The 2024 Florida Statutes (including 2025 Special Session C)

CHAPTER 393
DEVELOPMENTAL DISABILITIES

393.506 Administration of medication.

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

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

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

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

(4) The designated nonprofit corporation is eligible to use the state communications system in accordance with s. 282.705(3).

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

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

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

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

History.—s. 3, ch. 95-293; s. 31, ch. 99-5; s. 79, ch. 99-8; s. 412, ch. 2003-261; s. 33, ch. 2009-80; s. 70, ch. 2014-19.

393.062 Legislative findings and declaration of intent.—The Legislature finds and declares that existing state programs for the treatment of individuals with developmental disabilities, which often unnecessarily place clients in institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to many clients. A redirection in state treatment programs for individuals with developmental disabilities is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that prevent or reduce the severity of developmental disabilities. Further, the greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements. This goal cannot be met without ensuring the availability of community residential opportunities in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who live in licensed community homes shall have a family living environment comparable to other Floridians and that such residences shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home. The Legislature further declares that, in developing community-based programs and services for individuals with developmental disabilities, private businesses, not-for-profit corporations, units of local government, and other organizations capable of providing needed services to clients in a cost-efficient manner shall be given preference in lieu of operation of programs directly by state

agencies. Finally, it is the intent of the Legislature that all caretakers unrelated to individuals with developmental disabilities receiving care shall be of good moral character.

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

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

(1) "Adult day training" means a program of services which takes place in a nonresidential setting, separate from the home or facility in which the client resides, and is intended to support the participation of clients in meaningful and valued routines of the community. These services include, but are not limited to, the acquisition, retention, or improvement of self-help, socialization, and adaptive skills.

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

(3) "Algorithm" means the mathematical formula used by the agency to calculate budget amounts for clients which uses variables that have statistically validated relationships to clients' needs for services provided by the home and community-based services Medicaid waiver program.

(4) "Allocation methodology" is the process used to determine a client's iBudget by summing the amount generated by the algorithm, and, if applicable, any funding authorized by the agency for the client pursuant to s. 393.0662(1)(b).

(5) "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

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

(7) "Client" means any person determined eligible by the agency for services under this chapter.

(8) "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.

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

(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 with developmental disabilities.

(11) "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid 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.

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

(13) "Domicile" means the place where a client legally resides and which 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.

(14) "Down syndrome" means a disorder caused by the presence of an extra chromosome 21.

(15) "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.

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

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

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

(19) “Guardian” has the same meaning as in s. 744.102.

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

(21) “Habilitation” means the process by which a client is assisted in acquiring and maintaining those life skills that 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.

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

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

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

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

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

(23) “Intellectual disability” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of this definition, the term:

(a) “Adaptive behavior” 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.

(b) “Significantly subaverage general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

For purposes of the application of the criminal laws and procedural rules of this state to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty, the terms “intellectual disability” or “intellectually disabled” are interchangeable with and have the same meaning as the terms “mental retardation” or “retardation” and “mentally retarded” as defined in this section before July 1, 2013.

(24) “Intermediate care facility for the developmentally disabled” means a residential facility licensed and certified under part VIII of chapter 400.

(25) “Licensee” means an individual, a corporation, a partnership, a firm, an association, a governmental entity, or other entity that is issued a permit, registration, certificate, or license by the agency. The licensee is legally responsible for all aspects of the provider operation.

(26) “Medical/dental services” means medically necessary services that 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.

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

(28) “Phelan-McDermid syndrome” means a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading

to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech.

(29) "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 intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

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

(31) "Resident" means a person who has a developmental disability and resides at a residential facility, whether or not such person is a client of the agency.

(32) "Residential facility" means a facility providing room and board and personal care for persons who have developmental disabilities.

(33) "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.

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

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

(36) "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 an 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 necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; to provide support for the achievement of functional body position or proper balance; or to protect a person from falling out of bed.

(37) "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.

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

(39) "Significant additional need" means an additional need for medically necessary services which would place the health and safety of the client, the client's caregiver, or the public in serious jeopardy if it is not met. The term does not exclude services for an additional need that the client requires in order to remain in the least restrictive setting, including, but not limited to, employment services and transportation services. The agency may provide additional funding only after the determination of a client's initial allocation amount and after the qualified organization has documented the availability of nonwaiver resources.

(40) "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.

(41) "Spina bifida" means a medical diagnosis of spina bifida cystica or myelomeningocele.

(42) "Support coordinator" means an employee of a qualified organization as provided in s. 393.0663 designated by the agency to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

(43) "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.

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

(45) "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.

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

History.—s. 1, ch. 77-335; s. 1, ch. 79-148; s. 153, ch. 79-400; s. 3, ch. 81-23; s. 4, ch. 85-54; s. 1, ch. 85-147; s. 5, ch. 87-238; s. 5, ch. 88-398; s. 7, ch. 89-308; ss. 2, 4, ch. 89-339; s. 27, ch. 90-306; s. 1, ch. 90-333; s. 17, ch. 91-158; s. 3, ch. 94-154; s. 1045, ch. 95-148; s. 53, ch. 95-228; s. 1, ch. 95-293; s. 13, ch. 96-417; s. 23, ch. 98-171; s. 140, ch. 98-403; s. 80, ch. 99-8; s. 203, ch. 99-13; s. 3, ch. 2000-338; s. 35, ch. 2002-400; s. 7, ch. 2004-260; s. 71, ch. 2004-267; s. 15, ch. 2006-197; s. 10, ch. 2006-227; s. 2, ch. 2008-244; s. 2, ch. 2011-135; s. 9, ch. 2013-162; s. 6, ch. 2016-3; ss. 38, 39, 126, ch. 2016-62; ss. 11, 12, ch. 2016-65; s. 1, ch. 2016-140; s. 58, ch. 2019-3; s. 1, ch. 2020-71; s. 2, ch. 2023-273.

393.064 Care navigation.—

(1) Within available resources, the agency shall offer to clients and their caregivers care navigation services for voluntary participation at the time of application and as part of any eligibility or renewal review. The goals of care navigation are to create a seamless network of community resources and supports for the client and the client's family as a whole to support a client in daily living, community integration, and achievement of individual goals. Care navigation services must involve assessing client needs and developing and implementing care plans, including, but not limited to, connecting a client to resources and supports. At a minimum, a care plan must address immediate, intermediate, and long-term needs and goals to promote and increase well-being and opportunities for education, employment, social engagement, community integration, and caregiver support. For a client who is a public school student entitled to a free appropriate public education under the Individuals with Disabilities Education Act (IDEA), as amended, the care plan must be integrated with the student's individual education plan (IEP). The care plan and IEP must be implemented to maximize the attainment of educational and habilitation goals.

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

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

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

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

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

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

(a) Research into the etiology of developmental disabilities.

(b) Ensuring that new knowledge is rapidly disseminated throughout the agency.

(c) Diagnosis of unusual conditions and syndromes associated with developmental disabilities in clients identified throughout developmental disabilities programs.

(d) Evaluation of families of clients with developmental disabilities of genetic origin in order to provide them with genetic counseling aimed at preventing the recurrence of the disorder in other family members.

(e) Ensuring that health professionals in the developmental disabilities center at Gainesville have access to information systems that will allow them to remain updated on newer knowledge and maintain their postgraduate education standards.

(f) Enhancing staff training for professionals throughout the agency in the areas of genetics and developmental disabilities.

History.—s. 1, ch. 77-335; s. 92, ch. 79-164; ss. 1, 2, ch. 79-367; s. 5, ch. 82-213; s. 45, ch. 83-218; s. 8, ch. 89-308; s. 4, ch. 94-154; s. 81, ch. 99-8; s. 46, ch. 2000-139; s. 13, ch. 2000-153; s. 72, ch. 2004-267; s. 51, ch. 2004-350; s. 11, ch. 2006-227; s. 3, ch. 2008-244; s. 1, ch. 2024-14.

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

393.065 Application and eligibility determination.—

(1)(a) The agency shall develop and implement an online application process that, at a minimum, supports paperless, electronic application submissions with immediate e-mail confirmation to each applicant to acknowledge receipt of application upon submission. The online application system must allow an applicant to review the status of a submitted application and respond to provide additional information.

(b) The agency shall maintain access to a printable paper application on its website and, upon request, must provide an applicant with a printed paper application. Paper applications may be submitted in writing to the agency in the region in which the applicant resides, sent to a central or regional address through regular United States mail, or faxed to a central or regional confidential fax number. The agency shall acknowledge receipt of all applications it receives, regardless of the manner of submission, with an immediate receipt confirmation provided in the same manner in which the application was received, unless the applicant has designated an alternative preferred method of communication on the submitted application.

(c) The agency must review each submitted application in accordance with federal time standards.

1. If the agency determines additional documentation is necessary to make an eligibility determination, the agency may request the additional documentation from the applicant.

2. When necessary to definitively identify individual conditions or needs, the agency or its designee must provide a comprehensive assessment.

(d)1. For purposes of this paragraph, the term “complete application” means an application submitted to the agency which is signed and dated by the applicant or an individual with legal authority to apply for public benefits on behalf of the applicant, is responsive on all parts of the application, and contains documentation of a diagnosis.

