl, *Watching Out for Grandma: Video Cameras in Nursing Homes May Help to Eliminate Abuse*, 30 FORDHAM URB. L.J. 2083, 2096 (Sept. 2003).
[63] *Id*.
[64] *Id*. at 2097.
[65] *Id*. at 2100.

C. Government Sector Impact:[66]

The Agency for Health Care Administration and the Department of Elder Affairs may incur an indeterminate amount of costs associated with the additional rulemaking and oversight responsibilities provided for in the bill. However, the exact fiscal impact is unknown at this time.

Additionally, the Office of Appeals Hearings of the Department of Children and Family Services may incur additional costs and see an increased workload associated with challenges to a facility's proposed relocation or termination of residency.

VI. Technical Deficiencies:

This bill raises the standards, in many circumstances, related to assisted living facilities (ALF or facility). The bill requires:

- Heightened educational requirements for administrators of ALFs;
- Additional training for ALF administrators and certain staff;
- Additional testing requirements for ALF administrators and certain staff;
- Additional continuing education requirements for ALF administrators and certain staff;
- A licensed administrator be in charge of an ALF; and
- A new procedure for certifying individuals to provide training to administrators and staff.

Many portions of the bill require the Agency for Health Care Administration, the Department of Elder Affairs, the Department of Children and Families, or the Department of Health to adopt rules to administer the section. Additionally, there are areas of the bill that require certain things to be done by July 1, 2013, or that the provisions of the bill apply to persons on or after July 1, 2012. Interested parties have raised concerns that the time frames in the bill may not provide adequate time for rules to be made or for persons to complete the requirements laid out in the bill in the requisite time.

In s. 429.28(2), F.S., current law makes reference the Advocacy Center for Persons with Disabilities, Inc., (Advocacy Center) and the Florida local advocacy council. It appears that the name of the Advocacy Center was changed a year ago and that the Florida local advocacy council no longer exists.[67] The bill could be amended to reflect these changes; however, professional staff is unsure how many times the Advocacy Center is referenced in other sections of the law and whether the bill would need to amend every section of law that makes reference to the Advocacy Center in order to reflect the name change.

[66] As of the time this analysis was published, Senate professional staff did not have official analyses for SB 2050 from AHCA, DOEA, DCF, or DOH. Senate professional staff has requested analyses from the agency and departments and will update this bill analysis with fiscal information as it is received.

[67] E-mail from Dana Farmer, Director of Legislative and Public Affairs, Disability Rights Florida, to Senate professional staff (Jan. 18, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VII. Related Issues:

Resident Relocation or Termination of Residency

The bill provides a resident the right to a hearing to challenge a facility's proposed relocation or termination of residency. The hearing is conducted by the Office of Appeals of the Department of Children and Family Services (Office) and the burden of proof is by the preponderance of the evidence. Section 429.28, F.S., provides the resident bill of rights, which gives rights to the resident. If a facility violates any of the rights contained in the bill of rights, or any other state or federal law, the resident would have a legal right to go to a court of competent jurisdiction to seek redress. The resident bill of rights does not include the right to not be relocated to another facility or to have residency terminated. Therefore, it is unclear what legal ground a resident has to challenge a facility's proposed relocation or termination of residency.

Additionally, the bill provides the Office 15 days in which to render a decision if a resident elects to challenge a facility's proposed relocation or termination of residency.[68] The Office also currently handles nursing home discharge hearings pursuant to s. 400.0255, F.S., which provides that a resident has 90 days to request a fair hearing and that the hearing must be completed within 90 days after receipt of a notice for a fair hearing. According to the Chief of Appeal Hearings,

The current 90 day time limit allows the office to efficiently use its staffing resources. The office currently has 24 hearing officers and their workload has them now scheduling cases 30 to 45 days prior to the hearing. If existing hearing officers were used in part to complete the ALF request, their calendars would not allow them to add these cases in without continuing other cases.

To meet these timeframes the office will have to add an additional hearing officer for each of the regional offices, a supervisor and two administrative support positions.[69]

Finally, the bill appears to be trying to provide a resident of an ALF certain due process considerations prior to being removed from a facility. Basic due process requirements are:

- Hearings must be tailored to the capacity and circumstances of the parties involved;
- An individual must have the opportunity to be represented by counsel;
- An individual must be afforded an opportunity to present evidence, including the right to call witnesses;
- An individual must have the opportunity to confront and cross-examine adverse witnesses;
- An individual must have the right to know about opposing evidence; and

[68] The time frames provided in the bill were developed based upon discussion and recommendations from the Governor's task force.

[69] Correspondence from John Pritchard, Chief of Appeal Hearings, Office of Appeal Hearings, to Senate professional staff (Jan. 20, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

- There must be a written decision and right to appeal. [70]

The 15 day time frame in the bill makes it unlikely that a resident will be given appropriate due process.

Rulemaking

The bill authorizes the Agency for Health Care Administration (AHCA or agency) and the Department of Elder Affairs (DOEA or department) to adopt rules to implement many sections of the bill. Due to changes made in the law over the last few years, the economic impact for some of the rules may require submission of the rules to the Small Business Regulatory Advisory Council and possibly ratification by the Legislature.[71] Also, due to the time requirements for adopting rules, additional time may be needed for the portions of the bill that require rules.[72] The agency suggested that the bill be amended to allow DOEA to promulgate rules and develop forms in consultation with AHCA, and, in certain places, that certain elements in the bill be provided for in statute rather than through the rulemaking process.[73]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Children, Families, and Elder Affairs Committee on January 25, 2012:
The committee substitute:

- Removes the term "core" from the trainer certification process in order to allow individuals who become certified to provide not only core training for administrators and staff, but to also provide the required supplemental training and continuing education;
- Provides that an individual's employer may pay the expenses for the continuing education test; and
- Provides a "good cause" exception to the 15 day requirement for a hearing officer to render a decision in a resident relocation or termination of residency challenge.

B. Amendments:

None.

[70] Agency for Health Care Admin., *SPB 7176 Committee on Children and Families, Agency for Health Care Administration Suggestions & Comments* (Jan. 20, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[71] Agency for Health Care Admin., *SPB 7176 Committee on Children and Families, Agency for Health Care Administration Suggestions & Comments* (Jan. 20, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[72] *Id*.
[73] *Id*.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2012	.	
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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 394.4574, Florida Statutes, is amended to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.—

(2) The department must ensure that:

(a) A mental health resident has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or

psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be provided to the administrator of the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident if it was completed within 90 days prior to admission to the facility.

(b) A cooperative agreement, as required in s. 429.075, is developed between the mental health care services provider that serves a mental health resident and the administrator of the assisted living facility with a limited mental health license in which the mental health resident is living. Any entity that provides Medicaid prepaid health plan services shall ensure the appropriate coordination of health care services with an assisted living facility in cases where a Medicaid recipient is both a member of the entity's prepaid health plan and a resident of the assisted living facility. If the entity is at risk for Medicaid targeted case management and behavioral health services, the entity shall inform the assisted living facility of the procedures to follow should an emergent condition arise.

(c) The community living support plan, as defined in s. 429.02, has been prepared by a mental health resident and a mental health case manager of that resident in consultation with the administrator of the facility or the administrator's designee. The plan must be provided to the administrator of the assisted living facility with a limited mental health license in

which the mental health resident lives. The support plan and the agreement may be in one document.

(d) The assisted living facility with a limited mental health license is provided with documentation that the individual meets the definition of a mental health resident.

(e) The mental health services provider assigns a case manager to each mental health resident who lives in an assisted living facility with a limited mental health license. The case manager is responsible for coordinating the development of and implementation of the community living support plan defined in s. 429.02. The plan must be updated at least annually in order to ensure that the ongoing needs of the resident are addressed. Each case manager shall keep a record of the date and time of any face-to-face interaction with a mental health resident and make the record available to the department for inspection. The record must be maintained for 2 years following the date of the interaction.

(f) There is adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements.

Section 2. Subsection (2) of section 400.0078, Florida Statutes, is amended to read:

400.0078 Citizen access to State Long-Term Care Ombudsman Program services.—

(2) Every resident or representative of a resident shall receive, upon admission to a long-term care facility, information regarding the purpose of the State Long-Term Care Ombudsman Program, the statewide toll-free telephone number for receiving complaints, the confidentiality of a complainant's

name and identity and of the subject matter of a complaint, and other relevant information regarding how to contact the program. Residents or their representatives must be furnished additional copies of this information upon request.

Section 3. Subsection (1) of section 415.103, Florida Statutes, is amended to read:

415.103 Central abuse hotline.—

(1) The department shall establish and maintain a central abuse hotline that receives all reports made pursuant to s. 415.1034 or s. 429.55 in writing or through a single statewide toll-free telephone number. Any person may use the statewide toll-free telephone number to report known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour of the day or night, any day of the week. The central abuse hotline must be operated in such a manner as to enable the department to:

(a) Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited.

(b) Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority.

(c) When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter’s concerns.

(d) Immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline.

(e) Track critical steps in the investigative process to ensure compliance with all requirements for all reports.

(f) Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation.

(g) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation.

Section 4. Paragraph (a) of subsection (1) of section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council member or long-term care ombudsman council member; ~~or~~

8. Bank, savings and loan, or credit union officer, trustee, or employee; or

9. Employee or agent of any state or local agency that has regulatory responsibilities concerning, or provides services to, persons in state-licensed facilities,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

Section 5. Present subsections (15) through (26) of section 429.02, Florida Statutes, are renumbered as subsections (16) through (27), respectively, and a new subsection (15) is added to that section, to read:

429.02 Definitions.—When used in this part, the term:

(15) "Mental health professional" means an individual licensed under chapter 458, chapter 459, chapter 464, chapter 490, or chapter 491 who provides mental health services as defined under s. 394.67, or an individual who has a 4-year baccalaureate degree from an accredited college or university and at least 5 years of experience providing services that improve an individual's mental health or treat mental illness.

Section 6. Section 429.075, Florida Statutes, is amended to read:

429.075 Limited mental health license.—An assisted living facility that serves any ~~three or more~~ mental health resident ~~residents~~ must obtain a limited mental health license.

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(1) To obtain a limited mental health license, a facility must hold a standard license as an assisted living facility and~~,~~ must not have any current uncorrected deficiencies or violations. The~~, and must ensure that, within 6 months after receiving a limited mental health license, the facility administrator and the staff of the facility who are in direct contact with mental health residents must complete training of no less than 6 hours related to their duties. Such~~ designation may be made at the time of initial licensure or relicensure or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with this part, part II of chapter 408, and applicable rules. This training will be provided by or approved by the Department of Children and Family Services.

(2) A facility ~~Facilities~~ licensed to provide services to mental health residents shall provide appropriate supervision and staffing to provide for the health, safety, and welfare of such residents. Each administrator and staff member, who provides regular or direct care to residents, of a facility licensed to provide services to mental health residents must meet the limited mental health training requirements set forth in s. 429.521 in addition to any other training or education requirements.

(3) A facility that has a limited mental health license must:

(a) Have a copy of each mental health resident’s community living support plan and the cooperative agreement with the mental health care services provider. The support plan and the

agreement may be combined.

(b) Have documentation that is provided by the Department of Children and Family Services that each mental health resident has been assessed and determined to be able to live in the community in an assisted living facility with a limited mental health license.

(c) Make the community living support plan available for inspection by the resident, the resident's legal guardian, the resident's health care surrogate, and other individuals who have a lawful basis for reviewing this document.

(d) Assist the mental health resident in carrying out the activities identified in the individual's community living support plan.

(4) A facility with a limited mental health license may enter into a cooperative agreement with a private mental health provider. For purposes of the limited mental health license, the private mental health provider may act as the case manager.

Section 7. Section 429.176, Florida Statutes, is amended to read:

429.176 Notice of change of administrator.—If, during the period for which a license is issued, the owner changes administrators, the owner must notify the agency of the change within 10 days and provide documentation within 90 days that the new administrator is licensed under s. 429.50 and has completed the applicable core training ~~educational~~ requirements under s. 429.521(2) ~~s. 429.52~~.

Section 8. Subsection (2) of section 429.178, Florida Statutes, is amended to read:

429.178 Special care for persons with Alzheimer's disease

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or other related disorders.—

(2)(a) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who has regular contact with such residents, must complete up to 4 hours of initial dementia-specific training developed or approved by the department. The training shall be completed within 3 months after beginning employment and shall satisfy the core training requirements of s. 429.521(3) ~~s. 429.52(2)(g)~~.

(b) A direct caregiver who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who provides direct care to such residents, must complete the required initial training and 4 additional hours of training developed or approved by the department. The training shall be completed within 9 months after beginning employment and shall satisfy the core training requirements of s. 429.521(3) ~~s. 429.52(2)(g)~~.

(c) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, but who only has incidental contact with such residents, must be given, at a minimum, general information on interacting with individuals with Alzheimer's disease or other related disorders, within 3 months after beginning employment.

Section 9. Subsections (1) and (2) of section 429.28, Florida Statutes, are amended to read:

429.28 Resident bill of rights.—

(1) A ~~No~~ resident of a facility may not ~~shall~~ be deprived of any civil or legal rights, benefits, or privileges guaranteed

by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.

(d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.

(e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage his or her financial affairs unless the resident or, if applicable, the resident’s representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. 429.27.

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(g) Share a room with his or her spouse if both are residents of the facility.

(h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.

(j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.

(k) At least 30 ~~45~~ days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 30 ~~45~~ days' notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. A resident or the resident's legal guardian or representative may challenge the notice of relocation or termination of residency from the facility pursuant to s. 429.281. ~~In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.~~

(l) Present grievances and recommend changes in policies,

procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility shall establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(m) Place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative pursuant to s. 429.55.

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council, where complaints may be lodged. The notice must state that the names or identities of the complainants, or residents involved in a complaint, and the subject matter of a complaint made to the Office of State Long-Term Care Ombudsman or a local long-term care ombudsman council are confidential pursuant to s. 400.0077. The facility must ensure a resident's access to a telephone to call the local ombudsman council, central abuse hotline, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

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Section 10. Section 429.281, Florida Statutes, is created to read:

429.281 Resident relocation or termination of residency; requirements and procedures; hearings.—

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

(a) "Relocation" means to move a resident from the facility to another facility that is responsible for the resident's care.

(b) "Termination of residency" means to release a resident from the facility and the releasing facility ceases to be responsible for the resident's care.

(2) Each facility licensed under this part must comply with s. 429.28(1)(k) when a decision is made to relocate or terminate the residency of a resident.

