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# **Health & Human Services Committee**

**Tuesday, April 9, 2013  
10:30 AM – 12:00 PM  
Morris Hall**

**Will Weatherford  
Speaker**

**Richard Corcoran  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Health & Human Services Committee

**Start Date and Time:** Tuesday, April 09, 2013 10:30 am  
**End Date and Time:** Tuesday, April 09, 2013 12:00 pm  
**Location:** Morris Hall (17 HOB)  
**Duration:** 1.50 hrs

**Consideration of the following bill(s):**

CS/HB 831 Controlled Substance Prescription by Health Quality Subcommittee, Fasano  
CS/HB 969 Recreational Vehicle Parks by Health Quality Subcommittee, Raburn  
HB 1119 Intellectual Disabilities by Adkins

**Consideration of the following proposed committee bill(s):**

PCB HHSC 13-01 -- Comprehensive Health Information System

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, April 8, 2013.

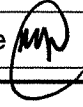

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, April 8, 2013.

**NOTICE FINALIZED on 04/05/2013 16:18 by Iseminger.Bobbye**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 831 Controlled Substance Prescription  
**SPONSOR(S):** Health Quality Subcommittee; Fasano  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 1 N, As CS	Poche	O'Callaghan
2) Health & Human Services Committee		Poche 	Calamas 

### SUMMARY ANALYSIS

The Committee Substitute for House Bill 831 requires all physicians, osteopathic physicians, naturopathic physicians, podiatrists, and dentists to consult the prescription drug monitoring program (PDMP) database, as established under s. 893.055, F.S., prior to prescribing a controlled substance to any patient. The bill makes the failure to consult the PDMP database grounds for disciplinary action under the practice act for each specified prescriber.

The bill reduces the time period within which a dispensing of a controlled substance must be reported to the PDMP database, from seven days to two days.

The bill removes the prohibition against funds from prescription drug manufacturers being used to implement the PDMP.

Lastly, the bill clarifies that a physician who is required to access the PDMP database is not subject to a lawsuit, or the imposition of damages against him or her, for accessing or failing to access the PDMP database.

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

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### *Controlled Substances*

Controlled substances are drugs with the potential for abuse. Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. The distinguishing factors between the different drug schedules are the "potential for abuse"<sup>1</sup> of the substance contained therein and whether there is a currently accepted medical use for the substance. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.<sup>2</sup>

*Schedule I* controlled substances currently have no accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use. These substances have a high potential for abuse and include heroin, peyote, lysergic acid diethylamide (LSD), and cannabis.<sup>3</sup>

*Schedule II* controlled substances have severely restricted medical uses and a high potential for abuse, which may lead to severe psychological or physical dependence. These drugs include morphine and its derivatives, amphetamines, cocaine, and pentobarbital.<sup>4</sup>

*Schedule III* controlled substances have lower abuse potential than Schedule II substances and have some accepted medical use, but they may still cause psychological or physical dependence. Schedule III substances include products containing less than 15 milligrams (mg) of hydrocodone (such as Vicodin) or less than 90 mg of dihydrocodeine per dose (such as Tylenol #3), ketamine, and anabolic steroids.<sup>5</sup>

*Schedule IV* substances have a low potential for abuse and include propoxyphene (Darvocet), alprazolam (Xanax), and lorazepam (Ativan).<sup>6</sup>

*Schedule V* controlled substances have an extremely low potential for abuse and primarily consist of preparations containing limited quantities of certain narcotics, such as cough syrup.<sup>7</sup>

Any health care professional wishing to prescribe controlled substances must apply for a prescribing number from the federal Drug Enforcement Administration (DEA). Prescribing numbers are linked to state licenses and may be suspended or revoked upon any disciplinary action taken against a licensee. The DEA will grant prescribing numbers to a wide range of health care professionals, including physicians, nurse practitioners, physician assistants, optometrists, dentists, and veterinarians, but such professionals may only prescribe controlled substances as authorized under state law. Prescribing numbers must be renewed every three years.<sup>8</sup>

###### *Controlled Substance Prescribing*

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<sup>1</sup> S. 893.02(19), F.S.

<sup>2</sup> DEA, Office of Diversion Control, Controlled Substance Schedules, available at: [www.deadiversion.usdoj.gov/21cfr/cfr/2108cfr.htm](http://www.deadiversion.usdoj.gov/21cfr/cfr/2108cfr.htm) (last visited March 18, 2013).

<sup>3</sup> S. 893.03(1), F.S.

<sup>4</sup> S. 893.03(2), F.S.

<sup>5</sup> S. 893.03(3), F.S.

<sup>6</sup> S. 893.03(4), F.S.

<sup>7</sup> S. 893.03 (5), F.S.

<sup>8</sup> U.S. Department of Justice, Drug Enforcement Administration, Office of Diversion Control, *Questions & Answers-Registration*, available at <http://www.deadiversion.usdoj.gov/drugreg/faq.htm#3> (last viewed on March 16, 2013).

As of January 1, 2012, every physician, podiatrist, or dentist who prescribes controlled substances in the state for the treatment of chronic nonmalignant pain<sup>9</sup> must register as a controlled substance prescribing practitioner and comply with certain practice standards specified in statute and rule.<sup>10</sup> Before prescribing any controlled substances for the treatment of chronic nonmalignant pain, a practitioner must document certain characteristics about the nature of the pain, success of past treatments, any underlying health problems, and history of alcohol and substance abuse.<sup>11</sup> The practitioner must develop a written plan for assessing the patient's risk for aberrant drug-related behavior and monitor such behavior throughout the course of controlled substance treatment.<sup>12</sup> Each practitioner must also enter into a controlled substance agreement with their patients; such agreements must include:

- The risks and benefits of controlled substance use, including the risk for addiction or dependence;
- The number and frequency of permitted prescriptions and refills;
- A statement of reasons for discontinuation of therapy, including violation of the agreement; and
- The requirement that a patient's chronic nonmalignant pain only be treated by one practitioner at a time unless otherwise authorized and documented.<sup>13</sup>

Patients treated with controlled substances must be seen by their prescribing practitioners at least once every three months to monitor progress and compliance, and detailed medical records relating to such treatment must be maintained.<sup>14</sup> Patients at special risk for drug abuse or diversion may require co-monitoring by an addiction medicine physician or a psychiatrist.<sup>15</sup> Anyone with signs or symptoms of substance abuse must be immediately referred to a pain-management physician, an addiction medicine specialist, or an addiction medicine facility.<sup>16</sup>

Anesthesiologists, physiatrists, neurologists, and surgeons are exempt from these provisions.<sup>17</sup> Physicians who hold certain credentials relating to pain medicine are also exempt.<sup>18</sup>

#### *Prescription Drug Monitoring Program*

Chapter 2009-197, L.O.F, established the Prescription Drug Monitoring Program (PDMP) in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.<sup>19</sup> Dispensers of certain controlled substances must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.<sup>20</sup>

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.<sup>21</sup> Indirect access to the PDMP database is provided to:

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<sup>9</sup> "Chronic nonmalignant pain" is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery. S. 456.44(1)(e), F.S.

<sup>10</sup> S. 456.44(2)(a) and (b), F.S.

<sup>11</sup> S. 456.44(3)(a), F.S.

<sup>12</sup> S. 456.44(3)(b), F.S.

<sup>13</sup> S. 456.44(3)(c)1.-3., F.S.

<sup>14</sup> S. 456.33(3)(d), F.S.

<sup>15</sup> S. 456.44(3)(e), F.S.

<sup>16</sup> S. 456.44(3)(g), F.S.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> S. 893.055(2)(a), F.S.

<sup>20</sup> S. 893.055(3)(a)-(c), F.S.

<sup>21</sup> S. 893.055(7)(b), F.S.

- DOH or its relevant health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- A law enforcement agency; and
- A patient or the legal guardian, or designated health care surrogate of an incapacitated patient.<sup>22</sup>

Restrictions on how DOH may fund implementation and operation of the PDMP are also included in statute. DOH is prohibited from using state funds and any money received directly or indirectly from prescription drug manufacturers to implement the PDMP.<sup>23</sup> Funding for the PDMP comes from three funding sources:<sup>24</sup>

1. Donations procured by the Florida PDMP Foundation, Inc. (Foundation), the direct-support organization authorized by s. 893.055, F.S., to fund the continuing operation of the PDMP. The following amounts have been paid to DOH by the Foundation since the PDMP was established:

FY 2009-2010	\$39,108
FY 2010-2011	\$201,552
FY 2011-2012	\$96,758
FY 2012-2013	\$102,654
<b>Total</b>	<b>\$440,072</b>

2. Federal Grants. The PDMP has been awarded three Harold Rogers Prescription Drug Monitoring Program grants from the U.S. Department of Justice and one additional federal grant. The award date and amount of each grant follows:
  - On May 19, 2010, DOH was awarded an "Implementation" grant of \$400,000 to implement the prescription drug monitoring system.
  - On September 19, 2010, DOH was awarded an "Enhancement" grant of \$400,000 for system enhancements.
  - On August 21, 2012, DOH was awarded a second "Enhancement" grant of \$399,300 to enhance the PDMP.
  - On September 20, 2012, DOH was awarded a grant of \$240,105 from the Substance Abuse and Mental Health Services Administration (SAMHSA) to integrate PDMP data into existing clinical workflow and technology and to expand interoperability.

The total amount of federal grants received is \$1,199,300. Of that amount, approximately \$566,460 has been expended in operation of the PDMP.

3. Private grants and donations. DOH has been awarded three private grants from the National Association of State Controlled Substance Authorities. These grants, totaling \$49,952, were used to create a website, to purchase office equipment, and to purchase promotional items.

Section 893.0551, F.S., provides an exemption from public records for personal information of a patient and certain information concerning health care professionals outlined in the statute.<sup>25</sup> The statute details exceptions for disclosure of information after DOH ensures the legitimacy of the person's request for the information.<sup>26</sup>

<sup>22</sup> S. 893.055(7)(c)1.-4., F.S.

<sup>23</sup> S. 893.055(10) and (11)(c), F.S.

<sup>24</sup> Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE), 2011-2012 Prescription Drug Monitoring Program Annual Report, page 7 (available at [www.eforcse.com/docs/2012AnnualReport.pdf](http://www.eforcse.com/docs/2012AnnualReport.pdf)) (on file with Health Quality Subcommittee staff); information also came from Florida Department of Health document detailing the funding history of the PDMP, also on file with Health Quality Subcommittee staff.

<sup>25</sup> S. 893.0551(2)(a)-(h), F.S.

<sup>26</sup> S. 893.0551(3)(a)-(g), F.S.

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.<sup>27</sup> Health care practitioners began accessing the PDMP on October 17, 2011.<sup>28</sup> Law enforcement began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.<sup>29</sup>

Between 2011 and 2012, physicians and pharmacists used the PDMP database at least 2.6 million times.<sup>30</sup> Nearly 5,000 pharmacists entered 56 million prescriptions into the database.<sup>31</sup> Law enforcement queried the PDMP database more than 20,000 times in conjunction with active criminal investigations.<sup>32</sup>

The PDMP is currently funded through fiscal year 2012-2013.<sup>33</sup>

#### *Disciplinary Actions of Health Care Practitioners*

Sections 456.072, 456.073 and 456.074 F.S., provide authority for a board to take disciplinary action against a licensee. These actions include:

- Refusal to certify, or to certify with restrictions, an application for a license;
- Suspension or permanent revocation of a license;
- Restriction of a practice or a license;
- Administration of a fine not to exceed \$10,000 per occurrence;
- Issuance of a reprimand or letter of concern;
- Imposition of probationary conditions on the licensee;
- Corrective action;
- Imposition of administrative fines for violations of patient rights;
- Refund of fees billed and collect from the patient or a third party on behalf of the patient; and
- Remedial education.<sup>34</sup>

The board can take action for any legally sufficient, written and signed complaint that is filed before it. Section 456.073(1), F.S., provides that a complaint is legally sufficient if it contains the ultimate facts that show a violation of ch. 456, F.S., the relevant practice act, or any rule adopted by DOH or the relevant board. DOH has the authority to investigate a complaint even if the original complainant withdraws or the complainant is anonymous.<sup>35</sup> Further, DOH may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida statute or a rule of either the board or the department.

The subject of an investigation has twenty days to respond in writing to the complaint or document after service.<sup>36</sup> All information that is submitted is considered by the probable cause panel of the respective board.<sup>37</sup> The right to respond does not preclude the State Surgeon General from issuing a summary emergency order if it is necessary to protect the public.<sup>38</sup>

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<sup>27</sup> See supra, FN 24 at page 4.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id. at page 1.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Florida Department of Health, *Florida's Prescription Drug Monitoring Program*, Presentation to the Senate Health Policy Committee, January 23, 2013, slide 5 (on file with Health Quality Subcommittee staff).

<sup>34</sup> S. 456.072(2), F.S.

<sup>35</sup> S. 456.073(1), F.S.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id.



DOH has six months to complete an investigation and submit it to the appropriate probable cause panel.<sup>39</sup> A determination as to probable cause is made by a majority vote of the panel.<sup>40</sup> The panel may request additional investigative information from DOH, which must be done within fifteen days of receiving the investigative report from the department or agency.<sup>41</sup> The panel has thirty days from receiving the final investigative report to make a determination of probable cause.<sup>42</sup> The Surgeon General may grant extensions of these time limits.<sup>43</sup> If the panel does not make a determination within the statutory timeframe, DOH is directed to do so within ten days of the expiration of the time limit.<sup>44</sup>

DOH is directed to follow the determination of the probable cause panel and, if probable cause exists, is directed to file a formal complaint against the subject and prosecute pursuant to ch. 120, F.S.<sup>45</sup> DOH may decide not to prosecute if probable cause has been found improvidently and refer the issue back to the appropriate board, which may then choose to file a formal complaint and prosecute pursuant to ch. 120, F.S.<sup>46</sup> Referrals to the Division of Administrative Hearings must occur within one year of filing the complaint.<sup>47</sup> Chapter 120, F.S., provides the practitioner with the right to appeal the action.

DOH is further directed to notify the person who filed the complaint and, if probable cause is not found, provide them with an opportunity sixty days from the determination to bring additional information to the department.<sup>48</sup>

### **Effect of Proposed Changes**

The bill requires all physicians, osteopathic physicians, naturopathic physicians, podiatrists, and dentists to consult the PDMP database and review a patient's controlled substance history prior to issuing a prescription for a controlled substance to that patient. Current law does not mandate the review of the PDMP database by a physician in advance of issuing a prescription for a controlled substance.

If a physician, who is mandated to review the PDMP database, willfully and knowingly fails to review a patient's controlled substance history prior to issuing a prescription for a controlled substance to the patient, under the bill, he or she is subject to disciplinary action under the respective practice act.

Current law permits a dispenser of a controlled substance to report to the PDMP database the dispensing of that controlled substance up to 7 days following dispensing. The bill requires such reporting of dispensing of a controlled substance to be completed within 2 days of the dispensing. By requiring a shorter time period between dispensing a controlled substance and reporting the dispensing to the PDMP database, the bill will permit physicians and pharmacists to catch individuals who now attempt to "doctor shop" and obtain as many controlled substances as possible under the current 7-day window of reporting.

Current law only allows DOH to operate the PDMP with federal grants or private funding. The bill removes the prohibition against using funds from prescription drug manufacturers to implement the PDMP. As a result, funds from prescription drug manufacturers may be obtained and used to operate the PDMP and the database.

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<sup>39</sup> S. 456.073(2), F.S.

<sup>40</sup> S. 456.073(4), F.S.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> S. 456.073(9)(c), F.S.

The bill also clarifies that a physician who is required to access the PDMP database is not subject to a lawsuit, or the imposition of damages against him or her, for accessing or failing to access the PDMP database.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 458.331, F.S., relating to grounds for disciplinary action; action by the board and department.

**Section 2:** Amends s. 459.015, F.S., relating to grounds for disciplinary action; action by the board and department.

**Section 3:** Amends s. 461.013, F.S., relating to relating to grounds for disciplinary action; investigations by department.

**Section 4:** Amends s. 462.14, F.S., relating to grounds for disciplinary action; action by the department.

**Section 5:** Amends s. 466.028, F.S., relating to grounds for disciplinary action; action by the board.

**Section 6:** Amends s. 893.055, F.S., relating to the prescription drug monitoring program.

**Section 7:** Provides an effective date of July 1, 2013.

**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:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

DOH and relevant boards have sufficient rule-making authority to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 19, 2013, the Health Quality Subcommittee adopted a strike-all amendment to House Bill 831. The strike-all:

- Requires all physicians, osteopathic physicians, naturopathic physicians, podiatrists, and dentists to consult the PDMP database to review a patient's controlled substance history prior to prescribing a controlled substance to the patient.
- Makes the failure to consult the PDMP database grounds for disciplinary action under the practice act for each of the specified prescribers required to consult the PDMP database.
- Removes the prohibition against using funds from prescription drug manufacturers to implement the PDMP.
- Reduces the time period for reporting to the PDMP database any dispensing of a controlled substance from seven days to two days.
- Clarifies that a physician who is required to access the PDMP database is not subject to a lawsuit, or the imposition of damages against him or her, for accessing or failing to access the PDMP database.

