

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1503 CS

Agency for Persons with Disabilities

SPONSOR(S): Galvano

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	8 Y, 0 N, w/CS	DePalma	Walsh
2) Health Care Appropriations Committee	15 Y, 0 N, w/CS	Ekholm	Massengale
3) Health & Families Council	10 Y, 0 N, w/CS	DePalma	Moore
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

In 2004, the Developmental Disabilities program in the Department of Children and Family Services (DCF, or “the department”) was transferred to the newly-created Agency for Persons with Disabilities (APD, or “the agency”).¹ Although the powers, duties, assets and liabilities of the former Developmental Disabilities (DD) Program Office of DCF were transferred to APD, various statutes relating to the DD Program Office were not amended and updated to reflect the creation of APD, or to clarify the agency’s jurisdiction.

The Council Substitute for HB 1503 CS proposes several substantive, conforming and technical changes to statutes relating to individuals with disabilities and the Agency for Persons with Disabilities.

The Agency for Persons with Disabilities reports no fiscal impact associated with the CS. However, the Department of Management Services has indicated that implementation of the provision in the CS providing for access to and use of electronic and information technology by state employees and members of the public with disabilities would likely create a “significant” fiscal impact, and require an increase in staffing.

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

¹ Chapter 2004-267, L.O.F.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

The Agency for Persons with Disabilities

In 2004, the Developmental Disabilities program in the Department of Children and Family Services (DCF or department) was transferred to the newly-created Agency for Persons with Disabilities (APD or agency).² Although the powers, duties, assets, and liabilities of the former Developmental Disabilities (DD) Program Office of DCF were transferred to APD, various statutes relating to the DD Program Office were not amended and updated to reflect the creation of the agency and to clarify the jurisdiction of APD.

The agency is responsible for providing services for persons with developmental disabilities in Florida. The stated agency mission is to support persons with developmental disabilities in living, learning, and working in all aspects of community life.³ The goals of the agency include increasing the number of persons with developmental disabilities who are employed in integrated settings, promoting consumer independence through increasing choice, reducing reliance on institutional settings, reducing the waiting list for services, and improving consumer outcomes and service quality.⁴

A developmental disability is defined as "a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."⁵ An individual is eligible for services if their domicile is in Florida, they have a developmental disability, and are three years of age or older.⁶ Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.⁷

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

² Chapter 2004-267, L.O.F.

³ Agency for Persons with Disabilities, briefing materials, October 18, 2005.

⁴ *Ibid.*

⁵ s. 393.063(10), F.S.

⁶ Children from birth to three years of age with developmental disabilities are served by Children's Medical Services in the Department of Health, s. 393.064, F.S.

⁷ "High-risk child" is defined in s. 393.063(23) F.S.

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

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

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

The agency estimated that the total enrollment in both waiver programs for FY 2005/2006 will be 32,603 clients. The enrollment for all waiver state funded only services is projected by APD to be approximately 40,000 by the end of Fiscal Year 2005/2006.⁸

The agency also provides fiscal and programmatic management of developmental disabilities institutions and those community-based services currently funded by only state funds. Statewide, there are three developmental disabilities institutions serving approximately 1,100 residents.

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

PROPOSED CHANGES

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

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

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

Access to Confidential Records and Reports [Section 3]

Currently, the Department of Health (DOH), the Agency for Health Care Administration (AHCA), and the Department of Elderly Affairs (DOEA) have access to abuse records as provided in s. 39.202, F.S., and s. 415.107, F.S. Prior to 2004, when the Developmental Disabilities program was administered by DCF, the program had access to both child and adult abuse records and investigations. Access to

⁸ Agency for Persons with Disabilities, briefing materials.

these records provided information necessary for licensing facilities housing DD clients and provided managers with reports of abuse or neglect to clients in licensed facilities. These records are confidential pursuant to s. 39.202, F.S., and s. 415.107, F.S.,⁹ and the agency is now unable to access reports that involve instances of alleged abuse that occur in facilities licensed by APD. As a result, since 2004, whenever DCF has had to remove a resident from an APD-licensed facility because of abuse or neglect in that facility, DCF has been unable to share any information about the abuse with the agency.

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

Court-ordered Developmental Disability Services [Section 4]

Pursuant to s. 39.407, F.S., a court may order a dependent child to be examined by a health care professional, psychiatrist, psychologist, or developmental disability evaluation team. The judge may also order the child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service providers. According to APD, the references to developmental disabilities in this section are inconsistent with other provisions in state and federal law and are creating confusion for clients, families, child welfare workers, and the courts. Although mental health services may be ordered by a court, eligibility for services for persons with disabilities, including children, are determined in accordance with ch. 393, F.S., which specifies the criteria for qualifying an individual for services.