(3) At least 30 days before a proposed relocation or termination of residency, the facility must provide advance notice of the proposed relocation or termination of residency to the resident and, if known, to a family member or the resident's legal guardian or representative. However, in the following circumstances the facility shall give notice as soon as is practicable before the relocation or termination of residency:

(a) The relocation or termination of residency is necessary for the resident's welfare or because the resident's needs cannot be met in the facility, and the circumstances are documented in the resident's record; or

(b) The health or safety of other residents or employees of the facility would be endangered, and the circumstances are documented in the resident's record.

(4) The notice required by subsection (3) must be in writing and contain all information required by rule. The agency

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shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a relocation or termination of residency. This document must include information on how a resident may request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a hearing with the Office of Appeals Hearings of the Department of Children and Family Services to challenge the relocation or termination of residency. In addition to any other pertinent information, the form must require the facility to specify the reason that the resident is being relocated or the residency is being terminated, along with an explanation to support this action. In addition, the form must require the facility to state the effective date of the relocation or termination of residency and the location to which the resident is being relocated, if known. The form must clearly describe the resident's challenge rights and the procedures for filing a challenge. A copy of the notice must be given to the resident, the resident's legal guardian or representative, if applicable, and the local long-term care ombudsman council within 5 business days after signature by the resident or the resident's legal guardian or representative, and a copy must be placed in the resident's file.

(5) A resident is entitled to a hearing to challenge a facility's proposed relocation or termination of residency. A resident may request that the local long-term care ombudsman council review any notice of relocation or termination of residency given to the resident. If requested, the local long-term care ombudsman council shall assist the resident, or the

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resident's legal guardian or representative, with filing a challenge to the proposed relocation or termination of residency. The resident, or the resident's legal guardian or representative, may request a hearing at any time within 10 days after the resident's receipt of the facility's notice of the proposed relocation or termination of residency. If a resident, or the resident's legal guardian or representative, requests a hearing, the request shall stay the proposed relocation or termination of residency pending a decision from the hearing officer. The facility may not impede the resident's right to remain in the facility, and the resident may remain in the facility until the outcome of the initial hearing, which must be completed within 15 days after receipt of a request for a hearing, unless:

(a) Both the facility and the resident, or the resident's legal guardian or representative, agree to extend the deadline for the decision; or

(b) Good cause to extend the deadline is given by either party.

(6) Notwithstanding subsection (5), an emergency relocation or termination of residency may be implemented as necessary pursuant to state or federal law during the period after the notice is given and before the time in which the hearing officer renders a decision. Notice of an emergency relocation or termination of residency must be made by telephone or in person and given to the resident, the resident's legal guardian or representative, and the local long-term care ombudsman council, if requested. This notice must be given before the relocation, if possible, or as soon thereafter as practical. The resident's

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file must contain documentation to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. Written notice that meets the requirements of subsection (4) must be given the next business day.

(7) The following persons must be present at each hearing authorized under this section:

(a) The resident or the resident's legal guardian or representative.

(b) The facility administrator or the facility's legal representative or designee.

A representative of the local long-term care ombudsman council may be present at each hearing authorized by this section.

(8)(a) The Office of Appeals Hearings of the Department of Children and Family Services shall conduct hearings under this section. The office shall notify the facility of a resident's request for a hearing.

(b) The Department of Children and Family Services shall establish procedures by rule which shall be used for hearings requested by residents. The burden of proof is by the preponderance of the evidence. A hearing officer shall render a decision within 15 days after receipt of the request for a hearing, unless:

1. The facility and the resident, or the resident's legal guardian or representative, agree to extend the deadline for a decision; or

2. Good cause to extend the deadline is given by either party.

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(c) If the hearing officer's decision is favorable to a resident who has already been relocated or whose residency has been terminated, the resident must be readmitted to the facility as soon as a bed is available.

(d) The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

(9) The Department of Children and Family Services may adopt rules as necessary to administer this section.

(10) This section applies to relocations or terminations of residency that are initiated by the assisted living facility, and does not apply to those initiated by the resident or by the resident's physician, legal guardian, or representative.

Section 11. Section 429.52, Florida Statutes, is amended to read:

429.52 Preservice orientation ~~Staff training and educational programs; core educational requirement~~.—

(1) Each employee and administrator of an assisted living facility who is newly hired on or after July 1, 2012, shall attend a preservice orientation provided by the assisted living facility which covers topics that enable an employee to relate and respond to the population of that facility. The orientation must be at least 2 hours in duration and, at a minimum, cover the following topics:

(a) Care of persons who have Alzheimer's disease or other related disorders;

(b) Deescalation techniques;

(c) Aggression control;

(d) Elopement prevention; and

(e) Behavior management.

(2) Upon completion of the preservice orientation, the employee and administrator shall sign an affidavit, under penalty of perjury, stating that he or she has completed the preservice orientation. The administrator of the assisted living facility shall maintain the signed affidavit in each employee's work file.

~~(1) Administrators and other assisted living facility staff must meet minimum training and education requirements established by the Department of Elderly Affairs by rule. This training and education is intended to assist facilities to appropriately respond to the needs of residents, to maintain resident care and facility standards, and to meet licensure requirements.~~

~~(2) The department shall establish a competency test and a minimum required score to indicate successful completion of the training and educational requirements. The competency test must be developed by the department in conjunction with the agency and providers. The required training and education must cover at least the following topics:~~

~~(a) State law and rules relating to assisted living facilities.~~

~~(b) Resident rights and identifying and reporting abuse, neglect, and exploitation.~~

~~(c) Special needs of elderly persons, persons with mental illness, and persons with developmental disabilities and how to meet those needs.~~

~~(d) Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food.~~

~~(e) Medication management, recordkeeping, and proper techniques for assisting residents with self-administered medication.~~

~~(f) Firesafety requirements, including fire evacuation drill procedures and other emergency procedures.~~

~~(g) Care of persons with Alzheimer's disease and related disorders.~~

~~(3) Effective January 1, 2004, a new facility administrator must complete the required training and education, including the competency test, within a reasonable time after being employed as an administrator, as determined by the department. Failure to do so is a violation of this part and subjects the violator to an administrative fine as prescribed in s. 429.19. Administrators licensed in accordance with part II of chapter 468 are exempt from this requirement. Other licensed professionals may be exempted, as determined by the department by rule.~~

~~(4) Administrators are required to participate in continuing education for a minimum of 12 contact hours every 2 years.~~

~~(5) Staff involved with the management of medications and assisting with the self-administration of medications under s. 429.256 must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff. The department shall establish by rule the minimum requirements of this additional training.~~

~~(6) Other facility staff shall participate in training~~

~~relevant to their job duties as specified by rule of the department.~~

~~(7) If the department or the agency determines that there are problems in a facility that could be reduced through specific staff training or education beyond that already required under this section, the department or the agency may require, and provide, or cause to be provided, the training or education of any personal care staff in the facility.~~

~~(8) The department shall adopt rules related to these training requirements, the competency test, necessary procedures, and competency test fees and shall adopt or contract with another entity to develop a curriculum, which shall be used as the minimum core training requirements. The department shall consult with representatives of stakeholder associations and agencies in the development of the curriculum.~~

~~(9) The training required by this section shall be conducted by persons registered with the department as having the requisite experience and credentials to conduct the training. A person seeking to register as a trainer must provide the department with proof of completion of the minimum core training education requirements, successful passage of the competency test established under this section, and proof of compliance with the continuing education requirement in subsection (4).~~

~~(10) A person seeking to register as a trainer must also:~~

~~(a) Provide proof of completion of a 4-year degree from an accredited college or university and must have worked in a management position in an assisted living facility for 3 years after being core certified;~~

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~~(b) Have worked in a management position in an assisted living facility for 5 years after being core certified and have 1 year of teaching experience as an educator or staff trainer for persons who work in assisted living facilities or other long-term care settings;~~

~~(c) Have been previously employed as a core trainer for the department; or~~

~~(d) Meet other qualification criteria as defined in rule, which the department is authorized to adopt.~~

~~(11) The department shall adopt rules to establish trainer registration requirements.~~

Section 12. Section 429.50, Florida Statutes, is created to read:

429.50 Licensure of assisted living facility administrators.—

(1) Effective July 1, 2013, an assisted living facility may not operate in this state unless the facility is under the management of an assisted living facility administrator who holds a valid license or provisional license issued by the Department of Health.

(2) In order to be eligible to be licensed as an assisted living facility administrator, an applicant must:

(a) Be at least 21 years old;

(b) Meet the educational requirements under subsection (5);

(c) Complete the training requirements in s. 429.521(2);

(d) Pass all required competency tests required in s. 429.521(2) with a minimum score of 80;

(e) Complete background screening pursuant to s. 429.174; and

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(f) Otherwise meet the requirements of this part.

(3)(a) An assisted living facility administrator who has been employed continuously for at least the 2 years immediately before July 1, 2012, is eligible for licensure without meeting the educational requirements of this section and without completing the core training and passing the competency test required in s. 429.521(2), if proof of compliance with the continuing education requirements in this part is submitted to the Department of Health and the applicant has not been an administrator of a facility that was cited for a class I or class II violation within the previous 2 years.

(b) Notwithstanding paragraph (a), an assisted living facility administrator who has been employed continuously for at least the 2 years immediately before July 1, 2012, must complete the mental health training and pass the competency test required in s. 429.521(2)(c) if the administrator is employed at a facility that has a mental health license, and the administrator must complete the supplemental training required in s. 429.521(2)(b) before licensure.

(4)(a) An administrator who is licensed in accordance with part II of chapter 468 is eligible for licensure without meeting the educational requirements of this section and without completing the core training and passing the competency test required in s. 429.521(2), if proof of compliance with the continuing education requirements in part II of chapter 468 is submitted to the Department of Health. Any other licensed professional may be exempted as determined by the Department of Health by rule.

(b) Notwithstanding paragraph (a), an administrator who is

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licensed in accordance with part II of chapter 468, and any other licensed professional who is exempted by rule, must complete the mental health training and pass the competency test required in s. 429.521(2)(c), if the administrator is employed at a facility that has a mental health license, and must complete the supplemental training required in s. 429.521(2)(b) before licensure.

(5) Before licensure, the applicant must submit to the Department of Health proof that he or she is at least 21 years old and has a 4-year baccalaureate degree that includes some coursework in health care, gerontology, or geriatrics. An applicant who submits proof to the Department of Health that he or she has a 4-year baccalaureate degree or a 2-year associate degree that includes coursework in health care, gerontology, or geriatrics, and has provided at least 2 years of direct care in an assisted living facility or nursing home is also eligible for licensure.

(6) The Department of Health shall issue a license as an assisted living facility administrator to any applicant who successfully completes the required training and passes the competency tests in accordance with s. 429.521, provides the requisite proof of required education, and otherwise meets the requirements of this part.

(7) The Department of Health shall establish licensure fees for licensure as an assisted living facility administrator, which shall be renewed biennially and may not exceed $250 for the initial licensure or $250 for each licensure renewal.

(8) The Department of Health may adopt rules as necessary to administer this section.

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Section 13. Section 429.512, Florida Statutes, is created to read:

429.512 Provisional licenses; inactive status.—

(1) The Department of Health may establish by rule requirements for issuance of a provisional license. A provisional license may be issued only for the purpose of filling a position of an assisted living facility administrator which unexpectedly becomes vacant and may be issued for one single period as provided by rule, which may not exceed 6 months. The provisional license may be issued to a person who does not meet all of the licensure requirements established in s. 429.50, but the Department of Health shall by rule establish minimal requirements to ensure protection of the public health, safety, and welfare. The provisional license may be issued to the person who is designated as the responsible person next in command if the position of an assisted living facility administrator becomes vacant. The Department of Health may set an application fee for a provisional license which may not exceed $500.

(2) An administrator’s license becomes inactive if the administrator does not complete the continuing education courses and pass the corresponding tests within the requisite time or if the administrator does not timely pay the licensure renewal fee. An administrator may also apply for inactive license status. The Department of Health shall adopt rules governing the application procedures for obtaining an inactive license status, the renewal of an inactive license, and the reactivation of a license. The Department of Health shall prescribe by rule an application fee for inactive license status, a renewal fee for inactive license

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status, a delinquency fee, and a fee for reactivating a license. These fees may not exceed the amount established by the Department of Health for the biennial renewal fee for an active license.

(3) The Department of Health may not reactivate a license unless the inactive or delinquent licensee has completed the requisite continuing education and passed the corresponding tests or has paid any applicable biennial renewal or delinquency fees, and paid the reactivation fee.

Section 14. Section 429.521, Florida Statutes, is created to read:

429.521 Training requirements.—

(1) GENERAL REQUIREMENTS.—

(a) Each administrator, applicant to become assisted living facility administrator, or staff member of an assisted living facility must meet minimum training requirements established by rule by the Department of Elderly Affairs. This training is intended to assist facilities in appropriately responding to the needs of residents, maintaining resident care and facility standards, and meeting licensure requirements.

(b) The department, in conjunction with the Department of Children and Family Services and stakeholders, shall establish a standardized core training curriculum that must be completed by an applicant for licensure as an assisted living facility administrator. The curriculum must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. The required training must cover, at a minimum, the following topics:

1. State law and rules relating to assisted living

facilities.

2. Residents' rights and procedures for identifying and reporting abuse, neglect, and exploitation.

3. Special needs of elderly persons, persons who have mental illness, and persons who have developmental disabilities and how to meet those needs.

4. Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food.

5. Medication management, recordkeeping, and proper techniques for assisting residents who self-administer medication.

6. Firesafety requirements, including procedures for fire evacuation drills and other emergency procedures.

7. Care of persons who have Alzheimer's disease and related disorders.

8. Elopement prevention.

9. Aggression and behavior management, deescalation techniques, and proper protocols and procedures of the Baker Act as provided in part I of chapter 394.

10. Do not resuscitate orders.

11. Infection control.

12. Admission, continuing residency, and best practices in the industry.

13. Phases of care and interacting with residents.

The department, in conjunction with the Department of Children and Family Services and stakeholders, shall also develop a supplemental course consisting of topics related to extended congregate care, limited mental health, and business operations,

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including, but not limited to, human resources, financial management, and supervision of staff, which must completed by an applicant for licensure as an assisted living facility administrator.