2. If the applicant requesting enrollment in the home and community-based services Medicaid waiver program for individuals with developmental disabilities is deemed to be in crisis as described in paragraph (5)(a), the agency must make an eligibility determination within 15 calendar days after receipt of a complete application.

3. If the applicant meets the criteria specified in paragraph (5)(b), the agency must review and make an eligibility determination as soon as practicable after receipt of a complete application.

4. If the application meets any of the criteria specified in paragraphs (5)(c)-(g), the agency must make an eligibility determination within 60 days after receipt of a complete application.

(e) Any delays in the eligibility determination process, or any tolling of the time standard until certain information or actions have been completed, must be conveyed to the client as soon as such delays are known through verbal contact with the client or the client's designated caregiver and confirmed by a written notice of the delay, the anticipated length of delay, and a contact person for the client.

(2) In order to be eligible for services under this chapter, the agency must determine that the applicant has met all eligibility requirements in rule, including having a developmental disability and being domiciled in this state. Information accumulated by other agencies, including professional reports and collateral data, shall be considered in this process when available.

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

(4) Before admission to an intermediate care facility for individuals with intellectual disabilities and to ensure that the setting is the least restrictive to meet the individual's needs, the agency must authorize admission pursuant to this subsection. As part of the authorization, the agency or its designee must conduct a comprehensive assessment that includes medical necessity, level of care, and level of reimbursement.

(5) Except as provided in subsections (6) and (7), if a client seeking enrollment in the developmental disabilities home and community-based services Medicaid waiver program meets the level of care requirement for an intermediate care facility for individuals with intellectual disabilities pursuant to 42 C.F.R. ss. 435.217(b)(1) and 440.150, the agency must assign the client to an appropriate preenrollment category pursuant to this subsection and must provide priority to clients waiting for waiver services in the following order:

(a) Category 1, which includes clients deemed to be in crisis as described in rule, must be given first priority in moving from the preenrollment categories to the waiver.

(b) Category 2, which includes clients in the preenrollment categories who are:

1. From the child welfare system with an open case in the Department of Children and Families' statewide automated child welfare information system and who are either:

a. Transitioning out of the child welfare system into permanency; or

b. At least 18 years but not yet 22 years of age and who need both waiver services and extended foster care services; or

2. At least 18 years but not yet 22 years of age and who withdrew consent pursuant to s. 39.6251(5)(c) to remain in the extended foster care system.

For individuals who are at least 18 years but not yet 22 years of age and who are eligible under sub-subparagraph 1.b., the agency must provide waiver services, including residential habilitation, and the community-based care lead agency must fund room and board at the rate established in s. 409.145(3) and provide case management and related services as defined in s. 409.986(3)(e). Individuals may receive both waiver services and services under s. 39.6251. Services may not duplicate services available through the Medicaid state plan.

(c) Category 3, which includes, but is not required to be limited to, clients:

1. Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;

2. At substantial risk of incarceration or court commitment without supports;

3. Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or

4. Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available or whose caregiver is unable to provide the care needed.

(d) Category 4, which includes, but is not required to be limited to, clients whose caregivers are 60 years of age or older and for whom a caregiver is required but no alternate caregiver is available.

(e) Category 5, which includes, but is not required to be limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain a meaningful day activity, maintain

competitive employment, or pursue an accredited program of postsecondary education to which they have been accepted.

(f) Category 6, which includes clients 21 years of age or older who do not meet the criteria for category 1, category 2, category 3, category 4, or category 5.

(g) Category 7, which includes clients younger than 21 years of age who do not meet the criteria for category 1, category 2, category 3, or category 4.

Within preenrollment categories 3, 4, 5, 6, and 7, the agency shall prioritize clients in the order of the date that the client is determined eligible for waiver services.

(6) The agency must allow an individual who meets the eligibility requirements of subsection (2) to receive home and community-based services in this state if the individual's parent or legal guardian is an active-duty military servicemember and if, at the time of the servicemember's transfer to this state, the individual was receiving home and community-based services in another state.

(7) The agency must allow an individual with a diagnosis of Phelan-McDermid syndrome who meets the eligibility requirements of subsection (2) to receive home and community-based services.

(8) Only a client may be eligible for services under the developmental disabilities home and community-based services Medicaid waiver program. For a client to receive services under the developmental disabilities home and community-based services Medicaid waiver program, there must be available funding pursuant to s. 393.0662 or through a legislative appropriation and the client must meet all of the following:

(a) The eligibility requirements of subsection (2), which must be confirmed by the agency.

(b) The eligibility requirements for the Florida Medicaid program under Title XIX of the Social Security Act, as amended, or the Supplemental Security Income program.

(c) The level of care requirements for an intermediate care facility for individuals with developmental disabilities pursuant to 42 C.F.R. ss. 435.217(b)(1) and 440.150.

(d) The requirements provided in the approved federal waiver authorized pursuant to s. 1915(c) of the Social Security Act and 42 C.F.R. s. 441.302.

(9) Agency action that selects individuals to receive waiver services pursuant to this section does not establish a right to a hearing or an administrative proceeding under chapter 120 for individuals remaining in the preenrollment categories.

(10) 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. Notwithstanding s. 393.0651, the agency must send an annual letter requesting updated information from the client, the client's guardian, or the client's family. The agency must remove from the preenrollment categories any individual who cannot be located using the contact information provided to the agency, fails to meet eligibility requirements, or becomes domiciled outside the state.

(11)(a) The agency must provide the following information to all applicants or their parents, legal guardians, or family members:

1. A brief overview of the vocational rehabilitation services offered through the Division of Vocational Rehabilitation of the Department of Education, including a hyperlink or website address that provides access to the application for such services;

2. A brief overview of the Florida ABLE program as established under s. 1009.986, including a hyperlink or website address that provides access to the application for establishing an ABLE account as defined in s. 1009.986(2);

3. A brief overview of the supplemental security income benefits and social security disability income benefits available under Title XVI of the Social Security Act, as amended, including a hyperlink or website address that provides access to the application for such benefits;

4. A statement indicating that the applicant's local public school district may provide specialized instructional services, including transition programs, for students with special education needs;

5. A brief overview of programs and services funded through the Florida Center for Students with Unique Abilities, including contact information for each state-approved Florida Postsecondary Comprehensive Transition

Program;

6. A brief overview of decisionmaking options for individuals with disabilities, guardianship under chapter 744, and alternatives to guardianship as defined in s. 744.334(1), which may include contact information for organizations that the agency believes would be helpful in assisting with such decisions;

7. A brief overview of the referral tools made available through the agency, including a hyperlink or website address that provides access to such tools; and

8. A statement indicating that some waiver providers may serve private-pay individuals.

(b) The agency must provide the information required in paragraph (a) in writing to an applicant or his or her parent, legal guardian, or family member along with a written disclosure statement in substantially the following form:

DISCLOSURE STATEMENT

Each program and service has its own eligibility requirements. By providing the information specified in section 393.065(11)(a), Florida Statutes, the agency does not guarantee an applicant's eligibility for or enrollment in any program or service.

(c) The agency must also publish the information required in paragraph (a) and the disclosure statement in paragraph (b) on its website, and must provide that information and statement annually to each client placed in the preenrollment categories or to the parent, legal guardian, or family member of such client.

(12) The agency and the Agency for Health Care Administration may adopt rules specifying application procedures, criteria associated with the preenrollment categories, procedures for administering the preenrollment, including tools for prioritizing waiver enrollment within preenrollment categories, and eligibility requirements as needed to administer this section.

History.—s. 1, ch. 77-335; s. 42, ch. 83-218; s. 7, ch. 88-398; s. 5, ch. 94-154; s. 120, ch. 96-410; s. 82, ch. 99-8; s. 2, ch. 99-144; s. 100, ch. 2004-267; s. 13, ch. 2006-227; s. 1, ch. 2009-56; s. 71, ch. 2014-19; ss. 40, 41, 126, ch. 2016-62; s. 13, ch. 2016-65; s. 3, ch. 2016-140; s. 16, ch. 2018-111; s. 16, ch. 2020-138; s. 1, ch. 2021-100; s. 4, ch. 2022-68; s. 3, ch. 2023-273; s. 2, ch. 2024-14.

393.0651 Family or individual support plan.—The agency shall provide directly or contract for the development of a family support plan for children ages 3 to 18 years of age and an individual support plan for each client served by the home and community-based services Medicaid waiver program under s. 393.0662. The client, if competent, the client's parent or guardian, or, when appropriate, the client advocate, shall be consulted in the development of the plan and shall receive a copy of the plan. Each plan must include the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized. The plan must include provisions for the most appropriate level of care for the client. Within the specification of needs and services for each client, when residential care is necessary, the agency shall move toward placement of clients in residential facilities based within the client's community. The ultimate goal of each plan, whenever possible, shall be to enable the client to live a dignified life in the least restrictive setting, be that in the home or in the community. The family or individual support plan must be developed within 60 calendar days after the agency determines the client eligible pursuant to s. 393.065(3).

(1) The agency shall develop and specify by rule the core components of support plans.

