



Health Care Services Policy Committee

Meeting Packet

Monday, March 1, 2010
3:15 - 5:00 PM
306 HOB

Larry Cretul
Speaker

Paige Kreegel
Chair



The Florida House of Representatives

Health Care Services Policy Committee

Agenda

March 1, 2010

3:15 – 5:00 PM

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- I. Call to Order/Roll Call**
- II. HB 627 Transitional Services for Youth by Porth.**
- III. PCB HCS 10-02, Relating to Developmental Disabilities.**
- IV. PCB HCS 10-03, Relating to Health and Human Services.**
- V. Adjournment.**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 627

Transitional Services for Youth

SPONSOR(S): Porth

TIED BILLS:

IDEN./SIM. BILLS: SB 1356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Services Policy Committee		Schoonover	Schoolfield
2) Public Safety & Domestic Security Policy Committee			
3) Full Appropriations Council on Education & Economic Development			
4) Criminal & Civil Justice Policy Council			
5)			

SUMMARY ANALYSIS

HB 627 allows the Department of Juvenile Justice (DJJ) to provide older youth in its custody or under its supervision opportunities to participate in activities and services that assist in transition to adulthood. DJJ would develop a plan for participating youth which will lead to total independence. The bill also ensures that youth, who are in the custody of the Department of Children and Family Services (DCF) and enter a DJJ residential program, remain eligible for DCF services including independent living transition services. Further the bill clarifies that a youth who leaves a DJJ residential program after delinquent adjudication and his or her family abandons or deserts him or her, is not hampered from a later dependent adjudication and eligibility for DCF's foster care system.

The bill also permits the court to retain jurisdiction for a year beyond the child's 19th birthday if they are participating in the transition to adulthood program.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Independent Living Transition Services

The Department of Children and Family Services (DCF) administers a system of independent living transition services to assist older children in foster care and 18 year olds exiting foster care to transition into self-sufficient adults.¹ This program was created in 2002, utilizing both state and federal funds to provide a continuum of services and financial assistance to prepare current and former foster youth to live independently.² Under the program, DCF serves children who have reached 13 years of age but are not 18 years of age and are in foster care.³ DCF also serves young adults who have turned 18 years old but are not 23 years old and were in foster care when they turned 18 years old. They also serve youth, who after turning 16 years old were adopted from foster care or placed with a court approved dependency guardian and spent at least 6 months in foster care within the 12 months preceding placement or adoption.⁴

The DCF program provides services to assist young adults in obtaining life skills and education for independent living and employment.⁵ Private and county government-based child welfare organizations deliver these services through the community-based care system.⁶ DCF includes youth that have been adjudicated dependent and/or delinquent in independent living services programs. Foster youth who have been adjudicated delinquent and enter a juvenile justice placement are the shared responsibility of DCF and DJJ.⁷ Current law provides no specific statutory requirement that requires DCF to provide independent living transition services to youth who are in foster care and also are being served by the Department of Juvenile Justice (DJJ). DCF presumes that these youth remain eligible for independent living transition services.

¹ s. 409.1451, F.S.

² Id.

³ s. 409.1451(2)(a), F.S.

⁴ s. 409.1451(2)(b), F.S.

⁵ s. 409.1451(1)(b), F.S.

⁶ s. 409.1671, F.S.

⁷ Staff Analysis, HB 627 (2009), Department of Children and Family Services, 2009. (On file with committee staff).

To coordinate services for children served by more than one agency or department, DCF has established an interagency agreement between DCF, DJJ, the Agency for Persons with Disabilities, the Agency for Health Care Administration, and the Department of Health.⁸ The agreement requires the establishment of local review teams, which meet consistently in each circuit and encourage the participation of the local community based care agencies.⁹ If the local team determines that an individual's needs are of such a nature that a coordinated multi-agency service team is necessary, the review team identifies a "champion" for the child.¹⁰ The "champion" ensures that all available necessary services are provided.¹¹

Department of Juvenile Justice

DJJ is tasked with providing conditional release services to youth exiting juvenile justice residential programs. Conditional release is the care, treatment, help, and supervision provided to juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.¹² The program is intended to help prepare youth for a successful transition from DJJ commitment back to the community. Each youth in a DJJ residential program is to be assessed to determine need for conditional release.

If upon leaving a DJJ residential program the youth's family abandons him or her or refuses to resume their parental duties, the youth has two options. First, he or she may use review teams, which are created through the interagency agreement with DCF and other agencies, to remove obstacles that caused a parent to abandon the child, thus allowing the youth to return to their family. The youth may also call the DCF Central Abuse Hotline and file a report, which could result in an investigation by a child protective investigator if the report meets the statutory definition of abuse, neglect, or abandonment.¹³ If following the investigation it is determined that the youth is in need of protection and supervision of the court, DCF is required to file a petition for dependence.¹⁴ Once adjudicated dependent, DCF will take responsibility for serving the individual through the foster care system which may include independent living transition services.

Court Jurisdiction

A child who has committed a delinquent act will usually remain under the jurisdiction of the court, unless otherwise relinquished, until the child's 19th birthday. The court may also retain jurisdiction for a child beyond 19 years for special circumstances such as commitments to juvenile prison or high risk residential programs.¹⁵

Effect of Proposed Changes

The bill creates a definition for "transition to adulthood" to mean services for youth, which are in the custody or supervision of DJJ, to provide them with knowledge, skills and aptitudes to assist them in their adult lives. The bill also defines the services which may be included under this definition including assessment, plan development and services toward achieving transition to adulthood.

The bill provides Legislative intent that DJJ may provide older youth in custody or under supervision the opportunity to participate in transition to adulthood services. This appears to be a similar and augmented authority to what currently exists in the conditional release program operated by DJJ for youth transitioning back to the community.¹⁶

⁸ Staff Analysis, HB 627 (2009), Department of Children and Family Services. (On file with committee staff.)

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² s. 985.46(1)(a), F.S.

¹³ s. 39.301,(9)b, F.S.

¹⁴ Id.

¹⁵ s. 985.0301,F.S.

¹⁶ s. 985.46, F.S.

The bill also provides that youth who enter a DJJ placement from a foster care placement, and who are in legal custody of DCF are eligible to receive independent living transition services pursuant to s. 409.1451, F.S. The bill also provides that court ordered commitment or probation are not barriers to eligibility for youth to receive the array of services available if they were in foster care alone. This is consistent with current DCF policy.

The bill provides that adjudication of delinquency may not be considered by itself as disqualifying criteria for eligibility in DCF's Independent Living Program. The bill elaborates on this point and provides that youth with a delinquent adjudication, who leave a DJJ residential program and are abandoned by family should not be hampered in receiving a dependent adjudication and eligibility for the DCF's foster care system.

The bill permits DJJ to assess youth prior to placement in a transition to adulthood program. The assessment will include determining the youth's ability to live independently and become self-sufficient. DJJ is also given authority to develop a list of age-appropriate activities and responsibilities. Some of the activities include, but are not limited to life skills training, banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, time management or organizational skills, educational support, employment training, and counseling.

The bill permits DJJ to request parental or guardian consent for the youth to participate in the transition to adulthood program. The activities the youth will participate in and other transition services are to be incorporated into an overall plan which must be reviewed and updated quarterly. The plan must not interfere with parents or guardians rights to train the child.

DJJ is also given authority to contract for transition to adulthood services including residential services. The bill provides for program eligibility to include youth at least 17 but not yet 19 years of age and who are not a danger to the public and have a demonstrated aptitude for the program. The effect of this change will permit DJJ to provide services to youth in their custody or supervision to increase their ability to live independently and become self-sufficient adults.