(c) The department, in conjunction with the Department of Children and Family Services and stakeholders, shall establish a standardized core training curriculum for staff members of an assisted living facility who provide regular or direct care to residents. This training curriculum must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. The training curriculum must cover, at a minimum, the following topics:

1. The reporting of major incidents.

2. The reporting of adverse incidents.

3. Emergency procedures, including chain-of-command and staff roles relating to emergency evacuation.

4. Residents' rights in an assisted living facility.

5. The recognition and reporting of resident abuse, neglect, and exploitation.

6. Resident behavior and needs.

7. Assistance with the activities of daily living.

8. Infection control.

9. Aggression and behavior management and deescalation techniques.

(d) The department, in conjunction with the agency and stakeholders, shall create two competency tests, one for applicants for licensure as an assisted living facility administrator and one for staff members of an assisted living facility who provide regular or direct care to residents, which

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test the individual's comprehension of the training required in paragraphs (b) and (c). The competency tests must be reviewed annually and updated as needed to reflect changes in the law, rules, and best practices. The competency tests must be offered in English and Spanish and may be made available through testing centers.

(e) The department, in conjunction with the Department of Children and Family Services and stakeholders, shall develop a comprehensive, standardized training curriculum and competency test to satisfy the requirements for mental health training in subsections (2) and (3). The curriculum and test must be reviewed annually and updated as needed to reflect changes in the law, rules, and best practices. The competency test must be offered in English and Spanish and may be made available online or through testing centers.

(f) The department, in conjunction with the Department of Children and Family Services and stakeholders, shall establish curricula for continuing education for administrators and staff members of an assisted living facility. Continuing education shall include topics similar to that of the core training required for staff members and applicants for licensure as assisted living facility administrators. Required continuing education must, at a minimum, cover the following topics:

1. Elopement prevention;

2. Deescalation techniques; and

3. Phases of care and interacting with residents.

(g) The department shall ensure that all continuing education curricula include a test upon completion of the training which demonstrates comprehension of the training. The

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training and the test must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. Continuing education and the required test may be offered through online courses and any fees associated to the online service shall be borne by the participant or the participant's employer.

(h) The department shall adopt rules related to training requirements, competency tests, necessary procedures, and training and testing fees.

(2) ADMINISTRATORS AND APPLICANTS FOR LICENSURE AS AN ASSISTED LIVING FACILITY ADMINISTRATOR.—

(a) An applicant for licensure as an assisted living facility administrator shall complete a minimum of 40 hours of core training that covers the required topics provided for in paragraph (1)(b).

(b) In addition to the required 40 hours of core training, each applicant must complete a minimum of 10 hours of supplemental training related to extended congregate care, limited mental health, and business operations, including, but not limited to, human resources, financial management, and supervision of staff.

(c) An applicant shall take a competency test that assesses the applicant's knowledge and comprehension of the required training provided for in paragraphs (a) and (b). A minimum score of 80 is required to show successful completion of the training requirements of this subsection. The applicant taking the test is responsible for any testing fees.

(d) If an applicant for licensure as an assisted living facility administrator fails any competency test, the individual

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must wait at least 10 days before retaking the test. If the applicant fails a competency test three times, the individual must retake the applicable training before retaking the test.

(e) A licensed administrator shall receive at least 1 hour of inservice training regarding the facility's policies and procedures related to resident elopement response within 30 days after employment at a facility. Each administrator must be provided a copy of the facility's policies and procedures related to resident elopement response and shall demonstrate an understanding and competency in the implementation of these policies and procedures.

(f) Each licensed administrator of an assisted living facility that has a limited mental health license must complete a minimum of 8 hours of mental health training and pass a competency test related to the training within 30 days after employment at the facility. A minimum score of 80 is required to show successful passage of the mental health competency test. An administrator who does not pass the test within 6 months after completing the mental health training is ineligible to be an administrator of an assisted living facility that has a limited mental health license until the administrator achieves a passing score. The competency test may be made available online or through testing centers and must be offered in English and Spanish.

(g) A licensed administrator of an assisted living facility that has an extended congregate care license must complete a minimum of 6 hours of extended congregate care training within 30 days after employment.

(h) A licensed administrator of an assisted living facility

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that has a limited nursing services license must complete a minimum of 4 hours of training related to the special needs and care of those persons who require limited nursing services within 30 days after employment.

(i) A licensed administrator must participate in continuing education for a minimum of 18 contact hours every 2 years and pass the corresponding test upon completion of the continuing education course with a minimum score of 80. Completion of all continuing education and a passing score on any corresponding tests must be achieved before license renewal. Continuing education may be offered through online courses, and any fees associated to the online service shall be borne by the participant or the participant's employer.

(3) STAFF TRAINING.—

(a) Each staff member of an assisted living facility shall receive at least 1 hour of inservice training regarding the facility's policies and procedures related to resident elopement response within 30 days after employment. Each staff member must be provided a copy of the facility's policies and procedures related to resident elopement response and shall demonstrate an understanding and competency in the implementation of these policies and procedures.

(b) Each staff member of an assisted living facility who is hired on or after July 1, 2012, and who provides regular or direct care to residents, shall complete a minimum of 20 hours of core training within 90 days after employment at a facility. The department may exempt nurses, certified nursing assistants, or home health aides who can demonstrate completion of training that is substantially similar to that of the core training

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required in this paragraph.

(c) Each staff member of an assisted living facility who is hired on or after July 1, 2012, and who provides regular or direct care to residents, must take a competency test within 90 days after employment at a facility which assesses the individual's knowledge and comprehension of the required training provided for in paragraph (b). A minimum score of 70 on the competency test is required to show successful completion of the training requirements. If a staff member fails the competency test, the individual must wait at least 10 days before retaking the test. If a staff member fails the competency test three times, the individual must retake the initial core training before retaking the test. If a staff member does not pass the competency test within 1 year after employment, the individual may not provide regular or direct care to residents until the individual successfully passes the test. The individual taking the test is responsible for any testing fees.

(d) A staff member of an assisted living facility that has a limited mental health license who provides regular or direct care to residents must complete a minimum of 8 hours of mental health training within 30 days after employment. Within 30 days after this training, the staff member must pass a competency test related to the mental health training with a minimum score of 70. If a staff member does not pass the competency test, the individual may not provide regular or direct care to residents until the individual successfully passes the test. The competency test may be made available online or through testing centers and must be offered in English and Spanish.

(e) A staff member of an assisted living facility who

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prepares or serves food must receive a minimum of 1 hour of inservice training in safe food handling practices within 30 days after employment.

(f) A staff member of an assisted living facility who manages medications and assists with the self-administration of medications under s. 429.256 must complete, within 30 days after employment, a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff. The department shall establish by rule the minimum requirements for this training, including continuing education requirements.

(g) Other staff members of an assisted living facility shall participate in training relevant to their job duties as specified by rule of the department.

(h) If the department or the agency determines that there are problems in a facility which could be reduced through specific staff training beyond that already required under this subsection, the department or the agency may require and provide, or cause to be provided, additional training of any staff member in the facility.

(i) Each staff member of an assisted living facility who provides regular or direct care to residents must participate in continuing education for a minimum of 10 contact hours every 2 years and pass the corresponding test upon completion of the continuing education course with a minimum score of 70. If an individual does not complete all required continuing education and pass any corresponding tests within the requisite time period, the individual may not provide regular or direct care to residents until the individual does so. Continuing education may be offered through online courses and any fees associated to the

online service shall be borne by the participant or the participant's employer.

Section 15. Section 429.522, Florida Statutes, is created to read:

429.522 Training providers; certification.—

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

(a) "Trainer certification" means a professional credential awarded to individuals demonstrating competency in the assisted living facility practice area by a department-approved third-party credentialing entity.

(b) "Competency" means the minimum knowledge, skills, and abilities necessary to perform work responsibilities.

(c) "Curriculum" means the minimum statewide training content that is based upon the competencies and is made available to persons providing services at an assisted living facility.

(d) "Third-party credentialing entity" means a department-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.

(2) THIRD-PARTY CREDENTIALING ENTITIES.—The department shall approve and provide oversight for one or more third-party credentialing entities for the purpose of developing and administering trainer certification programs for persons providing training to applicants for licensure as an assisted living facility administrator, to administrators of an assisted living facility, and to staff members of an assisted living facility. A third-party credentialing entity shall request this approval in writing from the department. In order to obtain

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approval, the third-party credentialing entity shall:

(a) Establish professional requirements and standards that applicants must achieve in order to obtain trainer certification and to maintain such certification. At a minimum, an applicant shall meet one of the following requirements:

1. Provide proof of completion of a 4-year baccalaureate degree from an accredited college or university and have worked in a management position in an assisted living facility for at least 3 years after obtaining core trainer certification;

2. Have worked in a management position in an assisted living facility for at least 5 years after obtaining core trainer certification and have at least 1 year of teaching experience as an educator or staff trainer for persons who work in assisted living facilities or other long-term care settings;

3. Have been previously certified as a core trainer for the department;

4. Have a minimum of 5 years of employment with the agency, or the former Department of Health and Rehabilitative Services, as a surveyor of assisted living facilities;

5. Have a minimum of 5 years of employment in a professional position in the agency's assisted living unit;

6. Have a minimum of 5 years of employment as an educator or staff trainer for persons working in an assisted living facility or other long-term care setting;

7. Have a minimum of 5 years of employment as a core trainer for an assisted living facility, which employment was not directly associated with the department; or

8. Provide proof of at least a 4-year baccalaureate degree from an accredited college or university in the areas of health

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care, gerontology, social work, education, or human services, and a minimum of 4 years of experience as an educator or staff trainer for persons who work in an assisted living facility or other long-term care setting after receiving core trainer certification.

(b) Apply competencies according to the department's standards as provided in s. 429.521.

(c) Maintain a professional code of ethics and establish a disciplinary process and a decertification process that applies to all persons holding trainer certification.

(d) Maintain a database, accessible to the public, of all persons who have trainer certification, including any history of violations.

(e) Require annual continuing education for persons who have trainer certification.

(f) Administer a continuing education provider program to ensure that only qualified providers offer continuing education opportunities for certificateholders.

(3) TRAINER CERTIFICATION.—Effective July 1, 2013, an individual seeking trainer certification must provide the third-party credentialing entity with, at a minimum, proof of:

(a) Completion of the minimum core training requirements in s. 429.521(2) and successful passage of the corresponding competency tests with a minimum score of 80;

(b) Compliance with the continuing education requirements in s. 429.521(2); and

(c) Compliance with the professional requirements and standards required in paragraph (2)(a).

(4) ADOPTION OF RULES.—The department shall adopt rules

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necessary to administer this section.

Section 16. Section 429.55, Florida Statutes, is created to read:

429.55 Electronic monitoring of resident's room.—

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

(a) "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an assisted living facility and the making of tapes or recordings through use of the device after making a request to the facility and obtaining all necessary consent to allow electronic monitoring.

(b) "Electronic monitoring device" means video surveillance cameras or audio devices installed in the room of a resident which are designed to acquire communications or other sounds occurring in the room. The term does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

(2) COVERT USE OF ELECTRONIC MONITORING DEVICE.—For purposes of this section, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(a) The placement and use of the device is not open and obvious; and

(b) The facility and the agency are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

The agency and the facility are not civilly liable in connection with the covert placement or use of an electronic monitoring

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device in the room of the resident.

(3) REQUIRED FORM ON ADMISSION.—The agency shall prescribe by rule a form that must be completed and signed upon a resident's admission to a facility by or on behalf of the resident. The form must state:

(a) That a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(b) That a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(c) That a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under this section and that, if the facility refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring, the person should contact the agency. The form must also provide the agency's contact information;

(d) The basic procedures that must be followed in order to request authorized electronic monitoring;

(e) That the electronic monitoring device and all installation and maintenance costs must be paid for by the resident or the resident's guardian or legal representative;

(f) The legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

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(g) Any other information regarding covert or authorized electronic monitoring which the agency considers advisable to include on the form.

(4) AUTHORIZATION AND CONSENT.—

(a) If a resident has the capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this section, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action, such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this section.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this section.

(d) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the facility on a form prescribed by the agency.

(e) The form prescribed by the agency must require the resident or the resident’s guardian or legal representative to:

1. Release the facility from any civil liability for a violation of the resident’s privacy rights in connection with the use of the electronic monitoring device;

2. If the electronic monitoring device is a video surveillance camera, choose whether the camera will always be unobstructed or whether the camera should be obstructed in

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specified circumstances in order to protect the dignity of the resident; and

3. Obtain the consent of the other residents in the room, using a form prescribed for this purpose by the agency, if the resident resides in a multiperson room.

(f) Consent under subparagraph (e)3. may be given only by:

1. The other resident or residents in the room;

2. The guardian of the other resident in the room, if the person has been judicially declared to lack the required capacity to consent; or

3. The legal representative of the other resident in the room, if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity to consent.

(g) The form prescribed by the agency under subparagraph (e)3. must condition the consent of another resident in the room on the other resident also releasing the facility from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(h) Another resident in the room may:

1. If the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

2. Condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(i) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new

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resident has consented in accordance with this subsection.

(j) Authorized electronic monitoring may not commence until all request and consent forms required by this subsection have been completed and returned to the facility, and the monitoring must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

(k) The agency may include other information that the agency considers to be appropriate on any of the forms that the agency is required to prescribe under this subsection.

(l) The agency shall adopt rules to administer this subsection.

(5) AUTHORIZED ELECTRONIC MONITORING; GENERAL PROVISIONS.—

(a) A facility shall allow a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The facility shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance of the resident's room which states that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this section is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) A facility may not refuse to admit an individual to residency in the facility and may not remove a resident from the facility because of a request to conduct authorized electronic monitoring.

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(e) A facility shall make reasonable physical accommodations for authorized electronic monitoring, including providing:

1. A reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

2. Access to power sources for the video surveillance camera or other electronic monitoring device.

(f) A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about a room.

(g) If authorized electronic monitoring is conducted, the facility may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(h) A facility may place a resident in a different room in order to accommodate a request to conduct authorized electronic monitoring.

(6) REPORTING ABUSE AND NEGLECT.—A person shall report abuse to the central abuse hotline of the Department of Children and Family Services pursuant to s. 415.103 based on the person's viewing of or listening to a tape or recording by an electronic monitoring device if the incident of abuse is acquired on the tape or recording. A person shall report neglect to the central abuse hotline pursuant to s. 415.103 based on the person's viewing of or listening to a tape or recording by an electronic monitoring device if it is clear from viewing or listening to the tape or recording that neglect has occurred. If a person reports abuse or neglect to the central abuse hotline pursuant to this subsection, the person shall also send to the agency a

copy of the tape or recording which indicates the reported abuse or neglect.