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

The agency maintains that, unlike DCF, APD is not a party to these proceedings. Some dependency courts, pursuant to s. 39.407(5), F.S., have ordered APD to provide services to children. The agency has challenged these court orders via Petitions for Writs of Prohibition, claiming a lack of jurisdiction, and prevailed at the appellate level.¹⁰ The Florida Supreme Court is presently considering granting certiorari on two of these cases.

The CS amends s. 39.407(5), F.S., to clarify that nothing in the section confers jurisdiction to the court with regard to determining eligibility or ordering services under chapter 393.

⁹ s. 39.202 (1), F.S., reads "[i]n order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in the possession of those entities granted access as set forth in this section." Section 415.107, F.S., reads, "[i]n order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113."

¹⁰ See generally *Agency for Persons with Disabilities v. F.G.*, 917 So. 2d 837 (Fla. 3rd DCA 2005) (holding that a trial court lacks constitutional or statutory authority to subpoena duces tecum officers of the state concerning a matter that is within their executive authority); *Agency for Persons with Disabilities v. R.N.*, 917 So. 2d 199 (Fla. 3rd DCA 2005).

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

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

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

The CS repeals s. 393.061, F.S., which previously specified that Chapter 393 was to be known as the “Developmental Disabilities Prevention and Community Services Act.”

The CS specifies certain legislative findings relating to treatment of individuals with developmental disabilities, and proposes several definitional changes:

- Deletes definitions for “day habilitation facility,” “day habilitation service,” “enclave,” “epilepsy,” “follow-along services,” “job coach,” “mobile work crew,” “normalization principle,” “reassessment,” and “supported employee.”
- Moves the definition of “comprehensive transitional education program” presently found in s. 393.063(7), F.S., to newly created s. 393.18, F.S., and notes that the primary goal of services offered through such programs is incorporating the principle of self-determination—not normalization—in establishing permanent residence for persons with maladaptive behaviors in facilities unassociated with the comprehensive transitional education program.
- Moves the definition of “severe self-injurious behavior” presently found in s. 393.063(39), F.S., to s. 393.0641, F.S., creating a diagnostic, treatment, training and research program for clients exhibiting such behavior.
- Provides that “adult day training” refers to training services that take place in a nonresidential setting, separate from the home or facility in which the client resides, and which are intended to support the participation of clients in daily, meaningful and valued routines of the community, and which may include work-like settings that do not meet the definition of supported employment.
- Deletes the definition of a “comprehensive transitional education program”, and a reference to the program as established in s. 393.18, F.S.,—newly created by the CS—is included;
- Specifies that a “developmental disability” must manifest itself before the age of 18.
- Deletes cross-references to other definitions of “direct service provider” found in chapters 39 and 415, F.S., specifies that such providers must have direct face-to-face contact with a client while providing services, and deletes the requirement that providers not be a relative of the client to whom they are providing services.
- Specifies that an “express and informed consent” occurs after an individual makes a “knowing” decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.
- Amends the definition for a “licensed care facility” to indicate that such facilities are to be licensed under chapter 393, F.S.
- Provides that a “group home facility” is to be licensed under chapter 393, F.S., and deletes a provision in this definition specifying that group home facilities shall not be considered commercial enterprises.
- Provides that a “high risk child” is a child from 3 to 5 years of age¹¹ exhibiting certain characteristics.
- Specifies that the services contemplated under the definition of “medical/dental services” includes medically-necessary services provided or ordered for a client by a person licensed under chapters 458, 459, or 466, F.S.

¹¹ s. 393.063(23), F.S., currently provides that a “high-risk child” is a child from birth to 5 years of age exhibiting certain characteristics.

- Specifies that, among those services considered “personal care services,” meal preparation is to be included; provides that personal care services are services that “are incidental to the care furnished and essential to the health, safety, and welfare of the client,” deletes that portion of the definition indicating that personal care services are not to be construed to mean the provision of medical, nursing, dental, or mental health services by the staff of a facility; also deletes the portion of the definition indicating that an emergency response device installed in the apartment or living area of a resident is not classified as a personal service.
- Specifies that the retardation exhibited by an individual suffering from “Prader-Willi syndrome” is mild to moderate mental retardation.
- Specifies that “residential habilitation” means supervision and training with the acquisition, retention or improvement in skills related to activities of daily living, such as personal hygiene skills, homemaking skills, and the social and adaptive skills necessary to enable the individual to reside in the community.
- Deletes a provision found in the definition of “retardation” providing that significantly sub-average general intellectual functioning must manifest during the period from conception to age 18.
- Creates a definition for “self-determination” as an individual’s freedom to exercise the same rights as all other citizens, authority to exercise control over—and prioritize use of—funds needed for one’s own support, responsibility for the wise use of public funds, and self advocacy to speak and advocate for oneself to gain independence and ensure that individuals with a developmental disability are treated equally.
- Deletes the portion of the definition of “supported employment” requiring that such employment must be provided in a normal employment setting, which provides at least 20 hours employment per week.