(2) The family or individual support plan shall be integrated with the individual education plan (IEP) for all clients who are public school students entitled to a free appropriate public education under the Individuals with Disabilities Education Act (IDEA), as amended. The family or individual support plan and IEP must be implemented to maximize the attainment of educational and habilitation goals.

(a) If the IEP for a student enrolled in a public school program indicates placement in a public or private residential program is necessary to provide special education and related services to a client, the local education agency must provide for the costs of that service in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA), as amended. This does not preclude local education agencies and the agency from sharing the residential service costs of students who are clients and require residential placement.

(b) For clients who are entering or exiting the school system, an interdepartmental staffing team composed of representatives of the agency and the local school system shall develop a written transitional living and training plan with the participation of the client or with the parent or guardian of the client, or the client advocate, as appropriate.

(3) Each family or individual support plan shall be facilitated through case management designed solely to advance the individual needs of the client.

(4) In the development of the family or individual support plan, a client advocate may be appointed by the support planning team for a client who is a minor or for a client who is not capable of express and informed consent when:

(a) The parent or guardian cannot be identified;

(b) The whereabouts of the parent or guardian cannot be discovered; or

(c) The state is the only legal representative of the client.

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

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

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

(b) Foster care facility.

(c) Group home facility.

(d) Intermediate care facility for the developmentally disabled.

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

(f) Developmental disabilities center.

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

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

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

(9) When developing or reviewing a client's family or individual support plan, the waiver support coordinator shall inform the client, the client's parent or guardian, or, when appropriate, the client advocate about the consumer-directed care program established under s. 409.221.

History.—s. 10, ch. 89-308; s. 3, ch. 89-339; s. 6, ch. 94-154; s. 1046, ch. 95-148; s. 121, ch. 96-410; s. 101, ch. 2004-267; s. 14, ch. 2006-227; s. 4, ch. 2008-244; s. 4, ch. 2023-273; s. 3, ch. 2024-14.

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

service provider under contract with the agency if:

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

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

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

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

History.—s. 15, ch. 2006-227.

393.0655 Screening of direct service providers.—

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

(a) A volunteer who assists on an intermittent basis for less than 10 hours per month does not have to be screened if a person who meets the screening requirement of this section is always present and has the volunteer within his or her line of sight.

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

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

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

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

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

(4) TERMINATION; HEARINGS PROVIDED.—

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

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

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

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

(5) DISQUALIFYING OFFENSES.—The background screening conducted under this section must ensure that, in addition to the disqualifying offenses listed in s. 435.04, no person subject to the provisions of this section has an arrest awaiting final disposition for, has been found guilty 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 any of the following provisions of state law or similar law of another jurisdiction:

(a) Any authorizing statutes, if the offense was a felony.

(b) This chapter, if the offense was a felony.

(c) Section 409.920, relating to Medicaid provider fraud.

(d) Section 409.9201, relating to Medicaid fraud.

(e) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.

(f) Section 817.234, relating to false and fraudulent insurance claims.

(g) Section 817.505, relating to patient brokering.

(h) Section 817.568, relating to criminal use of personal identification information.

(i) Section 817.60, relating to obtaining a credit card through fraudulent means.

(j) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.

(k) Section 831.01, relating to forgery.

(l) Section 831.02, relating to uttering forged instruments.

(m) Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.

(n) Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

History.—s. 5, ch. 85-54; s. 6, ch. 87-238; s. 2, ch. 90-225; s. 25, ch. 90-347; s. 6, ch. 91-33; s. 21, ch. 91-57; s. 88, ch. 91-221; s. 10, ch. 93-156; s. 18, ch. 94-134; s. 18, ch. 94-135; s. 7, ch. 94-154; s. 1047, ch. 95-148; s. 14, ch. 95-152; s. 12, ch. 95-158; s. 35, ch. 95-228; s. 123, ch. 95-418; s. 7, ch. 96-268; s. 206, ch. 96-406; s. 73, ch. 2004-267; s. 52, ch. 2005-2; s. 16, ch. 2006-227; s. 4, ch. 2010-114; s. 5, ch. 2023-273.

393.0657 Persons not required to be refingerprinted or rescreened.—Persons who have undergone any portion of the background screening required under s. 393.0655 within the last 12 months are not required to repeat such screening in order to comply with the screening requirements if such persons have not been unemployed for more than 90 consecutive days since that screening occurred. Such persons are responsible for providing documentation of the screening and shall undergo screening for any remaining background screening requirements that have never been conducted or have not been completed within the last 12 months.

History.—s. 1, ch. 87-128; s. 1, ch. 87-141; s. 22, ch. 93-39; s. 8, ch. 94-154; s. 8, ch. 2002-219; s. 979, ch. 2002-387; s. 40, ch. 2004-5; s. 17, ch. 2006-227; s. 5, ch. 2008-244.

393.066 Community services and treatment.—

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

(2) Necessary services shall be purchased, rather than provided directly by the agency, when the purchase of services is more cost-efficient than providing them directly. All purchased services must be approved by the agency. As a condition of payment and before billing, persons or entities under contract with the agency to provide services shall use agency data management systems to document service provision to clients and shall use such systems to bill for services. Contracted persons and entities shall meet the minimum hardware and software technical requirements established by the agency for the use of such systems. Such persons or entities shall also meet any requirements established by the agency for training and professional development of staff providing direct services to clients.

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

(a) Adult day training services.

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

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

(5) In order to improve the potential for utilization of more cost-effective, community-based residential facilities, the agency shall promote the statewide development of day habilitation services for clients who live with a direct service provider in a community-based residential facility and who do not require 24-hour-a-day care in a hospital or other health care institution, but who may, in the absence of day habilitation services, require admission to a developmental disabilities 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.

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

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

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

History.—s. 1, ch. 77-335; s. 2, ch. 80-174; s. 43, ch. 83-218; s. 15, ch. 84-226; s. 6, ch. 85-54; s. 2, ch. 85-147; s. 10, ch. 86-220; s. 7, ch. 87-238; s. 11, ch. 89-308; s. 18, ch. 91-158; s. 4, ch. 92-174; ss. 2, 3, ch. 93-143; s. 9, ch. 93-200; s. 5, ch. 93-267; s. 9, ch. 94-154; s. 1, ch. 98-152; s. 83, ch. 99-8; s. 3, ch. 99-144; s. 74, ch. 2004-267; s. 18, ch. 2006-227; s. 6, ch. 2008-244; s. 4, ch. 2016-140; s. 2, ch. 2020-71; s. 24, ch. 2021-51.

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, shall manage 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 administer an individual budget, referred to as an iBudget, for each 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. For the iBudget system, eligible clients shall include individuals with a developmental disability as defined in s. 393.063. The iBudget system shall 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 role for support coordinators that avoids potential conflicts of interest; a flexible and streamlined service review process; and the equitable allocation of available funds based on the client's level of need, as determined by the allocation methodology.

(a) In developing each client's iBudget, the agency shall use the allocation methodology as defined in s. 393.063(4), in conjunction with an assessment instrument that the agency deems to be reliable and valid, including, but not limited to, the agency's Questionnaire for Situational Information. The allocation methodology shall determine the amount of funds allocated to a client's iBudget.

(b) The agency may authorize additional funding based on a client having one or more significant additional needs that cannot be accommodated within the funding determined by the algorithm and having no other resources, supports, or services available to meet the needs. Such additional funding may be provided only after the determination of a client's initial allocation amount and after the qualified organization has documented the availability of all nonwaiver resources. Upon receipt of an incomplete request for services to meet significant additional needs, the agency shall close the request.

(c) The agency shall centralize, within its headquarters, medical necessity determinations for requested services made through the significant additional needs process. The process must ensure consistent application of medical necessity criteria. This process must provide opportunities for targeted training, quality assurance, and inter-rater reliability.

(d) A client's annual expenditures for home and community-based 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.

(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 manage the iBudget system, improve services for eligible and enrolled clients, and improve the delivery of services through the home and community-based services Medicaid waiver program and the Consumer-Directed Care Plus Program, including, but not limited to, enrollees with a dual diagnosis of a developmental disability and a mental health disorder.

(3) The agency must certify and document within each client's cost plan that the client has used all available 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.

(4) Rates for any or all services established under rules of the Agency for Health Care Administration must be designated as the maximum rather than a fixed amount for 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.

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

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

(7) The Agency for Health Care Administration shall seek federal approval to provide a consumer-directed option for persons with developmental disabilities. The agency and the Agency for Health Care Administration may

adopt rules necessary to administer this subsection.

(8) The Agency for Health Care Administration shall seek federal waivers and amend contracts as necessary to make changes to services defined in federal waiver programs, as follows:

(a) Supported living coaching services may not exceed 20 hours per month for persons who also receive in-home support services.

(b) Limited support coordination services are the only support coordination services that may be provided to persons under the age of 18 who live in the family home.

(c) Personal care assistance services are limited to 180 hours per calendar month and may not include rate modifiers. Additional hours may be authorized for persons who have intensive physical, medical, or adaptive needs, if such hours will prevent institutionalization.