(7) USE OF TAPE OR RECORDING.—

(a) Subject to applicable rules of evidence and procedure and the requirements of this subsection, a tape or recording created through the use of covert or authorized electronic monitoring may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

1. The tape or recording shows the time and date that the events acquired on the tape or recording occurred;

2. The contents of the tape or recording have not been edited or artificially enhanced; and

3. If the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the agency shall identify for the agency each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found.

(8) REQUIRED NOTICE.—Each facility shall post a notice at the entrance to the facility stating that the rooms of some residents are monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious.

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(9) ENFORCEMENT.—The agency may impose appropriate administrative sanctions under this part against an administrator of a facility who knowingly:

(a) Refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(b) Refuses to admit an individual to residency or allows the removal of a resident from the facility because of a request to conduct authorized electronic monitoring; or

(c) Violates another provision of this section.

(10) RULES.—The agency shall adopt rules as necessary to administer this section.

Section 17. This act shall take effect July 1, 2012.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to assisted living facilities; amending s. 394.4574, F.S.; requiring that the case manager assigned to a mental health resident of an assisted living facility that holds a limited mental health license keep a record of the date and time of face-to-face interactions with the mental health resident and make the record available to the Department of Children and Family Services for inspection; requiring that the record be maintained for a specified number of years; requiring that the

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department ensure that there is adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements; amending s. 400.0078, F.S.; requiring that, upon admission to a long-term care facility, a resident or his or her representative receive information regarding the confidentiality of any complainant's identity and the subject matter of the complaint; amending s. 415.103, F.S.; requiring that the department maintain a central abuse hotline that receives all reports made regarding incidents of abuse or neglect which are recorded by an electronic monitoring device in a resident's room of an assisted living facility; amending s. 415.1034, F.S.; requiring that certain employees or agents of any state or local agency report the abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline; amending s. 429.02, F.S.; defining the term "mental health professional" as it relates to the Assisted Living Facilities Act; amending s. 429.075, F.S.; requiring that an assisted living facility that serves any mental health resident obtain a limited mental health license; revising the training requirements for administrators and staff members of a facility that is licensed to provide services to mental health residents; amending ss. 429.176 and 429.178, F.S.; conforming cross-references; amending s. 429.28, F.S.; revising the bill of rights for residents of assisted living facilities with regard to notice of relocation

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or termination of residency and placement of an electronic monitoring device in the resident's room; revising requirements for a written notice of the rights, obligations, and prohibitions which is provided to a resident of an assisted living facility; creating s. 429.281, F.S.; providing definitions; requiring that an assisted living facility comply with notice of relocation or termination of residency from the facility when a decision is made to relocate or terminate the residency of a resident; providing requirements and procedures for notice and a hearing with regard to relocation of a resident or termination of the residency of a resident; requiring that the Department of Children and Family Services adopt rules; providing for application; amending s. 429.52, F.S.; requiring that a newly hired employee or administrator of an assisted living facility attend a preservice orientation provided by the assisted living facility; providing topics that must be covered in the preservice orientation; requiring that the employee and administrator sign an affidavit upon completion of the preservice orientation; requiring that the administrator of the assisted living facility maintain the signed affidavit in each employee's work file; deleting provisions regarding minimum training and core educational requirements for administrators and other staff; deleting provisions requiring the Department of Elderly Affairs to establish training requirements and a competency test by rule; deleting

provisions governing the registration of persons providing training; creating s. 429.50, F.S.; effective July 1, 2013, prohibiting an assisted living facility from operating unless it is under the management of an administrator who holds a valid license or provisional license issued by the Department of Health; providing eligibility requirements to be licensed as an assisted living facility administrator; providing an exception from the requirement to complete the educational and core training requirements and pass a competency test; providing additional requirements for licensure as an administrator of an assisted living facility that has a mental health license; providing that an administrator licensed under part II of ch. 468, F.S., is exempt from certain educational and core training requirements and the required competency test; providing additional licensure requirements for an administrator licensed under part II of ch. 468, F.S., who is employed at an assisted living facility that has a mental health license; providing that other licensed professionals may be exempted, as determined by rule by the Department of Health; requiring that the Department of Health issue a license to an applicant who successfully completes the training, passes the competency tests, and provides proof of the required education; requiring that the Department of Health establish licensure fees for licensure as an assisted living facility administrator; authorizing

the Department of Health to adopt rules; creating s. 429.512, F.S.; authorizing the Department of Health to establish requirements for issuing a provisional license; providing the conditions under which a provisional license is issued; authorizing the Department of Health to set an application fee; providing conditions under which an administrator's license becomes inactive; requiring that the Department or Health adopt rules governing application procedures for inactive licenses, the renewal of inactive licenses, and the reactivation of licenses; requiring that the Department of Health establish application fees for inactive license status, a renewal fee for inactive license status, a delinquency fee, and a fee for the reactivation of a license; prohibiting the Department of Health from reactivating a license unless the licensee pays the required fees; creating s. 429.521, F.S.; requiring that each administrator, applicant to become an assisted living facility administrator, and staff member of an assisted living facility meet minimum training requirements established by the Department of Elderly Affairs; requiring that the department, in conjunction with the Department of Children and Family Services and stakeholders, establish a standardized core training curriculum to be completed by an applicant for licensure as an assisted living facility administrator; providing minimum requirements for the training curriculum; requiring that the Department of

Elderly Affairs, in conjunction with the Department of Children and Family Services and stakeholders, develop a supplemental course consisting of topics related to extended congregate care, limited mental health, and business operations; requiring that the Department of Elderly Affairs, in conjunction with the Department of Children and Family Services and stakeholders, establish a standardized core training curriculum for staff members who provide regular or direct care to residents of an assisted living facility; providing requirements for the training curriculum; requiring that the Department of Elderly Affairs, in conjunction with the Agency for Health Care Administration and stakeholders, create competency tests to test an individual’s comprehension of the training; providing requirements for the competency tests; requiring that the Department of Elderly Affairs, in conjunction with the Department of Children and Family Services, develop a comprehensive, standardized training curriculum and competency test to satisfy the requirements for mental health training; requiring that the Department of Elderly Affairs, in conjunction with the Department of Children and Family Services and stakeholders, establish curricula for continuing education for administrators and staff members of an assisted living facility; providing minimum requirements for the required continuing education; requiring that the Department of Elderly Affairs ensure that all continuing education curricula include

a test upon completion of the training which demonstrates comprehension of the training; requiring the Department of Elderly Affairs to adopt rules; requiring that an applicant for licensure as an assisted living facility administrator complete a minimum number of hours of training and take a competency test; providing a minimum passing score for the competency test; providing requirements for an applicant who fails the competency test; requiring that a licensed administrator receive inservice training regarding the facility's policies and procedures related to resident elopement response; requiring that a licensed administrator of an assisted living facility that has a limited mental health license complete a minimum number of hours of mental health training and pass a competency test related to the training; requiring that a licensed administrator of an assisted living facility that has an extended congregate care license complete a minimum number of hours of extended congregate care training; requiring that a licensed administrator of an assisted living facility that has a limited nursing services license complete a minimum number of hours of training related to the special needs and care of those persons who require limited nursing services; requiring that a licensed administrator participate in continuing education for a minimum number of contact hours and pass the corresponding test upon completion of the continuing education course; requiring that a staff

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member of an assisted living facility receive inservice training regarding the facility's policies and procedures related to resident elopement response; requiring that certain staff members of an assisted living facility complete a minimum number of hours of core training; providing for exemptions; requiring that certain staff members of an assisted living facility take a competency test that assesses the staff member's knowledge and comprehension of the required core training; providing a minimum passing score for the competency test; providing requirements for a staff member who fails the competency test; requiring that a staff member who provides regular or direct care to residents of an assisted living facility that has a limited mental health license complete a minimum number of hours of mental health training and take a competency test; providing a minimum passing score; prohibiting a staff member from providing direct care to residents until the staff member passes the competency test; requiring that a staff member of an assisted living facility who prepares or serves food receive inservice training in safe food handling practices; requiring that a staff member of an assisted living facility who manages medications and assists with the self-administration of medications complete training provided by a registered nurse, licensed pharmacist, or department staff; requiring that the Department of Elderly Affairs establish requirements for the training;

requiring that other staff members of an assisted living facility participate in training relevant to their job duties as specified by rule of the department; authorizing the Department of Elderly Affairs or the Agency for Health Care Administration to provide additional training if necessary; requiring that staff members who provide regular or direct care to residents of an assisted living facility participate in continuing education and pass the corresponding test upon completion of the continuing education course; prohibiting a staff member from providing regular or direct care to residents under certain conditions; creating s. 429.522, F.S.; providing definitions; requiring that the Department of Elderly Affairs approve and provide oversight for third-party credentialing entities for the purpose of developing and administering trainer certification programs for persons providing training to applicants for licensure as an assisted living facility administrator, to administrators of an assisted living facility, and to staff members of an assisted living facility; requiring that a third-party credentialing entity meet certain requirements in order to obtain approval for developing and administering the trainer certification programs; requiring that an individual seeking trainer certification provide a third-party credentialing entity with proof of certain requirements; requiring that the Department of Elderly Affairs adopt rules; creating s. 429.55, F.S.;

providing definitions; defining when an electronic monitoring device that is placed in the room of a resident of an assisted living facility is considered to be covert; providing that the Agency for Health Care Administration and the facility are not civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of the resident; requiring that the agency prescribe by rule a form that must be completed and signed when a resident is admitted to a facility; providing requirements for the form; authorizing certain persons to request electronic monitoring; providing for the form prescribed by the agency to require that the resident release the facility from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device, choose whether the camera will be unobstructed, and obtain the consent of the other residents in the room if the resident resides in a multiperson room; requiring prior consent under certain circumstances; requiring that the agency adopt rules; requiring that the facility allow a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices; requiring that the facility require a resident who conducts authorized electronic monitoring to post a conspicuous notice at the entrance of the resident's room; providing that electronic monitoring of the room of a resident is not

compulsory; prohibiting a facility from refusing to admit an individual to residency in the facility or from removing a resident from the facility because of a request to conduct authorized electronic monitoring; requiring that a facility make reasonable physical accommodations for authorized electronic monitoring; authorizing a facility to require that an electronic monitoring device be installed in a manner that is safe; authorizing a facility to require that a resident conduct electronic monitoring in plain view; authorizing a facility to place a resident in a different room in order to accommodate a request to conduct authorized electronic monitoring; requiring that a person report abuse or neglect to the central abuse hotline of the Department of Children and Family Services based on the person's viewing of or listening to a tape or recording; providing requirements for reporting the abuse or neglect; providing that a tape or recording created through the use of covert or authorized electronic monitoring may be admitted into evidence in a civil or criminal court action or administrative proceeding; providing requirements for such admission; requiring that each facility post a notice at the entrance to the facility stating that the rooms of some residents are monitored electronically by or on behalf of the residents; authorizing the Agency for Health Care Administration to impose administrative sanctions against an administrator of an assisted living facility under

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certain circumstances; requiring the agency to adopt rules; providing an effective date.

By the Committee on Children, Families, and Elder Affairs

586-02096B-12 20122050__

A bill to be entitled

An act relating to assisted living facilities; amending s. 394.4574, F.S.; requiring that the case manager assigned to a mental health resident of an assisted living facility that holds a limited mental health license keep a record of the date and time of face-to-face interactions with the mental health resident and make the record available to the Department of Children and Family Services for inspection; requiring that the record be maintained for a specified number of years; requiring that the department ensure that there is adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements; amending s. 400.0078, F.S.; requiring that, upon admission to a long-term care facility, a resident or his or her representative receive information regarding the confidentiality of any complainant's identity and the subject matter of the complaint; amending s. 415.103, F.S.; requiring that the department maintain a central abuse hotline that receives all reports made regarding incidents of abuse or neglect which are recorded by an electronic monitoring device in a resident's room of an assisted living facility; amending s. 415.1034, F.S.; requiring that certain employees or agents of any state or local agency report the abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline; amending s. 429.02, F.S.; defining the term "mental

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health professional" as it relates to the Assisted Living Facilities Act; amending s. 429.075, F.S.; requiring that an assisted living facility that serves any mental health resident obtain a limited mental health license; revising the training requirements for administrators and staff members of a facility that is licensed to provide services to mental health residents; amending ss. 429.176 and 429.178, F.S.; conforming cross-references; amending s. 429.28, F.S.; revising the bill of rights for residents of assisted living facilities with regard to notice of relocation or termination of residency and placement of an electronic monitoring device in the resident's room; revising requirements for a written notice of the rights, obligations, and prohibitions which is provided to a resident of an assisted living facility; creating s. 429.281, F.S.; providing definitions; requiring that an assisted living facility comply with notice of relocation or termination of residency from the facility when a decision is made to relocate or terminate the residency of a resident; providing requirements and procedures for notice and a hearing with regard to relocation of a resident or termination of the residency of a resident; requiring that the Department of Children and Family Services adopt rules; providing for application; amending s. 429.52, F.S.; requiring that a newly hired employee or administrator of an assisted living facility attend a preservice orientation provided by the assisted living

facility; providing topics that must be covered in the preservice orientation; requiring that the employee and administrator sign an affidavit upon completion of the preservice orientation; requiring that the administrator of the assisted living facility maintain the signed affidavit in each employee's work file; deleting provisions regarding minimum training and core educational requirements for administrators and other staff; deleting provisions requiring the Department of Elderly Affairs to establish training requirements and a competency test by rule; deleting provisions governing the registration of persons providing training; creating s. 429.50, F.S.; effective July 1, 2013, prohibiting an assisted living facility from operating unless it is under the management of an administrator who holds a valid license or provisional license issued by the Department of Health; providing eligibility requirements to be licensed as an assisted living facility administrator; providing an exception from the requirement to complete the educational and core training requirements and pass a competency test; providing additional requirements for licensure as an administrator of an assisted living facility that has a mental health license; providing that an administrator licensed under part II of ch. 468, F.S., is exempt from certain educational and core training requirements and the required competency test; providing additional licensure requirements for an

administrator licensed under part II of ch. 468, F.S., who is employed at an assisted living facility that has a mental health license; providing that other licensed professionals may be exempted, as determined by rule by the Department of Health; requiring that the Department of Health issue a license to an applicant who successfully completes the training, passes the competency tests, and provides proof of the required education; requiring that the Department of Health establish licensure fees for licensure as an assisted living facility administrator; authorizing the Department of Health to adopt rules; creating s. 429.512, F.S.; authorizing the Department of Health to establish requirements for issuing a provisional license; providing the conditions under which a provisional license is issued; authorizing the Department of Health to set an application fee; providing conditions under which an administrator's license becomes inactive; requiring that the Department or Health adopt rules governing application procedures for inactive licenses, the renewal of inactive licenses, and the reactivation of licenses; requiring that the Department of Health establish application fees for inactive license status, a renewal fee for inactive license status, a delinquency fee, and a fee for the reactivation of a license; prohibiting the Department of Health from reactivating a license unless the licensee pays the required fees; creating s. 429.521, F.S.; requiring that each