Additionally, the CS supplies definitions for “restraint” and “seclusion.”

- A “restraint” refers to a physical device, method, or drug used to control dangerous behavior. A physical restraint is any manual method or physical device, material, or equipment attached or adjacent to the individual’s body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one’s body. A drug used as a restraint is a medication used to control the person’s behavior or to restrict his or her freedom of movement and is not a standard treatment for the person’s medical or psychiatric condition. The CS specifies that physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint, and provides that restraint does not include physical devices, such as orthopedically-prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for purposes of orthopedic, surgical, or other similar medical treatment; or when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.
- “Seclusion” refers to the involuntary isolation of a person in a room or area from which the person is prevented from leaving. Such prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. The CS specifies that seclusion does not refer to isolation because of the medical condition or symptoms of the individual.

Developmental Disabilities Prevention Services [Section 11]

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

Client Application Procedures and Eligibility Criteria [Section 13]

The CS provides that application for services shall be made in writing to the agency, in the “service area”—and not the “district”—in which the applicant resides, and specifies that applicant review is the responsibility of the agency, and not employees of the agency’s developmental services program. Two additional provisions are also added to s. 393.065, F.S., in the CS. First, with the exception of clients deemed to be in crisis whom the agency shall serve as described in rule, the CS directs APD to place at the top of its wait list for waiver services those children on the wait list who are from the child welfare system with an open case in the Department of Children and Family Services’ statewide automated child welfare information system. Second, the CS provides APD with rulemaking authority to specify application procedures and eligibility criteria for the above section.

Family and Individual Support Plans [Section 14]

The CS requires APD to provide, either directly or through contract, for the development of a family support plan for children ages birth to 18 years of age, and an individual support plan for each client. The CS also deletes a provision prohibiting the state from deducting residential costs for children from social security disability payments.¹² In addition to APD, the CS provides that a designated contractor may also submit the required annual report to the client required under s. 393.0651(7), F.S.

Dual Employment of Agency Employees [Section 15]

The CS creates s. 393.0654, F.S., relating to direct service providers. This section specifies that it is not a violation of s. 112.313(7), F.S.,¹³ for a direct service provider who is employed by the agency to own, operate, or work in a private facility that is a service provider under contract with the agency under certain circumstances. These circumstances include where the employee does not have any role in agency placement recommendations or the client decisionmaking process; where the provider’s employment with the agency does not compromise the ability of the client to make a voluntary choice among private providers; where the employee’s outside employment does not create a conflict with, or impede the full and faithful discharge of, such employee’s public duties; and where the provider discusses the dual employment or ownership status with the agency and all clients within the care of such provider.

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

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

¹² The agency maintains that they will continue to abide by court rulings that prohibit such deductions, but that they propose taking this language out of the statute in the event that there are later modifications to the ruling on which this provision is based.

¹³ Relating to conflicting employment or contractual relationships.

The CS revises s. 393.0657, F.S., relating to individuals not required to be refingerprinted or rescreened,¹⁴ and specifies that individuals who have undergone any portion of the background screening required under s. 393.0655, F.S., within the last 12 months are not required to repeat such screening to comply with that portion of the screening requirements. Documentation of past background screening is required, and individuals shall be required to undergo screening for any remaining background screening requirements that have never been conducted, or have not been completed within the last 12 months.

Agency Purchase of Services [Section 18]

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

Facility Licensure and Regulation [Section 19]

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

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

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

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

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

¹⁴ Under current law, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, F.S., and teachers who have been fingerprinted pursuant to chapter 1012, F.S., who have not been unemployed for more than 90 days thereafter, and who attest to the completion of such fingerprinting or screening are not required to be refingerprinted or rescreened in order to comply with any direct service provider screening or fingerprinting requirements.