(d) Residential habilitation services are limited to 8 hours per day. Additional hours may be authorized for persons who have intensive medical or adaptive needs and if such hours will prevent institutionalization, or for persons who have behavioral problems that are exceptional in intensity, duration, or frequency and who present a substantial risk of harm to themselves or others.

(e) 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.

(f) 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.

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

(h) The geographic differential for Monroe County for residential habilitation services is 20 percent.

(9) The agency shall collect premiums or cost sharing pursuant to s. 409.906(13)(c).

(10) This section or any related rule does not prevent or limit the Agency for Health Care Administration, in consultation with the agency, 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.

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

(12) The agency shall submit quarterly status reports to the Executive Office of the Governor, the chair of the Senate Appropriations Committee or its successor, and the chair of the House Appropriations Committee or its successor which contain all of the following information:

(a) The financial status of home and community-based services, including the number of enrolled individuals receiving services through one or more programs.

(b) The number of individuals who have requested services and who are not enrolled but who are receiving services through one or more programs, with a description indicating the programs under which the individual is receiving services.

(c) The number of individuals who have refused an offer of services but who choose to remain on the list of individuals waiting for services.

(d) The number of individuals who have requested services but who are receiving no services.

(e) A frequency distribution indicating the length of time individuals have been waiting for services.

(f) Information concerning the actual and projected costs compared to the amount of the appropriation available to the program and any projected surpluses or deficits.

(13) 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 (10) to the Executive Office of the Governor, the chair of the Senate Appropriations

Committee or its successor committee, and the chair of the House Appropriations Committee or its successor committee 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.

(14) The agency, in consultation with the Agency for Health Care Administration, shall provide a quarterly reconciliation report of all home and community-based services waiver expenditures from the Agency for Health Care Administration's claims management system with service utilization from the Agency for Persons with Disabilities Allocation, Budget, and Contract Control system. The reconciliation report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than 30 days after the close of each quarter.

(15) The agency and the Agency for Health Care Administration may adopt rules specifying the allocation algorithm and methodology; criteria and processes for clients to access funds for services to meet significant additional needs; and processes and requirements for selection and review of services, development of support and cost plans, and management of the iBudget system as needed to administer this section.

History.—s. 2, ch. 2010-157; s. 31, ch. 2011-135; s. 14, ch. 2016-65; s. 5, ch. 2016-140; s. 4, ch. 2020-71.

393.0663 Support coordination; legislative intent; qualified organizations; agency duties; due process; rulemaking.—

(1) LEGISLATIVE INTENT.—To enable the state to provide a systematic approach to service oversight for persons providing care to individuals with developmental disabilities, it is the intent of the Legislature that the agency work in collaboration with relevant stakeholders to ensure that waiver support coordinators have the knowledge, skills, and abilities necessary to competently provide services to individuals with developmental disabilities by requiring all support coordinators to be employees of a qualified organization.

(2) QUALIFIED ORGANIZATIONS.—

(a) As used in this section, the term "qualified organization" means an organization determined by the agency to meet the requirements of this section and of the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook.

(b) The agency shall use qualified organizations for the purpose of providing all support coordination services to iBudget clients in this state. In order to be qualified, an organization must:

1. Employ four or more support coordinators;
2. Maintain a professional code of ethics and a disciplinary process that apply to all support coordinators within the organization;
3. Comply with the agency's cost containment initiatives;
4. Require support coordinators to ensure that client budgets are linked to levels of need;
5. Require support coordinators to perform all duties and meet all standards related to support coordination as provided in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook;
6. Prohibit dual employment of a support coordinator if the dual employment adversely impacts the support coordinator's availability to clients;
7. Educate clients and families regarding identifying and preventing abuse, neglect, and exploitation;
8. Instruct clients and families on mandatory reporting requirements for abuse, neglect, and exploitation;
9. Submit within established timeframes all required documentation for requests for significant additional needs;
10. Require support coordinators to successfully complete training and professional development approved by the agency;
11. Require support coordinators to pass a competency-based assessment established by the agency; and
12. Implement a mentoring program approved by the agency for support coordinators who have worked as a support coordinator for less than 12 months.

(3) DUTIES OF THE AGENCY.—The agency shall:

(a) Require all qualified organizations to report to the agency any violation of ethical or professional conduct by support coordinators employed by the organization;

(b) Maintain a publicly accessible registry of all support coordinators, including any history of ethical or disciplinary violations; and

(c) Impose an immediate moratorium on new client assignments, impose an administrative fine, require plans of remediation, and terminate the Medicaid Waiver Services Agreement of any qualified organization that is noncompliant with applicable laws or rules.

(4) DUE PROCESS.—Any decision by the agency to take action against a qualified organization as described in paragraph (3)(c) is reviewable by the agency. Upon receiving an adverse determination, the qualified organization may request an administrative hearing pursuant to ss. 120.569 and 120.57(1) within 30 days after completing any appeals process established by the agency.

(5) RULEMAKING.—The agency may adopt rules to implement this section.

History.—s. 5, ch. 2020-71.

393.067 Facility licensure.—

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

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

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

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

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

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

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

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

(e) A description of the types of services and treatment to be provided by the facility or adult day training program.

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

(g) Certification that the staff of the facility or adult day training program will receive training to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients.

(h) Information the agency determines is necessary to carry out the provisions of this chapter.

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

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

(7) The agency shall adopt rules establishing minimum standards for facilities and adult day training programs licensed under this section, including rules requiring facilities and adult day training programs to train staff to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients, minimum standards of quality and adequacy of client care, incident reporting requirements, and uniform firesafety standards established by the State Fire Marshal which are appropriate to the size of the facility or adult day training program.

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

(9) The agency may conduct unannounced inspections to determine compliance by foster care facilities, group home facilities, residential habilitation centers, and adult day training programs with the applicable provisions of this chapter and the rules adopted pursuant hereto, including the rules adopted for training staff of a facility or an adult day training program to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients. The facility or adult day training program shall make copies of inspection reports available to the public upon request.

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

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

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

(13) Facilities and adult day training programs licensed under this section shall adhere to all rights specified in s. 393.13.

(14) The agency may not authorize funds or services to an unlicensed facility or, beginning October 1, 2024, an adult day training program that requires a license under this section. A license for the operation of a facility or an adult day training program may not be renewed if the licensee has any outstanding fines assessed pursuant to this chapter wherein final adjudication of such fines has been entered.

(15) The agency is not required to contract with facilities or adult day training programs licensed under this chapter.

History.—s. 1, ch. 77-335; s. 154, ch. 79-400; s. 4, ch. 81-290; s. 7, ch. 85-54; s. 8, ch. 87-238; s. 12, ch. 89-308; s. 5, ch. 89-339; s. 26, ch. 90-347; s. 23, ch. 91-158; s. 23, ch. 93-211; s. 10, ch. 94-154; s. 2, ch. 95-293; s. 207, ch. 96-406; s. 14, ch. 96-417; ss. 24, 71, ch. 98-171; s. 84, ch. 99-8; s. 204, ch. 99-13; s. 4, ch. 99-144; s. 1, ch. 2000-338; s. 62, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; ss. 6, 90, ch. 2004-267; s. 19, ch. 2006-227; s. 1, ch. 2010-224; s. 270, ch. 2011-142; ss. 23, 24, ch. 2015-222; ss. 43, 44, 126, ch. 2016-62; s. 15, ch. 2016-65; ss. 8, 9, ch. 2016-140; s. 6, ch. 2023-273.

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

(1) The following constitute grounds for which the agency may take disciplinary action, including revoking or suspending a license and imposing an administrative fine, not to exceed $1,000 per violation per day:

(a) The licensee has:

1. Falsely represented or omitted a material fact in its license application submitted under s. 393.067;

2. Had prior action taken against it under the Medicaid or Medicare program; or

3. Failed to comply with the applicable requirements of this chapter or rules applicable to the licensee; or

(b) The Department of Children and Families has verified that the licensee is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult.

(2) For purposes of disciplinary action under this section for verified findings of abuse, neglect, abandonment, or exploitation of a child or vulnerable adult, the licensee is responsible not only for administration of the facilities in compliance with the standards provided by statute and administrative rule, but is ultimately responsible for the care and supervision of the clients in the facility or the participants of the program.

(a) A licensee may not delegate to others the ultimate responsibility for the safety of the clients in its care.

(b) A licensee is subject to disciplinary action for an employee's lapse in care or supervision of the clients at the facility or the participants of the program in which a verified finding of abuse, neglect, abandonment, or exploitation occurred.

(c) Remedial action taken by the licensee does not affect the agency's ability to impose disciplinary action for the underlying violation.

(3) The agency may deny an application for licensure submitted under s. 393.067 if:

(a) The applicant has:

1. Falsely represented or omitted a material fact in its license application submitted under s. 393.067;

2. Had prior action taken against it under the Medicaid or Medicare program;

3. Failed to comply with the applicable requirements of this chapter or rules applicable to the applicant; or

4. Previously had a license to operate a residential facility or adult day training program revoked by the agency, the Department of Children and Families, or the Agency for Health Care Administration;

(b) The Department of Children and Families has verified that the applicant is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult; or

(c) The agency has determined that there is clear and convincing evidence that the applicant is unqualified for a license because of a lack of good moral character. For purposes of this paragraph, the term "good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and the Federal Government.

