

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Bean offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Subsection (4) of section 393.0661, Florida
6 Statutes, is amended, and subsection (5) is added to that
7 section, to read:

8 393.0661 Home and community-based services delivery
9 system; comprehensive redesign.--The Legislature finds that the
10 home and community-based services delivery system for persons
11 with developmental disabilities and the availability of
12 appropriated funds are two of the critical elements in making
13 services available. Therefore, it is the intent of the
14 Legislature that the Agency for Persons with Disabilities shall
15 develop and implement a comprehensive redesign of the system.

16 (4) Nothing in this section or in any administrative rule
17 shall be construed to prevent or limit the Agency for Health

188153

4/18/2006 10:23:25 AM

Amendment No. (for drafter's use only)

18 Care Administration, in consultation with the Agency for Persons
19 with Disabilities, from adjusting fees, reimbursement rates,
20 lengths of stay, number of visits, or number of services, or
21 from limiting enrollment, or making any other adjustment
22 necessary to comply with the availability of moneys and any
23 limitations or directions provided for in the General
24 Appropriations Act. ~~If at any time, based upon an analysis by
25 the Agency for Health Care Administration in consultation with
26 the Agency for Persons with Disabilities, the cost of home and
27 community based waiver services are expected to exceed the
28 appropriated amount, the Agency for Health Care Administration
29 may implement any adjustment, including provider rate
30 reductions, within 30 days in order to remain within the
31 appropriation.~~

32 (5) The Agency for Persons with Disabilities shall submit
33 quarterly status reports to the Executive Office of the
34 Governor, the chair of the Senate Ways and Means Committee, and
35 the chair of the House Fiscal Council regarding the financial
36 status of home and community-based services provided under the
37 federally approved waiver, including, but not limited to, the
38 number of clients currently being served through the program and
39 information concerning the actual and projected costs as
40 compared to the amount of the appropriation available to the
41 program. If at any time an analysis by the agency finds that the
42 cost of services is expected to exceed the amount appropriated,
43 based on the current rates as implemented on November 1, 2003,
44 the agency shall implement any adjustment that is necessary
45 under subsection (4) in order to remain within the
46 appropriation.

188153

4/18/2006 10:23:25 AM

Amendment No. (for drafter's use only)

47 Section 2. Paragraph (d) of subsection (15) of section
48 440.02, Florida Statutes, is amended to read:

49 440.02 Definitions.--When used in this chapter, unless the
50 context clearly requires otherwise, the following terms shall
51 have the following meanings:

52 (15)

53 (d) "Employee" does not include:

54 1. An independent contractor who is not engaged in the
55 construction industry.

56 a. In order to meet the definition of independent
57 contractor, at least four of the following criteria must be met:

58 (I) The independent contractor maintains a separate
59 business with his or her own work facility, truck, equipment,
60 materials, or similar accommodations;

61 (II) The independent contractor holds or has applied for a
62 federal employer identification number, unless the independent
63 contractor is a sole proprietor who is not required to obtain a
64 federal employer identification number under state or federal
65 regulations;

66 (III) The independent contractor receives compensation for
67 services rendered or work performed and such compensation is
68 paid to a business rather than to an individual;

69 (IV) The independent contractor holds one or more bank
70 accounts in the name of the business entity for purposes of
71 paying business expenses or other expenses related to services
72 rendered or work performed for compensation;

73 (V) The independent contractor performs work or is able to
74 perform work for any entity in addition to or besides the

188153

4/18/2006 10:23:25 AM

Amendment No. (for drafter's use only)

75 | employer at his or her own election without the necessity of
76 | completing an employment application or process; or

77 | (VI) The independent contractor receives compensation for
78 | work or services rendered on a competitive-bid basis or
79 | completion of a task or a set of tasks as defined by a
80 | contractual agreement, unless such contractual agreement
81 | expressly states that an employment relationship exists.

82 | b. If four of the criteria listed in sub-subparagraph a.
83 | do not exist, an individual may still be presumed to be an
84 | independent contractor and not an employee based on full
85 | consideration of the nature of the individual situation with
86 | regard to satisfying any of the following conditions:

87 | (I) The independent contractor performs or agrees to
88 | perform specific services or work for a specific amount of money
89 | and controls the means of performing the services or work.

90 | (II) The independent contractor incurs the principal
91 | expenses related to the service or work that he or she performs
92 | or agrees to perform.

93 | (III) The independent contractor is responsible for the
94 | satisfactory completion of the work or services that he or she
95 | performs or agrees to perform.

96 | (IV) The independent contractor receives compensation for
97 | work or services performed for a commission or on a per-job
98 | basis and not on any other basis.

99 | (V) The independent contractor may realize a profit or
100 | suffer a loss in connection with performing work or services.

101 | (VI) The independent contractor has continuing or
102 | recurring business liabilities or obligations.

188153

4/18/2006 10:23:25 AM

Amendment No. (for drafter's use only)

103 (VII) The success or failure of the independent
104 contractor's business depends on the relationship of business
105 receipts to expenditures.

106 c. Notwithstanding anything to the contrary in this
107 subparagraph, an individual claiming to be an independent
108 contractor has the burden of proving that he or she is an
109 independent contractor for purposes of this chapter.

110 2. A real estate licensee, if that person agrees, in
111 writing, to perform for remuneration solely by way of
112 commission.

113 3. Bands, orchestras, and musical and theatrical
114 performers, including disk jockeys, performing in licensed
115 premises as defined in chapter 562, if a written contract
116 evidencing an independent contractor relationship is entered
117 into before the commencement of such entertainment.