The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to controlled substance prescription;  
 3           amending ss. 458.331, 459.015, 461.013, 462.14, and  
 4           466.028, F.S.; providing for disciplinary action under  
 5           the relevant practice acts for a licensed  
 6           practitioner's failure to review a patient's  
 7           controlled substance prescription history before  
 8           prescribing a controlled substance to the patient;  
 9           amending s. 893.055, F.S.; reducing the number of days  
 10          within which a dispenser must report to the Department  
 11          of Health that a controlled substance has been  
 12          dispensed; providing that a prescriber of controlled  
 13          substances who willfully and knowingly fails to access  
 14          a certain electronic database to review a patient's  
 15          controlled substance prescription history before  
 16          prescribing a controlled substance to the patient may  
 17          be administratively disciplined; removing a  
 18          prohibition against certain funding by prescription  
 19          drug manufacturers; requiring a prescriber to access a  
 20          specified electronic database before prescribing a  
 21          controlled substance to a patient; providing an  
 22          effective date.

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

25  
 26           Section 1. Paragraph (tt) is added to subsection (1) of  
 27           section 458.331, Florida Statutes, to read:  
 28           458.331   Grounds for disciplinary action; action by the

29 board and department.—

30 (1) The following acts constitute grounds for denial of a  
31 license or disciplinary action, as specified in s. 456.072(2):

32 (tt) Failing to review a patient's controlled substance  
33 prescription history before prescribing a controlled substance  
34 to the patient, as required under s. 893.055.

35 Section 2. Paragraph (vv) is added to subsection (1) of  
36 section 459.015, Florida Statutes, to read:

37 459.015 Grounds for disciplinary action; action by the  
38 board and department.—

39 (1) The following acts constitute grounds for denial of a  
40 license or disciplinary action, as specified in s. 456.072(2):

41 (vv) Failing to review a patient's controlled substance  
42 prescription history before prescribing a controlled substance  
43 to the patient, as required under s. 893.055.

44 Section 3. Paragraph (dd) is added to subsection (1) of  
45 section 461.013, Florida Statutes, to read:

46 461.013 Grounds for disciplinary action; action by the  
47 board; investigations by department.—

48 (1) The following acts constitute grounds for denial of a  
49 license or disciplinary action, as specified in s. 456.072(2):

50 (dd) Failing to review a patient's controlled substance  
51 prescription history before prescribing a controlled substance  
52 to the patient, as required under s. 893.055.

53 Section 4. Paragraph (ff) is added to subsection (1) of  
54 section 462.14, Florida Statutes, to read:

55 462.14 Grounds for disciplinary action; action by the  
56 department.—

57 |           (1) The following acts constitute grounds for denial of a  
58 | license or disciplinary action, as specified in s. 456.072(2):

59 |           (ff) Failing to review a patient's controlled substance  
60 | prescription history before prescribing a controlled substance  
61 | to the patient, as required under s. 893.055.

62 |           Section 5. Paragraph (nn) is added to subsection (1) of  
63 | section 466.028, Florida Statutes, to read:

64 |           466.028 Grounds for disciplinary action; action by the  
65 | board.—

66 |           (1) The following acts constitute grounds for denial of a  
67 | license or disciplinary action, as specified in s. 456.072(2):

68 |           (nn) Failing to review a patient's controlled substance  
69 | prescription history before prescribing a controlled substance  
70 | to the patient, as required under s. 893.055.

71 |           Section 6. Subsections (4), (9), (10), and (12) of section  
72 | 893.055, Florida Statutes, are amended to read:

73 |           893.055 Prescription drug monitoring program.—

74 |           (4) Each time a controlled substance is dispensed to an  
75 | individual, the controlled substance shall be reported to the  
76 | department through the system as soon thereafter as possible,  
77 | but not more than 2 7 days after the date the controlled  
78 | substance is dispensed unless an extension is approved by the  
79 | department for cause as determined by rule. A dispenser must  
80 | meet the reporting requirements of this section by providing the  
81 | required information concerning each controlled substance that  
82 | it dispensed in a department-approved, secure methodology and  
83 | format. Such approved formats may include, but are not limited  
84 | to, submission via the Internet, on a disc, or by use of regular

85 mail.

86 (9) (a) Any prescriber who willfully and knowingly fails to  
 87 access the electronic database, as required under subsection  
 88 (12), may be disciplined pursuant to the practice act under  
 89 which the prescriber is licensed.

90 (b) Any person who willfully and knowingly fails to report  
 91 the dispensing of a controlled substance as required by this  
 92 section commits a misdemeanor of the first degree, punishable as  
 93 provided in s. 775.082 or s. 775.083.

94 (10) All costs incurred by the department in administering  
 95 the prescription drug monitoring program shall be funded through  
 96 federal grants or private funding applied for or received by the  
 97 state. The department may not commit funds for the monitoring  
 98 program without ensuring funding is available. The prescription  
 99 drug monitoring program and the implementation thereof are  
 100 contingent upon receipt of the nonstate funding. The department  
 101 and state government shall cooperate with the direct-support  
 102 organization established pursuant to subsection (11) in seeking  
 103 federal grant funds, other nonstate grant funds, gifts,  
 104 donations, or other private moneys for the department so long as  
 105 the costs of doing so are not considered material. Nonmaterial  
 106 costs for this purpose include, but are not limited to, the  
 107 costs of mailing and personnel assigned to research or apply for  
 108 a grant. Notwithstanding the exemptions to competitive-  
 109 solicitation requirements under s. 287.057(3)(f), the department  
 110 shall comply with the competitive-solicitation requirements  
 111 under s. 287.057 for the procurement of any goods or services  
 112 required by this section. ~~Funds provided, directly or~~

CS/HB 831

2013

113 ~~indirectly, by prescription drug manufacturers may not be used~~  
 114 ~~to implement the program.~~

115 (12) A prescriber shall access the electronic database  
 116 established under this section to review the controlled  
 117 substance prescription history of the prescriber's patient  
 118 before prescribing a controlled substance to the patient. A ~~or~~  
 119 dispenser may have access to the electronic database established  
 120 ~~information under this section, which relates to a patient of~~  
 121 ~~that prescriber or dispenser as needed,~~ for the purpose of  
 122 reviewing the ~~patient's~~ controlled substance drug prescription  
 123 history of the patient requesting a prescription from the  
 124 dispenser. A prescriber or dispenser acting in good faith is  
 125 immune from any civil, criminal, or administrative liability  
 126 that might otherwise be incurred or imposed for receiving or  
 127 using information from the prescription drug monitoring program.  
 128 This subsection does not create a private cause of action, and a  
 129 person may not recover damages against a prescriber required to  
 130 access or dispenser authorized to access information under this  
 131 subsection for accessing or failing to access such information.

132 Section 7. This act shall take effect July 1, 2013.





Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Committee

3 Representative Fasano offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (4) and (10) of section 893.055,  
8 Florida Statutes, are amended to read:

9 893.055 Prescription drug monitoring program.—

10 (4) Each time a controlled substance is dispensed to an  
11 individual, the controlled substance shall be reported to the  
12 department through the system as soon thereafter as possible,  
13 but not more than 2 7 days after the date the controlled  
14 substance is dispensed unless an extension is approved by the  
15 department for cause as determined by rule. A dispenser must  
16 meet the reporting requirements of this section by providing the  
17 required information concerning each controlled substance that  
18 it dispensed in a department-approved, secure methodology and  
19 format. Such approved formats may include, but are not limited



Amendment No.

20 to, submission via the Internet, on a disc, or by use of regular  
21 mail.

22 (10) All costs incurred by the department in administering  
23 the prescription drug monitoring program shall be funded through  
24 federal grants or private funding applied for or received by the  
25 state. The department may not commit funds for the monitoring  
26 program without ensuring funding is available. The prescription  
27 drug monitoring program and the implementation thereof are  
28 contingent upon receipt of the nonstate funding. The department  
29 and state government shall cooperate with the direct-support  
30 organization established pursuant to subsection (11) in seeking  
31 federal grant funds, other nonstate grant funds, gifts,  
32 donations, or other private moneys for the department so long as  
33 the costs of doing so are not considered material. Nonmaterial  
34 costs for this purpose include, but are not limited to, the  
35 costs of mailing and personnel assigned to research or apply for  
36 a grant. Notwithstanding the exemptions to competitive-  
37 solicitation requirements under s. 287.057(3)(f), the department  
38 shall comply with the competitive-solicitation requirements  
39 under s. 287.057 for the procurement of any goods or services  
40 required by this section. ~~Funds provided, directly or~~  
41 ~~indirectly, by prescription drug manufacturers may not be used~~  
42 ~~to implement the program.~~

43 Section 2. This act shall take effect July 1, 2013.

44  
45 -----  
46 **T I T L E A M E N D M E N T**

47 Remove everything before the enacting clause and insert:





Amendment No.

48 A bill to be entitled  
49 An act relating to controlled substance prescription;  
50 amending s. 893.055, F.S.; reducing the number of days  
51 within which a dispenser must report to the Department  
52 of Health that a controlled substance has been  
53 dispensed; removing a prohibition against certain  
54 funding by prescription drug manufacturers; providing  
55 an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 969 Recreational Vehicle Parks  
**SPONSOR(S):** Health Quality Subcommittee; Raburn  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 938

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Guzzo	O'Callaghan
2) Health & Human Services Committee		Guzzo 	Calamas 

### SUMMARY ANALYSIS

The Department of Health (DOH) is the exclusive regulatory and permitting authority for the sanitary standards of all mobile home parks, lodging parks, recreational vehicle (RV) parks, and recreational camps. Currently, there is no statutory guidance relating to uniform standards of operation for DOH to regulate these RV parks and recreational camps.

The bill provides standards for separation distances between RV sites, within RV parks, and setback distances from the exterior property boundary of RV parks. The bill provides that the separation and set-back distance provisions do not limit the regulation of the uniform fire-safety standards established in s. 633.022, F.S.

The bill also defines "occupancy" to clarify that the term means the length of time the RV is occupied by a transient guest and not the length of time the RV is located on a leased RV site. The definition also clarifies that the attachment of the RV and any appurtenances to the ground with removable attachment devices do not render the RV a permanent part of the RV site.

Lastly, the bill repeals s. 513.111, F.S., which requires the posting of rental rates in a certain manner and regulates advertising by RV parks.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Chapter 513, F.S., and Rule 64E-15, F.A.C., provide regulations for mobile home parks, lodging parks, recreational vehicle (RV) parks, and recreational camps.

The Department of Health (DOH) is required under s. 381.006, F.S., to conduct an environmental health program as part of fulfilling the state's public health mission. The mission of the environmental health program is to detect and prevent disease caused by natural and manmade factors in the environment. The environmental health program includes the oversight of mobile home parks, lodging parks, RV parks, and recreational camps, as provided in ch. 513, F.S.

Chapter 513, F.S., provides that DOH is the exclusive regulatory and permitting authority for sanitary standards for all mobile home parks, lodging parks, RV parks and recreational camps. In addition to permit and sanitation requirements, ch. 513, F.S., requires each RV park, renting by the day or week to post its rates, regulate the manner in which the rates are advertised, and requires each operator of a recreational vehicle park to maintain a guest register and a copy of ch. 513, F.S.

Pursuant to s. 513.05, F.S.,<sup>1</sup> DOH has adopted rules in Chapter 64E-15, Florida Administrative Code, pertaining to: minimum area requirements, water supply, sewage disposal, sanitary facilities, plumbing, garbage and refuse disposal, insect and rodent control, recreational camp standards, permits and fees, and owner's and operator's responsibilities.<sup>2</sup>

Chapter 513, F.S., also provides for:

- The liability of an operator of an RV park;
- The disposition of unclaimed property;
- The establishment of park rules and regulations;
- The right of a park operator to refuse accommodations or service in certain circumstances;
- Criminal penalties for persons obtaining park accommodations through fraud;
- Criminal penalties for theft of property belonging to the park;
- The eviction of transient guests; and
- Writs of distress.<sup>3</sup>

##### Applications and Permits

Before establishing or maintaining a mobile home park, lodging park, RV park, or recreational camp, a permit must be obtained from the DOH.<sup>4</sup> The permit must be renewed annually and a new permit is required when a park or camp is sold or its ownership is transferred.<sup>5</sup> If a person maintains or operates

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<sup>1</sup> See s. 513.05, F.S., "The DOH may adopt rules pertaining to the location, construction, modification, equipment, and operation of mobile home parks, lodging parks, recreational vehicle parks, and recreational vehicle camps... as necessary to administer this chapter."

<sup>2</sup> See 64E-15.002-15.008, F.A.C.

<sup>3</sup> According to s. 83.12, F.S., "a distress writ shall be issued by a judge of the court which has jurisdiction of the amount claimed. The writ shall enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the sheriff levies on the property, the writ is vacated, or the court otherwise orders." Section 513.151, F.S., authorizes an operator of a recreational vehicle park to levy a lien against the property of a guest if a guest vacates the premises with an outstanding account.

<sup>4</sup> S. 513.02(1), F.S.

<sup>5</sup> S. 513.02(5), F.S.

any of these entities without first obtaining a permit, he or she is guilty of a second degree misdemeanor.<sup>6</sup>

When applying to DOH for a permit, in addition to any information required by DOH, the camp or park must include the following information:

- The type of camp or park;
- The number of mobile homes or RVs to be accommodated or the number of recreational campsites;
- The type of water supply; and
- The method of sewage disposal.<sup>7</sup>

Parks and camps must also submit a valid set of plans to the county public health unit at the time of permit application. The plans must include:

- A drawing of the park or camp that includes the area and dimensions of the tract of land;
- The space number or other designation of the space;
- The location and size of all mobile home spaces, recreational vehicle spaces, and tent spaces; and
- The location of all roadways.<sup>8</sup>

The drawing does not have to be drawn to scale or completed by an engineer if the space dimensions are shown. For permanent buildings located within the park or camp, a floor plan must also be submitted showing the number, types, and distribution of all plumbing fixtures.<sup>9</sup>

Once DOH reviews the application and inspects the park or camp, a permit is issued, if it is determined that the park or camp complies with ch. 513, F.S., and that it is not a source of danger to the health of the general public.<sup>10</sup>

Currently, there are approximately 5,500 mobile home parks, lodging parks, RV parks, and recreational camps in Florida.<sup>11</sup> Permits for mobile home parks, lodging parks, RV parks, and recreational camps are issued annually by DOH under s. 513.02, F.S. Section 513.045, F.S., sets the permissible statutory range for permit fees at \$3.50-\$6.50 per space, and the total assessed fee at no less than \$50 or more than \$600, annually.<sup>12</sup> Permit fees are set by DOH rule at \$4 per space and cumulatively not less than \$100 or more than \$600 annually.<sup>13</sup>

RVs are typically installed in an RV park in the same manner as a manufactured home with tie downs and ground anchors. The RV also typically occupies a site for the term of a one year lease. Occupancy by the owner is always limited in the lease to a term of six months or less, in order to maintain the statutory presumption that it is a transient occupancy not subject to part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act." Notwithstanding the limitation on occupancy, the RV does not move, but is stored in place on the rented RV site.

Some local governments have adopted ordinances that do not allow the RV owner to stay in the RV on the site for more than six months. After the six-month period, the RV must be moved to a storage area. In this instance, "occupancy" of the home relates to the time that the RV is on the site, not to the

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<sup>6</sup> S. 513.10(1), F.S.

<sup>7</sup> S. 513.03(1), F.S.

<sup>8</sup> Rule 64E-15.010(2)(b), F.A.C.

<sup>9</sup> *Id.*

<sup>10</sup> S. 513.03(2), F.S.

<sup>11</sup> The Department of Health, Division of Environmental Health, *Mobile Home and Recreational Vehicle Park Program*, available at: <<http://www.doh.state.fl.us/environment/community/mobile/index.html>> (Last visited on March 22, 2013).

<sup>12</sup> S. 513.045, F.S.

<sup>13</sup> Rule 64E-15.010, F.A.C.

actual occupancy by the owner. For example, the Monroe County ordinance states that upon vacation of the RV, the RV must be moved to an RV storage compound and not maintained on a rented site. This practice prohibits long term clients from maintaining their homes in the community. Charlotte County<sup>14</sup> has adopted an ordinance that defines a “mobile home” as a vehicle exceeding 8 feet in width and 32 feet in overall length, which contradicts with s. 513.01(3), F.S., which defines a mobile home as a residential structure that is 8 body feet (2.4 meters) or more in width and over 35 feet in length with the hitch. Volusia County<sup>15</sup> splits the definition of “mobile recreational shelters and vehicles” into multiple categories, some of which provide for different length and width requirements.<sup>16</sup> There are significant costs associated with moving and relocating an RV that has been installed on an RV site with anchors, tie downs and other temporary structures.