The bill also allows the court to retain jurisdiction for an additional 365 days beyond a youth's 19th birthday if he or she is participating in a DJJ transition to adulthood program. This is similar to the provision for continued court jurisdiction of up to one year for children from the foster care system who are participating in the Independent Living program administered under DCF.¹⁷

B. SECTION DIRECTORY:

Section 1. Amends s. 985.03, F.S., relating to definitions.

Section 2. Creates s. 985.461, F.S., relating to transition to adulthood.

Section 3. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 4. Creates an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹⁷ s. 39.013, F.S.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 65: This language is not clear that youth would still need to meet eligibility criteria in s. 409.1451, F.S., for Independent Living Transition Services. This section would be clearer if worded "placement, if otherwise eligible to receive services pursuant to s. 409.1451."

Line 68: "array of sources" probably intended to mean "array of resources"

Line 76 to 79: This section makes a broad statement that adjudication of delinquency is not an impediment to adjudication of dependency and *eligibility* for the foster care system. This should be made clearer that the person must still be eligible for the foster care system (i.e. under 18 years of age).

Line 99 to 100: the phrase "upon such consent" is not needed since it is permissive for DJJ to request parental consent. DJJ could incorporate activities in the plan without parental consent since the youth is under their legal custody and court jurisdiction.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to transitional services for youth;
3 amending s. 985.03, F.S.; defining the term "transition to
4 adulthood"; creating s. 985.461, F.S.; providing
5 legislative intent concerning transition to adulthood
6 services for youth in the custody of the Department of
7 Juvenile Justice; providing for eligibility for services
8 from both departments for youth served by the department
9 who are legally in the custody of the Department of
10 Children and Family Services; providing that an
11 adjudication of delinquency does not, by itself,
12 disqualify a youth in foster care from certain services
13 from the Department of Children and Family Services;
14 providing powers and duties of the Department of Juvenile
15 Justice for transition services; providing for
16 assessments; providing for a plan for a youth leading to
17 independence; amending s. 985.0301, F.S.; providing for
18 retention of court jurisdiction over a child for a
19 specified period beyond the child's 19th birthday if the
20 child is participating in a transition to adulthood
21 program; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:
24

25 Section 1. Subsections (56) and (57) of section 985.03,
26 Florida Statutes, are renumbered as subsections (57) and (58),
27 respectively, and a new subsection (56) is added to that section
28 to read:

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29 985.03 Definitions.—As used in this chapter, the term:
 30 (56) "Transition to adulthood" means services for youth in
 31 the custody of the department or under the supervision of the
 32 department with the objective of acquisition of knowledge,
 33 skills, and aptitudes that are essential to pro-social, self-
 34 supporting adult life. The services available under this
 35 definition may include, but are not limited to:

36 (a) Assessment of the youth's ability and readiness for
 37 adult life.

38 (b) A plan for the youth to acquire knowledge,
 39 information, and counseling sufficient to make a successful
 40 transition to adulthood.

41 (c) Services that have proven effective towards achieving
 42 the objective of transition to adulthood.

43 Section 2. Section 985.461, Florida Statutes, is created
 44 to read:

45 985.461 Transition to adulthood.—

46 (1) The Legislature finds that older youths are faced with
 47 the need to learn how to support themselves. Additional tasks
 48 for these youths are to support themselves with legal means and
 49 to overcome the stigma of being delinquent. The source in most,
 50 but not all, cases for expediting this transition process is
 51 parents.

52 (2) It is the intent of the Legislature that the
 53 department may provide to older youths in its custody or under
 54 its supervision opportunities to participate in transition to
 55 adulthood services while in the department's commitment programs
 56 or in probation or conditional release programs in the

57 community. These activities should be reasonable and appropriate
 58 for the youths' respective ages or for any special needs they
 59 may have and shall provide them with services to build life
 60 skills and increase their ability to live independently and
 61 become self-sufficient.

62 (3) Youth served by the department who are legally in the
 63 custody of the Department of Children and Family Services, and
 64 who entered a juvenile justice placement from a foster care
 65 placement, remain eligible to receive services pursuant to s.
 66 409.1451. Court-ordered commitment or probation with the
 67 department is not a barrier to eligibility for the array of
 68 sources available to a youth if he or she were in dependency
 69 foster care alone.

70 (4) For dependent children in the foster care system,
 71 adjudication for delinquency may not be considered, by itself,
 72 as disqualifying criteria for eligibility in the Independent
 73 Living Program of the Department of Children and Family
 74 Services. If upon exiting a departmental residential program the
 75 youth's family abandons or deserts him or her or otherwise
 76 refuses to resume their parental duties, the adjudication of
 77 delinquency is not an impediment to a subsequent adjudication of
 78 dependency and eligibility for the foster care system operated
 79 by the Department of Children and Family Services.

80 (5) To support the provision of opportunities for
 81 participation in transition to adulthood services and within
 82 appropriated resources, the department may:

83 (a) Assess the child's skills and abilities to live
 84 independently and become self-sufficient. The specific services

85 to be provided to a child shall be determined using an
 86 assessment of his or her readiness for adult life.

87 (b) Develop a list of age-appropriate activities and
 88 responsibilities to be incorporated in the child's written case
 89 plan for any youth 17 years of age or older who is under the
 90 custody or supervision of the department. Activities may
 91 include, but are not limited to, life skills training, including
 92 training to develop banking and budgeting skills, interviewing
 93 and career planning skills, parenting skills, personal health
 94 management, and time management or organizational skills;
 95 educational support; employment training; and counseling.

96 (c) Provide information related to social security
 97 insurance benefits and public assistance.

98 (d) Request parental or guardian permission for the youth
 99 to participate in the transition to adulthood services. Upon
 100 such consent, the age-appropriate activities shall be
 101 incorporated into the youth's written case plan. This plan may
 102 include specific goals and objectives and be reviewed and
 103 updated at least quarterly. If the parent or guardian is
 104 cooperative, the plan must not interfere with the parent's or
 105 guardian's rights to nurture and train his or her child in ways
 106 that are otherwise in compliance with the law and any court
 107 order.

108 (e) Contract for transition to adulthood programs, which
 109 include residential services and assistance, that allow for the
 110 child to live independently of the daily care and supervision of
 111 an adult in a setting that is not required to be licensed under
 112 s. 409.175. A child under the care or supervision of the

113 department who has reached 17 years of age but is not yet 19
 114 years of age is eligible for such services if he or she is not a
 115 danger to the public and is able to demonstrate at least
 116 minimally sufficient skill and aptitude for living with
 117 decreased adult supervision, as determined by the department,
 118 using established procedures and assessments.

119 (6) For a child who is 17 years of age or older, under the
 120 department's care or supervision, and without benefit of parents
 121 or legal guardians capable of assisting the child in the
 122 transition to adult life, the department may provide an
 123 assessment to determine the child's skills and abilities to live
 124 independently and become self-sufficient. Based on the results
 125 of the assessment, and within existing resources, services and
 126 training may be provided to the child to develop the necessary
 127 skills and abilities prior to the child's 18th birthday.

128 (7) Services focused on the transition to adulthood for a
 129 child must be part of an overall plan leading to the total
 130 independence of the child from the department's supervision. The
 131 plan must include, but need not be limited to, a description of
 132 the skills of the child and a plan for learning additional
 133 identified skills; the behavior that the child has exhibited
 134 which indicates an ability to be responsible and a plan for
 135 developing additional responsibilities, as appropriate; a plan
 136 for future educational, vocational, and training skills; present
 137 financial and budgeting capabilities and a plan for improving
 138 resources and abilities; a description of the proposed
 139 residence; documentation that the child understands the specific
 140 consequences of his or her conduct in such a program;

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141 documentation of proposed services to be provided by the
 142 department and other agencies, including the type of service and
 143 the nature and frequency of contact; and a plan for maintaining
 144 or developing relationships with family, other adults, friends,
 145 and the community, as appropriate.