(4) All hearings must be held within the county in which the licensee or applicant operates or applies for a license to operate a facility or adult day training program as defined herein.

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

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

(7) The agency may impose an immediate moratorium on admissions to any facility or service authorizations to a facility or adult day training program when the agency determines that any condition of the facility or adult day training program presents a threat to the health, safety, or welfare of the residents in the facility or the program participants.

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

History.—s. 11, ch. 83-230; s. 8, ch. 85-54; s. 40, ch. 93-217; s. 85, ch. 99-8; s. 5, ch. 99-144; s. 102, ch. 2004-267; s. 20, ch. 2006-227; s. 7, ch. 2008-9; s. 7, ch. 2008-244; s. 73, ch. 2014-19; s. 7, ch. 2023-273.

393.0674 Penalties.—

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

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

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

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

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

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

393.0675 Injunctive proceedings authorized.—

(1) The agency may institute injunctive proceedings in a court of competent jurisdiction to:

(a) Enforce the provisions of this chapter or any minimum standard, rule, regulation, or order issued or entered pursuant thereto; or

(b) Terminate the operation of facilities licensed pursuant to this chapter when any of the following conditions exist:

1. Failure by the facility to take preventive or corrective measures in accordance with any order of the agency.
2. Failure by the facility to abide by any final order of the agency once it has become effective and binding.
3. Any violation by the facility constituting an emergency requiring immediate action as provided in s. 393.0673.

(2) Such injunctive relief may include temporary and permanent injunctions.

(3) The agency may institute proceedings for an injunction in a court of competent jurisdiction to terminate the operation of a provider of supports or services if such provider has willfully and knowingly refused to comply with the screening requirement for direct service providers or has refused to terminate direct service providers found not to be in compliance with such requirements.

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

393.0678 Receivership proceedings.—

(1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for a residential habilitation center or a group home facility owned and operated by a corporation or partnership when any of the following conditions exist:

(a) Any person is operating a facility without a license and refuses to make application for a license as required by s. 393.067.

(b) The licensee is closing the facility or has informed the agency that it intends to close the facility, and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility.

(c) The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency shall facilitate the continued operation of the program.

(d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this chapter and all rules adopted thereunder.

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

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

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

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

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

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

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

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

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

(e) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for

receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership at the same rate of payment charged by the owner at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court for private, paying residents. The receiver may apply to the agency for a rate increase for residents under Title XIX of the Social Security Act if the facility is not receiving the state reimbursement cap and if expenditures justify an increase in the rate.

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

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

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

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

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

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

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

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

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

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

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

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

(9) The court may terminate a receivership when:

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

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

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

(11) Nothing in this section shall be deemed to relieve any owner, operator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator, or employee before the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, operator, or employee for payment of taxes or other operating and maintenance expenses of the facility or any obligation of the owner, operator, or employee or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to the approval of the court which ordered the receivership. A receivership imposed under the provisions of this chapter shall be subject to the Health Care Trust Fund pursuant to s. 400.063. The owner of a facility placed in receivership by the court shall be liable for all expenses and costs incurred by the Health Care Trust Fund which occur as a result of the receivership.

History.—s. 13, ch. 83-230; s. 14, ch. 89-308; s. 41, ch. 93-217; s. 700, ch. 95-148; s. 104, ch. 2004-267; s. 23, ch. 2006-227; s. 8, ch. 2008-9; s. 1, ch. 2017-174; s. 8, ch. 2023-273.

393.0679 Utilization review.—The agency shall conduct utilization review activities in intermediate care facilities for individuals with developmental disabilities, both public and private, as necessary to meet the requirements of the approved Medicaid state plan and federal law, and such facilities shall comply with any requests for information and documentation made by the agency and permit any agency inspections in connection with such activities.

History.—s. 6, ch. 2016-140.

393.068 Family care program.—

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

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

(a) Attendant care.

(b) Barrier-free modifications to the home.

(c) Home visitation by agency workers.

(d) In-home subsidies.

(e) Low-interest loans.

(f) Modifications for vehicles used to transport the individual with a developmental disability.

(g) Facilitated communication.

(h) Family counseling.

(i) Equipment and supplies.

(j) Self-advocacy training.

(k) Roommate services.

(l) Integrated community activities.

(m) Emergency services.

(n) Support coordination.

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

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

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

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

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

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

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

393.0695 Provision of in-home subsidies.—

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

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

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

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

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

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

393.071 Client fees.—The agency shall charge fees for services provided to clients in accordance with s. 402.33. All funds collected pursuant to this section shall be deposited in the Operations and Maintenance Trust Fund.

History.—s. 1, ch. 77-335; s. 87, ch. 99-8; s. 105, ch. 2004-267; s. 2, ch. 2008-144.

393.075 General liability coverage.—

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

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

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

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

393.11 Involuntary admission to residential services.—

(1) JURISDICTION.—If a person has an intellectual disability or autism and requires involuntary admission to residential services provided by the agency, the circuit court of the county in which the person resides has jurisdiction to conduct a hearing and enter an order involuntarily admitting the person in order for the person to receive the care, treatment, habilitation, and rehabilitation that the person needs. For the purpose of identifying intellectual disability or autism, diagnostic capability shall be established by the agency. Except as otherwise specified, the proceedings under this section are governed by the Florida Rules of Civil Procedure.

(2) PETITION.—

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

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

(c) The petition shall be verified and must:

1. State the name, age, and present address of the commissioners and their relationship to the person who has an intellectual disability or autism;

2. State the name, age, county of residence, and present address of the person who has an intellectual disability 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 must be filed in the circuit court of the county in which the person who has the intellectual disability or autism resides.

(3) NOTICE.—

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

(b) If a motion or petition has been filed pursuant to s. 916.303 to dismiss criminal charges against a defendant who has an intellectual disability 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 must 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 must state that a hearing shall be set to inquire into the need of the person who has an intellectual disability or autism for involuntary residential services. The notice must also state the date of the hearing on the petition.

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

(4) AGENCY PARTICIPATION.—

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

(b) Following examination, the agency shall file a written report with the court at least 10 working days before the date of the hearing. The report must be served on the petitioner, the person who has the intellectual disability or autism, and the person's attorney at the time the report is filed with the court.

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

(5) EXAMINING COMMITTEE.—

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

(b) The court shall appoint at least three disinterested experts who have demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities or autism. The committee must include at least one licensed and qualified physician, one licensed and qualified psychologist, and one qualified professional who, at a minimum, has a master's degree in social work, special education, or vocational rehabilitation counseling, to examine the person and to testify at the hearing on the involuntary admission to residential services.

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

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

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

1. The degree of the person's intellectual disability or autism and whether, using diagnostic capabilities established by the agency, the person is eligible for agency services;

2. Whether, because of the person's degree of intellectual disability or autism, the person:

a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065 and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a threat of substantial harm to the person's well-being; or

b. Is likely to physically injure others if allowed to remain at liberty.

3. The purpose to be served by residential care;

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

5. The appropriate care, habilitation, and treatment.

(f) The committee shall file the report with the court at least 10 working days before the date of the hearing. The report must be served on the petitioner, the person who has the intellectual disability or autism, the person's

attorney at the time the report is filed with the court, and the agency.

(g) Members of the examining committee shall receive a reasonable fee to be determined by the court. The fees shall be paid from the general revenue fund of the county in which the person who has the intellectual disability or autism resided when the petition was filed.

(6) COUNSEL; GUARDIAN AD LITEM.—

(a) The person who has the intellectual disability or autism must be represented by counsel at all stages of the judicial proceeding. If the person is indigent and cannot afford counsel, the court shall appoint a public defender at least 20 working days before the scheduled hearing. The person's counsel shall have full access to the records of the service provider and the agency. In all cases, the attorney shall represent the rights and legal interests of the person, regardless of who initiates the proceedings or pays the attorney fee.

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

(7) HEARING.—

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

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

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

(d) The person who has the intellectual disability or autism must be physically present throughout the entire proceeding. If the person's attorney believes that the person's presence at the hearing is not in his or her best interest, the person's presence may be waived once the court has seen the person and the hearing has commenced.

(e) The person has the right to present evidence and to cross-examine all witnesses and other evidence alleging the appropriateness of the person's admission to residential care. Other relevant and material evidence regarding the appropriateness of the person's admission to residential services; the most appropriate, least restrictive residential placement; and the appropriate care, treatment, and habilitation of the person, including written or oral reports, may be introduced at the hearing by any interested person.

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

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

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

(8) ORDER.—

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

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

1. The person is intellectually disabled or autistic;

2. Placement in a residential setting is the least restrictive and most appropriate alternative to meet the person's needs; and

3. Because of the person's degree of intellectual disability or autism, the person:

a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065 and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to the person's well-being; or

b. Is likely to physically injure others if allowed to remain at liberty.

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

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

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

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

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

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

(10) COMPETENCY.—

(a) The issue of competency is separate and distinct from a determination of the appropriateness of involuntary admission to residential services due to intellectual disability or autism.