### Mobile Home and Recreational Vehicle Parks Program

The Mobile Home and Recreational Vehicle Parks Program is administered within DOH by the Division of Environmental Health. The program is administered through the 67 county health departments. The program’s primary objective is to minimize the risk of injury and illness by conducting routine inspections of parks and camps. DOH inspects each park or camp at least annually.<sup>17</sup> The inspections focus on proper sewage disposal, safe drinking water, safe solid waste collection and disposal, and safe and disease-free swimming pools to minimize the risk of certain diseases and minimize infestations of harmful insects and rodents. The county health departments are responsible for receiving and investigating environmental health and sanitation complaints; they also conduct routine inspections, plan reviews, educational programs, investigations, complaints, and enforcement actions.<sup>18</sup>

DOH’s enforcement actions may include citations, fines, or suspension or revocation of an operating permit.<sup>19</sup> However, DOH may only use a single enforcement procedure for any one violation.<sup>20</sup> Certain violations of ch. 513, F.S., are also subject to criminal penalties.<sup>21</sup>

### **Effect of Proposed Changes**

The bill defines “occupancy” in the context of mobile homes and RV parks to mean the length of time that an RV is occupied by a transient guest and not the length of time that the vehicle is located on the leased RV site. An RV may be stored and tied down on the RV site when not in use to accommodate the needs of the guest. The bill clarifies in the definition that the attachment of an RV to the ground with tie-downs or other removable fasteners and the attachment of carports, porches, screen rooms, and similar appurtenances with removable attaching devices, do not render the RV a permanent part of the vehicle site.

The change in the definition of “occupancy” of an RV should alleviate concerns by local government that there is permanent housing being provided. The “continuous occupancy” in an RV unit can be determined by the guest register, required under s. 513.112, F.S. Action can be taken by local government to prohibit continuous occupancy of an RV without imposing the cost and expense of requiring a move of the RV every six months.

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<sup>14</sup> Ordinances of Charlotte County, Florida, Part III: *Land Development and Growth Management*, Ch. 3-4 “Mobile Homes,” S. 3-4-1, “Definitions,” available at: [http://library.municode.com/HTML/10526/level2/PTIILADEGRMA\\_CH3-4MOHO.html#PTIILADEGRMA\\_CH3-4MOHO\\_S3-4-1DE](http://library.municode.com/HTML/10526/level2/PTIILADEGRMA_CH3-4MOHO.html#PTIILADEGRMA_CH3-4MOHO_S3-4-1DE) (Last visited on March 7, 2012).

<sup>15</sup> Volusia County Code of Ordinances, Ch. 72: *Land Planning*, “Definitions,” available at: <http://library.municode.com/index.aspx?clientid=11665> (Last visited on March 7, 2012).

<sup>16</sup> See s. 316.515, F.S.

<sup>17</sup> S. 513.052, F.S.

<sup>18</sup> See *supra* at FN 10.

<sup>19</sup> Ss. 513.055 and 513.065, F.S.

<sup>20</sup> S. 513.065(6), F.S.

<sup>21</sup> Ss. 513.054 (second-degree misdemeanor for specified offenses by an operator of a camp or park), 513.10 (second-degree misdemeanor for operating without a permit), 513.111 (second-degree misdemeanor for an advertising violation), and 513.122, F.S. (third-degree felony for theft of guest property by park employee).



The bill creates s. 513.1115, F.S., to require that separation distances between RV sites on lots in permitted parks be the distances established at the time of the initial approval of the RV park by DOH and the local government. The bill also requires that setback distances from the exterior property boundary of the RV park be the setback distances established at the time of the initial approval by DOH and the local government. The bill specifies that these requirements do not limit the regulations of the uniform fire safety standards in s. 633.022, F.S.

Finally, the bill repeals s. 513.111, F.S., which regulates site rates, the posting of signs, and advertising in and for RV parks and establishes penalties for violating those regulations.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 513.01, F.S., relating to definitions.

**Section 2:** Creates s. 513.1115, F.S., relating to placement of recreational vehicles on lots in permitted parks.

**Section 3:** Repeals s. 513.111, F.S., relating to site rates, posting, advertising, and penalties.

**Section 4:** Provides an effective date of July 1, 2013.

**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:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The Department of Health has sufficient rule-making authority to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

A part of the definition of "recreational vehicle" in s. 513.01(9), F.S., is included in the newly created definition of "occupancy" in the bill, which appears to make that portion of the new definition redundant.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2013, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Deletes provisions preempting local ordinances, resolutions, codes, policies, and regulations that relate to the permitting and design of recreational vehicle parks and recreational camps; and
- Makes a clarifying change as to the required separation distances between recreational vehicle sites.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

1                                   A bill to be entitled  
 2       An act relating to recreational vehicle parks;  
 3       amending s. 513.01, F.S.; defining the term  
 4       "occupancy"; creating s. 513.1115, F.S.; providing  
 5       requirements for the establishment of separation and  
 6       setback distances in parks; repealing s. 513.111,  
 7       F.S., relating to the posting of site rental rates,  
 8       advertising, and penalties; providing an effective  
 9       date.

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

12

13           Section 1. Present subsections (5) through (11) of section  
 14   513.01, Florida Statutes, are renumbered as subsections (6)  
 15   through (12), respectively, and a new subsection (5) is added to  
 16   that section to read:

17

18           513.01 Definitions.—As used in this chapter, the term:  
 19           (5) "Occupancy" means the length of time that a  
 20           recreational vehicle is occupied by a transient guest and not  
 21           the length of time that such vehicle is located on the leased  
 22           recreational vehicle site. A recreational vehicle may be stored  
 23           and tied down on site when not in use to accommodate the needs  
 24           of the guest. The attachment of a recreational vehicle to the  
 25           ground with tie-downs or other removable fasteners, and the  
 26           attachment of carports, porches, screen rooms, and similar  
 27           appurtenances with removable attaching devices, do not render  
 28           the recreational vehicle a permanent part of the recreational  
           vehicle site.

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Section 2. Section 513.1115, Florida Statutes, is created to read:

513.1115 Placement of recreational vehicles on lots in permitted parks.—

(1) Separation distances between recreational vehicle sites within a recreational vehicle park must be the distances established at the time of the initial approval of the recreational vehicle park by the department and the local government.

(2) Setback distances from the exterior property boundary of the recreational vehicle park must be the setback distances established at the time of the initial approval by the department and the local government.

(3) This section does not limit the regulation of the uniform firesafety standards established under s. 633.022.

Section 3. Section 513.111, Florida Statutes, is repealed.

Section 4. This act shall take effect July 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1119 Intellectual Disabilities  
**SPONSOR(S):** Adkins and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N	Entress	Schoolfield
2) Health & Human Services Committee		Entress <i>BE</i>	Calamas <i>CC</i>

### SUMMARY ANALYSIS

The terms "mental retardation" and "mentally retarded" are used throughout Florida Statutes. The bill replaces the term "mental retardation" with the term "intellectual disability" and replaces the term "mentally retarded" with the term "intellectually disabled" in areas of state law. The bill also replaces the term "Association for Retarded Citizens" with the "Arc of Florida" and the term "handicapped" with "disability."

The bill clarifies that the term "intellectual disability" and "intellectually disabled" are interchangeable and have the same meaning as the terms "mental retardation" or "retardation" and "mentally retarded" as currently defined for purposes of the application of criminal laws and procedural rules to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty.

The bill clarifies that the Legislature does not intend to expand or contract the scope or application of any provision of Florida Statutes and that the bill may not be construed to change the application of any provision of Florida Statutes.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The word “retarded” has evolved into a derogatory term. The Joseph P. Kennedy Jr. Foundation for the Benefit of Persons with Intellectual Disabilities has partnered with the Special Olympics, Best Buddies, and over 200 organizations worldwide to support a campaign to end “the R word.”<sup>1</sup> The campaign asks people to pledge to stop saying “the R-word” as a starting point toward creating more accepting attitudes and communities for all people due to its offensive and derogatory association.<sup>2</sup>

In 2010, President Obama signed “Rosa’s Law,” which removes the terms “mental retardation” and “mentally retarded” from Federal health, education, and labor policy and replaces the terms with “individual with an intellectual disability” and “intellectually disabled.” Currently, all but seven states have either passed laws or presented legislation to remove references to the word “retarded” from state statutes.<sup>3</sup>

##### *Florida Arc*

Florida Arc is a nonprofit advocacy organization for individuals with intellectual and developmental disabilities.<sup>4</sup> Florida Arc is part of the national organization, the Arc of the United States. The Arc began in 1953 as the “National Association for Retarded Children.” The name has evolved and was changed to “the Arc” in 1992.

##### *The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)*

The Diagnostic and Statistical Manual of Mental Disorders (DSM) is a manual used by clinicians and researchers to diagnose and classify mental disorders.<sup>5</sup> The current version of the DSM (the DSM-IV) defines the term mental retardation and specifies four levels of mental retardation: Mild Mental Retardation (IQ levels of 50-55 to approximately 70), Moderate Mental Retardation (IQ levels of 35-40 to 50-55), Severe Mental Retardation (IQ levels of 20-25 to 35-40), and Profound Mental Retardation (IQ levels below 20-25).<sup>6</sup> A new version of the DSM, the DSM-V, will be published in 2013 and removes the term “mental retardation” and replaces it with “intellectually disability”.<sup>7</sup>

##### *Florida Laws*

The term “mental retardation” or “retardation” is used in numerous places of Florida Statutes. Some of the significant examples of use include the following:

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<sup>1</sup> “The R-word” campaign is aimed at ending the use of the word “retarded.”

<sup>2</sup> “The R-word” Campaign, *accessible at*: <http://www.r-word.org/r-word-why-pledge.aspx> (last accessed March 19, 2013).

<sup>3</sup> Inclusive Language Legislation, “The R-word” Campaign, *accessible at*: <http://www.r-word.org/contact-your-local-government.aspx> (last accessed March 19, 2013).

<sup>4</sup> About the Arc, The Arc of Florida, *accessible at*:

[http://www.arcflorida.org/index.php?option=com\\_content&view=category&layout=blog&id=5&Itemid=2](http://www.arcflorida.org/index.php?option=com_content&view=category&layout=blog&id=5&Itemid=2) (last accessed March 20, 2013).

<sup>5</sup> Intellectual Disability, American Psychiatric Publisher, *accessible at*: <http://www.psych.org/File%20Library/Practice/DSM/DSM-5/DSM-5-Intellectual-Disability-Fact-Sheet.pdf> (last accessed March 19, 2013),

<sup>6</sup> DSM-IV

<sup>7</sup> Intellectual Disability, American Psychiatric Publisher, *accessible at*: <http://www.psych.org/File%20Library/Practice/DSM/DSM-5/DSM-5-Intellectual-Disability-Fact-Sheet.pdf> (last accessed March 19, 2013).

Florida Law prohibits the death sentence for a defendant convicted of a capital felony if the defendant has mental retardation.<sup>8</sup> Mentally retarded is defined in Chapter 921, F.S., as an individual with:

“significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term “significantly subaverage general intellectual functioning,” for the purpose of this section, 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 Persons with Disabilities. The term “adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.”<sup>9</sup>

A defendant charged with a capital felony who intends to raise mental retardation as a bar to the death sentence must give notice of such intention in accordance with the rules of court. The notice informs the court of intent to offer expert testimony regarding mental health mitigation during the penalty phase of a trial. The court then must appoint two experts in the field of mental retardation to evaluate the defendant and report their findings to the court. If the court finds, by clear and convincing evidence, that the defendant has mental retardation, the court may not impose the death penalty.<sup>10</sup>

Chapter 393.063, F.S., provides a definition of “retardation” which is also included in the definition of a developmental disability. According to s. 393.063(15), F.S., “retardation” means:

“significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that manifests before the age of 18 and can reasonably be expected to continue indefinitely. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency. “Adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.”<sup>11</sup>

This definition is used by the Agency for Persons with Disabilities in part to determine if an individual has a developmental disability and would therefore be eligible for service under chapter 393, F.S.<sup>12</sup> In addition, the definition is used to determine if an individual is incompetent to proceed to trial in criminal proceedings which are governed by chapter 916, Florida Statutes.<sup>13</sup>

### **Effect of Proposed Changes**

The bill replaces the term “mental retardation” with the term “intellectual disability” and replaces the term “mentally retarded” with the term “intellectually disabled” in the following areas of state law:

- Notice, process, and service of judicial proceedings related to children, s. 39.502, F.S.
- Disqualification or excused from jury service, s. 40.013, F.S.
- Actions fiduciary individuals in the administration of a trust, guardianship, or estate of individuals, who are mentally incompetent, s. 86.041, F.S.
- Videotaping the testimony of a victim or witness who is mentally retarded, s. 92.53, F.S.
- Use of closed circuit television in proceedings involving a victim or witness with mental retardation, s. 92.54, F.S.

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<sup>8</sup> S. 921.137(2), F.S.

<sup>9</sup> S. 921.137, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> S. 393.063(32), F.S.

<sup>12</sup> S. 20.197(3), F.S.

<sup>13</sup> S. 916.301, F.S.



- Judicial or other proceedings involving victims or witnesses with mental retardation, s. 92.55, F.S.
- Requirement of the Department of Health to administer and provide certain services, s. 383.14, F.S.
- Definitions related to developmental disabilities, s. 393.063
- Involuntary admission to residential services, s. 393.11, F.S.
- Definitions related to mental health, s. 394.455, F.S.
- Reimbursement of Medicaid Providers, s. 409.908, F.S.
- Definitions related to Vocational Rehabilitation, s. 413.20, F.S.
- Limitation of liability for subsequent injury through Special Disability Trust Fund, s. 440.49, F.S.
- Exemptions of advertising and labeling of drugs, devices, and cosmetics, s. 499.0054, F.S.
- Handicapped Children, s. 627.6041, F.S.
- Handicapped Children, s. 627.6615, F.S.
- Health maintenance contracts, s. 641.31, F.S.
- Plans for coverage of employees of political subdivisions, s. 650.05, F.S.
- Capacity of principal, s. 765.204, F.S.
- Permitting minors and persons under guardianship to gamble, s. 849.04, F.S.
- Child abuse and sexual abuse of victims with mental retardation, s. 914.16, F.S.
- Appointment of advocate for victims or witnesses with mental retardation, s. 914.17, F.S.
- Legislative intent of mentally deficient and mentally ill defendants related to criminal procedures and protections statute, s. 916.105, F.S.
- Definitions relating to mentally deficient and mentally ill defendants related to criminal procedures and protections statute, s. 916.106, F.S.
- Right to individual dignity regarding the rights of forensic clients, s. 916.107, F.S.
- Appointment of experts, s. 916.301, F.S.
- Mental competence to proceed, s. 916.3012, F.S.
- Involuntary commitment of defendant determined to be incompetent to proceed, s. 916.302, F.S.
- Jurisdiction of committing court, s. 916.3025, F.S.
- Determination of incompetency due to retardation or autism, s. 916.303, F.S.
- Conditional release, s. 916.304, F.S.
- Sex offenses; testimony of persons with mental retardation, s. 916.16, F.S.
- Prohibition of the imposition of the death sentence upon a defendant with mental retardation, s. 921.137, F.S.
- Extradition of persons alleged to be of unsound mind, s. 941.38, F.S.
- Agency notification before release of mentally retarded inmates, s. 944.602, F.S.
- Jurisdiction of the department, s. 945.025, F.S.
- Transfers for rehabilitative treatment, s. 945.12, F.S.
- Definitions related to the Department of Corrections, s. 945.42, F.S.
- Application for mental retardation services as condition of parole, s. 947.185, F.S.
- Medical screening and treatment of child, s. 984.19, F.S.
- Intake and case management system, s. 985.14, F.S.
- Responsibilities of juvenile probation officer during intake; screenings and assessments, s. 985.145, F.S.
- Medical, psychiatric, psychological, substance abuse, and educational examination and treatment, s. 985.18, F.S.
- Incompetency in juvenile delinquency cases, s. 985.19, F.S.
- Transfer to other treatment services, s. 985.195, F.S.

The bill replaces the term "Association for Retarded Citizens" with the term "Arc of Florida" in the following areas of state law:

- Judicial proceedings related to children, s. 39.502, F.S.
- Motor vehicle license tax exemptions, s. 320.10, F.S.

The bill replaces the term “handicapped” with “disability” in the following areas of state law:

- Handicapped Children, s. 627.6041, F.S.
- Handicapped Children, s. 627.6615, F.S.
- Health maintenance contracts, s. 641.31, F.S.

The bill clarifies that the term “intellectual disability” and “intellectually disabled” are interchangeable and have the same meaning as the terms “mental retardation” or “retardation” and “mentally retarded” as defined in s. 393.063, F.S. and in s. 921.137, F.S., as defined before July 1, 2013. This clarification pertains to the application of criminal laws and procedural rules to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty.