146 Section 3. Paragraph (a) of subsection (5) of section
 147 985.0301, Florida Statutes, is amended to read:

148 985.0301 Jurisdiction.-

149 (5)(a) Notwithstanding ss. 743.07, 985.43, 985.433,
 150 985.435, 985.439, and 985.441, and except as provided in ss.
 151 985.461, 985.465, and 985.47 and paragraph (f), when the
 152 jurisdiction of any child who is alleged to have committed a
 153 delinquent act or violation of law is obtained, the court shall
 154 retain jurisdiction, unless relinquished by its order, until the
 155 child reaches 19 years of age, with the same power over the
 156 child that the court had prior to the child becoming an adult.
 157 For purposes of s. 985.461, the court may retain jurisdiction
 158 for an additional 365 days beyond the child's 19th birthday if
 159 the child is participating in a transition to adulthood program.

160 Section 4. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCS 10-02 Developmental Disabilities
SPONSOR(S): Health Care Services Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Health Care Services Policy Committee		Schoolfield <i>[Signature]</i>	Schoolfield <i>[Signature]</i>
1)				
2)				
3)				
4)				
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SUMMARY ANALYSIS

PCB HCS 10-02 provides changes to statutes affecting programs administered by the Agency for Persons with Disabilities. Specifically the bill makes the following changes:

- Provides a clarification to the definition of autism in s. 393.063, F.S.
- Implements waitlist prioritization for the first two categories of the APD Medicaid waiver waitlist. This includes category 1, (clients in crisis) and category 2, (children in the child welfare system). The bill delays prioritization of categories 3 through 7 until July 1, 2012.
- Provides clarification to language in statute regarding assignment to a Medicaid waiver tier.
- Provides authority for APD to receive information from the central abuse hotline and child abuse system for licensure purposes.
- Adds requirements for licensed facilities to train staff in reporting sexual abuse.
- Provides a statement of rights for persons with developmental disabilities to be free from abuse.
- Provides APD with increased authority to deny applications for licenses, revoke or suspend existing licenses and fine a current licensee of a residential facility.
- Provides conditions for requesting Medicaid program hearings at APD and requires these hearings to be provided by the Department of Children and Families.
- Allows the assessment of competency for staff administering medications involving topical, transdermal and otic routes to be conducted through simulation.

The bill is anticipated to achieve an overall fiscal savings through the requirement that Medicaid hearings for APD programs be provided at the Department of Children and Families.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities.¹ A developmental disability is defined in chapter 393, F.S., as "a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."² Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.³

Services to Persons with Developmental Disabilities

APD provides an array of home and community based services through contract providers, as well as services in Developmental Disabilities Centers and Forensic program services. APD administers home and community based services through 14 area offices that are responsible for day to day operations. As of January 2010, APD was serving 53,216 persons in all programs.⁴

Four-Tier Medicaid Waiver System

The 2007 Legislature directed APD to establish a four-tier waiver system to replace the current waiver program. APD currently serves 29,903⁵ people in the Medicaid waiver tier system and has a waitlist of over 18,800⁶ people for the program. Each of the tier waivers target a specific group of people with certain needs. Three of the four tier waivers have caps on annual expenditures per person and one of the tier waivers has no cap and is reserved for individuals with the most intense needs.⁷ The purpose of the tier system is to create a predictable spending model for the program and help control over utilization of services which has lead to significant program deficits in recent years. APD has had some success in controlling spending through the implementation of the Medicaid waiver tier legislation.

¹ s. 20.197(3), F.S.

² s. 393.063(9), F.S.

³ "High-risk child" is defined in s. 393.063(19) F.S.

⁴ Email from Susan Chen, APD, dated 2-5-10, on file with committee.

⁵ Tier Waiver Enrollment Summary by Year and Month, December 2009.

⁶ APD Quarterly Report to the Legislature on Agency Services, February 2010

⁷ s. 393.0661(3), F.S.

When the tier legislation was passed, APD was projecting a deficit of over \$150 million for FY 2007-2008. This deficit was reduced to \$12 million for FY 2007-2008, in part by the implementing tier caps and other legislative actions.⁸ Delays have occurred in fully implementing the tiers as a result of 5,500 people in the waiver program requesting a hearing on their tier assignment. This in affect freezes their current services and cost to the program until their hearing outcome is decided. This delay in assigning people to tiers has partially resulted in continued deficits in the waiver program including a \$26.7 million deficit for FY 2008-2009 and projected deficit of \$36 million for the current year.

Recent litigation has challenged elements of APD's implementation of the Medicaid waiver tier program as directed in statute. In August 2009, the 1st District Court of Appeals (DCA) disagreed with a previous ruling by an Administrative Law Judge at the Division of Administrative Hearings and found the APD rules for implementing the tier waivers invalid on three points.⁹ The ruling cited that APD failed to demonstrate adoption of a valid and reliable assessment instrument, improperly placed an age limit on client eligibility for tier 3 and improperly placed people in tier 4 without an assessment.

Medicaid Fair Hearings

State agencies administering the Medicaid program are required by federal and state law to grant an opportunity for a hearing to persons in the program under certain circumstances. This includes but is not limited to, applicants whose claim for services is denied or not acted upon promptly. Individuals may also request a hearing if they believe the state has taken erroneous action that affects them.¹⁰

The Department of Children and Families (DCF) is directed by statute to conduct fair hearings for public assistance programs.¹¹ This includes 20 programs including Medicaid benefits and all Medicaid waivers except those administered by APD. Fair hearings conducted by DCF for the Medicaid program are presided over by hearing officers who are impartial arbiters of the case. The fair hearing process is based on federal regulations and Chapter 120, F.S. Prior to August 2006, Medicaid fair hearings for participants in the APD Medicaid waiver programs were also conducted by the Department of Children and Families, Office of Fair Hearings. As a result of a 1st District Court of Appeals ruling¹² in 2007, the APD hearings were moved to the Division of Administrative Hearings (DOAH). The DOAH hearings use Administrative Law Judges and are a more formal process which are not required by federal law.¹³ The cost of APD hearings at DOAH performed during FY 2006-2007 was \$686,070 and the budgeted cost for hearings performed in FY 2007-2008 is \$728,683.¹⁴ DOAH estimates that hearing costs for 4,200 pending cases related to Medicaid waiver tier assignments would be \$2.3 million.¹⁵ In addition, the cost to APD for representation by the Office of the Attorney General for these hearings is estimated to be \$4 million.¹⁶ This is a total cost for APD hearings on pending cases of nearly \$6.3 million.

When an individual requests a hearing regarding a change or reduction to their service package, their current level of service is maintained until the hearing is conducted and a decision is rendered. APD does not realize any cost savings from decisions regarding service reductions or Medicaid tier assignments until hearings are completed. When hearings were conducted by the DCF Fair Hearings Office for APD cases prior to 2006, the average time until completion of the hearing was 76 days¹⁷. APD reports that hearings currently conducted through the DOAH process requires 6 to 8 months.¹⁸

⁸ APD Medicaid Expenditure , Social Services Estimating Conference, , January 29, 2010

⁹ Moreland v. APD, Fla. 1st District Court of Appeals

¹⁰ 42 CFR 431.220, s. 409.285, F.S.

¹¹ s. 409.285, F.S

¹² J.M. v. Florida Agency for Persons with Disabilities, Case No. 1D06-0183.

¹³ Washington v. Debeaugrine, US District Court, N. District of Florida, Case no. 4:09cv189-RH/WCS, Order Granting Preliminary Injunction and Order Clarifying Preliminary Injunction.

¹⁴ APD report attached to email from Karen Fisher, APD, dated 2-5-10, on file with committee.