administrator, applicant to become an assisted living facility administrator, and staff member of an assisted living facility meet minimum training requirements established by the Department of Elderly Affairs; requiring that the department, in conjunction with the Department of Children and Family Services and stakeholders, establish a standardized core training curriculum to be completed by an applicant for licensure as an assisted living facility administrator; providing minimum requirements for the training curriculum; requiring that the Department of Elderly Affairs, in conjunction with the Department of Children and Family Services and stakeholders, develop a supplemental course consisting of topics related to extended congregate care, limited mental health, and business operations; requiring that the Department of Elderly Affairs, in conjunction with the Department of Children and Family Services and stakeholders, establish a standardized core training curriculum for staff members who provide regular or direct care to residents of an assisted living facility; providing requirements for the training curriculum; requiring that the Department of Elderly Affairs, in conjunction with the Agency for Health Care Administration and stakeholders, create competency tests to test an individual's comprehension of the training; providing requirements for the competency tests; requiring that the Department of Elderly Affairs, in conjunction with the Department of Children and Family Services,

develop a comprehensive, standardized training curriculum and competency test to satisfy the requirements for mental health training; requiring that the Department of Elderly Affairs, in conjunction with the Department of Children and Family Services and stakeholders, establish curricula for continuing education for administrators and staff members of an assisted living facility; providing minimum requirements for the required continuing education; requiring that the Department of Elderly Affairs ensure that all continuing education curricula include a test upon completion of the training which demonstrates comprehension of the training; requiring the Department of Elderly Affairs to adopt rules; requiring that an applicant for licensure as an assisted living facility administrator complete a minimum number of hours of training and take a competency test; providing a minimum passing score for the competency test; providing requirements for an applicant who fails the competency test; requiring that a licensed administrator receive inservice training regarding the facility's policies and procedures related to resident elopement response; requiring that a licensed administrator of an assisted living facility that has a limited mental health license complete a minimum number of hours of mental health training and pass a competency test related to the training; requiring that a licensed administrator of an assisted living facility that has an extended

congregate care license complete a minimum number of hours of extended congregate care training; requiring that a licensed administrator of an assisted living facility that has a limited nursing services license complete a minimum number of hours of training related to the special needs and care of those persons who require limited nursing services; requiring that a licensed administrator participate in continuing education for a minimum number of contact hours and pass the corresponding test upon completion of the continuing education course; requiring that a staff member of an assisted living facility receive inservice training regarding the facility's policies and procedures related to resident elopement response; requiring that certain staff members of an assisted living facility complete a minimum number of hours of core training; providing for exemptions; requiring that certain staff members of an assisted living facility take a competency test that assesses the staff member's knowledge and comprehension of the required core training; providing a minimum passing score for the competency test; providing requirements for a staff member who fails the competency test; requiring that a staff member who provides regular or direct care to residents of an assisted living facility that has a limited mental health license complete a minimum number of hours of mental health training and take a competency test; providing a minimum passing score; prohibiting a staff member from

providing direct care to residents until the staff member passes the competency test; requiring that a staff member of an assisted living facility who prepares or serves food receive inservice training in safe food handling practices; requiring that a staff member of an assisted living facility who manages medications and assists with the self-administration of medications complete training provided by a registered nurse, licensed pharmacist, or department staff; requiring that the Department of Elderly Affairs establish requirements for the training; requiring that other staff members of an assisted living facility participate in training relevant to their job duties as specified by rule of the department; authorizing the Department of Elderly Affairs or the Agency for Health Care Administration to provide additional training if necessary; requiring that staff members who provide regular or direct care to residents of an assisted living facility participate in continuing education and pass the corresponding test upon completion of the continuing education course; prohibiting a staff member from providing regular or direct care to residents under certain conditions; creating s. 429.522, F.S.; providing definitions; requiring that the Department of Elderly Affairs approve and provide oversight for third-party credentialing entities for the purpose of developing and administering core trainer certification programs for persons providing training

to applicants for licensure as an assisted living facility administrator and as a staff member of an assisted living facility; requiring that a third-party credentialing entity meet certain requirements in order to obtain approval for developing and administering the core trainer certification programs; requiring that an individual seeking core trainer certification provide a third-party credentialing entity with proof of certain requirements; requiring that the Department of Elderly Affairs adopt rules; creating s. 429.55, F.S.; providing definitions; defining when an electronic monitoring device that is placed in the room of a resident of an assisted living facility is considered to be covert; providing that the Agency for Health Care Administration and the facility are not civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of the resident; requiring that the agency prescribe by rule a form that must be completed and signed when a resident is admitted to a facility; providing requirements for the form; authorizing certain persons to request electronic monitoring; providing for the form prescribed by the agency to require that the resident release the facility from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device, choose whether the camera will be unobstructed, and obtain the consent of the other residents in the room if the resident

resides in a multiperson room; requiring prior consent under certain circumstances; requiring that the agency adopt rules; requiring that the facility allow a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices; requiring that the facility require a resident who conducts authorized electronic monitoring to post a conspicuous notice at the entrance of the resident's room; providing that electronic monitoring of the room of a resident is not compulsory; prohibiting a facility from refusing to admit an individual to residency in the facility or from removing a resident from the facility because of a request to conduct authorized electronic monitoring; requiring that a facility make reasonable physical accommodations for authorized electronic monitoring; authorizing a facility to require that an electronic monitoring device be installed in a manner that is safe; authorizing a facility to require that a resident conduct electronic monitoring in plain view; authorizing a facility to place a resident in a different room in order to accommodate a request to conduct authorized electronic monitoring; requiring that a person report abuse or neglect to the central abuse hotline of the Department of Children and Family Services based on the person's viewing of or listening to a tape or recording; providing requirements for reporting the abuse or neglect; providing that a tape

or recording created through the use of covert or authorized electronic monitoring may be admitted into evidence in a civil or criminal court action or administrative proceeding; providing requirements for such admission; requiring that each facility post a notice at the entrance to the facility stating that the rooms of some residents are monitored electronically by or on behalf of the residents; authorizing the Agency for Health Care Administration to impose administrative sanctions against an administrator of an assisted living facility under certain circumstances; requiring the agency to adopt rules; providing an effective date.

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

Section 1. Subsection (2) of section 394.4574, Florida Statutes, is amended to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.—

(2) The department must ensure that:

(a) A mental health resident has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be provided to the administrator of the facility within 30 days after the mental health resident has been admitted to the

facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident if it was completed within 90 days prior to admission to the facility.

(b) A cooperative agreement, as required in s. 429.075, is developed between the mental health care services provider that serves a mental health resident and the administrator of the assisted living facility with a limited mental health license in which the mental health resident is living. Any entity that provides Medicaid prepaid health plan services shall ensure the appropriate coordination of health care services with an assisted living facility in cases where a Medicaid recipient is both a member of the entity's prepaid health plan and a resident of the assisted living facility. If the entity is at risk for Medicaid targeted case management and behavioral health services, the entity shall inform the assisted living facility of the procedures to follow should an emergent condition arise.

(c) The community living support plan, as defined in s. 429.02, has been prepared by a mental health resident and a mental health case manager of that resident in consultation with the administrator of the facility or the administrator's designee. The plan must be provided to the administrator of the assisted living facility with a limited mental health license in which the mental health resident lives. The support plan and the agreement may be in one document.

(d) The assisted living facility with a limited mental health license is provided with documentation that the individual meets the definition of a mental health resident.

(e) The mental health services provider assigns a case manager to each mental health resident who lives in an assisted living facility with a limited mental health license. The case manager is responsible for coordinating the development of and implementation of the community living support plan defined in s. 429.02. The plan must be updated at least annually in order to ensure that the ongoing needs of the resident are addressed. Each case manager shall keep a record of the date and time of any face-to-face interaction with a mental health resident and make the record available to the department for inspection. The record must be maintained for 2 years following the date of the interaction.

(f) There is adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements.

Section 2. Subsection (2) of section 400.0078, Florida Statutes, is amended to read:

400.0078 Citizen access to State Long-Term Care Ombudsman Program services.—

(2) Every resident or representative of a resident shall receive, upon admission to a long-term care facility, information regarding the purpose of the State Long-Term Care Ombudsman Program, the statewide toll-free telephone number for receiving complaints, the confidentiality of a complainant's name and identity and of the subject matter of a complaint, and other relevant information regarding how to contact the program. Residents or their representatives must be furnished additional copies of this information upon request.

Section 3. Subsection (1) of section 415.103, Florida

Statutes, is amended to read:

415.103 Central abuse hotline.—

(1) The department shall establish and maintain a central abuse hotline that receives all reports made pursuant to s. 415.1034 or s. 429.55 in writing or through a single statewide toll-free telephone number. Any person may use the statewide toll-free telephone number to report known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour of the day or night, any day of the week. The central abuse hotline must be operated in such a manner as to enable the department to:

(a) Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited.

(b) Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority.

(c) When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns.

(d) Immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline.

(e) Track critical steps in the investigative process to ensure compliance with all requirements for all reports.

(f) Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation.

(g) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable

adults who have been subject to abuse, neglect, or exploitation.

Section 4. Paragraph (a) of subsection (1) of section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council member or long-term care ombudsman council member; ~~or~~

8. Bank, savings and loan, or credit union officer, trustee, or employee; or

9. Employee or agent of any state or local agency that has

regulatory responsibilities concerning, or provides services to, persons in state-licensed facilities,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

Section 5. Present subsections (15) through (26) of section 429.02, Florida Statutes, are renumbered as subsections (16) through (27), respectively, and a new subsection (15) is added to that section, to read:

429.02 Definitions.—When used in this part, the term:

(15) "Mental health professional" means an individual licensed under chapter 458, chapter 459, chapter 464, chapter 490, or chapter 491 who provides mental health services as defined under s. 394.67, or an individual who has a 4-year baccalaureate degree from an accredited college or university and at least 5 years of experience providing services that improve an individual's mental health or treat mental illness.

Section 6. Section 429.075, Florida Statutes, is amended to read:

429.075 Limited mental health license.—An assisted living facility that serves any ~~three or more~~ mental health resident ~~residents~~ must obtain a limited mental health license.

(1) To obtain a limited mental health license, a facility must hold a standard license as an assisted living facility and~~,~~ must not have any current uncorrected deficiencies or violations. The~~, and must ensure that, within 6 months after receiving a limited mental health license, the facility~~

~~administrator and the staff of the facility who are in direct contact with mental health residents must complete training of no less than 6 hours related to their duties. Such~~ designation may be made at the time of initial licensure or relicensure or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with this part, part II of chapter 408, and applicable rules. This training will be provided by or approved by the Department of Children and Family Services.

(2) A facility ~~Facilities~~ licensed to provide services to mental health residents shall provide appropriate supervision and staffing to provide for the health, safety, and welfare of such residents. Each administrator and staff member, who provides regular or direct care to residents, of a facility licensed to provide services to mental health residents must meet the limited mental health training requirements set forth in s. 429.521 in addition to any other training or education requirements.

(3) A facility that has a limited mental health license must:

(a) Have a copy of each mental health resident's community living support plan and the cooperative agreement with the mental health care services provider. The support plan and the agreement may be combined.

(b) Have documentation that is provided by the Department of Children and Family Services that each mental health resident has been assessed and determined to be able to live in the community in an assisted living facility with a limited mental

health license.

(c) Make the community living support plan available for inspection by the resident, the resident's legal guardian, the resident's health care surrogate, and other individuals who have a lawful basis for reviewing this document.

(d) Assist the mental health resident in carrying out the activities identified in the individual's community living support plan.

(4) A facility with a limited mental health license may enter into a cooperative agreement with a private mental health provider. For purposes of the limited mental health license, the private mental health provider may act as the case manager.

Section 7. Section 429.176, Florida Statutes, is amended to read:

429.176 Notice of change of administrator.—If, during the period for which a license is issued, the owner changes administrators, the owner must notify the agency of the change within 10 days and provide documentation within 90 days that the new administrator is licensed under s. 429.50 and has completed the applicable core training ~~educational~~ requirements under s. 429.521(2) ~~s. 429.52~~.

Section 8. Subsection (2) of section 429.178, Florida Statutes, is amended to read:

429.178 Special care for persons with Alzheimer's disease or other related disorders.—

(2)(a) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who has regular contact with such residents, must complete up to 4 hours of initial dementia-

specific training developed or approved by the department. The training shall be completed within 3 months after beginning employment and shall satisfy the core training requirements of s. 429.521(3) ~~s. 429.52(2)(g)~~.

(b) A direct caregiver who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who provides direct care to such residents, must complete the required initial training and 4 additional hours of training developed or approved by the department. The training shall be completed within 9 months after beginning employment and shall satisfy the core training requirements of s. 429.521(3) ~~s. 429.52(2)(g)~~.

(c) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, but who only has incidental contact with such residents, must be given, at a minimum, general information on interacting with individuals with Alzheimer's disease or other related disorders, within 3 months after beginning employment.

Section 9. Subsections (1) and (2) of section 429.28, Florida Statutes, are amended to read:

429.28 Resident bill of rights.—

(1) A ~~No~~ resident of a facility may not ~~shall~~ be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility. Every resident of a facility shall have the right to:

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.

(d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.

(e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. 429.27.

(g) Share a room with his or her spouse if both are residents of the facility.

(h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.

(j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.

(k) At least 30 ~~45~~ days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 30 ~~45~~ days' notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. A resident or the resident's legal guardian or representative may challenge the notice of relocation or termination of residency from the facility pursuant to s. 429.281. ~~In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.~~

(l) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility shall establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman

volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(m) Place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative pursuant to s. 429.55.

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council, where complaints may be lodged. The notice must state that the names or identities of the complainants, or residents involved in a complaint, and the subject matter of a complaint made to the Office of State Long-Term Care Ombudsman or a local long-term care ombudsman council are confidential pursuant to s. 400.0077. The facility must ensure a resident's access to a telephone to call the local ombudsman council, central abuse hotline, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

Section 10. Section 429.281, Florida Statutes, is created to read:

429.281 Resident relocation or termination of residency; requirements and procedures; hearings.—

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

(a) "Relocation" means to move a resident from the facility to another facility that is responsible for the resident's care.