The bill clarifies that the Legislature does not intend to expand or contract the scope or application of any provision of Florida Statutes and that the bill may not be construed to change the application of any provision of Florida Statutes to any person.

The bill directs that part III, chapter 916, Florida Statutes be renamed as “Forensic Services for Persons who are Intellectually Disabled or Autistic.”

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 39.502, F.S., relating to notice, process and service.
- Section 2:** Amends s. 40.013, F.S., relating to persons disqualified or excused from jury service.
- Section 3:** Amends s. 86.041, F.S., relating to actions by executors, administrators, trustees, etc.
- Section 4:** Amends s. 92.53, F.S., relating to videotaping of testimony of victim or witness under age 16 or person with mental retardation.
- Section 5:** Amends s. 92.54, F.S., relating to use of closed circuit television in proceedings involving victims or witnesses under the age of 16 or persons with mental retardation.
- Section 6:** Amends s. 92.55, F.S., relating to judicial or other proceedings involving victim or witnesses under the age of 16 or person with mental retardation; special protections; use of registered service or therapy animals.
- Section 7:** Amends s. 320.10, F.S., relating to exemptions.
- Section 8:** Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.
- Section 9:** Amends s. 393.063, F.S., relating to definitions.
- Section 10:** Amends s. 393.11, F.S., relating to involuntary admission to residential services.
- Section 11:** Amends s. 394.455, F.S., relating to definitions.
- Section 12:** Amends s. 400.960, F.S., relating to definitions.
- Section 13:** Amends s. 408.032, F.S., relating to definitions relating to Health Facility and Services Development Act.
- Section 14:** Amends s. 409.908, F.S., relating to reimbursement of Medicaid providers.
- Section 15:** Amends s. 413.20, F.S., relating to definitions.
- Section 16:** Amends s. 440.49, F.S., relating to limitation of liability for subsequent injury through Special Disability Trust Fund.
- Section 17:** Amends s. 499.0054, F.S., relating to advertising and labeling of drugs, devices, and cosmetics; exemptions.
- Section 18:** Amends s. 514.072, F.S., relating to certification of swimming instructors for people who have developmental disabilities.
- Section 19:** Amends s. 627.6041, F.S., relating to handicapped children.
- Section 20:** Amends s. 627.6615, F.S., relating to handicapped children.
- Section 21:** Amends s. 641.31, F.S., relating to health maintenance contracts.
- Section 22:** Amends s. 650.05, F.S., relating to plans for coverage of employees of political subdivisions.
- Section 23:** Amends s. 765.204, F.S., relating to capacity of principal; procedure.

- Section 24:** Amends s. 849.04, F.S., relating to permitting minors and persons under guardianship to gamble.
- Section 25:** Amends s. 914.16, F.S., relating to child abuse and sexual abuse of victims under the age of 16 or persons with mental retardation.
- Section 26:** Amends s. 914.17, F.S., appointment of advocate for victims or witnesses who are minors or persons with mental retardation.
- Section 27:** Amends s. 916.105, F.S., relating to legislative intent.
- Section 28:** Amends s. 916.106, F.S., relating to definitions.
- Section 29:** Amends s. 916.107, F.S., relating to rights of forensic clients.
- Section 30:** Requests that part III of chapter 916 is renamed.
- Section 31:** Amends s. 916.301, F.S., relating to appointment of experts.
- Section 32:** Amends s. 916.3012, F.S., relating to mental competence to proceed.
- Section 33:** Amends s. 916.302, F.S., relating to involuntary commitment of defendant determined to be incompetent to proceed.
- Section 34:** Amends s. 916.3025, F.S., relating to jurisdiction of committing court.
- Section 35:** Amends s. 916.303, F.S., relating to determination of incompetency due to retardation or autism; dismissal of charges.
- Section 36:** Amends s. 916.304, F.S., relating to conditional release.
- Section 37:** Amends s. 918.16, F.S., relating to sex offenses; testimony of person under age 16 or person with mental retardation; testimony of victim; courtroom cleared; exceptions.
- Section 38:** Amends s. 921.137, F.S., relating to imposition of the death sentence upon a defendant with mental retardation prohibited.
- Section 39:** Amends s. 941.38, F.S., relating to extradition of persons alleged to be of unsound mind.
- Section 40:** Amends s. 944.602, F.S., relating to agency notification before release of mentally retarded inmates.
- Section 41:** Amends s. 945.025, F.S., relating to jurisdiction of the department.
- Section 42:** Amends s. 945.12, F.S., relating to transfers for rehabilitative treatment.
- Section 43:** Amends s. 945.42, F.S., relating to definitions.
- Section 44:** Amends s. 947.185, F.S., relating to application for mental retardation services as condition of parole.
- Section 45:** Amends s. 984.19, F.S., relating to medical screening and treatment of child; examination of parent, guardian, or person requesting custody.
- Section 46:** Amends s. 985.14 F.S., relating to intake and case management system.
- Section 47:** Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.
- Section 48:** Amends s. 985.18, F.S., relating to medical, psychiatric, psychological, substance abuse, and educational examination and treatment.
- Section 49:** Amends s. 985.19, F.S., relating to incompetency in juvenile delinquency cases.
- Section 50:** Amends s. 985.195, F.S., relating to transfer to other treatment and services.
- Section 51:** Amends s. 985.61, F.S., relating to early delinquency intervention programs; criteria.
- Section 52:** Provides an effective date.

## 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:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to intellectual disabilities; amending  
 3           s. 39.502, F.S.; substituting the Arc of Florida for  
 4           the Association for Retarded Citizens for purposes of  
 5           certain proceedings relating to children; amending ss.  
 6           40.013, 86.041, 92.53, 92.54, and 92.55, F.S.;  
 7           substituting the term "intellectual disability" for  
 8           the term "mental retardation"; amending s. 320.10,  
 9           F.S.; substituting the Arc of Florida for the  
 10          Association for Retarded Citizens; amending ss.  
 11          383.14, 393.063, 393.11, and 394.455, F.S.;  
 12          substituting the term "intellectual disability" for  
 13          the term "mental retardation"; clarifying in s.  
 14          393.063, that the meaning of the terms "intellectual  
 15          disability" or "intellectually disabled" is the same  
 16          as the meaning of the terms "mental retardation,"  
 17          "retarded," and "mentally retarded" for purposes of  
 18          matters relating to the criminal laws and court rules;  
 19          amending s. 400.960, F.S.; revising definitions  
 20          relating to intermediate care facilities for the  
 21          developmentally disabled to delete unused terms;  
 22          amending s. 408.032, F.S.; conforming a cross-  
 23          reference; amending s. 409.908, F.S.; substituting the  
 24          term "intellectually disabled" for the term "mentally  
 25          retarded"; amending ss. 413.20, 440.49, and 499.0054,  
 26          F.S.; substituting the term "intellectual disability"  
 27          for the term "mental retardation"; amending s.  
 28          514.072, F.S.; conforming a cross-reference and

29 deleting obsolete provisions; amending ss. 627.6041,  
 30 627.6615, 641.31, 650.05, 765.204, 849.04, 914.16,  
 31 914.17, 916.105, and 916.106, F.S.; substituting the  
 32 term "intellectual disability" for the term "mental  
 33 retardation"; amending s. 916.107, F.S.; substituting  
 34 the term "intellectual disability" for the term  
 35 "retardation"; providing a directive to the Division  
 36 of Law Revision and Information; amending ss. 916.301,  
 37 916.3012, 916.302, 916.3025, 916.303, 916.304, 918.16,  
 38 921.137, 941.38, 944.602, 945.025, 945.12, 945.42,  
 39 947.185, 984.19, 985.14, 985.145, 985.18, 985.19,  
 40 985.195, and 985.61, F.S.; clarifying in s. 921.137,  
 41 F.S., that the terms "intellectual disability" or  
 42 "intellectually disabled" are interchangeable with and  
 43 have the same meaning as the terms "mental  
 44 retardation," or "retardation" and "mentally  
 45 retarded," as defined before the effective date of the  
 46 act; substituting the term "intellectual disability"  
 47 for the term "mental retardation"; expressing  
 48 legislative intent; providing an effective date.

49  
 50 Be It Enacted by the Legislature of the State of Florida:

51  
 52 Section 1. Subsection (15) of section 39.502, Florida  
 53 Statutes, is amended to read:

54 39.502 Notice, process, and service.—

55 (15) A party who is identified as a person who has a ~~with~~  
 56 mental illness or ~~with~~ a developmental disability must be

57 informed by the court of the availability of advocacy services  
 58 through the department, the Arc of Florida ~~Association for~~  
 59 ~~Retarded Citizens~~, or other appropriate mental health or  
 60 developmental disability advocacy groups and encouraged to seek  
 61 such services.

62 Section 2. Subsection (9) of section 40.013, Florida  
 63 Statutes, is amended to read:

64 40.013 Persons disqualified or excused from jury service.—

65 (9) Any person who is responsible for the care of a person  
 66 who, because of mental illness, intellectual disability ~~mental~~  
 67 ~~retardation~~, senility, or other physical or mental incapacity,  
 68 is incapable of caring for himself or herself shall be excused  
 69 from jury service upon request.

70 Section 3. Section 86.041, Florida Statutes, is amended to  
 71 read:

72 86.041 Actions by executors, administrators, trustees,  
 73 etc.—Any person interested as or through an executor,  
 74 administrator, trustee, guardian, or other fiduciary, creditor,  
 75 devisee, legatee, heir, next of kin, or cestui que trust, in the  
 76 administration of a trust, a guardianship, or ~~of~~ the estate of a  
 77 decedent, an infant, a mental incompetent, or insolvent may have  
 78 a declaration of rights or equitable or legal relations to ~~in~~  
 79 ~~respect thereto~~:

80 (1) ~~To~~ Ascertain any class of creditors, devisees,  
 81 legatees, heirs, next of kin, or others; ~~or~~

82 (2) ~~To~~ Direct the executor, administrator, or trustee to  
 83 refrain from doing any particular act in his or her fiduciary  
 84 capacity; or

85 (3) ~~To~~ Determine any question relating to arising in the  
 86 administration of the guardianship, estate, or trust, including  
 87 questions of construction of wills and other writings.

88  
 89 For the purpose of this section, a "mental incompetent" is one  
 90 who, because of mental illness, intellectual disability ~~mental~~  
 91 ~~retardation~~, senility, excessive use of drugs or alcohol, or  
 92 other mental incapacity, is incapable of ~~either~~ managing his or  
 93 her property or caring for himself or herself, or both.

94 Section 4. Section 92.53, Florida Statutes, is amended to  
 95 read:

96 92.53 Videotaping the ~~of~~ testimony of a victim or witness  
 97 under age 16 or who has an intellectual disability ~~person with~~  
 98 ~~mental retardation.~~

99 (1) On motion and hearing in camera and a finding that  
 100 there is a substantial likelihood that a victim or witness who  
 101 is under the age of 16 or who has an intellectual disability ~~is~~  
 102 ~~a person with mental retardation~~ as defined in s. 393.063 would  
 103 suffer at least moderate emotional or mental harm due to the  
 104 presence of the defendant if such victim or witness ~~the child or~~  
 105 ~~person with mental retardation~~ is required to testify in open  
 106 court, or ~~that such victim or witness~~ is otherwise unavailable  
 107 as defined in s. 90.804(1), the trial court may order the  
 108 videotaping of the testimony of the victim or witness in a case,  
 109 whether civil or criminal in nature, in which videotaped  
 110 testimony is to be used ~~utilized~~ at trial in lieu of trial  
 111 testimony in open court.

112 (2) The motion may be filed by:



113 (a) The victim or witness, or the victim's or witness's  
 114 attorney, parent, legal guardian, or guardian ad litem;

115 (b) A trial judge on his or her own motion;

116 (c) Any party in a civil proceeding; or

117 (d) The prosecuting attorney or the defendant, or the  
 118 defendant's counsel.

119 (3) The judge shall preside, or shall appoint a special  
 120 master to preside, at the videotaping unless ~~the following~~  
 121 ~~conditions are met:~~

122 (a) The child or the person who has the intellectual  
 123 disability ~~with mental retardation~~ is represented by a guardian  
 124 ad litem or counsel;

125 (b) The representative of the victim or witness and the  
 126 counsel for each party stipulate that the requirement for the  
 127 presence of the judge or special master may be waived; and

128 (c) The court finds at a hearing on the motion that the  
 129 presence of a judge or special master is not necessary to  
 130 protect the victim or witness.

131 (4) The defendant and the defendant's counsel must ~~shall~~  
 132 be present at the videotaping, unless the defendant has waived  
 133 this right. The court may require the defendant to view the  
 134 testimony from outside the presence of the child or the person  
 135 who has an intellectual disability ~~with mental retardation~~ by  
 136 means of a two-way mirror or another similar method that ensures  
 137 ~~will ensure~~ that the defendant can observe and hear the  
 138 testimony of the victim or witness in person, but ~~that~~ the  
 139 victim or witness cannot hear or see the defendant. The  
 140 defendant and the attorney for the defendant may communicate by

141 any appropriate private method.

142 (5) Any party, or the court on its own motion, may request  
 143 the aid of an interpreter, as provided in s. 90.606, to aid the  
 144 parties in formulating methods of questioning the child or  
 145 person who has the intellectual disability ~~with mental~~  
 146 ~~retardation~~ and in interpreting the answers of the child or  
 147 person during ~~with mental retardation throughout~~ proceedings  
 148 conducted under this section.

149 (6) The motion referred to in subsection (1) may be made  
 150 at any time with reasonable notice to each party to the cause,  
 151 and videotaping of testimony may be made any time after the  
 152 court grants the motion. The videotaped testimony is ~~shall be~~  
 153 admissible as evidence in the trial of the cause; however, such  
 154 testimony is ~~shall~~ not be admissible in any trial or proceeding  
 155 in which such witness testifies by use of closed circuit  
 156 television pursuant to s. 92.54.

157 (7) The court shall make specific findings of fact, on the  
 158 record, as to the basis for its ruling under this section.

159 Section 5. Section 92.54, Florida Statutes, is amended to  
 160 read:

161 92.54 Use of closed circuit television in proceedings  
 162 involving a victim or witness ~~victims or witnesses~~ under the age  
 163 of 16 or who has an intellectual disability ~~persons with mental~~  
 164 ~~retardation.~~

165 (1) Upon motion and hearing in camera and upon a finding  
 166 that there is a substantial likelihood that a victim or witness  
 167 under the age of 16 or who has an intellectual disability ~~the~~  
 168 ~~child or person with mental retardation~~ will suffer at least

HB 1119

2013

169 moderate emotional or mental harm due to the presence of the  
170 defendant if such victim or witness ~~the child or person with~~  
171 ~~mental retardation~~ is required to testify in open court, or ~~that~~  
172 ~~such victim or witness~~ is unavailable as defined in s.

173 90.804(1), the trial court may order that the testimony of the a  
174 ~~child under the age of 16 or person with mental retardation who~~  
175 ~~is a~~ victim or witness be taken outside of the courtroom and  
176 shown by means of closed circuit television.

177 (2) The motion may be filed by the victim or witness; the  
178 attorney, parent, legal guardian, or guardian ad litem of the  
179 victim or witness; the prosecutor; the defendant or the  
180 defendant's counsel; or the trial judge on his or her own  
181 motion.

182 (3) Only the judge, the prosecutor, the defendant, the  
183 attorney for the defendant, the operators of the videotape  
184 equipment, an interpreter, and some other person who, in the  
185 opinion of the court, contributes to the well-being of the child  
186 or the person who has an intellectual disability ~~with mental~~  
187 ~~retardation~~ and who will not be a witness in the case may be in  
188 the room during the recording of the testimony.

189 (4) During the victim's or witness's ~~child's or person's~~  
190 ~~with mental retardation~~ testimony by closed circuit television,  
191 the court may require the defendant to view the testimony from  
192 the courtroom. In such a case, the court shall permit the  
193 defendant to observe and hear the testimony of the victim or  
194 witness ~~child or person with mental retardation~~, but must ~~shall~~  
195 ensure that the victim or witness ~~child or person with mental~~  
196 ~~retardation~~ cannot hear or see the defendant. The defendant's

197 right to assistance of counsel, which includes the right to  
 198 immediate and direct communication with counsel conducting  
 199 cross-examination, must be protected and, upon the defendant's  
 200 request, such communication must ~~shall~~ be provided by any  
 201 appropriate electronic method.

202 (5) The court shall make specific findings of fact, on the  
 203 record, as to the basis for its ruling under this section.