¹⁵ Email from Marilyn Lawrence, DOAH, dated 2-25-10 on file with committee

¹⁶ Email from K. Acuff, APD Senior Atty. Dated 2-8-10 on file with committee.

¹⁷ Email from John Pritchard, Chief, DCF Office of Appeals Hearings dated 2-18-10 on file with committee.

¹⁸ Email from Cathy Bedell, Deputy General Counsel, APD, dated 2-18-10, on file with committee.

APD estimates that \$50 million in additional cost to the waiver program is being incurred by the over 4,000 cases pending a hearing for a tier assignment.¹⁹

Waitlist Prioritization

APD maintains a waitlist of people seeking services from the Medicaid waiver program. As of February 2010, there were 18,883 people waiting for services.²⁰ The waitlist is organized by the individual's date of eligibility for the waiver program. However, individuals experiencing a crisis or children from the child welfare system receive priority consideration. Due to funding constraints in the program, no individuals from the waitlist were offered Medicaid waiver services during the last two years.²¹ The 2009 Legislature directed APD to organize individuals on the waitlist into seven priority categories.²² Within each priority category the individuals are to be numbered in accordance with the date in which they were determined eligible for services. APD was directed by the legislation to implement this priority order a year after the legislation was enacted which is July 1, 2010.

Autism

APD currently serves 5,694 people with a diagnosis of Autism.²³ Specifically, APD serves people with a diagnosis of Autistic disorder which is one of the pervasive developmental disorders included in the Diagnostic and Statistics Manual of the American Psychiatric Association.²⁴ Autistic disorder is also considered as one of the Autism Spectrum Disorders. The Autism Spectrum Disorders also includes Asperger's syndrome and pervasive developmental disorders not otherwise specified. Autistic disorder is considered to be the most severe of the Autism Spectrum Disorders.²⁵

Florida Statutes defines autism as 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.²⁶

Licensure of Residential Facilities

APD is authorized in s. 393.067, F.S., to set standards and license group homes, foster homes, residential habilitation centers and comprehensive transitional education programs. Individuals can apply for a license to operate a home through an APD area office. The agency currently licenses 1,683 of these homes or centers and one comprehensive transitional education program. APD serves 7,364 people with developmental disabilities in licensed residential settings and most receive services in group homes. APD estimates that approximately 6 licenses are either revoked or not renewed each year.²⁷ As part of the licensure process, APD has statute authority to access the records of abuse, neglect and exploitation toward adults maintained by the Department of Children and Families. This information may be used by APD in the licensure review process which may include applicants and existing licenses holders.²⁸ APD does not have this authority for records related to child abuse, abandonment or neglect.

¹⁹ Email from Logan McFaddin, APD, dated 2-24-10 on file with committee.

²⁰ APD Quarterly Report to the Legislature on Agency Services, February 2010

²¹ Id.

²² s. 393.065(5), F.S.

²³ APD Active Consumers by Diagnosis, January 31, 2010.

²⁴ Application and Determination of Eligibility for Services from, the Agency for Persons with Disabilities, APD 04-007, 2006.

²⁵ Autism Spectrum Disorders, Pervasive Developmental Disorders, National Institute of Mental Health, 2008. located at <http://www.nimh.nih.gov/health/publications/autism/nimhautismspectrum.pdf>.

²⁶ s. 393.063(3), F.S.

²⁷ Email from Logan McFaddin, APD, dated 2-5-10, on file with the committee.

²⁸ s.415.107(3)(a)

Abuse of Persons with Disabilities

APD launched the Zero Tolerance Initiative in September 2003 as a means to address sexual violence committed against persons with developmental disabilities. The Zero Tolerance Initiative has expanded to now serve as APD's approach to dealing with the problem of all forms of abuse, neglect, and exploitation committed against persons with developmental disabilities.²⁹ Florida Statutes defines sexual misconduct toward person with developmental disabilities and sets penalties for the crime (2nd degree felony) and mandatory reporting requirements of sexual abuse.³⁰ In addition, staff of facilities licensed by APD are required to receive training to detect and prevent sexual abuse of residents.³¹

Medication Administration

Florida Statutes provides authority for un-licensed direct service providers to administer medications to persons with developmental disabilities or to supervise the client performing self administration of medications. The administration of medications is limited to oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral or topical prescription medications.³² Unlicensed providers who administer medications or supervise the self administration of medications must be assessed annually for competency in all allowed routes of administration before assisting with that route. Provider agencies such as group homes and Waiver Support Coordinators pay for these assessments by a registered nurse or medical doctor. When additional assessments/validations are needed to allow unlicensed providers to assist with medications the provider agency must bear the cost of the additional visits by the RN or MD. The topical, transdermal and otic routes are not used as often as some other routes. A client needing a medication by topical, transdermal or otic routes is less likely to be available at the same time a staff member needs initial validation or annual revalidation for competency in administration of these medications.³³

Effects of the Proposed Bill

- This bill provides a clarification to the definition of autism used in s. 393.063(3), F.S., that Autism means autistic disorder as defined by the Diagnostic and Statistical Reference Manual, fourth edition. This clarification is consistent with current APD practice as the agency uses Autistic disorder as the eligibility criteria for receiving services under the diagnosis of Autism. Autistic Disorder is the most severe of the autism spectrum disorders.
- The bill implements the waitlist prioritization required in s. 393.065(5), F.S., for the clients in crisis (category 1) and children in child welfare system (category 2) effective July 1, 2010. Categories 1 and 2 were existing priorities in law prior to the changes to s. 393.065(5), F.S., in 2009. The bill also moves the implementation date for waitlist categories 3 through 7 to July 1, 2012. This will postpone adversely affecting an estimated 11,891 people on the waitlist who would see their place on the waitlist drop to a lower position by the new categorization.³⁴
- This bill provides clarifications to language in s. 393.0661, F.S., related to the assignment of persons to a tier in the four tier Medicaid waiver system. This includes specification in statute the two assessment instruments which shall be used by APD in the process of assigning individuals in the four-tier waiver system. In addition, the statute is made clear that the client characteristics which shall be used in the process of assigning clients to a tier includes but is not limited to "age of the client." Finally, the bill

²⁹ <http://apd.myflorida.com/zero-tolerance/index.htm#one>

³⁰ s. 393.135, F.S.

³¹ s. 393.067(7), F.S.

³² s. 393.506(1)

³³ Agency for Persons with Disabilities, 2010 Agency Proposal for On-site Validation of Competency.

³⁴ Email from Terri McGarrity, APD dated 2-16-10 on file with the committee provides a rough estimate that 63% of the people on the waitlist would be adversely affected.

provides clarification that individuals enrolled in the Family and Supported Living waiver on July 1, 2007, were to be included in tier four of the four-tier Medicaid waiver system without further assessment.

- The bill provides authority for APD to receive information from the Department of Children and Families central abuse hotline and abuse information system related to reports of child abuse, neglect or exploitation. APD is limited to use this information as part of the licensure process for residential facilities. APD already has authority to use similar information related to abuse of adults. The effect of this change is to provide access to information which will assist APD in making determinations about granting or renewing licenses to new applicants and existing license holders.
- The bill adds to the residential facility licensure requirements that staff are trained to report sexual abuse, abuse, neglect, exploitation and abandonment. APD is also directed to adopt rules to set standards for the new requirement and is granted authority to conduct unannounced inspections of certain licensed facilities to monitor compliance. Also, a clarification to statute is added to express that persons with developmental disabilities have the right to be free from abuse, neglect and exploitation.
- The bill increases APD's authority to deny applications for licensure, to revoke or suspend an existing license, and to fine a current licensee of a residential facility. The agency may exercise this authority when the agency determines that the applicant or licensee has committed one or more of the following violations:
 - Abused, sexually abused, neglected or abandoned a child;
 - Abused, sexually abused, neglected or exploited an adult;
 - Knowingly submitted false or inaccurate information in order to obtain payment for services;
 - Knowingly used the funds, property, or identity of a client for the purpose of self-gain;
 - Knowingly compromised the health, safety, or welfare of a client;
 - Knowingly violated the rights of a client as provided in s. 393.13; or
 - Denied access to clients by the client's guardian, a minor's parent, waiver support coordinator, an agency employee, or other authorized person.