118 4. An owner-operator of a motor vehicle who transports
119 property under a written contract with a motor carrier which
120 evidences a relationship by which the owner-operator assumes the
121 responsibility of an employer for the performance of the
122 contract, if the owner-operator is required to furnish motor
123 vehicle equipment as identified in the written contract and the
124 principal costs incidental to the performance of the contract,
125 including, but not limited to, fuel and repairs, provided a
126 motor carrier's advance of costs to the owner-operator when a
127 written contract evidences the owner-operator's obligation to
128 reimburse such advance shall be treated as the owner-operator
129 furnishing such cost and the owner-operator is not paid by the
130 hour or on some other time-measured basis.

188153

4/18/2006 10:23:25 AM

Amendment No. (for drafter's use only)

131 5. A person whose employment is both casual and not in the
132 course of the trade, business, profession, or occupation of the
133 employer.

134 6. A volunteer, except a volunteer worker for the state or
135 a county, municipality, or other governmental entity. A person
136 who does not receive monetary remuneration for services is
137 presumed to be a volunteer unless there is substantial evidence
138 that a valuable consideration was intended by both employer and
139 employee. For purposes of this chapter, the term "volunteer"
140 includes, but is not limited to:

141 a. Persons who serve in private nonprofit agencies and who
142 receive no compensation other than expenses in an amount less
143 than or equivalent to the standard mileage and per diem expenses
144 provided to salaried employees in the same agency or, if such
145 agency does not have salaried employees who receive mileage and
146 per diem, then such volunteers who receive no compensation other
147 than expenses in an amount less than or equivalent to the
148 customary mileage and per diem paid to salaried workers in the
149 community as determined by the department; and

150 b. Volunteers participating in federal programs
151 established under Pub. L. No. 93-113.

152 7. Unless otherwise prohibited by this chapter, any
153 officer of a corporation who elects to be exempt from this
154 chapter. Such officer is not an employee for any reason under
155 this chapter until the notice of revocation of election filed
156 pursuant to s. 440.05 is effective.

157 8. An officer of a corporation that is engaged in the
158 construction industry who elects to be exempt from the
159 provisions of this chapter, as otherwise permitted by this
188153

4/18/2006 10:23:25 AM

Amendment No. (for drafter's use only)

160 chapter. Such officer is not an employee for any reason until
161 the notice of revocation of election filed pursuant to s. 440.05
162 is effective.

163 9. An exercise rider who does not work for a single horse
164 farm or breeder, and who is compensated for riding on a case-by-
165 case basis, provided a written contract is entered into prior to
166 the commencement of such activity which evidences that an
167 employee/employer relationship does not exist.

168 10. A taxicab, limousine, or other passenger vehicle-for-
169 hire driver who operates said vehicles pursuant to a written
170 agreement with a company which provides any dispatch, marketing,
171 insurance, communications, or other services under which the
172 driver and any fees or charges paid by the driver to the company
173 for such services are not conditioned upon, or expressed as a
174 proportion of, fare revenues.

175 11. A person who performs services as a sports official
176 for an entity sponsoring an interscholastic sports event or for
177 a public entity or private, nonprofit organization that sponsors
178 an amateur sports event. For purposes of this subparagraph, such
179 a person is an independent contractor. For purposes of this
180 subparagraph, the term "sports official" means any person who is
181 a neutral participant in a sports event, including, but not
182 limited to, umpires, referees, judges, linespersons,
183 scorekeepers, or timekeepers. This subparagraph does not apply
184 to any person employed by a district school board who serves as
185 a sports official as required by the employing school board or
186 who serves as a sports official as part of his or her
187 responsibilities during normal school hours.

188153

4/18/2006 10:23:25 AM

Amendment No. (for drafter's use only)

188 12. Medicaid-enrolled clients under chapter 393 who are
 189 excluded from the definition of employment under s.
 190 443.1216(4)(d) and served by Adult Day Training Services under
 191 the Home and Community-Based or the Family and Supported Living
 192 Medicaid Waiver program in a sheltered workshop setting licensed
 193 by the United States Department of Labor for the purpose of
 194 training and earning less than the federal hourly minimum wage.

195 13. Medicaid-enrolled clients under chapter 393 who are
 196 excluded from the definition of employment under s.
 197 443.1216(4)(d) and served by Adult Day Training Services under
 198 the Family and Supported Living Medicaid Waiver program in a
 199 sheltered workshop setting licensed by the United States
 200 Department of Labor for the purpose of training and earning less
 201 than the federal hourly minimum wage. ~~This subparagraph expires~~
 202 ~~July 1, 2006.~~

203 Section 3. This act shall take effect January 1, 2007.

204

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

206 Remove the entire title and insert:

207 A bill to be entitled

208 An act relating to social services; amending s. 393.0661,
 209 F.S.; deleting provisions requiring the Agency for Health
 210 Care Administration to make certain adjustments with
 211 respect to home and community-based services; requiring
 212 that the Agency for Persons with Disabilities report to
 213 the Governor and Legislature the financial status of home
 214 and community-based services provided under a federally
 215 approved waiver; requiring that the agency adjust the
 216 rates for such services in order to remain within the

188153

4/18/2006 10:23:25 AM

Amendment No. (for drafter's use only)

217 amount appropriated; amending s. 440.02, F.S.; deleting
218 provisions providing for the expiration of an exemption
219 from coverage under workers' compensation law for certain
220 clients enrolled in the Medicaid program who are served by
221 Adult Day Training Services; providing an effective date.