204 Section 6. Section 92.55, Florida Statutes, is amended to  
 205 read:

206 92.55 Judicial or other proceedings involving victim or  
 207 witness under the age of 16 or person who has an intellectual  
 208 disability ~~with mental retardation~~; special protections; use of  
 209 registered service or therapy animals.—

210 (1) Upon motion of any party, upon motion of a parent,  
 211 guardian, attorney, or guardian ad litem for a victim or witness  
 212 ~~child~~ under the age of 16 or person who has an intellectual  
 213 disability ~~with mental retardation~~, or upon its own motion, the  
 214 court may enter any order necessary to protect such a ~~child~~  
 215 ~~under the age of 16 or person with mental retardation who is a~~  
 216 victim or witness in any judicial proceeding or other official  
 217 proceeding from severe emotional or mental harm due to the  
 218 presence of the defendant if the victim or witness ~~child or~~  
 219 ~~person with mental retardation~~ is required to testify in open  
 220 court. Such orders must ~~shall~~ relate to the taking of testimony  
 221 and ~~shall~~ include, but are not ~~be~~ limited to:

222 (a) Interviewing or the taking of depositions as part of a  
 223 civil or criminal proceeding.

224 (b) Examination and cross-examination for the purpose of

225 | qualifying as a witness or testifying in any proceeding.

226 |       (c) The use of testimony taken outside of the courtroom,  
227 | including proceedings under ss. 92.53 and 92.54.

228 |       (2) In ruling upon the motion, the court shall consider  
229 | ~~take into consideration:~~

230 |       (a) The age of the child, the nature of the offense or  
231 | act, the relationship of the child to the parties in the case or  
232 | to the defendant in a criminal action, the degree of emotional  
233 | trauma that will result to the child as a consequence of the  
234 | defendant's presence, and any other fact that the court deems  
235 | relevant; or

236 |       (b) The age of the person who has an intellectual  
237 | disability with mental retardation, the functional capacity of  
238 | such the person ~~with mental retardation~~, the nature of the  
239 | offenses or act, the relationship of the person ~~with mental~~  
240 | ~~retardation~~ to the parties in the case or to the defendant in a  
241 | criminal action, the degree of emotional trauma that will result  
242 | to the person ~~with mental retardation~~ as a consequence of the  
243 | defendant's presence, and any other fact that the court deems  
244 | relevant.

245 |       (3) In addition to such other relief ~~as is~~ provided by  
246 | law, the court may enter orders limiting the number of times  
247 | that a child or a person who has an intellectual disability with  
248 | ~~mental retardation~~ may be interviewed, prohibiting depositions  
249 | of such a child or person ~~with mental retardation~~, requiring the  
250 | submission of questions before the ~~prior to~~ examination of the a  
251 | child or person ~~with mental retardation~~, setting the place and  
252 | conditions for interviewing the a child or person ~~with mental~~

HB 1119

2013

253 ~~retardation~~ or for conducting any other proceeding, or  
 254 permitting or prohibiting the attendance of any person at any  
 255 proceeding. The court shall enter any order necessary to protect  
 256 the rights of all parties, including the defendant in any  
 257 criminal action.

258 (4) The court may set any other conditions it finds just  
 259 and appropriate when ~~on the~~ taking the ~~of~~ testimony of ~~by~~ a  
 260 child, including the use of a service or therapy animal that has  
 261 been evaluated and registered according to national standards,  
 262 in any proceeding involving a sexual offense. When deciding  
 263 whether to permit a child to testify with the assistance of a  
 264 registered service or therapy animal, the court shall consider  
 265 ~~take into consideration~~ the age of the child, the interests of  
 266 the child, the rights of the parties to the litigation, and any  
 267 other relevant factor that would facilitate the testimony by the  
 268 child.

269 Section 7. Subsection (1) of section 320.10, Florida  
 270 Statutes, is amended to read:

271 320.10 Exemptions.—

272 (1) The provisions of s. 320.08 do not apply to:

273 (a) Any motor vehicle or mobile home owned by, and  
 274 operated exclusively for the personal use of, any member of the  
 275 United States Armed Forces who is not a resident of this state  
 276 and who is stationed in the state while in compliance with  
 277 military or naval orders;

278 (b) Any motor vehicle owned or operated exclusively by the  
 279 Federal Government;

280 (c) Any motor vehicle owned and operated exclusively for

HB 1119

2013

281 the benefit of the Boys' Clubs of America, the National Audubon  
 282 Society, the National Children's Cardiac Hospital, any humane  
 283 society, any nationally chartered veterans' organization that  
 284 maintains a state headquarters in this state, the Children's  
 285 Bible Mission, the Boy Scouts of America, the Girl Scouts of  
 286 America, the Salvation Army, the American National Red Cross,  
 287 the United Service Organization, any local member unit of the  
 288 National Urban League which provides free services to municipal  
 289 and county residents who are in need of such services, the Young  
 290 Men's Christian Association, the Young Men's Hebrew Association,  
 291 the Camp Fire Girls' Council, the Young Women's Christian  
 292 Association, the Young Women's Hebrew Association, any local  
 293 member unit of the Arc of Florida ~~Association for Retarded~~  
 294 ~~Citizens~~, the Children's Home Society of Florida, or the  
 295 Goodwill Industries. A not-for-profit organization named in this  
 296 paragraph and its local affiliate organizations is ~~shall be~~  
 297 eligible for the exemption if it ~~for so long as each~~ maintains  
 298 current articles of incorporation on file with the Department of  
 299 State and qualifies as a not-for-profit organization under s.  
 300 212.08;

301 (d) Any motor vehicle owned and operated by a church,  
 302 temple, or synagogue for exclusive use as a community service  
 303 van or to transport passengers without compensation to religious  
 304 services or for religious education;

305 (e) Any motor vehicle owned and operated by the Civil Air  
 306 Patrol or the United States Coast Guard Auxiliary;

307 (f) Any mobile blood bank unit when operated as a  
 308 nonprofit service by an organization;

309 (g) Any mobile X-ray unit or truck or bus used exclusively  
 310 for public health purposes;

311 (h) Any school bus owned and operated by a nonprofit  
 312 educational or religious corporation;

313 (i) Any vehicle used by any of the various search and  
 314 rescue units of the several counties for exclusive use as a  
 315 search and rescue vehicle; or ~~and~~

316 (j) Any motor vehicle used by a community transportation  
 317 coordinator or a transportation operator as defined in part I of  
 318 chapter 427, and which is used exclusively to transport  
 319 transportation disadvantaged persons.

320 Section 8. Paragraph (d) of subsection (3) of section  
 321 383.14, Florida Statutes, is amended to read:

322 383.14 Screening for metabolic disorders, other hereditary  
 323 and congenital disorders, and environmental risk factors.—

324 (3) DEPARTMENT OF HEALTH; POWERS AND DUTIES.—The  
 325 department shall administer and provide certain services to  
 326 implement the provisions of this section and shall:

327 (d) Maintain a confidential registry of cases, including  
 328 information of importance for the purpose of followup services  
 329 to prevent intellectual disabilities ~~mental retardation~~, to  
 330 correct or ameliorate physical disabilities ~~handicaps~~, and for  
 331 epidemiologic studies, if indicated. Such registry shall be  
 332 exempt from the provisions of s. 119.07(1).

333  
 334 All provisions of this subsection must be coordinated with the  
 335 provisions and plans established under this chapter, chapter  
 336 411, and Pub. L. No. 99-457.



337 Section 9. Subsection (9) and subsections (21) through  
 338 (32) of section 393.063, Florida Statutes, are reordered and  
 339 amended to read:

340 393.063 Definitions.—For the purposes of this chapter, the  
 341 term:

342 (9) "Developmental disability" means a disorder or  
 343 syndrome that is attributable to intellectual disability  
 344 ~~retardation~~, cerebral palsy, autism, spina bifida, or Prader-  
 345 Willi syndrome; that manifests before the age of 18; and that  
 346 constitutes a substantial handicap that can reasonably be  
 347 expected to continue indefinitely.

348 ~~(22)~~(21) "Intermediate care facility for the  
 349 developmentally disabled" or "ICF/DD" means a residential  
 350 facility licensed and certified under ~~pursuant to~~ part VIII of  
 351 chapter 400.

352 ~~(23)~~(22) "Medical/dental services" means medically  
 353 necessary services that ~~which~~ are provided or ordered for a  
 354 client by a person licensed under chapter 458, chapter 459, or  
 355 chapter 466. Such services may include, but are not limited to,  
 356 prescription drugs, specialized therapies, nursing supervision,  
 357 hospitalization, dietary services, prosthetic devices, surgery,  
 358 specialized equipment and supplies, adaptive equipment, and  
 359 other services as required to prevent or alleviate a medical or  
 360 dental condition.

361 ~~(24)~~(23) "Personal care services" means individual  
 362 assistance with or supervision of essential activities of daily  
 363 living for self-care, including ambulation, bathing, dressing,  
 364 eating, grooming, and toileting, and other similar services that

365 are incidental to the care furnished and essential to the  
 366 health, safety, and welfare of the client if ~~when there is~~ no  
 367 one else is available to perform those services.

368 ~~(25)-(24)~~ "Prader-Willi syndrome" means an inherited  
 369 condition typified by neonatal hypotonia with failure to thrive,  
 370 hyperphagia or an excessive drive to eat which leads to obesity  
 371 usually at 18 to 36 months of age, mild to moderate intellectual  
 372 disability ~~mental retardation~~, hypogonadism, short stature, mild  
 373 facial dysmorphism, and a characteristic neurobehavior.

374 ~~(26)-(25)~~ "Relative" means an individual who is connected  
 375 by affinity or consanguinity to the client and who is 18 years  
 376 of age or older.

377 ~~(27)-(26)~~ "Resident" means a any person who has a with  
 378 developmental disability and resides ~~disabilities residing~~ at a  
 379 residential facility, whether or not such person is a client of  
 380 the agency.

381 ~~(28)-(27)~~ "Residential facility" means a facility providing  
 382 room and board and personal care for persons who have with  
 383 developmental disabilities.

384 ~~(29)-(28)~~ "Residential habilitation" means supervision and  
 385 training with the acquisition, retention, or improvement in  
 386 skills related to activities of daily living, such as personal  
 387 hygiene skills, homemaking skills, and the social and adaptive  
 388 skills necessary to enable the individual to reside in the  
 389 community.

390 ~~(30)-(29)~~ "Residential habilitation center" means a  
 391 community residential facility licensed under this chapter which  
 392 provides habilitation services. The capacity of such a facility

393 may ~~shall~~ not be fewer than nine residents. After October 1,  
 394 1989, new residential habilitation centers may not be licensed  
 395 and the licensed capacity for any existing residential  
 396 habilitation center may not be increased.

397 ~~(31)-(30)~~ "Respite service" means appropriate, short-term,  
 398 temporary care that is provided to a person who has a ~~with~~  
 399 developmental disability in order ~~disabilities~~ to meet the  
 400 planned or emergency needs of the person or the family or other  
 401 direct service provider.

402 ~~(32)-(31)~~ "Restraint" means a physical device, method, or  
 403 drug used to control dangerous behavior.

404 (a) A physical restraint is any manual method or physical  
 405 or mechanical device, material, or equipment attached or  
 406 adjacent to an ~~the~~ individual's body so that he or she cannot  
 407 easily remove the restraint and which restricts freedom of  
 408 movement or normal access to one's body.

409 (b) A drug used as a restraint is a medication used to  
 410 control the person's behavior or to restrict his or her freedom  
 411 of movement and is not a standard treatment for the person's  
 412 medical or psychiatric condition. Physically holding a person  
 413 during a procedure to forcibly administer psychotropic  
 414 medication is a physical restraint.

415 (c) Restraint does not include physical devices, such as  
 416 orthopedically prescribed appliances, surgical dressings and  
 417 bandages, supportive body bands, or other physical holding ~~when~~  
 418 necessary for routine physical examinations and tests; for  
 419 purposes of orthopedic, surgical, or other similar medical  
 420 treatment; ~~when used~~ to provide support for the achievement of

421 functional body position or proper balance; or ~~when used to~~  
 422 protect a person from falling out of bed.

423 ~~(21)-(32)~~ "Intellectual disability" ~~"Retardation"~~ means  
 424 significantly subaverage general intellectual functioning  
 425 existing concurrently with deficits in adaptive behavior which  
 426 ~~that~~ manifests before the age of 18 and can reasonably be  
 427 expected to continue indefinitely. For the purposes of this  
 428 definition, the term:

429 (a) "Adaptive behavior" means the effectiveness or degree  
 430 with which an individual meets the standards of personal  
 431 independence and social responsibility expected of his or her  
 432 age, cultural group, and community.

433 (b) "Significantly subaverage general intellectual  
 434 functioning," for the purpose of this definition, means  
 435 performance that which is two or more standard deviations from  
 436 the mean score on a standardized intelligence test specified in  
 437 the rules of the agency. "Adaptive behavior," for the purpose of  
 438 this definition, means the effectiveness or degree with which an  
 439 individual meets the standards of personal independence and  
 440 social responsibility expected of his or her age, cultural  
 441 group, and community.

442  
 443 For purposes of the application of the criminal laws and  
 444 procedural rules of this state to matters relating to pretrial,  
 445 trial, sentencing, and any matters relating to the imposition  
 446 and execution of the death penalty, the terms "intellectual  
 447 disability" or "intellectually disabled" are interchangeable  
 448 with and have the same meaning as the terms "mental retardation"

449 or "retardation" and "mentally retarded" as defined in this  
 450 section before July 1, 2013.

451 Section 10. Subsection (1), paragraphs (c) and (d) of  
 452 subsection (2), paragraphs (b) through (d) of subsection (3),  
 453 paragraph (b) of subsection (4), paragraphs (b), (e), (f), and  
 454 (g) of subsection (5), subsection (6), paragraph (d) of  
 455 subsection (7), paragraph (b) of subsection (8), subsection  
 456 (10), and paragraph (b) of subsection (12) of section 393.11,  
 457 Florida Statutes, are amended to read:

458 393.11 Involuntary admission to residential services.—

459 (1) JURISDICTION.—If ~~When~~ a person has an intellectual  
 460 disability ~~is mentally retarded~~ and requires involuntary  
 461 admission to residential services provided by the agency, the  
 462 circuit court of the county in which the person resides has  
 463 ~~shall have~~ jurisdiction to conduct a hearing and enter an order  
 464 involuntarily admitting the person in order for ~~that~~ the person  
 465 to ~~may~~ receive the care, treatment, habilitation, and  
 466 rehabilitation that ~~which~~ the person needs. For the purpose of  
 467 identifying intellectual disability ~~mental retardation~~,  
 468 diagnostic capability shall be established by the agency. Except  
 469 as otherwise specified, the proceedings under this section are  
 470 ~~shall be~~ governed by the Florida Rules of Civil Procedure.

471 (2) PETITION.—

472 (c) The petition shall be verified and must ~~shall~~:

473 1. State the name, age, and present address of the  
 474 commissioners and their relationship to the person who has an  
 475 intellectual disability ~~with mental retardation~~ or autism;

476 2. State the name, age, county of residence, and present

477 address of the person who has an intellectual disability with  
 478 ~~mental retardation~~ or autism;

479 3. Allege that the commission believes that the person  
 480 needs involuntary residential services and specify the factual  
 481 information on which the belief is based;

482 4. Allege that the person lacks sufficient capacity to  
 483 give express and informed consent to a voluntary application for  
 484 services and lacks the basic survival and self-care skills to  
 485 provide for the person's well-being or is likely to physically  
 486 injure others if allowed to remain at liberty; and

487 5. State which residential setting is the least  
 488 restrictive and most appropriate alternative and specify the  
 489 factual information on which the belief is based.

490 (d) The petition must ~~shall~~ be filed in the circuit court  
 491 of the county in which the person who has the intellectual  
 492 disability with mental retardation or autism resides.

493 (3) NOTICE.—

494 (b) If ~~Whenever~~ a motion or petition has been filed  
 495 pursuant to s. 916.303 to dismiss criminal charges against a  
 496 defendant who has an intellectual disability with retardation or  
 497 autism, and a petition is filed to involuntarily admit the  
 498 defendant to residential services under this section, the notice  
 499 of the filing of the petition must ~~shall~~ also be given to the  
 500 defendant's attorney, the state attorney of the circuit from  
 501 which the defendant was committed, and the agency.

502 (c) The notice must ~~shall~~ state that a hearing shall be  
 503 set to inquire into the need of the person who has an  
 504 intellectual disability with mental retardation or autism for

505 involuntary residential services. The notice must ~~shall~~ also  
 506 state the date of the hearing on the petition.

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

512 (4) AGENCY PARTICIPATION.—

513 (b) Following examination, the agency shall file a written  
 514 report with the court at least ~~not less than~~ 10 working days  
 515 before the date of the hearing. The report must be served on the  
 516 petitioner, the person who has the intellectual disability ~~with~~  
 517 ~~mental retardation~~, and the person's attorney at the time the  
 518 report is filed with the court.