The effect of this change is to grant the agency more specific authority and circumstances for denying, revoking or suspending a license and assessing fines to current license holders.

- The bill provides that requests for hearings for Medicaid programs administered by APD shall be in accordance with federal Medicaid law and rules and pursuant to specific sections of Florida's Administrative Procedures Act (ss.120.569 and 120.57, F.S.). The bill also requires that hearings under Medicaid programs administered by APD will be provided by the Department of Children and Families (DCF). The effect of this change is to restore a DCF process that existed prior to August 2006, when DCF provided these hearings for APD.³⁵ This change should provide an overall savings and significant cost avoidance to the state. It is estimated that the savings/cost avoidance would be \$4.3 million if the 4,200 pending Medicaid tier hearings were held at DCF Office of Appeal Hearings (see Fiscal Comments section).

³⁵ The location of the hearings was changed to the Division of Administrative Hearings (DOAH) in 2007, as a result of a 1st DCA ruling: J.M. v. Florida Agency for Persons with Disabilities, Case No. 1D06-0183

- The bill provides that the assessment and validation of competency in supervision of self administration of medications and administration of medications for topical, transdermal and otic routes may be conducted through simulation. This validation may be done through a required training course and is not required to be revalidated annually. The effect of this change is to provide a practical and less costly process for validating staff competency in these less complicated routes of medication administration.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment or neglect.

Section 2. Amends s. 393.063, F.S., relating to definitions.

Section 3. Amends s. 393.065, F.S., relating to application and eligibility determination.

Section 4. Amends s. 393.0661, F.S., relating to home and community based service system.

Section 5. Amends s. 393.067, F.S., relating to facility licensure.

Section 6. Amends s. 393.0673, F.S., relating to denial, suspension or revocation of license.

Section 7. Amends s. 393.125, F.S., relating to hearing rights.

Section 8. Amends s. 393.13, F.S., relating to treatment of persons with developmental disabilities.

Section 9. Amends s. 393.506, F.S., relating to administration of medication.

Section 10. Provides the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments below

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The fiscal impact in this bill is anticipated to be an overall net savings of \$4,494,214. This is primarily through cost avoidance by moving the APD Medicaid fair hearings from the Division of Administrative Hearings (DOAH) to the Department of Children and Families, Office of Appeal Hearings and APD providing legal representation. In the calculations below, 4200 hearings were used for comparison since this is the number of hearings pending for Medicaid tier waiver assignments.

- Comparison of Cost of Hearings at DOAH and DCF

Hearings at DOAH

APD and DOAH estimates the cost of conducting Medicaid hearings at DOAH and legal representation would be \$6.3 million for 4,200 hearings.

DOAH hearing costs estimate	\$2.3 million ³⁶
Legal Representation by Attorney General	<u>\$4.0 million</u> ³⁷
Total Estimated cost at DOAH venue	\$6.3 million

Hearings at DCF

DCF and APD estimate the cost of conducting hearings at the DCF Office of Appeal Hearings with legal representation by APD would be \$ 1,805,786 for 4,200 hearings.

DCF Office of Appeal Hearing cost estimate	\$1,251,993 ³⁸
APD estimated cost of legal representation	\$ <u>553,793</u> ³⁹
Total Estimated Cost at DCF venue.	\$1,805,786

- Also, an indeterminate savings in the APD program will occur by more timely decisions in Medicaid hearings when the pending decision reduces services and cost to the program. Currently, once a hearing request is filed by a consumer, the service reduction is pended and the current level of service is maintained until the outcome of the hearing is decided. APD estimates that hearings conducted at DOAH require 180 to 240 days to completion. DCF estimates that hearings conducted at the DCF Office of Appeal hearings would require 76 days on average. An example of the importance of timeliness in conducting hearings and the affect on the APD budget is evidenced by the current 4,200 hearings pending at DOAH. APD estimates that \$50 million in cost savings would be realized to the program when the hearings are completed (assuming the hearings are upheld in favor of APD).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

³⁶ Email from Marilyn Lawrence, DOAH, dated 2-25-10 on file with committee

³⁷ Email from K. Acuff, APD Senior Atty. Dated 2-8-10 on file with committee

³⁸ Department of Children and Families Fiscal Note, on file with committee

³⁹ Letter from Mike Palecki, APD General Council, Dated 2-25-10 on APD's needs for legal representation before the Department of Children and Families

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to Developmental Disabilities; amending s.
 3 39.201, F.S.; allowing the Agency for Persons with
 4 Disabilities use of information in the central abuse
 5 hotline and abuse information system for the licensure
 6 process; amending s. 393.063, F.S.; defining autism as
 7 autistic disorder; amending s. 393.065, F.S.; providing
 8 dates for implementation of waitlist prioritization;
 9 amending s. 393.0661, F.S.; specifying assessment
 10 instruments which may be used for home and community based
 11 services and assignments to tiers; providing that age is a
 12 client characteristic to be used as part of the tier
 13 assignment; providing which individuals are to be enrolled
 14 in tier four; amending s. 393.067, F.S.; requiring
 15 facility staff training on reporting abuse, neglect and
 16 exploitation and giving the agency rule and facility
 17 inspection authority; amending s. 393.0673, F.S.;
 18 providing violations which may be considered in procedures
 19 related to denial, suspension revocation of a license or
 20 an administrative fine; amending s. 393.125, F.S.;
 21 providing for hearings on Medicaid programs administered
 22 by the Agency for Persons with Disabilities; amending s.
 23 393.13, F.S.; providing rights for persons with
 24 developmental disabilities; amending s. 393.506, F.S.;
 25 providing an exception and method for validation of
 26 certain routes of medication administration; providing an
 27 effective date.
 28

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

30

31 Section 1. Subsection (6) of section 39.201, Florida
32 Statutes, is amended to read:

33 39.201 Mandatory reports of child abuse, abandonment, or
34 neglect; mandatory reports of death; central abuse hotline.—

35 (6) Information in the central abuse hotline may not be
36 used for employment screening, except as provided in s.
37 39.202(2)(a) and (h). Information in the central abuse hotline
38 and the department's automated abuse information system may be
39 used by the department, its authorized agents or contract
40 providers, the Agency for Persons with Disabilities as part of
41 the licensure process pursuant to s. 393.067 and s. 393.0673,
42 the Department of Health, or county agencies as part of the
43 licensure or registration process pursuant to ss. 402.301-
44 402.319 and ss. 409.175-409.176.

45 Note.—Former ss. 828.041, 827.07(3), (4), (9), (13); s.
46 415.504.

47 Section 2. Subsection (3) of section 393.063, Florida
48 Statutes, is amended to read:

49 393.063 Definitions.—For the purposes of this chapter, the
50 term:

51 (3) "Autism" means autistic disorder as defined in the
52 fourth edition of the Diagnostic and Statistical Manual of
53 Mental Disorders, by the American Psychiatric Association, which
54 is a pervasive, neurologically based developmental disability of
55 extended duration which causes severe learning, communication,
56 and behavior disorders with age of onset during infancy or

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57 childhood. Individuals with autism exhibit impairment in
 58 reciprocal social interaction, impairment in verbal and
 59 nonverbal communication and imaginative ability, and a markedly
 60 restricted repertoire of activities and interests.