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

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

(12) APPEAL.—

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

(b) The filing of an appeal by the person who has an intellectual disability or autism stays admission of the person into residential care. The stay remains in effect during the pendency of all review proceedings in Florida courts until a mandate issues.

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

(14) REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO RESIDENTIAL SERVICES.—

(a) If a person is involuntarily admitted to residential services provided by the agency, the agency shall employ or, if necessary, contract with a qualified evaluator to conduct a review annually, unless otherwise ordered, to determine the propriety of the person's continued involuntary admission to residential services based on the criteria in paragraph (8)(b). The review shall include an assessment of the most appropriate and least restrictive type of residential placement for the person.

(b) A placement resulting from an involuntary admission to residential services must be reviewed by the court at a hearing annually, unless a shorter review period is ordered at a previous hearing. The agency shall provide to the court the completed reviews by the qualified evaluator. The review and hearing must determine whether the person continues to meet the criteria in paragraph (8)(b) and, if so, whether the person still requires involuntary placement in a residential setting and whether the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting.

(c) The agency shall provide a copy of the review and reasonable notice of the hearing to the appropriate state attorney, if applicable, the person's attorney, and the person's guardian or guardian advocate, if appointed.

(d) For purposes of this section, the term "qualified evaluator" means a psychiatrist licensed under chapter 458 or chapter 459, or a psychologist licensed under chapter 490, who has demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities.

History.—s. 4, ch. 10272, 1925; CGL 3677; s. 1, ch. 61-426; s. 5, ch. 67-65; s. 1, ch. 70-343; s. 1, ch. 70-439; s. 4, ch. 73-308; s. 25, ch. 73-334; s. 8, ch. 75-259; s. 197, ch. 77-147; s. 2, ch. 77-335; s. 155, ch. 79-400; s. 3, ch. 80-174; s. 5, ch. 81-290; s. 8, ch. 88-398; s. 2, ch. 90-333; s. 7, ch. 92-58; s. 14, ch. 94-154; s. 95, ch. 95-143; s. 1048, ch. 95-148; s. 2, ch. 98-92; s. 89, ch. 99-8; s. 5, ch. 99-240; s. 76, ch. 2004-11; s. 78, ch. 2004-267; s. 27, ch. 2006-227; s. 10, ch. 2013-162; s. 7, ch. 2016-140.

393.115 Discharge.—

(1) DISCHARGE AT THE AGE OF MAJORITY.—

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

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

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

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

History.—s. 7, ch. 7887, 1919; ss. 2, 3, ch. 10272, 1925; CGL 3669, 3674-3676; s. 1, ch. 61-426; ss. 19, 35, ch. 69-106; s. 1, ch. 70-343; s. 1, ch. 70-439; s. 7, ch. 73-308; s. 194, ch. 77-147; s. 3, ch. 77-335; s. 19, ch. 78-95; s. 9, ch. 88-398; s. 16, ch. 89-308; s. 702, ch. 95-148; s. 107, ch. 2004-267; s. 87, ch. 2020-2.

Note.—Former s. 393.05.

393.12 Capacity; appointment of guardian advocate.—

(1) CAPACITY.—

(a) A person with a developmental disability may not be presumed incapacitated solely by reason of his or her acceptance in nonresidential services or admission to residential care and may not be denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States.

(b) The determination of incapacity of a person with a developmental disability and the appointment of a guardian must be conducted in a separate proceeding according to the procedures and requirements of chapter 744 and the Florida Probate Rules.

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(a) A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities, if the person lacks the decisionmaking ability to do some, but not all, of the decisionmaking tasks necessary to care for his or her person or property or if the person has voluntarily petitioned for the appointment of a guardian advocate. In determining whether to appoint a guardian advocate, the court shall consider the person's unique needs and abilities, including, but not limited to, the person's ability to independently exercise his or her rights with appropriate assistance, and may only delegate decisionmaking tasks that the person lacks the decisionmaking ability to exercise. Except as otherwise specified, the proceeding shall be governed by the Florida Rules of Probate Procedure.

(b) A person who is being considered for appointment or is appointed as a guardian advocate is not required to be represented by an attorney unless required by the court or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits or to receive periodic payments for the support, care, maintenance, education, or other needs of the person with a developmental disability pursuant to s. 61.1255. This paragraph applies only to proceedings relating to the appointment of a guardian advocate and the court's supervision of a guardian advocate and is not an exercise of the Legislature's authority under s. 2(a), Art. V of the State Constitution.

(c) If a petition is filed pursuant to this section requesting appointment of a guardian advocate for a minor who is the subject of any proceeding under chapter 39, the court division with jurisdiction over guardianship matters has jurisdiction over the proceedings pursuant to this section when the minor reaches the age of 17 years and 6 months or anytime thereafter. The minor shall be provided all the due process rights conferred upon an alleged developmentally disabled adult pursuant to this chapter. The order of appointment of a guardian advocate under this section shall issue upon the minor's 18th birthday or as soon thereafter as possible. Any proceeding pursuant to this paragraph shall be conducted separately from any other proceeding.

(3) PETITION.—

(a) A petition to appoint a guardian advocate for a person with a developmental disability may be executed by an adult person who is a resident of this state. The petition must be verified and must:

1. State the name, age, and present address of the petitioner and his or her relationship to the person with a developmental disability;

2. State the name, age, county of residence, and present address of the person with a developmental disability;

3. Allege that the petitioner believes that the person needs a guardian advocate and specify the factual information on which such belief is based;

4. Specify the exact areas in which the person lacks the decisionmaking ability to make informed decisions about his or her care and treatment services or to meet the essential requirements for his or her physical health or safety;

5. Specify the legal disabilities to which the person is subject;

6. Identify any other type of guardian advocacy or alternatives to guardian advocacy that the person has designated, is in currently, or has been in previously and the reasons why alternatives to guardian advocacy are insufficient to meet the needs of the person;

7. State whether the person uses assistance to exercise his or her rights, including, but not limited to, supported decisionmaking, and, if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights; and

8. State the name of the proposed guardian advocate, the relationship of that person to the person with a developmental disability; the relationship that the proposed guardian advocate had or has with a provider of health care services, residential services, or other services to the person with a developmental disability; and the reason why this person should be appointed. The petition must also state if a willing and qualified guardian advocate cannot be located.

(b) A petition to appoint a guardian advocate may include a request for the authority to bring a civil action in circuit court to establish periodic payments from either or both parents of the person with a developmental disability for the support, care, maintenance, education, or other needs of that person pursuant to s. 61.1255. This

section may not be construed to confer any obligation or duty for a guardian advocate to pursue support for the person with a developmental disability.

(4) NOTICE.—

(a) Notice of the filing of the petition must be given to the person with a developmental disability, verbally and in writing in the language of the person and in English. Notice must also be given to the next of kin of the person with a developmental disability as defined in chapter 744, a health care surrogate designated pursuant to an advance directive under chapter 765, an agent under a durable power of attorney, and such other persons as the court may direct. A copy of the petition to appoint a guardian advocate must be served with the notice.

(b) The notice must state that a hearing will be held to inquire into the capacity of the person with a developmental disability to exercise the rights enumerated in the petition. The notice must also state the date of the hearing on the petition.

(c) The notice shall state that the person with a developmental disability has the right to be represented by counsel of his or her own choice and the court shall initially appoint counsel.

(5) COUNSEL.—Within 3 days after a petition has been filed, the court shall appoint an attorney to represent a person with a developmental disability who is the subject of a petition to appoint a guardian advocate. The person with a developmental disability may substitute his or her own attorney for the attorney appointed by the court.

(a) The court shall initially appoint a private attorney who shall be selected from the attorney registry compiled pursuant to s. 27.40. Such attorney must have completed a minimum of 8 hours of education in guardianship. The court may waive this requirement for an attorney who has served as a court-appointed attorney in guardian advocate proceedings or as an attorney of record for guardian advocates for at least 3 years. This education requirement does not apply to a court-appointed attorney who is employed by an office of criminal conflict and civil regional counsel.

(b) An attorney representing a person with a developmental disability may not also serve as the guardian advocate of the person, as counsel for the guardian advocate, or as counsel for the person petitioning for the appointment of a guardian advocate.

(6) HEARING.—

(a) Upon the filing of the petition to appoint a guardian advocate, the court shall set a date for holding a hearing on the petition. The hearing must be held as soon as practicable after the petition is filed, but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses may be granted.

(b) The hearing must be held at the time and place specified in the notice of hearing and must be conducted in a manner consistent with due process.

(c) The person with a developmental disability has the right to be present at the hearing and shall be present unless good cause to exclude the individual can be shown. The person has the right to remain silent, to present evidence, to call and cross-examine witnesses, and to have the hearing open or closed, as the person may choose.

(d) At the hearing, the court shall receive and consider all reports relevant to the person’s disability, including, but not limited to, the person’s current individual family or individual support plan, the individual education plan, and other professional reports documenting the condition and needs of the person.

(e) The Florida Evidence Code, chapter 90, applies at the hearing. The burden of proof must be by clear and convincing evidence.

(7) ADVANCE DIRECTIVES FOR HEALTH CARE AND DURABLE POWER OF ATTORNEY.—In each proceeding in which a guardian advocate is appointed under this section, the court shall determine whether the person with a developmental disability has executed any valid advance directive under chapter 765 or a durable power of attorney under chapter 709.