519 (5) EXAMINING COMMITTEE.—

520 (b) The court shall appoint at least ~~no fewer than~~ three  
 521 disinterested experts who have demonstrated to the court an  
 522 expertise in the diagnosis, evaluation, and treatment of persons  
 523 who have intellectual disabilities ~~with mental retardation~~. The  
 524 committee must include at least one licensed and qualified  
 525 physician, one licensed and qualified psychologist, and one  
 526 qualified professional who, at with a minimum, has ~~of~~ a masters  
 527 degree in social work, special education, or vocational  
 528 rehabilitation counseling, to examine the person and to testify  
 529 at the hearing on the involuntary admission to residential  
 530 services.

531 (e) The committee shall prepare a written report for the  
 532 court. The report must explicitly document the extent that the

533 person meets the criteria for involuntary admission. The report,  
 534 and expert testimony, must include, but not be limited to:

535 1. The degree of the person's intellectual disability  
 536 ~~mental retardation~~ and whether, using diagnostic capabilities  
 537 established by the agency, the person is eligible for agency  
 538 services;

539 2. Whether, because of the person's degree of intellectual  
 540 disability ~~mental retardation~~, the person:

541 a. Lacks sufficient capacity to give express and informed  
 542 consent to a voluntary application for services pursuant to s.  
 543 393.065;

544 b. Lacks basic survival and self-care skills to such a  
 545 degree that close supervision and habilitation in a residential  
 546 setting is necessary and if not provided would result in a real  
 547 and present threat of substantial harm to the person's well-  
 548 being; or

549 c. Is likely to physically injure others if allowed to  
 550 remain at liberty.

551 3. The purpose to be served by residential care;

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

555 5. The appropriate care, habilitation, and treatment.

556 (f) The committee shall file the report with the court at  
 557 least ~~not less than~~ 10 working days before the date of the  
 558 hearing. The report must ~~shall~~ be served on the petitioner, the  
 559 person who has the intellectual disability ~~with mental~~  
 560 ~~retardation~~, the person's attorney at the time the report is



561 filed with the court, and the agency.

562 (g) Members of the examining committee shall receive a  
 563 reasonable fee to be determined by the court. The fees shall ~~are~~  
 564 ~~to~~ be paid from the general revenue fund of the county in which  
 565 the person who has the intellectual disability ~~with mental~~  
 566 ~~retardation~~ resided when the petition was filed.

567 (6) COUNSEL; GUARDIAN AD LITEM.—

568 (a) The person who has the intellectual disability must  
 569 ~~with mental retardation~~ shall be represented by counsel at all  
 570 stages of the judicial proceeding. If ~~In the event~~ the person is  
 571 indigent and cannot afford counsel, the court shall appoint a  
 572 public defender at least ~~not less than~~ 20 working days before  
 573 the scheduled hearing. The person's counsel shall have full  
 574 access to the records of the service provider and the agency. In  
 575 all cases, the attorney shall represent the rights and legal  
 576 interests of the person ~~with mental retardation~~, regardless of  
 577 who initiates ~~may initiate~~ the proceedings or pays ~~pay~~ the  
 578 attorney's fee.

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

586 (7) HEARING.—

587 (d) The person who has the intellectual disability must  
 588 ~~with mental retardation~~ shall be physically present throughout

589 the entire proceeding. If the person's attorney believes that  
 590 the person's presence at the hearing is not in his or her ~~the~~  
 591 ~~person's~~ best interest, the person's presence may be waived once  
 592 the court has seen the person and the hearing has commenced.

593 (8) ORDER.—

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

596 1. The person is intellectually disabled ~~mentally retarded~~  
 597 or autistic;

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

601 3. Because of the person's degree of intellectual  
 602 disability ~~mental retardation~~ or autism, the person:

603 a. Lacks sufficient capacity to give express and informed  
 604 consent to a voluntary application for services pursuant to s.  
 605 393.065 and lacks basic survival and self-care skills to such a  
 606 degree that close supervision and habilitation in a residential  
 607 setting is necessary and, if not provided, would result in a  
 608 real and present threat of substantial harm to the person's  
 609 well-being; or

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

612 (10) COMPETENCY.—

613 (a) The issue of competency is ~~shall be~~ separate and  
 614 distinct from a determination of the appropriateness of  
 615 involuntary admission to residential services due to  
 616 intellectual disability ~~for a condition of mental retardation~~.

617 (b) The issue of the competency of a person who has an  
 618 intellectual disability ~~with mental retardation~~ for purposes of  
 619 assigning guardianship shall be determined in a separate  
 620 proceeding according to the procedures and requirements of  
 621 chapter 744. The issue of the competency of a person who has an  
 622 intellectual disability ~~with mental retardation~~ or autism for  
 623 purposes of determining whether the person is competent to  
 624 proceed in a criminal trial shall be determined in accordance  
 625 with chapter 916.

626 (12) APPEAL.—

627 (b) The filing of an appeal by the person who has an  
 628 intellectual disability ~~stays with mental retardation shall stay~~  
 629 admission of the person into residential care. The stay remains  
 630 ~~shall remain~~ in effect during the pendency of all review  
 631 proceedings in Florida courts until a mandate issues.

632 Section 11. Subsection (18) of section 394.455, Florida  
 633 Statutes, is amended to read:

634 394.455 Definitions.—As used in this part, unless the  
 635 context clearly requires otherwise, the term:

636 (18) "Mental illness" means an impairment of the mental or  
 637 emotional processes that exercise conscious control of one's  
 638 actions or of the ability to perceive or understand reality,  
 639 which impairment substantially interferes with the ~~a~~ person's  
 640 ability to meet the ordinary demands of living, ~~regardless of~~  
 641 ~~etiology~~. For the purposes of this part, the term does not  
 642 include a ~~retardation or~~ developmental disability as defined in  
 643 chapter 393, intoxication, or conditions manifested only by  
 644 antisocial behavior or substance abuse impairment.

HB 1119

2013

645 Section 12. Subsections (3) through (13) of section  
 646 400.960, Florida Statutes, are amended to read:

647 400.960 Definitions.—As used in this part, the term:

648 ~~(3) "Autism" has the same meaning as in s. 393.063.~~

649 ~~(4) "Cerebral palsy" has the same meaning as in s.~~

650 ~~393.063.~~

651 (3)~~(5)~~ "Client" means any person determined by the Agency  
 652 for Persons with Disabilities to be eligible for developmental  
 653 services.

654 (4)~~(6)~~ "Developmentally disabled" ~~"developmental~~  
 655 ~~disability"~~ has the same meaning as "developmental disability"  
 656 as that term is defined in s. 393.063.

657 (5)~~(7)~~ "Direct service provider" means a person 18 years  
 658 of age or older who has direct contact with individuals who have  
 659 ~~with~~ developmental disabilities and who is unrelated to such ~~the~~  
 660 individuals ~~with developmental disabilities.~~

661 (6)~~(8)~~ "Intermediate care facility for the developmentally  
 662 disabled" means a residential facility licensed and certified in  
 663 accordance with state law, and certified by the Federal  
 664 Government, pursuant to the Social Security Act, as a provider  
 665 of Medicaid services to persons who have ~~with~~ developmental  
 666 disabilities.

667 ~~(9) "Prader-Willi syndrome" has the same meaning as in s.~~  
 668 ~~393.063.~~

669 (7)~~(10)~~~~(a)~~ "Restraint" means a physical device, method, or  
 670 drug used to control behavior.

671 (a) A physical restraint is any manual method or physical  
 672 or mechanical device, material, or equipment attached or

673 adjacent to the individual's body so that he or she cannot  
 674 easily remove the restraint and which restricts freedom of  
 675 movement or normal access to one's body.

676 (b) A drug used as a restraint is a medication used to  
 677 control the person's behavior or to restrict his or her freedom  
 678 of movement. Physically holding a person during a procedure to  
 679 forcibly administer psychotropic medication is a physical  
 680 restraint.

681 (c) Restraint does not include physical devices, such as  
 682 orthopedically prescribed appliances, surgical dressings and  
 683 bandages, supportive body bands, or other physical holding ~~when~~  
 684 necessary for routine physical examinations and tests; for  
 685 purposes of orthopedic, surgical, or other similar medical  
 686 treatment; ~~when used~~ to provide support for the achievement of  
 687 functional body position or proper balance; or ~~when used~~ to  
 688 protect a person from falling out of bed.

689 ~~(11) "Retardation" has the same meaning as in s. 393.063.~~

690 (8)~~(12)~~ "Seclusion" means the physical segregation of a  
 691 person in any fashion or the involuntary isolation of a person  
 692 in a room or area from which the person is prevented from  
 693 leaving. The prevention may be by physical barrier or by a staff  
 694 member who is acting in a manner, or who is physically situated,  
 695 so as to prevent the person from leaving the room or area. For  
 696 purposes of this part, the term does not mean isolation due to a  
 697 person's medical condition or symptoms.

698 ~~(13) "Spina bifida" has the same meaning as in s. 393.063.~~

699 Section 13. Subsection (12) of section 408.032, Florida  
 700 Statutes, is amended to read:

HB 1119

2013

701 408.032 Definitions relating to Health Facility and  
 702 Services Development Act.—As used in ss. 408.031-408.045, the  
 703 term:

704 (12) "Intermediate care facility for the developmentally  
 705 disabled" means a residential facility licensed under part VIII  
 706 of chapter 400 ~~chapter 393~~ and certified by the Federal  
 707 Government pursuant to the Social Security Act as a provider of  
 708 Medicaid services to persons who are mentally retarded or who  
 709 have a related condition.

710 Section 14. Subsection (8) of section 409.908, Florida  
 711 Statutes, is amended to read:

712 409.908 Reimbursement of Medicaid providers.—Subject to  
 713 specific appropriations, the agency shall reimburse Medicaid  
 714 providers, in accordance with state and federal law, according  
 715 to methodologies set forth in the rules of the agency and in  
 716 policy manuals and handbooks incorporated by reference therein.  
 717 These methodologies may include fee schedules, reimbursement  
 718 methods based on cost reporting, negotiated fees, competitive  
 719 bidding pursuant to s. 287.057, and other mechanisms the agency  
 720 considers efficient and effective for purchasing services or  
 721 goods on behalf of recipients. If a provider is reimbursed based  
 722 on cost reporting and submits a cost report late and that cost  
 723 report would have been used to set a lower reimbursement rate  
 724 for a rate semester, then the provider's rate for that semester  
 725 shall be retroactively calculated using the new cost report, and  
 726 full payment at the recalculated rate shall be effected  
 727 retroactively. Medicare-granted extensions for filing cost  
 728 reports, if applicable, shall also apply to Medicaid cost

HB 1119

2013

729 reports. Payment for Medicaid compensable services made on  
730 behalf of Medicaid eligible persons is subject to the  
731 availability of moneys and any limitations or directions  
732 provided for in the General Appropriations Act or chapter 216.  
733 Further, nothing in this section shall be construed to prevent  
734 or limit the agency from adjusting fees, reimbursement rates,  
735 lengths of stay, number of visits, or number of services, or  
736 making any other adjustments necessary to comply with the  
737 availability of moneys and any limitations or directions  
738 provided for in the General Appropriations Act, provided the  
739 adjustment is consistent with legislative intent.

740 (8) A provider of home-based or community-based services  
741 rendered pursuant to a federally approved waiver shall be  
742 reimbursed based on an established or negotiated rate for each  
743 service. These rates shall be established according to an  
744 analysis of the expenditure history and prospective budget  
745 developed by each contract provider participating in the waiver  
746 program, or under any other methodology adopted by the agency  
747 and approved by the Federal Government in accordance with the  
748 waiver. Privately owned and operated community-based residential  
749 facilities which meet agency requirements and which formerly  
750 received Medicaid reimbursement for the optional intermediate  
751 care facility for the intellectually disabled ~~mentally retarded~~  
752 service may participate in the developmental services waiver as  
753 part of a home-and-community-based continuum of care for  
754 Medicaid recipients who receive waiver services.

755 Section 15. Subsection (16) of section 413.20, Florida  
756 Statutes, is amended to read:

757 413.20 Definitions.—As used in this part, the term:  
 758 (16) "Person who has a significant disability" means an  
 759 individual who has a disability that is a severe physical or  
 760 mental impairment that seriously limits one or more functional  
 761 capacities, such as mobility, communication, self-care, self-  
 762 direction, interpersonal skills, work tolerance, or work skills,  
 763 in terms of an employment outcome; whose vocational  
 764 rehabilitation may be expected to require multiple vocational  
 765 rehabilitation services over an extended period of time; and who  
 766 has one or more physical or mental disabilities resulting from  
 767 amputation, arthritis, autism, blindness, burn injury, cancer,  
 768 cerebral palsy, cystic fibrosis, deafness, head injury, heart  
 769 disease, hemiplegia, hemophilia, respiratory or pulmonary  
 770 dysfunction, intellectual disability ~~mental retardation~~, mental  
 771 illness, multiple sclerosis, muscular dystrophy, musculoskeletal  
 772 disorder, neurological disorder, including stroke and epilepsy,  
 773 paraplegia, quadriplegia, or other spinal cord condition,  
 774 sickle-cell anemia, specific learning disability, end-stage  
 775 renal disease, or another disability or a combination of  
 776 disabilities that is determined, after an assessment for  
 777 determining eligibility and vocational rehabilitation needs, to  
 778 cause comparable substantial functional limitation.

779 Section 16. Paragraph (a) of subsection (6) of section  
 780 440.49, Florida Statutes, is amended to read:

781 440.49 Limitation of liability for subsequent injury  
 782 through Special Disability Trust Fund.—

783 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

784 (a) Reimbursement is not allowed under this section unless



HB 1119

2013

785 it is established that the employer knew of the preexisting  
 786 permanent physical impairment prior to the occurrence of the  
 787 subsequent injury or occupational disease, and ~~that~~ the  
 788 permanent physical impairment is one of the following:

- 789 1. Epilepsy.
- 790 2. Diabetes.
- 791 3. Cardiac disease.
- 792 4. Amputation of foot, leg, arm, or hand.
- 793 5. Total loss of sight of one or both eyes or a partial  
 794 loss of corrected vision of more than 75 percent bilaterally.
- 795 6. Residual disability from poliomyelitis.
- 796 7. Cerebral palsy.
- 797 8. Multiple sclerosis.
- 798 9. Parkinson's disease.
- 799 10. Meniscectomy.
- 800 11. Patellectomy.
- 801 12. Ruptured cruciate ligament.
- 802 13. Hemophilia.
- 803 14. Chronic osteomyelitis.
- 804 15. Surgical or spontaneous fusion of a major weight-  
 805 bearing joint.
- 806 16. Hyperinsulinism.
- 807 17. Muscular dystrophy.
- 808 18. Thrombophlebitis.
- 809 19. Herniated intervertebral disk.
- 810 20. Surgical removal of an intervertebral disk or spinal  
 811 fusion.
- 812 21. One or more back injuries or a disease process of the

813 back resulting in disability over a total of 120 or more days,  
 814 if substantiated by a doctor's opinion that there was a  
 815 preexisting impairment to the claimant's back.

816 22. Total deafness.

817 23. Intellectual disability if ~~Mental retardation,~~  
 818 ~~provided~~ the employee's intelligence quotient is such that she  
 819 or he falls within the lowest 2 percentile of the general  
 820 population. However, ~~it shall not be necessary for~~ the employer  
 821 does not need to know the employee's actual intelligence  
 822 quotient or actual relative ranking in relation to the  
 823 intelligence quotient of the general population.

824 24. Any permanent physical condition that ~~which~~, prior to  
 825 the industrial accident or occupational disease, constitutes a  
 826 20 percent ~~20-percent~~ impairment of a member or of the body as a  
 827 whole.

828 25. Obesity if, ~~provided~~ the employee is 30 percent or  
 829 more over the average weight designated for her or his height  
 830 and age in the Table of Average Weight of Americans by Height  
 831 and Age prepared by the Society of Actuaries using data from the  
 832 1979 Build and Blood Pressure Study.

833 26. Any permanent physical impairment as provided ~~defined~~  
 834 in s. 440.15(3) which is a result of a prior industrial accident  
 835 with the same employer or the employer's parent company,  
 836 subsidiary, sister company, or affiliate located within the  
 837 geographical boundaries of this state.

838 Section 17. Paragraph (g) of subsection (1) of section  
 839 499.0054, Florida Statutes, is amended to read:

840 499.0054 Advertising and labeling of drugs, devices, and

841 cosmetics; exemptions.-

842 (1) It is a violation of the Florida Drug and Cosmetic Act  
 843 to perform or cause the performance of any of the following  
 844 acts:

845 (g) The advertising of any drug or device represented to  
 846 have any effect in any of the following conditions, disorders,  
 847 diseases, or processes:

- 848 1. Blood disorders.
- 849 2. Bone or joint diseases.
- 850 3. Kidney diseases or disorders.
- 851 4. Cancer.
- 852 5. Diabetes.
- 853 6. Gall bladder diseases or disorders.
- 854 7. Heart and vascular diseases.
- 855 8. High blood pressure.
- 856 9. Diseases or disorders of the ear or auditory apparatus,  
 857 including hearing loss or deafness.
- 858 10. Mental disease or intellectual disability ~~mental~~  
 859 ~~retardation~~.
- 860 11. Paralysis.
- 861 12. Prostate gland disorders.
- 862 13. Conditions of the scalp affecting hair loss.
- 863 14. Baldness.
- 864 15. Endocrine disorders.
- 865 16. Sexual impotence.
- 866 17. Tumors.
- 867 18. Venereal diseases.
- 868 19. Varicose ulcers.