61 Section 3. Subsection (5) of section 393.065, Florida
 62 Statutes, is amended to read:

63 393.065 Application and eligibility determination.—

64 (5) Except as otherwise directed by law, beginning July 1,
 65 2010, the agency shall assign and provide priority to clients
 66 waiting for waiver services in the following order for
 67 categories 1 and 2 in paragraph (a) and (b) and effective July
 68 1, 2012, for categories 3,4,5,6 and 7 in paragraphs (c)-(g):

69 (a) Category 1, which includes clients deemed to be in
 70 crisis as described in rule.

71 (b) Category 2, which includes children on the wait list
 72 who are from the child welfare system with an open case in the
 73 Department of Children and Family Services' statewide automated
 74 child welfare information system.

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

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

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

83 3. Whose documented behaviors or physical needs place them
 84 or their caregiver at risk of serious harm and other supports

85 are not currently available to alleviate the situation; or

86 4. Who are identified as ready for discharge within the
 87 next year from a state mental health hospital or skilled nursing
 88 facility and who require a caregiver but for whom no caregiver
 89 is available.

90 (d) Category 4, which includes, but is not required to be
 91 limited to, clients whose caregivers are 70 years of age or
 92 older and for whom a caregiver is required but no alternate
 93 caregiver is available.

94 (e) Category 5, which includes, but is not required to be
 95 limited to, clients who are expected to graduate within the next
 96 12 months from secondary school and need support to obtain or
 97 maintain competitive employment, or to pursue an accredited
 98 program of postsecondary education to which they have been
 99 accepted.

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

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

106
 107 Within categories 3, 4, 5, 6, and 7, the agency shall maintain a
 108 wait list of clients placed in the order of the date that the
 109 client is determined eligible for waiver services.

110 Section 4. Subsections (1) and (3) of section 393.0661,
 111 Florida Statutes, are amended to read:

112 393.0661 Home and community-based services delivery

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

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

128 (a) The agency shall use an assessment instrument which
129 ~~that~~ is reliable and valid, including either the Individual Cost
130 Guidelines, version 10.0, or the Questionnaire for Situational
131 Information, version 4.0. The agency may contract with an
132 external vendor or may use support coordinators to complete
133 client assessments if it develops sufficient safeguards and
134 training to ensure ongoing inter-rater reliability.

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

138 (3) The Agency for Health Care Administration, in
139 consultation with the agency, shall seek federal approval and
140 implement a four-tiered waiver system to serve eligible clients

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141 through the developmental disabilities and family and supported
142 living waivers. The agency shall assign all clients receiving
143 services through the developmental disabilities waiver to a tier
144 based on an ~~valid~~ assessment instrument which is either the
145 Individual Cost Guidelines, version 10.0 or the Questionnaire
146 for Situational Information, version 4.0, client characteristics
147 including but not limited to age, and other appropriate
148 assessment methods.

149 (a) Tier one is limited to clients who have service needs
150 that cannot be met in tier two, three, or four for intensive
151 medical or adaptive needs and that are essential for avoiding
152 institutionalization, or who possess behavioral problems that
153 are exceptional in intensity, duration, or frequency and present
154 a substantial risk of harm to themselves or others.

155 (b) Tier two is limited to clients whose service needs
156 include a licensed residential facility and who are authorized
157 to receive a moderate level of support for standard residential
158 habilitation services or a minimal level of support for behavior
159 focus residential habilitation services, or clients in supported
160 living who receive more than 6 hours a day of in-home support
161 services. Total annual expenditures under tier two may not
162 exceed \$55,000 per client each year.

163 (c) Tier three includes, but is not limited to, clients
164 requiring residential placements, clients in independent or
165 supported living situations, and clients who live in their
166 family home. Total annual expenditures under tier three may not
167 exceed \$35,000 per client each year.

168 (d) Tier four ~~is~~ includes individuals enrolled in the

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169 family and supported living waiver on July 1, 2007, who shall be
170 assigned to this tier without the assessments required by this
171 section. ~~and~~ Tier four also includes, but is not limited to,
172 clients in independent or supported living situations and
173 clients who live in their family home. Total annual expenditures
174 under tier four may not exceed \$14,792 per client each year.

175 (e) The Agency for Health Care Administration shall also
176 seek federal approval to provide a consumer-directed option for
177 persons with developmental disabilities which corresponds to the
178 funding levels in each of the waiver tiers. The agency shall
179 implement the four-tiered waiver system beginning with tiers
180 one, three, and four and followed by tier two. The agency and
181 the Agency for Health Care Administration may adopt rules
182 necessary to administer this subsection.

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

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

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

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

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

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

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

212 7. The agency shall conduct supplemental cost plan reviews
213 to verify the medical necessity of authorized services for plans
214 that have increased by more than 8 percent during either of the
215 2 preceding fiscal years.

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

221 9. Pending federal approval, the agency may extend current
222 support plans for clients receiving services under Medicaid
223 waivers for 1 year beginning July 1, 2007, or from the date
224 approved, whichever is later. Clients who have a substantial

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225 | change in circumstances which threatens their health and safety
 226 | may be reassessed during this year in order to determine the
 227 | necessity for a change in their support plan.

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

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

237 | Section 5. Subsections (4), (7), and (9) of section
 238 | 393.067, Florida Statutes, are amended to read:

239 | 393.067 Facility licensure.—

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

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

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

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

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

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

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

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

263 (h) Certification that the staff of the facility or
264 program will receive training to detect, report and prevent
265 sexual abuse, abuse, neglect, exploitation and abandonment as
266 defined in s. 39.01 and s. 415.102, of residents and clients.

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

269 (7) The agency shall adopt rules establishing minimum
270 standards for facilities and programs licensed under this
271 section, including rules requiring facilities and programs to
272 train staff to detect, report and prevent sexual abuse, abuse,
273 neglect, exploitation and abandonment, as defined in s. 39.01
274 and s. 415.102, of residents and clients, minimum standards of
275 quality and adequacy of client care, incident reporting
276 requirements, and uniform firesafety standards established by
277 the State Fire Marshal which are appropriate to the size of the
278 facility or of the component centers or units of the program.

279 (9) The agency may conduct unannounced inspections to
280 determine compliance by foster care facilities, group home

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281 facilities, residential habilitation centers, and comprehensive
 282 transitional education programs with the applicable provisions
 283 of this chapter and the rules adopted pursuant hereto, including
 284 the rules adopted for training staff of a facility or a program
 285 to detect, report, and prevent sexual abuse, abuse, neglect,
 286 exploitation and abandonment, as defined in s. 39.01 and s.
 287 415.102, of residents and clients. The facility or program shall
 288 make copies of inspection reports available to the public upon
 289 request.

290 Section 6. Subsections (1) and (2) of section 393.0673,
 291 Florida Statutes, are amended to read:

292 393.0673 Denial, suspension, or revocation of license;
 293 moratorium on admissions; administrative fines; procedures.—

294 (1) The agency may revoke or suspend a license or ~~impose~~
 295 ~~an administrative fine~~ a licensee, not to exceed \$1,000 per
 296 violation per day, if the agency determines the licensee has
 297 committed one or more of the following violations:

298 ~~(a) The licensee has:~~

299 ~~1~~(a). Falsely represented or omitted a material fact in
 300 its license application submitted under s. 393.067;

301 ~~2~~(b). Had prior action taken against it under the Medicaid
 302 or Medicare program; ~~or~~

303 ~~3~~(c). Failed to comply with the applicable requirements of
 304 this chapter or rules applicable to the licensee; ~~or~~

305 ~~(b)(d) The Department of Children and Family Services has~~
 306 ~~verified that the licensee is responsible for the abuse,~~
 307 ~~neglect, or abandonment of~~ Abused, sexually abused, neglected or
 308 abandoned a child as defined in s. 39.01, F.S., or the abuse,

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309 ~~neglect, or exploitation of~~ abused, sexually abused, neglected
 310 or exploited a vulnerable adult as defined in s.415.102, F.S.;

311 (e) Knowingly submitted false or inaccurate information in
 312 order to obtain payment for services;

313 (f) Knowingly used the funds, property, or identity of a
 314 client for the purpose of self-gain;

315 (g) Knowingly compromised the health, safety, or welfare of
 316 a client;

317 (h) Knowingly violated the rights of a client as provided
 318 in s. 393.13; or

319 (i) Denied access to clients by the client's guardian, a
 320 minor's parent, waiver support coordinator, an agency employee,
 321 or other authorized person.