(b) "Termination of residency" means to release a resident from the facility and the releasing facility ceases to be responsible for the resident's care.

(2) Each facility licensed under this part must comply with s. 429.28(1)(k) when a decision is made to relocate or terminate the residency of a resident.

(3) At least 30 days before a proposed relocation or termination of residency, the facility must provide advance notice of the proposed relocation or termination of residency to the resident and, if known, to a family member or the resident's legal guardian or representative. However, in the following circumstances the facility shall give notice as soon as is practicable before the relocation or termination of residency:

(a) The relocation or termination of residency is necessary for the resident's welfare or because the resident's needs cannot be met in the facility, and the circumstances are documented in the resident's record; or

(b) The health or safety of other residents or employees of the facility would be endangered, and the circumstances are documented in the resident's record.

(4) The notice required by subsection (3) must be in writing and contain all information required by rule. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a relocation or termination of residency. This document must include information on how a resident may request the local long-term care ombudsman council to review the notice and

request information about or assistance with initiating a hearing with the Office of Appeals Hearings of the Department of Children and Family Services to challenge the relocation or termination of residency. In addition to any other pertinent information, the form must require the facility to specify the reason that the resident is being relocated or the residency is being terminated, along with an explanation to support this action. In addition, the form must require the facility to state the effective date of the relocation or termination of residency and the location to which the resident is being relocated, if known. The form must clearly describe the resident's challenge rights and the procedures for filing a challenge. A copy of the notice must be given to the resident, the resident's legal guardian or representative, if applicable, and the local long-term care ombudsman council within 5 business days after signature by the resident or the resident's legal guardian or representative, and a copy must be placed in the resident's file.

(5) A resident is entitled to a hearing to challenge a facility's proposed relocation or termination of residency. A resident may request that the local long-term care ombudsman council review any notice of relocation or termination of residency given to the resident. If requested, the local long-term care ombudsman council shall assist the resident, or the resident's legal guardian or representative, with filing a challenge to the proposed relocation or termination of residency. The resident, or the resident's legal guardian or representative, may request a hearing at any time within 10 days after the resident's receipt of the facility's notice of the

proposed relocation or termination of residency. If a resident, or the resident's legal guardian or representative, requests a hearing, the request shall stay the proposed relocation or termination of residency pending a decision from the hearing officer. The facility may not impede the resident's right to remain in the facility, and the resident may remain in the facility until the outcome of the initial hearing, which must be completed within 15 days after receipt of a request for a hearing, unless both the facility and the resident, or the resident's legal guardian or representative, agree to extend the deadline for the decision.

(6) Notwithstanding subsection (5), an emergency relocation or termination of residency may be implemented as necessary pursuant to state or federal law during the period after the notice is given and before the time in which the hearing officer renders a decision. Notice of an emergency relocation or termination of residency must be made by telephone or in person and given to the resident, the resident's legal guardian or representative, and the local long-term care ombudsman council, if requested. This notice must be given before the relocation, if possible, or as soon thereafter as practical. The resident's file must contain documentation to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. Written notice that meets the requirements of subsection (4) must be given the next business day.

(7) The following persons must be present at each hearing authorized under this section:

(a) The resident or the resident's legal guardian or

representative.

(b) The facility administrator or the facility's legal representative or designee.

A representative of the local long-term care ombudsman council may be present at each hearing authorized by this section.

(8)(a) The Office of Appeals Hearings of the Department of Children and Family Services shall conduct hearings under this section. The office shall notify the facility of a resident's request for a hearing.

(b) The Department of Children and Family Services shall establish procedures by rule which shall be used for hearings requested by residents. The burden of proof is by the preponderance of the evidence. A hearing officer shall render a decision within 15 days after receipt of the request for a hearing, unless the facility and the resident, or the resident's legal guardian or representative, agree to extend the deadline for a decision.

(c) If the hearing officer's decision is favorable to a resident who has already been relocated or whose residency has been terminated, the resident must be readmitted to the facility as soon as a bed is available.

(d) The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

(9) The Department of Children and Family Services may adopt rules as necessary to administer this section.

(10) This section applies to relocations or terminations of residency that are initiated by the assisted living facility, and does not apply to those initiated by the resident or by the resident's physician, legal guardian, or representative.

Section 11. Section 429.52, Florida Statutes, is amended to read:

429.52 Preservice orientation ~~Staff training and educational programs; core educational requirement~~.—

(1) Each employee and administrator of an assisted living facility who is newly hired on or after July 1, 2012, shall attend a preservice orientation provided by the assisted living facility which covers topics that enable an employee to relate and respond to the population of that facility. The orientation must be at least 2 hours in duration and, at a minimum, cover the following topics:

(a) Care of persons who have Alzheimer's disease or other related disorders;

(b) Deescalation techniques;

(c) Aggression control;

(d) Elopement prevention; and

(e) Behavior management.

(2) Upon completion of the preservice orientation, the employee and administrator shall sign an affidavit, under penalty of perjury, stating that he or she has completed the preservice orientation. The administrator of the assisted living facility shall maintain the signed affidavit in each employee's work file.

~~(1) Administrators and other assisted living facility staff must meet minimum training and education requirements~~

~~established by the Department of Elderly Affairs by rule. This training and education is intended to assist facilities to appropriately respond to the needs of residents, to maintain resident care and facility standards, and to meet licensure requirements.~~

~~(2) The department shall establish a competency test and a minimum required score to indicate successful completion of the training and educational requirements. The competency test must be developed by the department in conjunction with the agency and providers. The required training and education must cover at least the following topics:~~

~~(a) State law and rules relating to assisted living facilities.~~

~~(b) Resident rights and identifying and reporting abuse, neglect, and exploitation.~~

~~(c) Special needs of elderly persons, persons with mental illness, and persons with developmental disabilities and how to meet those needs.~~

~~(d) Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food.~~

~~(e) Medication management, recordkeeping, and proper techniques for assisting residents with self-administered medication.~~

~~(f) Firesafety requirements, including fire evacuation drill procedures and other emergency procedures.~~

~~(g) Care of persons with Alzheimer's disease and related disorders.~~

~~(3) Effective January 1, 2004, a new facility administrator must complete the required training and education, including the~~

~~competency test, within a reasonable time after being employed as an administrator, as determined by the department. Failure to do so is a violation of this part and subjects the violator to an administrative fine as prescribed in s. 429.19.~~

~~Administrators licensed in accordance with part II of chapter 468 are exempt from this requirement. Other licensed professionals may be exempted, as determined by the department by rule.~~

~~(4) Administrators are required to participate in continuing education for a minimum of 12 contact hours every 2 years.~~

~~(5) Staff involved with the management of medications and assisting with the self-administration of medications under s. 429.256 must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff. The department shall establish by rule the minimum requirements of this additional training.~~

~~(6) Other facility staff shall participate in training relevant to their job duties as specified by rule of the department.~~

~~(7) If the department or the agency determines that there are problems in a facility that could be reduced through specific staff training or education beyond that already required under this section, the department or the agency may require, and provide, or cause to be provided, the training or education of any personal care staff in the facility.~~

~~(8) The department shall adopt rules related to these training requirements, the competency test, necessary procedures, and competency test fees and shall adopt or contract~~

~~with another entity to develop a curriculum, which shall be used as the minimum core training requirements. The department shall consult with representatives of stakeholder associations and agencies in the development of the curriculum.~~

~~(9) The training required by this section shall be conducted by persons registered with the department as having the requisite experience and credentials to conduct the training. A person seeking to register as a trainer must provide the department with proof of completion of the minimum core training education requirements, successful passage of the competency test established under this section, and proof of compliance with the continuing education requirement in subsection (4).~~

~~(10) A person seeking to register as a trainer must also:~~

~~(a) Provide proof of completion of a 4-year degree from an accredited college or university and must have worked in a management position in an assisted living facility for 3 years after being core certified;~~

~~(b) Have worked in a management position in an assisted living facility for 5 years after being core certified and have 1 year of teaching experience as an educator or staff trainer for persons who work in assisted living facilities or other long-term care settings;~~

~~(c) Have been previously employed as a core trainer for the department; or~~

~~(d) Meet other qualification criteria as defined in rule, which the department is authorized to adopt.~~

~~(11) The department shall adopt rules to establish trainer registration requirements.~~

Section 12. Section 429.50, Florida Statutes, is created to read:

429.50 Licensure of assisted living facility administrators.—

(1) Effective July 1, 2013, an assisted living facility may not operate in this state unless the facility is under the management of an assisted living facility administrator who holds a valid license or provisional license issued by the Department of Health.

(2) In order to be eligible to be licensed as an assisted living facility administrator, an applicant must:

(a) Be at least 21 years old;

(b) Meet the educational requirements under subsection (5);

(c) Complete the training requirements in s. 429.521(2);

(d) Pass all required competency tests required in s. 429.521(2) with a minimum score of 80;

(e) Complete background screening pursuant to s. 429.174; and

(f) Otherwise meet the requirements of this part.

(3)(a) An assisted living facility administrator who has been employed continuously for at least the 2 years immediately before July 1, 2012, is eligible for licensure without meeting the educational requirements of this section and without completing the core training and passing the competency test required in s. 429.521(2), if proof of compliance with the continuing education requirements in this part is submitted to the Department of Health and the applicant has not been an administrator of a facility that was cited for a class I or class II violation within the previous 2 years.

(b) Notwithstanding paragraph (a), an assisted living facility administrator who has been employed continuously for at least the 2 years immediately before July 1, 2012, must complete the mental health training and pass the competency test required in s. 429.521(2)(c) if the administrator is employed at a facility that has a mental health license, and the administrator must complete the supplemental training required in s. 429.521(2)(b) before licensure.

(4)(a) An administrator who is licensed in accordance with part II of chapter 468 is eligible for licensure without meeting the educational requirements of this section and without completing the core training and passing the competency test required in s. 429.521(2), if proof of compliance with the continuing education requirements in part II of chapter 468 is submitted to the Department of Health. Any other licensed professional may be exempted as determined by the Department of Health by rule.

(b) Notwithstanding paragraph (a), an administrator who is licensed in accordance with part II of chapter 468, and any other licensed professional who is exempted by rule, must complete the mental health training and pass the competency test required in s. 429.521(2)(c), if the administrator is employed at a facility that has a mental health license, and must complete the supplemental training required in s. 429.521(2)(b) before licensure.

(5) Before licensure, the applicant must submit to the Department of Health proof that he or she is at least 21 years old and has a 4-year baccalaureate degree that includes some coursework in health care, gerontology, or geriatrics. An

applicant who submits proof to the Department of Health that he or she has a 4-year baccalaureate degree or a 2-year associate degree that includes coursework in health care, gerontology, or geriatrics, and has provided at least 2 years of direct care in an assisted living facility or nursing home is also eligible for licensure.

(6) The Department of Health shall issue a license as an assisted living facility administrator to any applicant who successfully completes the required training and passes the competency tests in accordance with s. 429.521, provides the requisite proof of required education, and otherwise meets the requirements of this part.

(7) The Department of Health shall establish licensure fees for licensure as an assisted living facility administrator, which shall be renewed biennially and may not exceed $250 for the initial licensure or $250 for each licensure renewal.

(8) The Department of Health may adopt rules as necessary to administer this section.

Section 13. Section 429.512, Florida Statutes, is created to read:

429.512 Provisional licenses; inactive status.—

(1) The Department of Health may establish by rule requirements for issuance of a provisional license. A provisional license may be issued only for the purpose of filling a position of an assisted living facility administrator which unexpectedly becomes vacant and may be issued for one single period as provided by rule, which may not exceed 6 months. The provisional license may be issued to a person who does not meet all of the licensure requirements established in

s. 429.50, but the Department of Health shall by rule establish minimal requirements to ensure protection of the public health, safety, and welfare. The provisional license may be issued to the person who is designated as the responsible person next in command if the position of an assisted living facility administrator becomes vacant. The Department of Health may set an application fee for a provisional license which may not exceed $500.

(2) An administrator's license becomes inactive if the administrator does not complete the continuing education courses and pass the corresponding tests within the requisite time or if the administrator does not timely pay the licensure renewal fee. An administrator may also apply for inactive license status. The Department of Health shall adopt rules governing the application procedures for obtaining an inactive license status, the renewal of an inactive license, and the reactivation of a license. The Department of Health shall prescribe by rule an application fee for inactive license status, a renewal fee for inactive license status, a delinquency fee, and a fee for reactivating a license. These fees may not exceed the amount established by the Department of Health for the biennial renewal fee for an active license.

(3) The Department of Health may not reactivate a license unless the inactive or delinquent licensee has completed the requisite continuing education and passed the corresponding tests or has paid any applicable biennial renewal or delinquency fees, and paid the reactivation fee.

Section 14. Section 429.521, Florida Statutes, is created to read:

429.521 Training requirements.—

(1) GENERAL REQUIREMENTS.—

(a) Each administrator, applicant to become assisted living facility administrator, or staff member of an assisted living facility must meet minimum training requirements established by rule by the Department of Elderly Affairs. This training is intended to assist facilities in appropriately responding to the needs of residents, maintaining resident care and facility standards, and meeting licensure requirements.

(b) The department, in conjunction with the Department of Children and Family Services and stakeholders, shall establish a standardized core training curriculum that must be completed by an applicant for licensure as an assisted living facility administrator. The curriculum must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. The required training must cover, at a minimum, the following topics:

1. State law and rules relating to assisted living facilities.

2. Residents' rights and procedures for identifying and reporting abuse, neglect, and exploitation.

3. Special needs of elderly persons, persons who have mental illness, and persons who have developmental disabilities and how to meet those needs.

4. Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food.

5. Medication management, recordkeeping, and proper techniques for assisting residents who self-administer medication.

6. Firesafety requirements, including procedures for fire evacuation drills and other emergency procedures.

7. Care of persons who have Alzheimer's disease and related disorders.

8. Elopement prevention.

9. Aggression and behavior management, deescalation techniques, and proper protocols and procedures of the Baker Act as provided in part I of chapter 394.

10. Do not resuscitate orders.

11. Infection control.

12. Admission, continuing residency, and best practices in the industry.

13. Phases of care and interacting with residents.

The department, in conjunction with the Department of Children and Family Services and stakeholders, shall also develop a supplemental course consisting of topics related to extended congregate care, limited mental health, and business operations, including, but not limited to, human resources, financial management, and supervision of staff, which must completed by an applicant for licensure as an assisted living facility administrator.