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

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

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

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

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

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

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

Involuntary Admission to Residential Services [Section 27]

The CS amends s. 393.11, F.S., relating to involuntary admission to residential services, or civil commitment. The CS specifies that the involuntary commitment of an individual with mental retardation or autism who is charged with a felony offense shall be determined in accordance with s. 916.302, F.S.,¹⁵ relating to forensic treatment and training, and deletes related provisions regulating involuntary admission to residential services arising out of chapter 916.

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

The CS amends s. 393.11(7), F.S., and changes the location of the involuntary admission hearing to the county in which the original petition is filed, instead of the county (or nearby county) in which the individual resides. The CS clarifies that the issue of the competency of a person with mental retardation or autism, for the purposes of assigning guardianship, is to be determined in a separate

¹⁵ Chapter 916 relates to mentally deficient and mentally ill defendants.

proceeding according to the procedures and requirements of chapter 744, F.S.,¹⁶ and the issue of the competency of a person with mental retardation or autism, for purposes of determining whether the person is competent to proceed in a criminal trial, shall be determined in accordance with chapter 916, F.S. The CS further specifies that, at any time and without notice, any person involuntarily admitted into residential care, or the person's parent or legal guardian on his or her behalf, is entitled to file a petition for a writ of *habeus corpus* to question the cause, legality, and appropriateness of the person's involuntary admission.

Use of Restraints and Seclusion [Section 29]

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

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

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

The CS specifies that clients shall have the right to be free from restraint or seclusion,¹⁷ and clarifies the use of restraint or seclusion in emergencies or to protect the client or others. The CS deletes a provision specifying that mechanical supports used in normative situations to achieve proper body position and balance are not considered restraints. The CS also deletes provisions covered by the definitions provided in s. 393.063, F.S.

APD is required to adopt rules for standards and procedures relating to the use of restraint and seclusion, and removes a requirement that APD post a copy of such rules, once adopted, in each living unit of residential facilities. A copy of these rules is to be given to the client, parent, guardian or guardian advocate, and all staff members of licensed facilities, and is required to be made a part of all staff pre-service and in-service training programs.

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

The CS specifies that the resident government required to be maintained at each residential facility may include, at the option of the resident government, representatives of advocacy groups for persons

¹⁶ Chapter 744 relates to guardianship.

¹⁷ According to the Advocacy Center for Persons with Disabilities in a letter dated March 12, 2006, based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida has the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005. Letter on file with the Elder and Long-Term Care Committee.

with developmental disabilities from the community. The CS deletes a provision specifying that a facility's resident government is to work closely with the Florida local advocacy council and the district administrator.

Prohibited Sexual Misconduct [Section 30]

The CS changes the definition found in s. 393.135, F.S., relating to prohibited sexual misconduct, from "employee" to "covered person." A covered person is any paid staff member, volunteer or intern of the agency, any person under contract with the agency, and any person providing care or support to a client on behalf of the agency or its providers. The CS redefines "sexual misconduct" as sexual activity between a covered person and a client to whom the covered person renders services, care, or support on behalf of the agency or its providers, or between the covered person and another client who lives in the same home as the client to whom the covered person is rendering the services, care, or support, regardless of the client's consent. It is a felony of the second degree for a covered person to engage in sexual misconduct with an individual with a developmental disability who resides in a residential facility and is eligible¹⁸ to receive services from the agency under chapter 393, F.S.

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

The Community Resources Development Loan Program [Section 31]

The CS specifies the Legislature's intent that APD develop and administer a loan program to provide support and encouragement in the establishment of community-based foster care, group home, and supported employment programs for persons with developmental disabilities. The CS deletes the Community Resources Development Trust Fund originally created in the State Treasury, and creates a Community Resources Development Loan Program in APD for the purpose of granting loans to eligible programs for the initial costs of development of the programs. The CS specifies that, in order to be eligible for the program, a foster home, group home, or supported employment program must serve persons with disabilities, be a non-profit corporation, partnership, or sole proprietorship, and must be in compliance with the zoning regulations of the local community.

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

Certification of Behavior Analysts [Section 32]

The CS amends s. 393.17, F.S., and provides that APD may establish a certification process for behavior analysts in order to ensure that only qualified employees and service providers provide

¹⁸ Under current law, s. 393.135(2), F.S., requires that the individual with a developmental disability "receives services from a family care program."

behavioral analysis services to clients. Such procedures are to be established by rule, and must include criteria for scope of practice, certain qualifications for certification, and decertification procedures that may be used to determine whether an individual continues to meet the qualifications for certification and, if not, the procedures necessary to decertify an employee or service provider.