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

324 (a) The applicant has:

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

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

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

331 4. Previously had a license to operate a residential
 332 facility revoked by the agency, the Department of Children and
 333 Family Services, or the Agency for Health Care Administration;
 334 ~~or~~

335 5. The Department of Children and Family Services has
 336 verified that the applicant is responsible for the abuse,

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337 ~~neglect, or abandonment of~~ Abused, sexually abused, neglected or
 338 abandoned a child as defined in s. 39.01, or the abuse, neglect,
 339 ~~or exploitation of~~ abused, sexually abused, neglected or
 340 exploited a vulnerable adult as defined in s. 415.102, F.S.;

341 6. Knowingly submitted false or inaccurate information in
 342 order to obtain payment for services;

343 7. Knowingly used the funds, property, or identity of a
 344 client for the purpose of self-gain;

345 8. Knowingly compromised the health, safety, or welfare of
 346 a client;

347 9. Knowingly violated the rights of a client as provided in
 348 s. 393.13, F.S.; or

349 10. Denied access to clients by the client's guardian, a
 350 minor's parent, waiver support coordinator, an agency employee,
 351 or other authorized person.

352 Section 7. Subsection (1) of section 393.125, Florida
 353 Statutes, is amended to read:

354 393.125 Hearing rights.—

355 (1) REVIEW OF AGENCY DECISIONS.—

356 (a) For Medicaid programs administered by the agency, any
 357 developmental services applicant or client, or his or her
 358 parent, guardian, guardian advocate, or authorized
 359 representative, may request a hearing in accordance with federal
 360 Medicaid law and rules and shall request such a hearing pursuant
 361 to ss. 120.569 and 120.57. These hearings shall be provided by
 362 the Department of Children and Family Services pursuant to s.
 363 409.285 and shall follow procedures consistent with applicable
 364 federal Medicaid law and rules.

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

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

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

381 Section 8. Paragraph (a) of subsection (3) of section
 382 393.13, Florida Statutes, is amended to read:

383 393.13 Treatment of persons with developmental
 384 disabilities.—

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

389 (a) Persons with developmental disabilities shall have a
 390 right to dignity, privacy, and humane care, including the right
 391 to be free from **abuse, including sexual abuse, neglect and**
 392 **exploitation.** ~~in residential facilities.~~

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393 Section 9. Paragraph (c) is added to subsection (2) of
 394 section 393.506, Florida Statutes, to read:

395 393.506 Administration of medication.—

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

406 (c) Competency in all routes of medication administration
 407 as provided in subsection (1) must be assessed and validated at
 408 least annually in an onsite setting with an actual client except
 409 for the topical, transdermal, and otic routes, which may be
 410 validated by simulation during the required training course, and
 411 do not require annual revalidation.

412
 413 Section 10. This act shall take effect upon becoming law.
 414
 415

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCS 10-03 Health and Human Services
SPONSOR(S): Health Care Services Policy Committee and Kreegel
TIED BILLS: IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Health Care Services Policy Committee		Schoonover <i>am</i>	Schoolfield <i>[Signature]</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

PCB 10-03 repeals the following sections of law, which either are outdated, no longer effective, applicable or being implemented:

- s. 39.0015, F.S., relating to child abuse prevention training in the district school system;
- s. 39.305, F.S., relating to the development by the Department of Children and Family Services of a model plan for intervention and treatment in sexual abuse cases;
- s. 39.4086, F.S., relating to a pilot program for attorneys ad litem for dependent children in the Ninth Judicial Circuit;
- s. 39.816, F.S., relating to authorization for pilot and demonstration projects;
- s. 39.817, F.S., relating to a foster care privatization demonstration pilot project;
- s. 383.0115, F.S., relating to the Commission on Marriage and Family Support Initiatives;
- s. 393.22, F.S., relating to financial commitment to community services programs;
- s. 393.503, F.S., relating to respite and family care subsidy expenditures and funding recommendations;
- s. 402.3045, F.S., relating to a requirement that the Department of Children and Family Services adopt distinguishable definitions of child care programs by rule;
- s. 402.50, F.S., relating to the development of administrative infrastructure standards by the Department of Children and Family Services;
- s. 409.1673, F.S., relating to legislative findings regarding the foster care system and the development of alternate care plans;
- s. 409.1685, F.S., relating to an annual report to Legislature by the Department of Children and Family Services with respect to children in foster care;
- s. 409.801 to 803, F.S., relating to the creation of the Family Policy Act;

The bill does not appear to have a fiscal impact on state or local governments.

The bill becomes effective on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill repeals the following sections of statute which either are outdated, no longer effective or no longer being implemented:

Child Abuse Prevention Training in the District School System

Repeals s. 39.0015, F.S., which created the "Child Abuse Prevention Training Act of 1985". This Act encouraged the Department of Education to implement abuse prevention training for all school teachers, guidance counselors, parents, and children in the district school system. No rules were created relating to this section and the program was never implemented by the Department of Education (DOE).

Intervention and Treatment in Sexual Abuse Cases; Model Plan

Repeals s. 39.305, F.S., which requires the Department of Children and Family Services (DCF) to develop a model plan for community intervention and treatment of intra-family sexual abuse in conjunction with the Department of Law Enforcement, the Department of Health, Department of Education, the Attorney General, the state Guardian Ad Litem Program, the Department of Corrections, representatives of the judiciary, and professionals and advocates from the mental health and child welfare community. The model plan was never developed. However, other sections of law already provide collaborative efforts including but not limited to child protection teams,¹ agreements with local law enforcement regarding investigations² and mandatory notification requirements regarding abuse³.

Pilot Program for Attorneys Ad Litem for Dependent Children

Repeals s. 39.4086, F.S., which requires the Office of State Courts Administrator, subject to a specific appropriation, to establish a three year pilot Attorney Ad Litem Program in the Ninth Judicial Circuit by October 1, 2000 to provide representation to children taken into custody by DCF. A final report was completed and submitted to the Legislature and the Governor. The program is no longer funded and the Office of State Courts Administrator indicates that the program is no longer operational.

Authorization for Pilot and Demonstration Projects

Repeals s. 39.816, F.S., which was enacted in 1998 and requires DCF, contingent on a grant from the federal Adoption Safe Families Act (ASFA), to establish one or more pilots for the purpose of furthering the goals of the Act. It also authorizes DCF to establish demonstration projects to identify barriers to

¹ s. 39.303, F.S.

² s. 39.306, F.S.

³ s. 39.301, F.S.

adoption, to address parental substance abuse problems that endanger children, and to address kinship care. The statutory language and pilots are outdated and are no longer effective.

Foster Care Privatization Demonstration Pilot Project

Repeals s. 39.817, F.S., which requires the establishment of a pilot project through The Ounce of Prevention Fund of Florida to contract with a private entity for a foster care privatization demonstration project. The statute is outdated and foster care and related services are currently privatized statewide through community based care organizations.