HB 1119

2013

- 869 20. Breast enlargement.
- 870 21. Purifying blood.
- 871 22. Metabolic disorders.
- 872 23. Immune system disorders or conditions affecting the
- 873 immune system.
- 874 24. Extension of life expectancy.
- 875 25. Stress and tension.
- 876 26. Brain stimulation or performance.
- 877 27. The body's natural defense mechanisms.
- 878 28. Blood flow.
- 879 29. Depression.
- 880 30. Human immunodeficiency virus or acquired immune
- 881 deficiency syndrome or related disorders or conditions.

882 Section 18. Section 514.072, Florida Statutes, is amended  
 883 to read:

884 514.072 Certification of swimming instructors for people  
 885 who have developmental disabilities ~~required~~.—Any person working  
 886 at a swimming pool who holds himself or herself out as a  
 887 swimming instructor specializing in training people who have  
 888 developmental disabilities, as defined in s. 393.063(9), may be  
 889 certified by the Dan Marino Foundation, Inc., in addition to  
 890 being certified under s. 514.071. The Dan Marino Foundation,  
 891 Inc., must develop certification requirements and a training  
 892 curriculum for swimming instructors for people who have  
 893 developmental disabilities ~~and must submit the certification~~  
 894 ~~requirements to the Department of Health for review by January~~  
 895 ~~1, 2007. A person certified under s. 514.071 before July 1,~~  
 896 ~~2007, must meet the additional certification requirements of~~

HB 1119

2013

897 ~~this section before January 1, 2008.~~ A person certified under s.  
 898 514.071 ~~on or after July 1, 2007,~~ must meet the additional  
 899 certification requirements of this section within 6 months after  
 900 receiving certification under s. 514.071.

901 Section 19. Section 627.6041, Florida Statutes, is amended  
 902 to read:

903 627.6041 ~~Handicapped~~ Children with disabilities;  
 904 continuation of coverage.—

905 (1) A hospital or medical expense insurance policy or  
 906 health care services plan contract that is delivered or issued  
 907 for delivery in this state and that provides that coverage of a  
 908 dependent child terminates ~~will terminate~~ upon attainment of the  
 909 limiting age for dependent children specified in the policy or  
 910 contract must ~~shall~~ also provide in substance that attainment of  
 911 the limiting age does not terminate the coverage of the child  
 912 while the child continues to be both:

913 (a) ~~(1)~~ Incapable of self-sustaining employment by reason  
 914 of an intellectual ~~mental retardation~~ or physical disability.  
 915 ~~handicap; and~~

916 (b) ~~(2)~~ Chiefly dependent upon the policyholder or  
 917 subscriber for support and maintenance.

918 (2) If a claim is denied under a policy or contract for  
 919 the stated reason that the child has attained the limiting age  
 920 for dependent children specified in the policy or contract, the  
 921 notice of denial must state that the policyholder has the burden  
 922 of establishing that the child continues to meet the criteria  
 923 specified in subsection ~~subsections~~ (1) ~~and (2)~~.

924 Section 20. Section 627.6615, Florida Statutes, is amended

HB 1119

2013

925 to read:

926 627.6615 ~~Handicapped~~ Children with disabilities;  
 927 continuation of coverage under group policy.—

928 (1) A group health insurance policy or health care  
 929 services plan contract that is delivered or issued for delivery  
 930 in this state and that provides that coverage of a dependent  
 931 child of an employee or other member of the covered group  
 932 terminates ~~will terminate~~ upon attainment of the limiting age  
 933 for dependent children specified in the policy or contract must  
 934 ~~shall~~ also provide in substance that attainment of the limiting  
 935 age does not terminate the coverage of the child while the child  
 936 continues to be both:

937 (a) ~~(1)~~ Incapable of self-sustaining employment by reason  
 938 of an intellectual ~~mental retardation~~ or physical disability.  
 939 ~~handicap; and~~

940 (b) ~~(2)~~ Chiefly dependent upon the employee or member for  
 941 support and maintenance.

942 (2) If a claim is denied under a policy or contract for  
 943 the stated reason that the child has attained the limiting age  
 944 for dependent children specified in the policy or contract, the  
 945 notice of denial must state that the certificateholder or  
 946 subscriber has the burden of establishing that the child  
 947 continues to meet the criteria specified in subsection  
 948 ~~subsections (1) and (2)~~.

949 Section 21. Subsection (29) of section 641.31, Florida  
 950 Statutes, is amended to read:

951 641.31 Health maintenance contracts.—

952 (29) If a health maintenance contract provides that

HB 1119

2013

953 coverage of a dependent child of the subscriber terminates ~~will~~  
 954 ~~terminate~~ upon attainment of the limiting age for dependent  
 955 children which is specified in the contract, the contract must  
 956 also provide in substance that attainment of the limiting age  
 957 does not terminate the coverage of the child while the child  
 958 continues to be both:

959 (a) Incapable of self-sustaining employment by reason of  
 960 an intellectual ~~mental retardation~~ or physical disability.  
 961 ~~handicap, and~~

962 (b) Chiefly dependent upon the employee or member for  
 963 support and maintenance.

964  
 965 If the claim is denied under a contract for the stated reason  
 966 that the child has attained the limiting age for dependent  
 967 children specified in the contract, the notice or denial must  
 968 state that the subscriber has the burden of establishing that  
 969 the child continues to meet the criteria specified in this  
 970 subsection ~~paragraphs (a) and (b).~~

971 Section 22. Subsection (4) of section 650.05, Florida  
 972 Statutes, is amended to read:

973 650.05 Plans for coverage of employees of political  
 974 subdivisions.-

975 (4) ~~(a)~~ Notwithstanding any other provision of this  
 976 chapter, effective January 1, 1972, all state political  
 977 subdivisions receiving financial aid which ~~that~~ provide social  
 978 security coverage for their employees pursuant to ~~the provisions~~  
 979 ~~of~~ this chapter and the ~~provisions of the~~ various retirement  
 980 systems as authorized by law shall, in addition to other

HB 1119

2013

981 purposes, use ~~utilize~~ all grants-in-aid and other revenue  
 982 received from the state to pay the employer's share of social  
 983 security cost.

984 ~~(b)~~ The grants-in-aid and other revenue ~~referred to in~~  
 985 ~~paragraph (a)~~ specifically include, but are not limited to,  
 986 minimum foundation program grants to public school districts and  
 987 community colleges; gasoline, motor fuel, cigarette, racing, and  
 988 insurance premium taxes distributed to political subdivisions;  
 989 and amounts specifically appropriated as grants-in-aid for  
 990 mental health, intellectual disabilities ~~mental retardation~~, and  
 991 mosquito control programs.

992 Section 23. Subsection (1) of section 765.204, Florida  
 993 Statutes, is amended to read:

994 765.204 Capacity of principal; procedure.-

995 (1) A principal is presumed to be capable of making health  
 996 care decisions for herself or himself unless she or he is  
 997 determined to be incapacitated. Incapacity may not be inferred  
 998 from the person's voluntary or involuntary hospitalization for  
 999 mental illness or from her or his intellectual disability ~~mental~~  
 1000 ~~retardation~~.

1001 Section 24. Section 849.04, Florida Statutes, is amended  
 1002 to read:

1003 849.04 Permitting minors and persons under guardianship to  
 1004 gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.  
 1005 O., keno or pool table, or billiard table, wheel of fortune, or  
 1006 other game of chance, kept for the purpose of betting, who  
 1007 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is  
 1008 mentally incompetent or under guardianship to play at such game



HB 1119

2013

1009 or to bet on such game of chance; or whoever aids or abets or  
 1010 otherwise encourages such playing or betting of any money or  
 1011 other valuable thing upon the result of such game of chance by a  
 1012 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under  
 1013 guardianship, commits ~~shall be guilty of~~ a felony of the third  
 1014 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 1015 775.084. For the purpose of this section, the term a "person who  
 1016 is mentally incompetent person" means a person ~~is one~~ who  
 1017 because of mental illness, intellectual disability ~~mental~~  
 1018 ~~retardation~~, senility, excessive use of drugs or alcohol, or  
 1019 other mental incapacity is incapable of ~~either~~ managing his or  
 1020 her property or caring for himself or herself or both.

1021 Section 25. Section 914.16, Florida Statutes, is amended  
 1022 to read:

1023 914.16 Child abuse and sexual abuse of victims under age  
 1024 16 or who have an intellectual disability ~~persons with mental~~  
 1025 ~~retardation~~; limits on interviews.—The chief judge of each  
 1026 judicial circuit, after consultation with the state attorney and  
 1027 the public defender for the judicial circuit, the appropriate  
 1028 chief law enforcement officer, and any other person deemed  
 1029 appropriate by the chief judge, shall ~~provide by~~ order  
 1030 reasonable limits on the number of interviews which ~~that~~ a  
 1031 victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s.  
 1032 847.0135(5) who is under 16 years of age or a victim of a  
 1033 violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who  
 1034 has an intellectual disability ~~is a person with mental~~  
 1035 ~~retardation~~ as defined in s. 393.063 must submit to for law  
 1036 enforcement or discovery purposes. ~~The order shall,~~ To the

HB 1119

2013

1037 extent possible, the order must protect the victim from the  
 1038 psychological damage of repeated interrogations while preserving  
 1039 the rights of the public, the victim, and the person charged  
 1040 with the violation.

1041 Section 26. Section 914.17, Florida Statutes, is amended  
 1042 to read:

1043 914.17 Appointment of advocate for victims or witnesses  
 1044 who are minors or intellectually disabled ~~persons with mental~~  
 1045 ~~retardation.~~-

1046 (1) A guardian ad litem or other advocate shall be  
 1047 appointed by the court to represent a minor in any criminal  
 1048 proceeding if the minor is a victim of or witness to child abuse  
 1049 or neglect, ~~or if the minor is~~ a victim of a sexual offense, or  
 1050 a witness to a sexual offense committed against another minor.  
 1051 The court may appoint a guardian ad litem or other advocate in  
 1052 any other criminal proceeding in which a minor is involved as  
 1053 ~~either~~ a victim or a witness. The guardian ad litem or other  
 1054 advocate shall have full access to all evidence and reports  
 1055 introduced during the proceedings, may interview witnesses, may  
 1056 make recommendations to the court, shall be noticed and have the  
 1057 right to appear on behalf of the minor at all proceedings, and  
 1058 may request additional examinations by medical doctors,  
 1059 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian  
 1060 ad litem or other advocate shall ~~to perform the following~~  
 1061 ~~services:~~

1062 (a) ~~To~~ Explain, in language understandable to the minor,  
 1063 all legal proceedings in which the minor is ~~shall be~~ involved;

1064 (b) ~~To~~ Act, as a friend of the court, to advise the judge,

1065 whenever appropriate, of the minor's ability to understand and  
 1066 cooperate with any court proceeding; and

1067 (c) ~~To~~ Assist the minor and the minor's family in coping  
 1068 with the emotional effects of the crime and subsequent criminal  
 1069 proceedings in which the minor is involved.

1070 (2) An advocate shall be appointed by the court to  
 1071 represent a person who has an intellectual disability with  
 1072 ~~mental retardation~~ as defined in s. 393.063 in any criminal  
 1073 proceeding if the person ~~with mental retardation~~ is a victim of  
 1074 or witness to abuse or neglect, ~~or if the person with mental~~  
 1075 ~~retardation is~~ a victim of a sexual offense, or a witness to a  
 1076 sexual offense committed against a minor or person who has an  
 1077 intellectual disability with mental retardation. The court may  
 1078 appoint an advocate in any other criminal proceeding in which  
 1079 such a person with mental retardation is involved as ~~either~~ a  
 1080 victim or a witness. The advocate shall have full access to all  
 1081 evidence and reports introduced during the proceedings, may  
 1082 interview witnesses, may make recommendations to the court,  
 1083 shall be noticed and have the right to appear on behalf of the  
 1084 person ~~with mental retardation~~ at all proceedings, and may  
 1085 request additional examinations by medical doctors,  
 1086 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate  
 1087 shall to perform the following services:

1088 (a) ~~To~~ Explain, in language understandable to the person  
 1089 ~~with mental retardation~~, all legal proceedings in which the  
 1090 person is ~~shall be~~ involved;

1091 (b) ~~To~~ Act, as a friend of the court, to advise the judge,  
 1092 whenever appropriate, of the person's ~~person with mental~~

HB 1119

2013

1093 ~~retardation's~~ ability to understand and cooperate with any court  
 1094 proceedings; and

1095 (c) ~~To~~ Assist the person ~~with mental retardation~~ and the  
 1096 person's family in coping with the emotional effects of the  
 1097 crime and subsequent criminal proceedings in which the person  
 1098 ~~with mental retardation~~ is involved.

1099 (3) Any person participating in a judicial proceeding as a  
 1100 guardian ad litem or other advocate is ~~shall be~~ presumed prima  
 1101 facie to be acting in good faith and in so doing is ~~shall be~~  
 1102 immune from any liability, civil or criminal, which ~~that~~  
 1103 ~~otherwise~~ might be incurred or imposed.

1104 Section 27. Subsections (1), (2), and (3) of section  
 1105 916.105, Florida Statutes, are amended to read:

1106 916.105 Legislative intent.—

1107 (1) It is the intent of the Legislature that the  
 1108 Department of Children and Family Services and the Agency for  
 1109 Persons with Disabilities, as appropriate, establish, locate,  
 1110 and maintain separate and secure forensic facilities and  
 1111 programs for the treatment or training of defendants who have  
 1112 been charged with a felony and who have been found to be  
 1113 incompetent to proceed due to their mental illness, intellectual  
 1114 disability ~~mental retardation~~, or autism, or who have been  
 1115 acquitted of a felony by reason of insanity, and who, while  
 1116 still under the jurisdiction of the committing court, are  
 1117 committed to the department or agency under ~~the provisions of~~  
 1118 this chapter. Such facilities must ~~shall~~ be sufficient to  
 1119 accommodate the number of defendants committed under the  
 1120 conditions noted above. Except for those defendants found by the

HB 1119

2013

1121 department or agency to be appropriate for treatment or training  
 1122 in a civil facility or program pursuant to subsection (3),  
 1123 forensic facilities must ~~shall~~ be designed and administered so  
 1124 that ingress and egress, together with other requirements of  
 1125 this chapter, may be strictly controlled by staff responsible  
 1126 for security in order to protect the defendant, facility  
 1127 personnel, other clients, and citizens in adjacent communities.

1128 (2) It is the intent of the Legislature that treatment or  
 1129 training programs for defendants who are found to have mental  
 1130 illness, intellectual disability ~~mental retardation~~, or autism  
 1131 and are involuntarily committed to the department or agency, and  
 1132 who are still under the jurisdiction of the committing court, be  
 1133 provided in a manner, subject to security requirements and other  
 1134 mandates of this chapter, which ensures ~~as to ensure~~ the rights  
 1135 of the defendants as provided in this chapter.

1136 (3) It is the intent of the Legislature that evaluation  
 1137 and services to defendants who have mental illness, intellectual  
 1138 disability ~~mental retardation~~, or autism be provided in  
 1139 community settings, in community residential facilities, or in  
 1140 civil facilities, whenever this is a feasible alternative to  
 1141 treatment or training in a state forensic facility.

1142 Section 28. Subsections (1), (10), (11), (12), and (17) of  
 1143 section 916.106, Florida Statutes, are amended, and subsections  
 1144 (13) through (15) of that section are reordered and amended, to  
 1145 read:

1146 916.106 Definitions.—For the purposes of this chapter, the  
 1147 term:

1148 (1) "Agency" means the Agency for Persons with

HB 1119

2013

1149 Disabilities. The agency is responsible for training forensic  
 1150 clients who are developmentally disabled due to intellectual  
 1151 disability ~~mental retardation~~ or autism and have been determined  
 1152 incompetent to proceed.

1153 (10) "Forensic facility" means a separate and secure  
 1154 facility established within the department or agency to serve  
 1155 forensic clients. A separate and secure facility means a  
 1156 security-grade building for the purpose of separately housing  
 1157 persons who have mental illness from persons who have  
 1158 intellectual disabilities ~~with retardation~~ or autism and  
 1159 separately housing persons who have been involuntarily committed  
 1160 pursuant to this chapter from nonforensic residents.

1161 (11) "Incompetent to proceed" means unable to proceed at  
 1162 any material stage of a criminal proceeding, which includes the  
 1163 ~~shall include~~ trial of the case, pretrial hearings involving  
 1164 questions of fact on which the defendant might be expected to  
 1165 testify, entry of a plea, proceedings for violation of probation  
 1166 or violation of community control, sentencing, and hearings on  
 1167 issues regarding a defendant's failure to comply with court  
 1168 orders or conditions or other matters in which the mental  
 1169 competence of the defendant is necessary for a just resolution  
 1170 of the issues being considered.