The CS further specifies that APD shall recognize the certification of behavior analysts awarded by a non-profit corporation if such corporation adheres to the national standards of boards setting professional credentials. The certification procedure recognized by the agency must undergo regular psychometric review and validation, pursuant to a job analysis survey of the profession and standards established by content experts in the field.

Operation of Comprehensive Transitional Education Programs [Section 33]

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

Developmental Disabilities Institutions' Trust Accounts [Section 34]

The CS creates s. 393.23, F.S., relating to trust funds for developmental disabilities institutions, and provides that all receipts from the operation of canteens, vending machines, hobby shops, sheltered workshops, activity centers, farming projects, and other like activities operated in a developmental disabilities institution—as well as moneys donated to the institution—must be deposited in a trust account in any bank, credit union, or savings and loan association authorized by the State Treasury if the moneys are available on demand. The CS specifies that moneys in the trust account must be expended for the benefit, education, and welfare of clients (unless a donor provides a separate intent). Trust account money may not be used for the benefit of agency employees, or to pay the wages of such employees. The CS specifies that the “welfare of the clients” includes the expenditure of funds for the purchase of items for resale at canteens or vending machines, and for the establishment, maintenance, and operation of canteens, hobby shops, recreational or entertainment facilities, sheltered workshops, activity centers, farming projects, or other like facilities or programs established at the institutions for the benefit of clients.

A developmental disabilities institution may invest any money not necessary for immediate use in a trust account, and the interest earned and other increments derived from the investments of the money must be deposited into the trust account for the benefit of clients. The CS specifies that the accounting system of an institution must account separately for revenues and expenses for each activity, and the institution is required to reconcile the trust account to its accounting system and check registers, and to the accounting system of the Chief Financial Officer. Sales tax collected by the institution as a result of sales is to be deposited into the trust account and remitted to the Department of Revenue, and funds are required to be expended in accordance with requirements and guidelines established by the Chief Financial Officer.

General Rule Authority [Section 35]

The mandatory rulemaking directive contained in s. 393.501(1), F.S., is made optional, and the CS deletes a requirement that the rules address, for intermediate care facilities for the mentally retarded, the rate and location of facility development and level of care. The CS transfers an exemption to the 1,000-foot-radius requirement of s. 419.001(2), F.S.,¹⁹ for certain alternative living centers and independent living education centers from s. 393.067(4), F.S., to s. 393.501(2), F.S.

¹⁹ s. 419.001(2), F.S., specifies that “[h]omes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home

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

The CS amends s. 394.453, F.S., relating to mental health, to add that it is the policy of the state that the use of restraint and seclusion on clients is justified only as an emergency safety measure to be used in response to imminent danger to the client or others, and noting that the Legislature intends to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness. The CS also inserts similar definitions of “restraint” and “seclusion” proposed for inclusion in s. 393.063, F.S., into s. 394.455, F.S. The CS provides that rules adopted pursuant to s. 394.457(5)(b), F.S., must include provisions governing the use of restraint or seclusion, which:

- Are consistent with recognized best practices and professional judgment.
- Prohibit inherently dangerous restraint or seclusion procedures.
- Establish limitations on the use and duration of restraint and seclusion.
- Establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion.
- Establish procedures for staff to follow before, during, and after incidents of restraint or seclusion.
- Establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion.
- Establish mandatory reporting, data-collection, and data-dissemination procedures and requirements.

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

Intermediate Care Facilities for the Developmentally Disabled [Sections 42, 43, 44]

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

The CS adds a provision to s. 400.962, F.S., requiring an applicant for a license to operate an intermediate care facility to agree to provide or arrange for active treatment services. The CS provides that AHCA is to adopt, by rule, standards for such active treatment services, and specifies that active treatment services are provided in accordance with the individual support plan and reimbursed as part of the per diem rate as paid under the Medicaid program.

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

- be consistent with recognized best practices;

shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents. Such homes with six or fewer residents shall not be required to comply with the notification provisions of this section; provided, however, that the sponsoring agency or the department notifies the local government at the time of home occupancy that the home is licensed by the department.”

- prohibit inherently dangerous restraint or seclusion procedures;
- establish limitations on the use and duration of restraint and seclusion;
- establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion;
- establish procedures for staff to follow before, during, and after incidents of restraint or seclusion, including individualized plans for the use of restraint or seclusion in emergency situations;
- establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion;
- establish requirements for facility data collection and reporting; and
- establish procedures relating to the documentation of the use of restraint or seclusion in the client's facility or program record.