(a) If the person with a developmental disability has executed an advance directive or durable power of attorney, the court must consider and find whether the documents will sufficiently address the needs of the person with a developmental disability for whom the guardian advocate is sought. A guardian advocate may not be appointed if the court finds that the advance directive or durable power of attorney provides an alternative to the appointment of a guardian advocate which will sufficiently address the needs of the person with a developmental disability.

(b) If an interested person seeks to contest an advance directive or durable power of attorney executed by a person with a developmental disability, the interested person shall file a verified statement. The verified statement shall include the factual basis for the belief that the advance directive or durable power of attorney is invalid or does not sufficiently address the needs of the person for whom a guardian advocate is sought or that the person with authority under the advance directive or durable power of attorney is abusing his or her power.

(c) If an advance directive exists, the court shall specify in its order and letters of guardian advocacy what authority, if any, the guardian advocate shall exercise over the person's health care surrogate. Pursuant to the grounds listed in s. 765.105, the court, upon its own motion, may, with notice to the health care surrogate and any other appropriate parties, modify or revoke the authority of the health care surrogate to make health care decisions for the person with a developmental disability. For purposes of this section, the term "health care decision" has the same meaning as in s. 765.101.

(d) If any durable power of attorney exists, the court shall specify in its order and letters of guardian advocacy what powers of the agent, if any, are suspended and granted to the guardian advocate. The court, however, may not suspend any powers of the agent unless the court determines the durable power of attorney is invalid or there is an abuse by the agent of the powers granted.

(8) COURT ORDER.—If the court finds the person with a developmental disability requires the appointment of a guardian advocate, the court shall enter a written order appointing the guardian advocate and containing the findings of facts and conclusions of law on which the court made its decision, including:

(a) The nature and scope of the person's lack of decisionmaking ability;

(b) The exact areas in which the individual lacks decisionmaking ability to make informed decisions about care and treatment services or to meet the essential requirements for his or her physical health and safety;

(c) The specific legal disabilities to which the person with a developmental disability is subject;

(d) The identity of existing alternatives and a finding as to the validity or sufficiency of such alternative to alleviate the need for the appointment of a guardian advocate;

(e) The name of the person selected as guardian advocate and the reasons for the court's selection; and

(f) The powers, duties, and responsibilities of the guardian advocate, including bonding of the guardian advocate, as provided in s. 744.351.

(9) LEGAL RIGHTS.—A person with a developmental disability for whom a guardian advocate has been appointed retains all legal rights except those that have been specifically granted to the guardian advocate.

(10) POWERS AND DUTIES OF GUARDIAN ADVOCATE.—A guardian advocate for a person with a developmental disability shall be a person or corporation qualified to act as guardian, with the same powers, duties, and responsibilities required of a guardian under chapter 744 or those defined by court order under this section. However, a guardian advocate may not be required to file an annual accounting under s. 744.3678 if the court determines that the person with a developmental disability receives income only from Social Security benefits and the guardian advocate is the person's representative payee for the benefits.

(11) COURT COSTS.—In all proceedings under this section, court costs may not be charged against the agency.

(12) SUGGESTION OF RESTORATION OF RIGHTS.—Any interested person, including the person with a developmental disability, may file a suggestion of restoration of rights with the court in which the guardian advocacy is pending. The suggestion must state that the person with a developmental disability is currently capable of exercising some or all of the rights that were delegated to the guardian advocate and provide evidentiary support for the filing of the suggestion. Evidentiary support includes, but is not limited to, a signed statement from a medical, psychological, or psychiatric practitioner by whom the person with a developmental disability was evaluated and which supports the suggestion for the restoration. If the petitioner is unable to provide evidentiary support due to the lack of access to such information or reports, the petitioner may state a good faith basis for the suggestion for the restoration of rights without attaching evidentiary support. The court shall immediately set a hearing if no evidentiary support is attached to inquire of the petitioner and guardian advocate as to the reason and enter such orders as are appropriate to secure the required documents. The person with a disability and the person's attorney shall be provided notice of the hearing.

(a) Within 3 days after the filing of the suggestion, counsel shall be appointed for the person with a developmental disability as set forth in subsection (5).

(b) The clerk of the court shall immediately send notice of the filing of the suggestion to the person with a developmental disability, the guardian advocate, the attorney for the person with a developmental disability, the attorney for the guardian advocate, if any, and any other interested person designated by the court. Formal notice shall be served on the guardian advocate. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion.

(c) Any objections to the suggestion must be filed within 20 days after service of the notice. If an objection is timely filed, or if the evidentiary support suggests that restoration of rights is not appropriate, the court shall set the matter for hearing. The hearing shall be conducted as set forth in s. 744.1095. The court, at the hearing, shall consider all reports and testimony relevant to the person's decisionmaking abilities at the hearing, including, but not limited to, the person's current individual family plan or individual support plan, the individual education plan, and other professional reports that document the condition and needs of the person.

(d) Notice of the hearing and copies of the objections shall be served upon the person with a developmental disability, the attorney for the person with a developmental disability, the guardian advocate, the attorney for the guardian advocate, the next of kin of the person with a developmental disability, and any other interested person as directed by the court.

(e) If no objections are filed and the court is satisfied with the evidentiary support for restoration, the court shall enter an order of restoration of rights which were delegated to a guardian advocate and which the person with a developmental disability may now exercise.

(f) At the conclusion of a hearing, the court shall enter an order denying the suggestion or restoring all or some of the rights that were delegated to the guardian advocate. If only some rights are restored to the person with a developmental disability, the court shall enter amended letters of guardian advocacy.

(g) If only some rights are restored to the person with a developmental disability, the order must state which rights are restored and amended letters of guardian advocacy shall be issued by the court. The guardian advocate shall amend the current plan as required under chapter 744 if personal rights are restored to the person with a developmental disability. The guardian advocate shall file a final accounting as required under chapter 744 if all property rights are restored to the person with a developmental disability. The guardian advocate must file the amended plan or final accounting within 60 days after the order restoring rights and amended letters of guardian advocacy are issued. A copy of the reports shall be served upon the person with a developmental disability and the attorney for the person with a developmental disability.

History.—s. 1, ch. 29853, 1955; s. 1, ch. 61-426; s. 26, ch. 63-559; s. 1, ch. 70-343; s. 5, ch. 73-308; s. 25, ch. 73-334; s. 4, ch. 77-335; s. 2, ch. 80-171; s. 10, ch. 88-398; s. 109, ch. 89-96; s. 15, ch. 94-154; s. 96, ch. 95-143; s. 1049, ch. 95-148; s. 8, ch. 2004-260; s. 108, ch. 2004-267; s. 1, ch. 2008-124; s. 4, ch. 2015-112; s. 9, ch. 2022-195; s. 6, ch. 2023-213; s. 1, ch. 2024-242.

393.122 Applications for continued residential services.—

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

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

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

393.125 Hearing rights.—

(1) REVIEW OF AGENCY DECISIONS.—

(a) 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. These hearings shall be provided by the Department of Children and Families pursuant to s. 409.285 and shall follow procedures consistent with federal law and rules applicable to Medicaid cases.

(b) Any other developmental services applicant or client, or his or her parent, guardian, guardian advocate, or authorized representative, who has any substantial interest determined by the agency, has the right to request an administrative hearing pursuant to ss. 120.569 and 120.57, which shall be conducted pursuant to s. 120.57(1), (2), or (3).

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

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

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

History.—s. 17, ch. 89-308; s. 703, ch. 95-148; s. 122, ch. 96-410; s. 109, ch. 2004-267; s. 3, ch. 2010-157; s. 74, ch. 2014-19.

393.13 Treatment of persons with developmental disabilities.—

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

(2) LEGISLATIVE INTENT.—

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

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

1. Abate the use of large institutions.

2. Continue the development of community-based services that provide reasonable alternatives to institutionalization in settings that are least restrictive to the client and that provide opportunities for inclusion in the community.

3. Provide training and education that will maximize their potential to lead independent and productive lives and that will afford opportunities for outward mobility from institutions.

4. Reduce the use of sheltered workshops and other noncompetitive employment day activities and promote opportunities for those who choose to seek such employment.

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

(d) It is the intent of the Legislature:

1. To articulate the existing legal and human rights of persons with developmental disabilities so that they may be exercised and protected. Persons with developmental disabilities shall have all the rights enjoyed by citizens of the state and the United States.

2. To provide a mechanism for the identification, evaluation, and treatment of persons with developmental disabilities.

3. To divert those individuals from institutional commitment who, by virtue of comprehensive assessment, can be placed in less costly, more effective community environments and programs.

4. To fund improvements in the program in accordance with the availability of state resources and yearly priorities determined by the Legislature.

5. To ensure that persons with developmental disabilities receive treatment and habilitation which fosters the developmental potential of the individual.

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

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

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

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

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

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

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

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

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

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

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

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

(h) Persons with developmental disabilities shall have a right to consent to or refuse treatment, subject to the powers of a guardian advocate appointed pursuant to s. 393.12 or a guardian appointed pursuant to chapter 744.