(c) The department, in conjunction with the Department of Children and Family Services and stakeholders, shall establish a standardized core training curriculum for staff members of an assisted living facility who provide regular or direct care to residents. This training curriculum must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. The training

curriculum must cover, at a minimum, the following topics:

1. The reporting of major incidents.

2. The reporting of adverse incidents.

3. Emergency procedures, including chain-of-command and staff roles relating to emergency evacuation.

4. Residents' rights in an assisted living facility.

5. The recognition and reporting of resident abuse, neglect, and exploitation.

6. Resident behavior and needs.

7. Assistance with the activities of daily living.

8. Infection control.

9. Aggression and behavior management and deescalation techniques.

(d) The department, in conjunction with the agency and stakeholders, shall create two competency tests, one for applicants for licensure as an assisted living facility administrator and one for staff members of an assisted living facility who provide regular or direct care to residents, which test the individual's comprehension of the training required in paragraphs (b) and (c). The competency tests must be reviewed annually and updated as needed to reflect changes in the law, rules, and best practices. The competency tests must be offered in English and Spanish and may be made available through testing centers.

(e) The department, in conjunction with the Department of Children and Family Services and stakeholders, shall develop a comprehensive, standardized training curriculum and competency test to satisfy the requirements for mental health training in subsections (2) and (3). The curriculum and test must be

reviewed annually and updated as needed to reflect changes in the law, rules, and best practices. The competency test must be offered in English and Spanish and may be made available online or through testing centers.

(f) The department, in conjunction with the Department of Children and Family Services and stakeholders, shall establish curricula for continuing education for administrators and staff members of an assisted living facility. Continuing education shall include topics similar to that of the core training required for staff members and applicants for licensure as assisted living facility administrators. Required continuing education must, at a minimum, cover the following topics:

1. Elopement prevention;

2. Deescalation techniques; and

3. Phases of care and interacting with residents.

(g) The department shall ensure that all continuing education curricula include a test upon completion of the training which demonstrates comprehension of the training. The training and the test must be offered in English and Spanish, reviewed annually, and updated as needed to reflect changes in the law, rules, and best practices. Continuing education and the required test may be offered through online courses and any fees associated to the online service shall be borne by the participant.

(h) The department shall adopt rules related to training requirements, competency tests, necessary procedures, and training and testing fees.

(2) ADMINISTRATORS AND APPLICANTS FOR LICENSURE AS AN ASSISTED LIVING FACILITY ADMINISTRATOR.—

(a) An applicant for licensure as an assisted living facility administrator shall complete a minimum of 40 hours of core training that covers the required topics provided for in paragraph (1)(b).

(b) In addition to the required 40 hours of core training, each applicant must complete a minimum of 10 hours of supplemental training related to extended congregate care, limited mental health, and business operations, including, but not limited to, human resources, financial management, and supervision of staff.

(c) An applicant shall take a competency test that assesses the applicant's knowledge and comprehension of the required training provided for in paragraphs (a) and (b). A minimum score of 80 is required to show successful completion of the training requirements of this subsection. The applicant taking the test is responsible for any testing fees.

(d) If an applicant for licensure as an assisted living facility administrator fails any competency test, the individual must wait at least 10 days before retaking the test. If the applicant fails a competency test three times, the individual must retake the applicable training before retaking the test.

(e) A licensed administrator shall receive at least 1 hour of inservice training regarding the facility's policies and procedures related to resident elopement response within 30 days after employment at a facility. Each administrator must be provided a copy of the facility's policies and procedures related to resident elopement response and shall demonstrate an understanding and competency in the implementation of these policies and procedures.

(f) Each licensed administrator of an assisted living facility that has a limited mental health license must complete a minimum of 8 hours of mental health training and pass a competency test related to the training within 30 days after employment at the facility. A minimum score of 80 is required to show successful passage of the mental health competency test. An administrator who does not pass the test within 6 months after completing the mental health training is ineligible to be an administrator of an assisted living facility that has a limited mental health license until the administrator achieves a passing score. The competency test may be made available online or through testing centers and must be offered in English and Spanish.

(g) A licensed administrator of an assisted living facility that has an extended congregate care license must complete a minimum of 6 hours of extended congregate care training within 30 days after employment.

(h) A licensed administrator of an assisted living facility that has a limited nursing services license must complete a minimum of 4 hours of training related to the special needs and care of those persons who require limited nursing services within 30 days after employment.

(i) A licensed administrator must participate in continuing education for a minimum of 18 contact hours every 2 years and pass the corresponding test upon completion of the continuing education course with a minimum score of 80. Completion of all continuing education and a passing score on any corresponding tests must be achieved before license renewal. Continuing education may be offered through online courses, and any fees

associated to the online service shall be borne by the participant.

(3) STAFF TRAINING.—

(a) Each staff member of an assisted living facility shall receive at least 1 hour of inservice training regarding the facility's policies and procedures related to resident elopement response within 30 days after employment. Each staff member must be provided a copy of the facility's policies and procedures related to resident elopement response and shall demonstrate an understanding and competency in the implementation of these policies and procedures.

(b) Each staff member of an assisted living facility who is hired on or after July 1, 2012, and who provides regular or direct care to residents, shall complete a minimum of 20 hours of core training within 90 days after employment at a facility. The department may exempt nurses, certified nursing assistants, or home health aides who can demonstrate completion of training that is substantially similar to that of the core training required in this paragraph.

(c) Each staff member of an assisted living facility who is hired on or after July 1, 2012, and who provides regular or direct care to residents, must take a competency test within 90 days after employment at a facility which assesses the individual's knowledge and comprehension of the required training provided for in paragraph (b). A minimum score of 70 on the competency test is required to show successful completion of the training requirements. If a staff member fails the competency test, the individual must wait at least 10 days before retaking the test. If a staff member fails the competency

test three times, the individual must retake the initial core training before retaking the test. If a staff member does not pass the competency test within 1 year after employment, the individual may not provide regular or direct care to residents until the individual successfully passes the test. The individual taking the test is responsible for any testing fees.

(d) A staff member of an assisted living facility that has a limited mental health license who provides regular or direct care to residents must complete a minimum of 8 hours of mental health training within 30 days after employment. Within 30 days after this training, the staff member must pass a competency test related to the mental health training with a minimum score of 70. If a staff member does not pass the competency test, the individual may not provide regular or direct care to residents until the individual successfully passes the test. The competency test may be made available online or through testing centers and must be offered in English and Spanish.

(e) A staff member of an assisted living facility who prepares or serves food must receive a minimum of 1 hour of inservice training in safe food handling practices within 30 days after employment.

(f) A staff member of an assisted living facility who manages medications and assists with the self-administration of medications under s. 429.256 must complete, within 30 days after employment, a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff. The department shall establish by rule the minimum requirements for this training, including continuing education requirements.

(g) Other staff members of an assisted living facility

shall participate in training relevant to their job duties as specified by rule of the department.

(h) If the department or the agency determines that there are problems in a facility which could be reduced through specific staff training beyond that already required under this subsection, the department or the agency may require and provide, or cause to be provided, additional training of any staff member in the facility.

(i) Each staff member of an assisted living facility who provides regular or direct care to residents must participate in continuing education for a minimum of 10 contact hours every 2 years and pass the corresponding test upon completion of the continuing education course with a minimum score of 70. If an individual does not complete all required continuing education and pass any corresponding tests within the requisite time period, the individual may not provide regular or direct care to residents until the individual does so. Continuing education may be offered through online courses and any fees associated to the online service shall be borne by the participant.

Section 15. Section 429.522, Florida Statutes, is created to read:

429.522 Core training providers; certification.—

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

(a) "Core trainer certification" means a professional credential awarded to individuals demonstrating core competency in the assisted living facility practice area by a department-approved third-party credentialing entity.

(b) "Core competency" means the minimum knowledge, skills, and abilities necessary to perform work responsibilities.

(c) "Core curriculum" means the minimum statewide training content that is based upon the core competencies and is made available to persons providing services at an assisted living facility.

(d) "Third-party credentialing entity" means a department-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.

(2) THIRD-PARTY CREDENTIALING ENTITIES.—The department shall approve and provide oversight for one or more third-party credentialing entities for the purpose of developing and administering core trainer certification programs for persons providing training to applicants for licensure as an assisted living facility administrator and to staff members of an assisted living facility. A third-party credentialing entity shall request this approval in writing from the department. In order to obtain approval, the third-party credentialing entity shall:

(a) Establish professional requirements and standards that applicants must achieve in order to obtain core trainer certification and to maintain such certification. At a minimum, an applicant shall meet one of the following requirements:

1. Provide proof of completion of a 4-year baccalaureate degree from an accredited college or university and have worked in a management position in an assisted living facility for at least 3 years after obtaining core trainer certification;

2. Have worked in a management position in an assisted living facility for at least 5 years after obtaining core trainer certification and have at least 1 year of teaching

experience as an educator or staff trainer for persons who work in assisted living facilities or other long-term care settings;

3. Have been previously certified as a core trainer for the department;

4. Have a minimum of 5 years of employment with the agency, or the former Department of Health and Rehabilitative Services, as a surveyor of assisted living facilities;

5. Have a minimum of 5 years of employment in a professional position in the agency's assisted living unit;

6. Have a minimum of 5 years of employment as an educator or staff trainer for persons working in an assisted living facility or other long-term care setting;

7. Have a minimum of 5 years of employment as a core trainer for an assisted living facility, which employment was not directly associated with the department; or

8. Provide proof of at least a 4-year baccalaureate degree from an accredited college or university in the areas of health care, gerontology, social work, education, or human services, and a minimum of 4 years of experience as an educator or staff trainer for persons who work in an assisted living facility or other long-term care setting after receiving core trainer certification.

(b) Apply core competencies according to the department's standards as provided in s. 429.521.

(c) Maintain a professional code of ethics and establish a disciplinary process and a decertification process that applies to all persons holding core trainer certification.

(d) Maintain a database, accessible to the public, of all persons who have core trainer certification, including any

history of violations.

(e) Require annual continuing education for persons who have core trainer certification.

(f) Administer a continuing education provider program to ensure that only qualified providers offer continuing education opportunities for certificateholders.

(3) CORE TRAINER CERTIFICATION.—Effective July 1, 2013, an individual seeking core trainer certification must provide the third-party credentialing entity with, at a minimum, proof of:

(a) Completion of the minimum core training requirements in s. 429.521(2) and successful passage of the corresponding competency tests with a minimum score of 80;

(b) Compliance with the continuing education requirements in s. 429.521(2); and

(c) Compliance with the professional requirements and standards required in paragraph (2)(a).

(4) ADOPTION OF RULES.—The department shall adopt rules necessary to administer this section.

Section 16. Section 429.55, Florida Statutes, is created to read:

429.55 Electronic monitoring of resident's room.—

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

(a) "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an assisted living facility and the making of tapes or recordings through use of the device after making a request to the facility and obtaining all necessary consent to allow electronic monitoring.

(b) "Electronic monitoring device" means video surveillance

cameras or audio devices installed in the room of a resident which are designed to acquire communications or other sounds occurring in the room. The term does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

(2) COVERT USE OF ELECTRONIC MONITORING DEVICE.—For purposes of this section, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(a) The placement and use of the device is not open and obvious; and

(b) The facility and the agency are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

The agency and the facility are not civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of the resident.

(3) REQUIRED FORM ON ADMISSION.—The agency shall prescribe by rule a form that must be completed and signed upon a resident's admission to a facility by or on behalf of the resident. The form must state:

(a) That a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(b) That a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room

of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(c) That a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under this section and that, if the facility refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring, the person should contact the agency. The form must also provide the agency's contact information;

(d) The basic procedures that must be followed in order to request authorized electronic monitoring;

(e) That the electronic monitoring device and all installation and maintenance costs must be paid for by the resident or the resident's guardian or legal representative;

(f) The legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(g) Any other information regarding covert or authorized electronic monitoring which the agency considers advisable to include on the form.

(4) AUTHORIZATION AND CONSENT.—

(a) If a resident has the capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this section, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action, such as requesting electronic monitoring, only the guardian of the resident may

request electronic monitoring under this section.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this section.

(d) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the facility on a form prescribed by the agency.

(e) The form prescribed by the agency must require the resident or the resident's guardian or legal representative to:

1. Release the facility from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

2. If the electronic monitoring device is a video surveillance camera, choose whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances in order to protect the dignity of the resident; and

3. Obtain the consent of the other residents in the room, using a form prescribed for this purpose by the agency, if the resident resides in a multiperson room.

(f) Consent under subparagraph (e)3. may be given only by:

1. The other resident or residents in the room;

2. The guardian of the other resident in the room, if the person has been judicially declared to lack the required capacity to consent; or

3. The legal representative of the other resident in the room, if the person does not have capacity to sign the form but

has not been judicially declared to lack the required capacity to consent.

(g) The form prescribed by the agency under subparagraph (e)3. must condition the consent of another resident in the room on the other resident also releasing the facility from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(h) Another resident in the room may:

1. If the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

2. Condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(i) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this subsection.

(j) Authorized electronic monitoring may not commence until all request and consent forms required by this subsection have been completed and returned to the facility, and the monitoring must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

(k) The agency may include other information that the agency considers to be appropriate on any of the forms that the agency is required to prescribe under this subsection.

(l) The agency shall adopt rules to administer this subsection.

(5) AUTHORIZED ELECTRONIC MONITORING; GENERAL PROVISIONS.—

(a) A facility shall allow a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The facility shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance of the resident's room which states that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this section is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) A facility may not refuse to admit an individual to residency in the facility and may not remove a resident from the facility because of a request to conduct authorized electronic monitoring.

(e) A facility shall make reasonable physical accommodations for authorized electronic monitoring, including providing:

1. A reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

2. Access to power sources for the video surveillance camera or other electronic monitoring device.

(f) A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about a room.

(g) If authorized electronic monitoring is conducted, the facility may require the resident or the resident's guardian or

legal representative to conduct the electronic monitoring in plain view.

(h) A facility may place a resident in a different room in order to accommodate a request to conduct authorized electronic monitoring.

(6) REPORTING ABUSE AND NEGLECT.—A person shall report abuse to the central abuse hotline of the Department of Children and Family Services pursuant to s. 415.103 based on the person's viewing of or listening to a tape or recording by an electronic monitoring device if the incident of abuse is acquired on the tape or recording. A person shall report neglect to the central abuse hotline pursuant to s. 415.103 based on the person's viewing of or listening to a tape or recording by an electronic monitoring device if it is clear from viewing or listening to the tape or recording that neglect has occurred. If a person reports abuse or neglect to the central abuse hotline pursuant to this subsection, the person shall also send to the agency a copy of the tape or recording which indicates the reported abuse or neglect.