Sharing of Confidential Information; Claims Procedures [Sections 45, 46, 47]

The CS amends s. 402.115, F.S., and includes APD in the list of agencies authorized to share confidential information, or information exempt from disclosure under chapter 119, F.S., on any individual who is or has been the subject of a program within the jurisdiction of each agency. The CS also amends s. 402.17, F.S., and requires APD to protect the financial interest of the state with respect to claims that the state may have for the care and maintenance of clients of the agency.

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

County Contracts Authorized for Services and Facilities for Mental Health and Developmental Disabilities [Section 48]

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

Consumer-Directed Care Programs [Section 52]

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

Family Support Planning Process [Section 55]

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

Children's Early Investment Program [Section 56]

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

Miscellaneous Provisions

The CS amends the definition of “facility” found in s. 415.102, F.S., by specifying that the term “facility” may include either a residential facility licensed under chapter 393, F.S., or an adult day training center. [Section 57]

The CS includes APD among the departments and agencies required by s. 415.1035, F.S., to work with DCF to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful or exploitative practices. [Section 58]

Similarly, the CS inserts APD into s. 415.1055, F.S., and provides that, upon receipt of a report that alleges that an employee or agent of APD, acting in an official capacity, has committed an act of abuse, neglect, or exploitation, DCF shall notify the state attorney in whose circuit the abuse, neglect, or exploitation occurred. When a report has been received and DCF has reason to believe that a vulnerable adult resident of a facility licensed by APD has been the victim of abuse, neglect, or exploitation, DCF is required to provide a copy of its investigation to APD. [Section 59]

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

- Administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function.
- Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution. [Section 60]

The CS amends s. 944.602, F.S., by requiring the Department of Corrections (DOC) to notify APD—and not DCF—prior to the release of mentally retarded inmates. That sufficient time be allowed to notify the inmate or the inmate’s representative, written notification of available community services is required at least seven days prior to the inmate’s release. [Section 64]

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

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

The CS specifies that under s. 985.224, F.S., if a detention petition or petition for delinquency has been filed, and a developmental disability is suspected or alleged, the court may order a diagnostic team from the APD to evaluate the child. [Section 67]

The CS includes APD in s. 1003.58, F.S., relating to the provision of educational programs to students in residential care facilities. [Section 68]

The CS amends s. 17.61, F.S., by providing that APD may not invest trust fund moneys as provided in s. 17.61, F.S., except for the Federal Grants Trust Fund and the Tobacco Settlement Trust Fund. [Section 69].

The CS deletes a provision in s. 984.22, F.S., specifying that, in cases in which a child is placed in foster care with DCF, child support payments are to be deposited in the Community Resources Development Trust Fund. [Section 72]

Additionally, the CS provides an unnumbered statute section relating to accessible electronic and information technology for use by individuals with disabilities, and specifically:

- supplies a legislative finding citing the importance of ensuring that individuals with disabilities have access to electronic and information technology maintained by the state;
- provides that state employees with disabilities shall have access to, and use of, information and data provided to state employees who are not disabled, unless an “undue burden” would be imposed on the agency;
- provides that members of the public who are individuals with disabilities and are seeking information or services from a state agency shall have access to, and use of, information and data that is comparable to the access and use of information and data provided to members of the public who are not disabled, unless an “undue burden” would be imposed on the state agency;
- requires state agencies procuring electronic and information technology resources after July 1, 2006 to procure products that comply with certain accessibility standards adopted by the Department of Management Services (DMS), in partnership with the Florida Alliance for Assistive Services and Technology;
- requires state agencies procuring electronic and information technology to include language in its solicitations and contracts requiring vendors to provide products that comply with these accessibility standards; and
- requires DMS, in partnership with the Florida Alliance for Assistive Services and Technology, to adopt rules addressing certain accessibility standards, review procedures, training and technical assistance, and complaint procedures. [Section 73]

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

C. SECTION DIRECTORY:

Section 1. Amends s. 20.197, F.S., providing for Senate confirmation of APD director, and requiring APD to include a Division of Budget and Planning and a Division of Operations, as well as other divisions needed to promote efficient and effective operation of the agency.

Section 2. Amends s. 39.001, F.S., relating to the development of the comprehensive state plan.

Section 3. Amends s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect.

Section 4. Amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatments.

Section 5. Amends s. 287.155, F.S., relating to departmental purchase of automotive equipment.

Section 6. Amends s. 381.0072, F.S., relating to licensure of food service establishments.

Section 7. Amends s. 393.14, F.S., relating to the Genetics and Newborn Screening Advisory Council.