The Commission on Marriage and Family Support Initiatives

Repeals s. 383.0115, F.S., which creates the Commission on Marriage and Family Support Initiatives (Commission), which essentially replaced the Commission of Responsible Fatherhood created in 1996. The Commission is authorized to hire an executive director, a researcher, and an administrative assistant and to also create documents related to marriage and family initiatives. The Commission is also required to develop a community awareness campaign related to marriage promotion. The Commission was funded following its inception in 2003, but has not been funded since 2008. As a result, the Commission is no longer operating.

Financial Commitment to Community Services Program

Repeals s. 393.22, F.S., which provides specific guidelines for transferring funds from the institution budget to the community budget when a developmental disabilities center discharges enough persons to close a residential unit. The section also provides that the funds to support at least 80 percent of the direct cost to serve people in the unit that closes must be shifted to community services. The language is not needed as the use of funds which become available from the closing or downsizing of an institution are handled through the Legislative budgeting process. Legislative findings and intent already cover preference of community services instead of services in a developmental disabilities center.⁴ This section of law is no longer needed.

Respite and Family Care Subsidy Expenditures

Repeals s. 393.503, F.S., which requires the Agency for Persons with Disabilities (APD) to report to the Family Care Councils and others the annual expenditures for respite care and family care subsidies for individuals living at home. The law also requires the Family Care Council to review the information and make recommendations to APD when new funds become available. This section of law is no longer effective since the Family Care Council no longer needs to submit recommendations to plan for funding of respite care and family care subsidies and APD no longer needs to report the information to the Council each year. Under current law, clients of APD are served based on their assessed need within the funds available.⁵ The services are not provided to individuals based on the funding of specific programs such as respite or family care subsidies. Therefore, this section of law is no longer effective and inconsistent with the current Legislative policy.

Requirement for Distinguishable Definitions of Child Care

Repeals s. 402.3045, F.S., which requires DCF to adopt by rule a definition for child care which distinguishes between child care programs that require child care licensure and after-school programs that do not require licensure. This section of law is redundant since language in s. 402.305(1)(c), F.S., is a rule-making directive that contains the same directive as in s. 402.3045, F.S.

Administrative Infrastructure; Legislative Intent; Establishment of Standards

Repeals s. 402.50, F.S., which expresses legislative findings and intent relating to evidence of deficiencies in the administrative infrastructure of DCF that may negatively affect the timeliness and quality of delivery of services. DCF is required to develop standards for administrative infrastructure funding and staffing to support the department and contract service providers. The provisions of this section are outdated and no longer implemented since DCF has undergone reorganizations since this section of statute was enacted.

⁴ s. 393.062, F.S.

⁵ s. 393.0661, F.S.

Alternative Care Plans: Legislative Findings

Repeals s. 409.1673, F.S., which provides legislative findings related to out-of-home placements for children in the legal custody of the department. It also requires DCF, in collaboration with community service providers, to develop and administer plans for services for dependent children. This section of law was enacted at the early stages of the change to community-based care and it is now outdated as a result of subsequent changes to chapter 39, F.S., and s. 409.1671, F.S.

Annual Report to Legislature relating to Children in Foster Care

Repeals s. 409.1685, F.S., which requires DCF to submit a report each year to the Legislature concerning the status of children in foster care. The report with the specific content referenced in statute is not needed. This section of law is outdated as the information in this report is available from other sources.

Family Policy Act

Repeals s. 409.801, F.S., which creates the "Family Policy Act." Repeals s. 409.802, F.S., which requires the Legislature to seek to provide families certain benefits. Repeals s. 409.803, F.S., which requires DCF to establish a two year pilot program in a rural and an urban county to provide funding and resources for shelters, foster homes, and the children in their care. Provisions regarding these services exist in chapters 39 and 402 and other sections of chapter 409, which more accurately reflect the current philosophy and practice relating to foster children and their parents. This section of statute is outdated.

B. SECTION DIRECTORY:

Section 1. Repeals ss. 39.0015, 39.305, 39.4086, 39.816, 39.817, 383.0115, 393.22, 393.503, 402.3045, 402.50, 409.1673, 409.1685, 409.801, 409.802, and 409.803, F.S.

Section 2. Amends s. 39.3031, F.S., relating to rules of implementation for ss. 39.303 and 39.305, F.S.

Section 3. Amends s. 390.01114, F.S., relating to parental notice of abortion act.

Section 4. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to health and human services; repealing s.
 3 39.0015, relating to child abuse prevention training in
 4 the district school system; repealing s. 39.305, F.S.,
 5 relating to the development by the Department of Children
 6 and Family Services of a model plan for intervention and
 7 treatment in sexual abuse cases; repealing s. 39.4086,
 8 F.S., relating to a pilot program for attorneys ad litem
 9 for dependent children in the Ninth Judicial Circuit;
 10 repealing s. 39.816, F.S., relating to authorization for
 11 pilot and demonstration projects; repealing s. 39.817,
 12 F.S., relating to a foster care privatization
 13 demonstration pilot project; repealing s. 383.0115, F.S.,
 14 relating to the Commission on Marriage and Family Support
 15 Initiatives; repealing s. 393.22, F.S., relating to
 16 financial commitment to community services programs;
 17 repealing s. 393.503, F.S., relating to respite and family
 18 care subsidy expenditures and funding recommendations;
 19 repealing s. 402.3045, F.S., relating to a requirement
 20 that the Department of Children and Family Services adopt
 21 distinguishable definitions of child care programs by
 22 rule; repealing s. 402.50, F.S., relating to the
 23 development of administrative infrastructure standards by
 24 the Department of Children and Family Services; repealing
 25 s. 409.1673, F.S., relating to legislative findings
 26 regarding the foster care system and the development of
 27 alternate care plans; repealing s. 409.1685, F.S.,
 28 relating to an annual report to Legislature by the

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29 Department of Children and Family Services with respect to
 30 children in foster care; repealing s. 409.801, F.S.,
 31 relating to the creation of the Family Policy Act;
 32 repealing s. 409.802, F.S., relating to provisions of the
 33 Family Policy Act; repealing s. 409.803, F.S., relating to
 34 pilot programs to provide shelter and foster care services
 35 to dependent children; amending ss. 39.3031 and 390.01114,
 36 F.S.; conforming cross-reference to changes made by the
 37 act; providing an effective date.

38

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

40

41 Section 1. Section 39.0015, 39.305, 39.4086, 39.816,
 42 39.817, 383.0115, 393.22, 393.503, 402.3045, 402.50, 409.1673,
 43 409.1685, 409.801, 409.802, and 409.803, Florida Statutes, are
 44 repealed.

45 Section 2. Section 39.3031, Florida Statutes, is amended
 46 to read:

47 39.3031 Rules for implementation of s. ~~ss.~~ 39.303 and
 48 ~~39.305.~~—The Department of Health, in consultation with the
 49 Department of Children and Family Services, shall adopt rules
 50 governing the child protection teams ~~and the sexual abuse~~
 51 ~~treatment program~~ pursuant to s. ~~ss.~~ 39.303 and ~~39.305,~~
 52 including definitions, organization, roles and responsibilities,
 53 eligibility, services and their availability, qualifications of
 54 staff, and a waiver-request process.

55 Section 3. Paragraph (b) of subsection (2) of section
 56 390.01114, Florida Statutes, is amended to read:

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57 | 390.01114 Parental Notice of Abortion Act.—
58 | (2) DEFINITIONS.—As used in this section, the term:
59 | (b) "Child abuse" means abandonment, abuse, harm, mental
60 | injury, neglect, physical injury, or sexual abuse of a child as
61 | those terms are defined in s. 39.01, 827.04, and 984.03 ~~has the~~
62 | ~~same meaning as s. 39.0015(3).~~
63 | Section 4. This act shall take effect July 1, 2010.