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

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

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

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

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

2. Clients in residential facilities shall be afforded reasonable opportunities for telephone communication, to make and receive confidential calls, unless there is reason to believe that the content of the telephone

communication may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable observation and monitoring to the telephone communication.

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

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

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

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

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

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

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

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

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

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

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

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

a. The nature and consequences of such procedures.

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

c. Alternate procedures available.

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

8. The absence of express and informed consent notwithstanding, a licensed and qualified physician may render emergency medical care or treatment to any client who has been injured or who is suffering from an acute illness,

disease, or condition if, within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the client.

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

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

(f) Each client shall receive humane discipline.

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

1. Treatment programs involving the use of noxious or painful stimuli are prohibited.

2. All alleged violations of this paragraph shall be reported immediately to the chief administrator of the facility and the agency. A thorough investigation of each incident shall be conducted and a written report of the finding and results of the investigation shall be submitted to the chief administrator of the facility and the agency within 24 hours after the occurrence or discovery of the incident.

3. The agency shall adopt by rule a system for the oversight of behavioral programs. The system shall establish guidelines and procedures governing the design, approval, implementation, and monitoring of all behavioral programs involving clients. The system shall ensure statewide and local review by committees of professionals certified as behavior analysts pursuant to s. 393.17. No behavioral program shall be implemented unless reviewed according to the rules established by the agency under this section.

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

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

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

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

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

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

incompetent.

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

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

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

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

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

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

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

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

History.—ss. 1, 2, 3, 4, 5, 6, 7, ch. 75-259; s. 1, ch. 77-174; s. 7, ch. 77-335; s. 7, ch. 79-12; s. 9, ch. 79-320; s. 18, ch. 89-308; s. 3, ch. 90-333; s. 39, ch. 90-347; s. 11, ch. 93-200; s. 16, ch. 94-154; s. 1050, ch. 95-148; s. 208, ch. 96-406; s. 90, ch. 99-8; s. 47, ch. 2000-139; s. 8, ch. 2000-263; s. 79, ch. 2004-267; s. 29, ch. 2006-227; s. 2, ch. 2008-124; s. 2, ch. 2010-224.

393.135 Sexual misconduct prohibited; reporting required; penalties.—

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

(a) "Covered person" includes any employee, paid staff member, volunteer, or intern of the agency; any person under contract with the agency; and any person providing care or support to a client on behalf of the agency or its providers.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving

sexual activity in the presence of a victim.

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

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

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

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

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

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

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

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

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

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

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

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

History.—s. 1, ch. 2004-267; s. 30, ch. 2006-227; s. 8, ch. 2008-244; s. 75, ch. 2014-19; s. 9, ch. 2023-273.

393.15 Legislative intent; Community Resources Development Loan Program.—

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

(2) There is created a Community Resources Development Loan Program in the agency for the purpose of granting loans to eligible programs for the initial costs of development of the programs. In order to be eligible for the program, a foster home, group home, or supported employment program must:

(a) Serve persons with developmental disabilities;

(b) Be a nonprofit corporation, partnership, or sole proprietorship; and

(c) Be in compliance with the zoning regulations of the local community.

(3) Loans may be made to pay for the costs of development and structural modification, the purchase of equipment and fire and safety devices, preoperational staff training, and the purchase of insurance. Such costs may not include the actual construction of a facility and may not be in lieu of payment for maintenance, client services, or care provided.

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

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

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

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

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

393.17 Behavioral programs; certification of behavior analysts.—

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

(2) The agency shall recognize the certification of behavior analysts awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services. The certification procedure recognized by the agency must undergo regular psychometric review and validation, pursuant to a job analysis survey of the profession and standards established by content experts in the field.

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

393.23 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, activity centers, farming projects, or other like facilities or programs established at the center for the benefit of clients.

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

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

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

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

History.—s. 34, ch. 2006-227; s. 99, ch. 2008-4; s. 10, ch. 2008-244; s. 3, ch. 2009-56.

393.501 Rulemaking.—

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

(2) Such rules must address the number of facilities on a single lot or on adjacent lots, except that there is no restriction on the number of facilities designated as community residential homes located within a planned residential community as those terms are defined in s. 419.001(1).

History.—s. 13, ch. 88-398; s. 56, ch. 2000-158; s. 9, ch. 2000-338; s. 111, ch. 2004-267; s. 35, ch. 2006-227; s. 1, ch. 2010-193; s. 22, ch. 2017-3.

393.502 Family care councils.—

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

(2) MEMBERSHIP.—

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

(b) At least three of the members of the council shall be individuals receiving or waiting to receive services from the agency. One such member shall be an individual who has been receiving services within the 4 years before the date of recommendation. The remainder of the council members shall be parents, grandparents, guardians, or siblings of individuals who have developmental disabilities and qualify for services pursuant to this chapter. For a grandparent to be a council member, the grandchild's parent or legal guardian must consent to the appointment and report the consent to the agency.

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

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

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

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

(3) TERMS; VACANCIES.—

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

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

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

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

(5) TRAINING.—

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

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

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

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

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

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

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

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

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

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

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

History.—s. 4, ch. 93-143; s. 94, ch. 99-8; s. 5, ch. 2000-139; s. 82, ch. 2004-267; s. 1, ch. 2014-87.

393.506 Administration of medication.—

(1) An unlicensed direct service provider may supervise the self-administration of medication or may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a client if the unlicensed direct service provider meets the requirements of this section.

(2) In order to supervise the self-administration of medication or to administer medications as provided in subsection (1), an unlicensed direct service provider must satisfactorily complete an initial training course conducted by an agency-approved trainer of not less than 6 hours in medication administration and be found

competent to supervise the self-administration of medication by a client and to administer medication to a client in a safe and sanitary manner.

(a) The competency of the unlicensed direct service provider to supervise and administer otic, transdermal, and topical medication must be assessed and validated using simulation during the initial training course, and need not be revalidated annually.

(b) Competency must be validated initially and revalidated annually for oral, enteral, ophthalmic, rectal, and inhaled medication administration. The initial validation and annual revalidations of medication administration must be performed onsite with an actual client using the client's actual medication and must include the validating practitioner personally observing the unlicensed direct service provider satisfactorily:

1. Supervising the oral, enteral, ophthalmic, rectal, or inhaled self-administration of medication by a client; and

2. Administering medication to a client by oral, enteral, ophthalmic, rectal, or inhaled medication routes.

(c)1. An unlicensed direct service provider who completes the required initial training course and is validated in the oral or enteral route of medication administration is not required to retake the initial training course unless he or she fails to maintain annual validation in the oral or enteral route, in which case the provider must complete the initial 6-hour training course again and obtain all required validations before he or she may supervise the self-administration of medication by a client or administer medication to a client.

2. If the unlicensed direct service provider has already completed an initial training course of at least 4 hours and has a current validation for oral or enteral routes of medication administration on or before July 1, 2018, he or she is not required to complete the initial 6-hour training course. If for any reason the unlicensed direct service provider fails to meet the annual validation requirement for oral or enteral medication administration, or the annual inservice training requirement in subsection (4), the unlicensed direct service provider must satisfactorily complete the initial training course again and obtain all required validations before he or she may supervise the self-administration of medication by a client or administer medication to a client.

3. If an unlicensed direct service provider has completed an initial training course of at least 4 hours but has not obtained validation for otic, transdermal, or topical medication administration before July 1, 2018, that direct service provider must obtain validation before administering otic, transdermal, and topical medication, which may be performed through simulation.

(3) Only an unlicensed direct service provider who has met the training requirements of this section and who has been validated as competent may administer medication to a client. In addition, a direct service provider who is not currently licensed to administer medication may supervise the self-administration of medication by a client or may administer medication to a client only if the client, or the client's guardian or legal representative, has given his or her informed written consent.

(4) An unlicensed direct service provider must annually and satisfactorily complete a 2-hour agency-developed inservice training course in medication administration and medication error prevention conducted by an agency-approved trainer. The inservice training course shall count toward annual inservice training hours required by agency rules or by the rules of the Agency for Health Care Administration. This subsection may not be construed to require an increase in the total number of hours required for annual inservice training for direct service providers.

(5) The training, determination of competency, and initial and annual validations required in this section shall be conducted by a registered nurse licensed pursuant to chapter 464 or by a licensed practical nurse in accordance with the requirements of chapter 464. A physician licensed pursuant to chapter 458 or chapter 459 may validate or revalidate competency.

(6) The agency shall establish by rule standards and procedures that an unlicensed direct service provider must follow when supervising the self-administration of medication by a client and when administering medication to a client. Such rules must, at a minimum, address qualification requirements for trainers, requirements for labeling medication, documentation and recordkeeping, the storage and disposal of medication, instructions concerning the safe administration of medication or supervision of self-administered medication, informed-consent requirements and records, and the training curriculum and validation procedures. The agency shall adopt rules to establish methods of enforcement to ensure compliance with this section.

History.—s. 1, ch. 2003-57; s. 113, ch. 2004-267; s. 1, ch. 2006-37; s. 16, ch. 2006-197; s. 11, ch. 2008-244; s. 1, ch. 2018-107.