Section 8. Repeals s. 393.061, F.S., providing a short title.

Section 9. Amends s. 393.062, F.S., providing legislative findings and intent.

Section 10. Amends s. 393.063, F.S., providing definitions.

Section 11. Amends s. 393.064, F.S., relating to developmental disabilities preventative services and programs.

Section 12. Amends s. 393.0641, F.S., relating to the program for the prevention and treatment of severe self-injurious behavior.

Section 13. Amends s. 393.065, F.S., relating to application for services and eligibility determinations.

Section 14. Amends s. 393.0651, F.S., relating to family or individual support plans.

Section 15. Creates s. 393.0654, F.S., relating to dual employment of direct service providers.

Section 16. Amends s. 393.0655, F.S., relating to screening of direct service providers.

Section 17. Amends s. 393.0657, F.S., relating to persons not required to be re-fingerprinted or re-screened.

Section 18. Amends s. 393.066, F.S., relating to purchase of community services and treatment.

Section 19. Amends s. 393.067, F.S., relating to facility licensure and regulation.

Section 20. Amends s. 393.0673, F.S., relating to administrative fines.

Section 21. Amends s. 393.0674, F.S., relating to penalties.

Section 22. Amends s. 393.0675, F.S., relating to injunctive proceedings.

Section 23. Amends s. 393.0678, F.S., relating to receivership proceedings.

Section 24. Amends s. 393.068, F.S., relating to the family care program.

Section 25. Amends s. 393.0695, F.S., relating to provision of in-home subsidies.

Section 26. Amends s. 393.075, F.S., relating to general liability coverage.

Section 27. Amends s. 393.11, F.S., relating to involuntary admission to residential services.

Section 28. Amends s. 393.122, F.S., relating to applications for continued residential services.

Section 29. Amends s. 393.13, F.S., relating to treatment of persons with developmental disabilities, and the Bill of Rights of Persons with Developmental Disabilities.

Section 30. Amends s. 393.135, F.S., relating to prohibited sexual misconduct.

Section 31. Amends s. 393.15, F.S., relating to the Community Resources Development Loan Program.

Section 32. Amends s. 393.17, F.S., relating to certification of behavior analysts.

Section 33. Creates s. 393.18, F.S., relating to comprehensive transitional education programs.

Section 34. Creates s. 393.23, F.S., relating to developmental disabilities institutions' trust accounts.

Section 35. Amends s. 393.501, F.S., relating to agency rulemaking authority and certain zoning requirements.

Section 36. Amends s. 394.453, F.S., relating to legislative intent for treatment of individuals with mental illnesses.

Section 37. Amends s. 394.455, F.S., providing definitions.

Section 38. Amends s. 394.457, F.S., relating to rulemaking authority.

Section 39. Amends s. 394.879, F.S., relating to rulemaking authority.

Section 40. Amends s. 397.405, F.S., providing exemptions from licensure.

Section 41. Amends s. 400.419, F.S., relating to violations and imposition of administrative fines.

Section 42. Amends s. 400.960, F.S., providing definitions.

Section 43. Amends s. 400.962, F.S., regarding requirements for an applicant to operate an intermediate care facility.

Section 44. Amends s. 400.967, F.S., relating to rules and classification of deficiencies.

Section 45. Amends s. 402.115, F.S., relating to the sharing of confidential or exempt information.

Section 46. Amends s. 402.17, F.S., relating to claims for care and maintenance, and trust property.

Section 47. Amends s. 402.181, F.S., relating to the State Institutions Claims Program.

Section 48. Amends s. 402.20, F.S., relating to county contracts authorized for services and facilities for mental health and developmental disabilities.

Section 49. Amends s. 402.22, F.S., relating to education programs for students residing in residential care facilities operated by the Department of Children and Family Services or the Agency for Persons with Disabilities.

Section 50. Amends s. 402.33, F.S., relating to departmental authority to charge fees for services provided.

Section 51. Amends s. 408.036, F.S., relating to projects subject to review.

Section 52. Amends s. 409.221, F.S., relating to consumer-directed care programs.

Section 53. Amends s. 409.908, F.S., relating to reimbursement of Medicaid providers.

Section 54. Amends s. 409.9127, F.S., relating to preauthorization and concurrent utilization review and conflict of interest standards.

Section 55. Amends s. 411.224, F.S., relating to the family support planning process.

Section 56. Amends s. 411.232, F.S., relating to the Children's Early Investment Program.

Section 57. Amends s. 415.102, F.S., adding to the definition of "facility."