(7) USE OF TAPE OR RECORDING.—

(a) Subject to applicable rules of evidence and procedure and the requirements of this subsection, a tape or recording created through the use of covert or authorized electronic monitoring may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

1. The tape or recording shows the time and date that the events acquired on the tape or recording occurred;

2. The contents of the tape or recording have not been edited or artificially enhanced; and

3. If the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the agency shall identify for the agency each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found.

(8) REQUIRED NOTICE.—Each facility shall post a notice at the entrance to the facility stating that the rooms of some residents are monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious.

(9) ENFORCEMENT.—The agency may impose appropriate administrative sanctions under this part against an administrator of a facility who knowingly:

(a) Refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(b) Refuses to admit an individual to residency or allows the removal of a resident from the facility because of a request to conduct authorized electronic monitoring; or

(c) Violates another provision of this section.

(10) RULES.—The agency shall adopt rules as necessary to administer this section.

Section 17. This act shall take effect July 1, 2012.

AARP Comments?Questions re: SB 2050

Substitute amendment 150160

1/25/12

AARP supports legislation that promotes early intervention and prevention of abuse, harm or neglect of ALF residents, that clarifies roles and responsibilities of the Omsbudsman program and that avoids interfering with or impeding that program, and that enhances credentialing/training or both for all direct care personnel in ALFs.

This legislation moves positively on all points.

As you proceed to refine this legislation, hope you can clarify or consider some further changes:

-Multiple agencies (AHCA, facility regulation, DCF (dealing with limited mental health licenses/protective investigations, relocation/termination hearings), DOEA and DOH. Cite case where disparate obligations in past, have led to criticism that responses were slow, disjointed or otherwise unacceptable. Urge Legislature to consider making one agency responsible for timely resolving inter-agency issues—be it on broad organizational and operational issues, coordinating investigations and agency involvement—all of this to avoid, "who's on first" situations going forward, especially on cases where risk of abuse, neglect and harm to residents is an issue or could be prevented if action is timely.

-The credentialing/training requirements in this legislation are conditions of employment and continued employment—which is GREAT! AARP also notes that this amendment provides that payment of the costs may be born by the employer or the staff (rather than only by staff in the original-filed bill. That, too, is a welcome improvement. There may be times when it is cost-effective for the employer to pay those costs: The employers costs should be deductible expenses for the ALFs; lower-paid service personnel, in particular, in ALFs often will not have adequate income to avail themselves of income tax itemized deductions, so the costs for them would come from their net salaries—on which they are already obligated to pay personal income tax.

-Line 156 et seq.: If a resident is not a mental health resident, the facility is not a limited mental health licensee and the resident's condition changes such that the resident needs mental health services, how will this be handled? Will the resident have to relocate to a facility that holds a limited mental health license? Is a procedure available and clear that would allow the resident to remain in a facility that has no current uncorrected deficiencies or violations pending processing of the limited mental health license application and pending the required training of staff for that license?

-Line 243: "Shall" changed to "may." AARP would prefer to keep the mandatory rather than permissive language.

Line 409 et seq.: (6) provides for emergency "termination of residency." If an ALF resident continues to meet the standard for residency in an ALF, the discharging facility (which will no longer be responsible for the care of the person whose residency is being terminated) should have an obligation to inform the resident/guardian/legal representative of the location, and, if known, the availability of space, in an alternate and available ALF or (feasible alternative). At a minimum, the discharging ALF could contact the ADRC to determine alternate residency options or provide the ADRC's contact information to the resident/guardian/legal representative. "Dumping" of residents should be "suspect.". Even under emergency situations, there should be some discharge planning. At least the facility should note in the record what discharge planning assistance it provides.

Line 595/605: Suggest adding... employed "in that capacity" continuously... An ALF administrator could be employed continuously for 2 years in a capacity other than as an ALF administrator.

Line 653: Provisional license. Would you consider establishing a pool of retired, (inactive ?)ALF administrators (a registry, perhaps), who could/would want to be available to temporarily assume the administration until a fully qualified administrator could become licensed/trained, etc. The section, as currently written, would permit a person who "does not meet all of the licensure requirements" to step in for up to six months This could be a resource to assist ALFs, and to provide more assurance to ALF residents that competent experienced administrators are managing their residential environments, at least until another licensed administrator could be put in place.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic Assisted Living

Bill Number 2050 *(if applicable)*

Name Carol Berkowitz

Amendment Barcode *(if applicable)*

Job Title Sr. Director

Address 1812 Riggins Rd *Street*
Tallahassee *City* *State* *Zip*

Phone 850/671-3700

E-mail Cberkowitz@fahsa.org

Speaking: ☐ For ☐ Against ☑ Information

Representing Florida Association of Homes & Services for Aging

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic AHF's

Bill Number 2050 *(if applicable)*

Name Malcolm Harrison

Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 12006 McIntosh Rd *Street*
City *State* *Zip*

Phone 813.956.7401

E-mail mharrison@stoneledgemanor.com

Speaking: ☐ For ☐ Against ☒ Information

Representing FALA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-25-12
Meeting Date

Topic Assisted Living Bill Number 2050 *(if applicable)*

Name Michael Bay Amendment Barcode *(if applicable)*

Job Title Owner / Administrator

Address 152 SE Defender Dr Phone 386-623-3606
Street

Lake City FL 32025 E-mail Mbay101@yahoo.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information

Representing Eastside Care ALF & The Plantation on Summers ALF

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/12
Meeting Date

Topic ALFs Bill Number 2050 *(if applicable)*

Name JACK McRAY Amendment Barcode *(if applicable)*

Job Title

Address 200 W. COLLEGE ST. #304 Phone 850-577-5187
Street

TLH FL 32301 E-mail jmcray@aarp.org
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AARP

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2012
Meeting Date

Topic Assisted Living
Bill Number SB2050 *(if applicable)*

Name Pat Lange
Amendment Barcode _____ *(if applicable)*

Job Title Executive Director

Address 2447 Millcreek Court, Suite 3
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 850.383.1159
E-mail patl@falamail.org

Speaking: ☐ For ☐ Against ☑ Information

Representing Florida Assisted Living Association

Appearing at request of Chair: ☐ Yes ☑ No
Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1 25 12
Meeting Date

Topic ALF licensing reforms
Bill Number 2050 *(if applicable)*

Name Dan Hendrickson
Amendment Barcode _____ *(if applicable)*

Job Title Asst Public Defender, 2d Judicial Circuit

Address 301 S Monroe St, 4th Flr N
Street
Tallahassee, Fl 32301
City *State* *Zip*

Phone 850/ 606-1037
E-mail dan.hendrickson@flpd2.com

Speaking: ☐ For ☐ Against ☑ Information

Representing Fla Public Defender Assn

Appearing at request of Chair: ☐ Yes ☐ No
Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

CourtSmart Tag Report

Room: SB 401 **Case:** **Type:**
Caption: Children, Families, and Elder Affairs Committee **Judge:**

Started: 1/25/2012 3:38:23 PM
Ends: 1/25/2012 5:30:17 PM Length: 01:51:55

3:38:25 PM Roll Call
3:38:45 PM Senator Storms opening remarks
3:40:56 PM CS/SB 554, Disability Awareness (Temporarily Postponed)
3:41:33 PM SB 1808, Psychotropic Medications to Children (Senator Storms)
3:46:01 PM SB 1808, Psychotropic Medications (Public Testimony)
3:51:00 PM Senator Storms closing remarks
3:52:40 PM SB 1808, Psychotropic Medications vote
3:53:13 PM SB 1658, Public Assistance (Senator Storms)
3:55:57 PM Senator Detert question
3:56:22 PM Senator Storms response
3:57:02 PM Senator Detert remarks
3:57:52 PM Senator Storms response
3:59:36 PM Senator Detert remarks
4:00:39 PM Senator Gibson question
4:00:59 PM Senator Storms response
4:01:48 PM Senator Gibson question
4:02:07 PM Senator Storms response
4:02:39 PM Senator Gibson question
4:03:14 PM Senator Storms response
4:04:29 PM Senator Gibson question
4:04:49 PM Senator Storms response
4:05:24 PM Senator Gibson question
4:06:03 PM Senator Storms response
4:06:51 PM SB 1658, Public Assistance (Public Testimony)
4:08:12 PM Senator Latvala remarks
4:09:58 PM Senator Detert remarks
4:11:32 PM Senator Gibson remarks
4:13:29 PM Senator Rich remarks
4:14:28 PM Senator Storms closing remarks
4:16:38 PM SB 1658, Public Assistance vote
4:16:58 PM Senator Rich remarks
4:18:17 PM SB 2052, Sexually Violent Predators (CFEA)
4:18:24 PM Renai Farmer, CFEA Staff Director, remarks
4:19:07 PM SB 2052, Sexually Violent Predators (barcode 443924) by Senator Storms
4:20:24 PM SB 2052, Sexually Violent Predators (barcode 520814) by Senator Storms
4:21:06 PM Senator Storms remarks
4:21:23 PM SB 2052, Sexually Violent Predators vote
4:21:42 PM SB 2046, Substance Abuse and Mental Health Services (CFEA)
4:21:47 PM Ashley Daniell, CFEA Staff Attorney, SB 2046 -- Substance Abuse and Mental Health Services
4:22:30 PM Senator Latvala remarks
4:22:44 PM Senator Storms remarks
4:22:56 PM SB 2046, Substance Abuse and Mental Health Services (Public Testimony)
4:25:04 PM SB 2046, Substance Abuse and Mental Health Services vote
4:25:22 PM CS/SB 370, Supervised Visitation (Senator Wise)
4:26:55 PM CS/SB 370, Supervised Visitation (barcode 946218) by Senator Storms and Dockery
4:27:30 PM CS/SB 370, Supervised Visitation (Public Testimony)
4:28:03 PM CS/SB 370, Supervised Visitation vote
4:28:38 PM SB 2044, Child Protection (CFEA)
4:28:54 PM Carol Preston, CFEA Chief Legislative Analyst -- SB 2044, Child Protection
4:29:39 PM SB 2044, Child Protection vote
4:29:57 PM SB 2054, Domestic Violence (CFEA)
4:30:07 PM Carol Preston, CFEA Chief Legislative Analyst -- SB 2054, Domestic Violence

4:30:44 PM SB 2054, Domestic Violence (barcode 424090) by Senator Storms and Rich
4:31:13 PM SB 2054, Domestic Violence (barcode 842202) by Senator Storms and Rich
4:31:39 PM SB 2054, Domestic Violence (barcode 289178) by Senator Storms and Rich
4:32:22 PM SB 2054, Domestic Violence vote
4:33:12 PM SB 2048, Department of Children and Family Services (CFEA)
4:33:29 PM Carol Preston, CFEA Chief Legislative Analyst -- SB 2048, Department of Children and Family Services
4:34:59 PM Senator Dockery question
4:35:11 PM Carol Preston, CFEA Chief Legislative Analyst response
4:35:45 PM SB 2054, Domestic Violence (Public Testimony)
4:36:47 PM Senator Rich question
4:37:17 PM SB 2054, Domestic Violence (Public Testimony)
4:38:15 PM Senator Dockery remarks
4:39:00 PM Senator Rich remarks
4:39:11 PM SB 2054, Domestic Violence vote
4:39:44 PM SB 2050, Assisted Living Facilities (CFEA)
4:40:08 PM Ashley Daniell, CFEA Staff Attorney, SB 2050 -- Assisted Living Facilities
4:42:24 PM SB 2050, Assisted Living Facilities (barcode 150160) by Senator Storms and Rich
4:43:15 PM SB 2050, Assisted Living Facilities (Public Testimony)
4:45:40 PM Senator Dockery question
4:45:49 PM SB 2050, Assisted Living Facilities (Public Testimony)
4:46:19 PM Senator Gibson question
4:46:28 PM SB 2050, Assisted Living Facilities (Public Testimony)
4:47:58 PM Senator Dockery question
4:48:15 PM Senator Rich response
4:48:45 PM Ashley Daniell, CFEA Staff Attorney, response
4:49:16 PM Senator Dockery question
4:49:22 PM Senator Rich response
4:49:47 PM Senator Dockery question
4:50:01 PM Ashley Daniell, CFEA Staff Attorney response
4:50:13 PM Senator Dockery question
4:50:19 PM SB 2050, Assisted Living Facilities (Public Testimony)
5:00:23 PM Senator Dockery question
5:00:48 PM SB 2050, Assisted Living Facilities (Public Testimony)
5:04:24 PM SB 2050, Assisted Living Facilities vote
5:04:42 PM Senator Rich remarks
5:05:07 PM Senator Storms motion
5:05:29 PM Senator Latvala motion
5:05:56 PM SB 1516, Agency for Persons with Disabilities (Senator Negron)
5:11:19 PM Michael Hansen, Director Agency for Persons with Disabilities, remarks
5:12:38 PM SB 1516, Agency for Persons with Disabilities (barcode 874258) by Senator Detert
5:13:16 PM SB 1516, Agency for Persons with Disabilities (barcode 580344) by Senator Detert
5:13:25 PM SB 1516, Agency for Persons with Disabilities (barcode 334848) by Senator Latvala
5:13:43 PM SB 1516, Agency for Persons with Disabilities (Public Testimony)
5:15:33 PM SB 1516, Agency for Persons with Disabilities (barcode 187182) by Senator Storms
5:16:30 PM Senator Latvala remarks
5:17:44 PM Senator Negron remarks relating to amendment (barcode 187182) by Senator Storms
5:18:31 PM Senator Storms remarks
5:21:10 PM SB 1516, Agency for Persons with Disabilities (barcode 194354) by Senator Latvala
5:21:51 PM SB 1516, Agency for Persons with Disabilities (Public Testimony)
5:22:04 PM Senator Detert motion
5:22:16 PM SB 1516, Agency for Persons with Disabilities (barcode 358166) by Senator Detert
5:23:10 PM SB 1516, Agency for Persons with Disabilities (barcode 678590) by Senator Rich
5:23:21 PM SB 1516, Agency for Persons with Disabilities (barcode 568336) by Senator Rich
5:24:05 PM SB 1516, Agency for Persons with Disabilities (Public Testimony)
5:29:11 PM SB 1516, Agency for Persons with Disabilities vote
5:29:30 PM Adjourn