Section 58. Amends s. 415.1035, F.S., relating to a facility's duty to inform residents of their right to report abusive, neglectful, or exploitative practices.

Section 59. Amends s. 415.1055, F.S., relating to notification to administrative entities.

Section 60. Amends s. 415.107, F.S., relating to confidentiality of department reports and records.

Section 61. Amends s. 435.03, F.S., relating to Level 1 screening standards.

Section 62. Amends s. 490.014, F.S., relating to licensure exemptions.

Section 63. Amends s. 491.014, F.S., relating to licensure exemptions.

Section 64. Amends s. 944.602, F.S., relating to agency notification requirements prior to the release of mentally retarded inmates.

Section 65. Amends s. 945.025, F.S., relating to department jurisdiction.

Section 66. Amends s. 947.185, F.S., relating to application for mental retardation services as a condition of parole.

Section 67. Amends s. 985.224, F.S., relating to medical, psychiatric, psychological, substance abuse, and educational examination and treatment.

Section 68. Amends s. 1003.58, F.S., relating to students in residential care facilities.

Section 69. Amends s. 17.61, F.S., relating to powers and duties in the investment of certain funds.

Section 70. Amends s. 400.464, F.S., relating to licensure of home health agencies.

Section 71. Amends s. 744.704, F.S., relating to powers and duties of guardians.

Section 72. Amends s. 984.22, F.S., relating to powers of disposition.

Section 73. Provides for access to and use of electronic and information technology by state employees and members of the public with disabilities; requires state agencies to procure certain technology resources; and requires the Department of Management Services to adopt certain rules and standards.

Section 74. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

HB 169 CS, an act relating to accessible electronic and information technology for persons with disabilities, was introduced during the 2006 Legislative Session. The bill contained a regulatory scheme designed to ensure that disabled persons are provided with access to state government technology that is similar to the scheme proposed in section 73 of the CS, and likewise supplied a broad grant of rulemaking authority to DMS. HB 169 CS appropriated \$1,050,068 in recurring funds and \$431,106 in nonrecurring funds to DMS "for the purpose of improving access to state-maintained electronic and information technology to increase educational, employment, and procurement opportunities for persons with disabilities." The bill also authorized six full-time equivalent positions. DMS has indicated that implementation of the provision in the CS providing for access to and use of electronic and information technology by state employees and members of the public with disabilities would require a similar appropriation and staff increase.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The CS does not affect counties or municipalities.

2. Other:

None.

²⁰ Phone conversation with Rebecca McCarley, Legislative Director of the Department of Management Services, April 19, 2006.

B. RULE-MAKING AUTHORITY:

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

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

Additionally, the CS requires DMS, in partnership with the Florida Alliance for Assistive Services and Technology, to adopt rules addressing certain accessibility standards, review procedures, training and technical assistance, and complaint procedures relating to accessible electronic and information technology for use by certain individuals with disabilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 28, 2006 meeting the Committee on Elder and Long-Term Care adopted an extensive strike-all amendment to HB 1503. Additionally, an amendment to the strike-all was adopted which removed a proposed amendment to s. 419.001, F.S., relating to site selection of community residential homes, to avoid conflict with House Bill 351, relating to community residential homes.

The committee favorably reported a committee substitute.

At its April 11, 2006 meeting the Health Care Appropriations Committee adopted several amendments to HB 1503 CS. These amendments:

- clarified the use of restraint and seclusion in cases of emergency or to protect the client or others;
- made terms used in the definitions consistent;
- included a new requirement for an applicant for a license to operate an intermediate care facility regarding the provision of active treatment services;
- modified the section of the bill regarding procedures for restraint and seclusion;
- deleted sections of the bill amending ss. 984.19, 984.225, and 984.226, F.S., regarding screenings and referrals of children; and
- made a technical correction regarding investment of certain funds.

The committee favorably reported a committee substitute.

At its April 18, 2006 meeting the Health and Families Council adopted three amendments to HB 1503 CS. These amendments:

- add an unnumbered statute section relating to accessible electronic and information technology for use by individuals with disabilities;
- clarify that 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 part of the standard treatment regimen of an individual with a diagnosed mental illness who is a client of DCF;

- restore the power of a family court judge to order a child in an out-of-home placement to receive developmental disabilities services under s. 39.407, F.S., and clarify that nothing in s. 39.407, F.S., confers jurisdiction to the court with regard to determining eligibility or ordering services under chapter 393, F.S.

The Council favorably reported a Council Substitute, and this analysis is drafted to the Council Substitute.