1171 (12) "Institutional security personnel" means the staff of  
 1172 forensic facilities who meet or exceed the requirements of s.  
 1173 943.13 and who are responsible for providing security,  
 1174 protecting clients and personnel, enforcing rules, preventing  
 1175 and investigating unauthorized activities, and safeguarding the  
 1176 interests of residents ~~citizens~~ in the surrounding communities.

1177            (14)~~(13)~~ "Mental illness" means an impairment of the  
 1178 emotional processes that exercise conscious control of one's  
 1179 actions, or of the ability to perceive or understand reality,  
 1180 which impairment substantially interferes with the a defendant's  
 1181 ability to meet the ordinary demands of living. For the purposes  
 1182 of this chapter, the term does not apply to defendants who have  
 1183 only an intellectual disability ~~with only mental retardation~~ or  
 1184 autism and does not include intoxication or conditions  
 1185 manifested only by antisocial behavior or substance abuse  
 1186 impairment.

1187            (15)~~(14)~~ "Restraint" means a physical device, method, or  
 1188 drug used to control dangerous behavior.

1189            (a) A physical restraint is any manual method or physical  
 1190 or mechanical device, material, or equipment attached or  
 1191 adjacent to a person's body so that he or she cannot easily  
 1192 remove the restraint and that restricts freedom of movement or  
 1193 normal access to one's body.

1194            (b) A drug used as a restraint is a medication used to  
 1195 control the person's behavior or to restrict his or her freedom  
 1196 of movement and not part of the standard treatment regimen of  
 1197 the person with a diagnosed mental illness who is a client of  
 1198 the department. Physically holding a person during a procedure  
 1199 to forcibly administer psychotropic medication is a physical  
 1200 restraint.

1201            (c) Restraint does not include physical devices, such as  
 1202 orthopedically prescribed appliances, surgical dressings and  
 1203 bandages, supportive body bands, or other physical holding ~~when~~  
 1204 necessary for routine physical examinations and tests; for

1205 purposes of orthopedic, surgical, or other similar medical  
 1206 treatment; ~~when used~~ to provide support for the achievement of  
 1207 functional body position or proper balance; or ~~when used~~ to  
 1208 protect a person from falling out of bed.

1209 ~~(13)(15)~~ "Intellectual disability" ~~"Retardation"~~ has the  
 1210 same meaning as in s. 393.063.

1211 (17) "Social service professional" means a person whose  
 1212 minimum qualifications include a bachelor's degree and at least  
 1213 2 years of social work, clinical practice, special education,  
 1214 habilitation, or equivalent experience working directly with  
 1215 persons who have intellectual disabilities ~~with retardation~~,  
 1216 autism, or other developmental disabilities.

1217 Section 29. Paragraph (a) of subsection (1) and paragraph  
 1218 (a) of subsection (3) of section 916.107, Florida Statutes, are  
 1219 amended to read:

1220 916.107 Rights of forensic clients.—

1221 (1) RIGHT TO INDIVIDUAL DIGNITY.—

1222 (a) The policy of the state is that the individual dignity  
 1223 of the client shall be respected at all times and upon all  
 1224 occasions, including any occasion when the forensic client is  
 1225 detained, transported, or treated. Clients with mental illness,  
 1226 intellectual disability ~~retardation~~, or autism and who are  
 1227 charged with committing felonies shall receive appropriate  
 1228 treatment or training. In a criminal case involving a client who  
 1229 has been adjudicated incompetent to proceed or not guilty by  
 1230 reason of insanity, a jail may be used as an emergency facility  
 1231 for up to 15 days following the date the department or agency  
 1232 receives a completed copy of the court commitment order



1233 containing all documentation required by the applicable Florida  
 1234 Rules of Criminal Procedure. For a forensic client who is held  
 1235 in a jail awaiting admission to a facility of the department or  
 1236 agency, evaluation and treatment or training may be provided in  
 1237 the jail by the local community mental health provider for  
 1238 mental health services, by the developmental disabilities  
 1239 program for persons with intellectual disability ~~retardation~~ or  
 1240 autism, the client's physician or psychologist, or any other  
 1241 appropriate program until the client is transferred to a civil  
 1242 or forensic facility.

1243 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

1244 (a) A forensic client shall be asked to give express and  
 1245 informed written consent for treatment. If a client refuses such  
 1246 treatment as is deemed necessary and essential by the client's  
 1247 multidisciplinary treatment team for the appropriate care of the  
 1248 client, such treatment may be provided under the following  
 1249 circumstances:

1250 1. In an emergency situation in which there is immediate  
 1251 danger to the safety of the client or others, such treatment may  
 1252 be provided upon the written order of a physician for a period  
 1253 not to exceed 48 hours, excluding weekends and legal holidays.  
 1254 If, after the 48-hour period, the client has not given express  
 1255 and informed consent to the treatment initially refused, the  
 1256 administrator or designee of the civil or forensic facility  
 1257 shall, within 48 hours, excluding weekends and legal holidays,  
 1258 petition the committing court or the circuit court serving the  
 1259 county in which the facility is located, at the option of the  
 1260 facility administrator or designee, for an order authorizing the

1261 continued treatment of the client. In the interim, the need for  
 1262 treatment shall be reviewed every 48 hours and may be continued  
 1263 without the consent of the client upon the continued written  
 1264 order of a physician who has determined that the emergency  
 1265 situation continues to present a danger to the safety of the  
 1266 client or others.

1267         2. In a situation other than an emergency situation, the  
 1268 administrator or designee of the facility shall petition the  
 1269 court for an order authorizing necessary and essential treatment  
 1270 for the client. The order shall allow such treatment for a  
 1271 period not to exceed 90 days following the date of the entry of  
 1272 the order. Unless the court is notified in writing that the  
 1273 client has provided express and informed consent in writing or  
 1274 that the client has been discharged by the committing court, the  
 1275 administrator or designee shall, before ~~prior to~~ the expiration  
 1276 of the initial 90-day order, petition the court for an order  
 1277 authorizing the continuation of treatment for another 90-day  
 1278 period. This procedure shall be repeated until the client  
 1279 provides consent or is discharged by the committing court.

1280         3. At the hearing on the issue of whether the court should  
 1281 enter an order authorizing treatment for which a client was  
 1282 unable to or refused to give express and informed consent, the  
 1283 court shall determine by clear and convincing evidence that the  
 1284 client has mental illness, intellectual disability ~~retardation~~,  
 1285 or autism, that the treatment not consented to is essential to  
 1286 the care of the client, and that the treatment not consented to  
 1287 is not experimental and does not present an unreasonable risk of  
 1288 serious, hazardous, or irreversible side effects. In arriving at

HB 1119

2013

1289 the substitute judgment decision, the court must consider at  
 1290 least the following factors:

- 1291 a. The client's expressed preference regarding treatment;
- 1292 b. The probability of adverse side effects;
- 1293 c. The prognosis without treatment; and
- 1294 d. The prognosis with treatment.

1295

1296 The hearing shall be as convenient to the client as may be  
 1297 consistent with orderly procedure and shall be conducted in  
 1298 physical settings not likely to be injurious to the client's  
 1299 condition. The court may appoint a general or special magistrate  
 1300 to preside at the hearing. The client or the client's guardian,  
 1301 and the representative, shall be provided with a copy of the  
 1302 petition and the date, time, and location of the hearing. The  
 1303 client has the right to have an attorney represent him or her at  
 1304 the hearing, and, if the client is indigent, the court shall  
 1305 appoint the office of the public defender to represent the  
 1306 client at the hearing. The client may testify or not, as he or  
 1307 she chooses, and has the right to cross-examine witnesses and  
 1308 may present his or her own witnesses.

1309 Section 30. The Division of Law Revision and Information  
 1310 is requested to rename part III of chapter 916, Florida  
 1311 Statutes, consisting of ss. 916.301-916.304, as "Forensic  
 1312 Services for Persons who are Intellectually Disabled or  
 1313 Autistic."

1314 Section 31. Subsections (1) and (2) of section 916.301,  
 1315 Florida Statutes, are amended to read:  
 1316 916.301 Appointment of experts.—

1317 (1) All evaluations ordered by the court under this part  
 1318 must be conducted by qualified experts who have expertise in  
 1319 evaluating persons who have an intellectual disability ~~with~~  
 1320 ~~retardation~~ or autism. The agency shall maintain and provide the  
 1321 courts annually with a list of available ~~retardation and autism~~  
 1322 professionals who are appropriately licensed and qualified to  
 1323 perform evaluations of defendants alleged to be incompetent to  
 1324 proceed due to intellectual disability ~~retardation~~ or autism.  
 1325 The courts may use professionals from this list when appointing  
 1326 experts and ordering evaluations under this part.

1327 (2) If a defendant's suspected mental condition is  
 1328 intellectual disability ~~retardation~~ or autism, the court shall  
 1329 appoint the following:

1330 (a) At least one, or at the request of any party, two  
 1331 experts to evaluate whether the defendant meets the definition  
 1332 of intellectual disability ~~retardation~~ or autism and, if so,  
 1333 whether the defendant is competent to proceed; and

1334 (b) A psychologist selected by the agency who is licensed  
 1335 or authorized by law to practice in this state, with experience  
 1336 in evaluating persons suspected of having an intellectual  
 1337 disability ~~retardation~~ or autism, and a social service  
 1338 professional, with experience in working with persons who have  
 1339 an intellectual disability ~~with retardation~~ or autism.

1340 1. The psychologist shall evaluate whether the defendant  
 1341 meets the definition of intellectual disability ~~retardation~~ or  
 1342 autism and, if so, whether the defendant is incompetent to  
 1343 proceed due to intellectual disability ~~retardation~~ or autism.

1344 2. The social service professional shall provide a social

1345 and developmental history of the defendant.

1346 Section 32. Subsections (1), (2), and (4) of section  
1347 916.3012, Florida Statutes, are amended to read:

1348 916.3012 Mental competence to proceed.-

1349 (1) A defendant whose suspected mental condition is  
1350 intellectual disability ~~retardation~~ or autism is incompetent to  
1351 proceed within the meaning of this chapter if the defendant does  
1352 not have sufficient present ability to consult with the  
1353 defendant's lawyer with a reasonable degree of rational  
1354 understanding or if the defendant has no rational, as well as  
1355 factual, understanding of the proceedings against the defendant.

1356 (2) Experts in intellectual disability ~~retardation~~ or  
1357 autism appointed pursuant to s. 916.301 shall first consider  
1358 whether the defendant meets the definition of intellectual  
1359 disability ~~retardation~~ or autism and, if so, consider the  
1360 factors related to the issue of whether the defendant meets the  
1361 criteria for competence to proceed as described in subsection  
1362 (1).

1363 (4) If the experts ~~should~~ find that the defendant is  
1364 incompetent to proceed, the experts shall report on any  
1365 recommended training for the defendant to attain competence to  
1366 proceed. In considering the issues relating to training, the  
1367 examining experts shall specifically report on:

1368 (a) The intellectual disability ~~retardation~~ or autism  
1369 causing the incompetence;

1370 (b) The training appropriate for the intellectual  
1371 disability ~~retardation~~ or autism of the defendant and an  
1372 explanation of each of the possible training alternatives in

1373 order of choices;

1374 (c) The availability of acceptable training and, if  
 1375 training is available in the community, the expert shall so  
 1376 state in the report; and

1377 (d) The likelihood of the defendant's attaining competence  
 1378 under the training recommended, an assessment of the probable  
 1379 duration of the training required to restore competence, and the  
 1380 probability that the defendant will attain competence to proceed  
 1381 in the foreseeable future.

1382 Section 33. Subsection (1), paragraphs (a) and (b) of  
 1383 subsection (2), and paragraph (a) of subsection (3) of section  
 1384 916.302, Florida Statutes, are amended to read:

1385 916.302 Involuntary commitment of defendant determined to  
 1386 be incompetent to proceed.—

1387 (1) CRITERIA.—Every defendant who is charged with a felony  
 1388 and who is adjudicated incompetent to proceed due to  
 1389 intellectual disability ~~retardation~~ or autism may be  
 1390 involuntarily committed for training upon a finding by the court  
 1391 of clear and convincing evidence that:

1392 (a) The defendant has an intellectual disability  
 1393 ~~retardation~~ or autism;

1394 (b) There is a substantial likelihood that in the near  
 1395 future the defendant will inflict serious bodily harm on himself  
 1396 or herself or another person, as evidenced by recent behavior  
 1397 causing, attempting, or threatening such harm;

1398 (c) All available, less restrictive alternatives,  
 1399 including services provided in community residential facilities  
 1400 or other community settings, which would offer an opportunity

HB 1119

2013

1401 for improvement of the condition have been judged to be  
 1402 inappropriate; and

1403 (d) There is a substantial probability that the  
 1404 intellectual disability ~~retardation~~ or autism causing the  
 1405 defendant's incompetence will respond to training and the  
 1406 defendant will regain competency to proceed in the reasonably  
 1407 foreseeable future.

1408 (2) ADMISSION TO A FACILITY.—

1409 (a) A defendant who has been charged with a felony and who  
 1410 is found to be incompetent to proceed due to intellectual  
 1411 disability ~~retardation~~ or autism, and who meets the criteria for  
 1412 involuntary commitment to the agency under ~~the provisions of~~  
 1413 this chapter, shall be committed to the agency, and the agency  
 1414 shall retain and provide appropriate training for the defendant.  
 1415 Within ~~No later than~~ 6 months after the date of admission or at  
 1416 the end of any period of extended commitment or at any time the  
 1417 administrator or designee determines ~~shall have determined~~ that  
 1418 the defendant has regained competency to proceed or no longer  
 1419 meets the criteria for continued commitment, the administrator  
 1420 or designee shall file a report with the court pursuant to this  
 1421 chapter and the applicable Florida Rules of Criminal Procedure.

1422 (b) A defendant determined to be incompetent to proceed  
 1423 due to intellectual disability ~~retardation~~ or autism may be  
 1424 ordered by a circuit court into a forensic facility designated  
 1425 by the agency for defendants who have an intellectual disability  
 1426 ~~mental retardation~~ or autism.

1427 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

1428 (a) If a defendant has both an intellectual disability

HB 1119

2013

1429 ~~mental retardation~~ or autism and ~~has~~ a mental illness,  
 1430 evaluations must address which condition is primarily affecting  
 1431 the defendant's competency to proceed. Referral of the defendant  
 1432 should be made to a civil or forensic facility most appropriate  
 1433 to address the symptoms that are the cause of the defendant's  
 1434 incompetence.

1435 Section 34. Subsection (1) of section 916.3025, Florida  
 1436 Statutes, is amended to read:

1437 916.3025 Jurisdiction of committing court.—

1438 (1) The committing court shall retain jurisdiction in the  
 1439 case of any defendant found to be incompetent to proceed due to  
 1440 intellectual disability ~~retardation~~ or autism and ordered into a  
 1441 forensic facility designated by the agency for defendants who  
 1442 have intellectual disabilities ~~mental retardation~~ or autism. A  
 1443 defendant may not be released except by the order of the  
 1444 committing court. An administrative hearing examiner does not  
 1445 have jurisdiction to determine issues of continuing commitment  
 1446 or release of any defendant involuntarily committed pursuant to  
 1447 this chapter.

1448 Section 35. Section 916.303, Florida Statutes, is amended  
 1449 to read:

1450 916.303 Determination of incompetency ~~due to retardation~~  
 1451 ~~or autism~~; dismissal of charges.—

1452 (1) The charges against any defendant found to be  
 1453 incompetent to proceed due to intellectual disability  
 1454 ~~retardation~~ or autism shall be dismissed without prejudice to  
 1455 the state if the defendant remains incompetent to proceed within  
 1456 a reasonable time after such determination, not to exceed 2



1457 | years, unless the court in its order specifies its reasons for  
 1458 | believing that the defendant will become competent to proceed  
 1459 | within the foreseeable future and specifies the time within  
 1460 | which the defendant is expected to become competent to proceed.  
 1461 | The charges may be refiled by the state if the defendant is  
 1462 | declared competent to proceed in the future.

1463 |         (2) If the charges are dismissed and if the defendant is  
 1464 | considered to lack sufficient capacity to give express and  
 1465 | informed consent to a voluntary application for services and  
 1466 | lacks the basic survival and self-care skills to provide for his  
 1467 | or her well-being or is likely to physically injure himself or  
 1468 | herself or others if allowed to remain at liberty, the agency,  
 1469 | the state attorney, or the defendant's attorney shall apply to  
 1470 | the committing court to involuntarily admit the defendant to  
 1471 | residential services pursuant to s. 393.11.

1472 |         (3) If the defendant is considered to need involuntary  
 1473 | residential services for reasons described in subsection (2)  
 1474 | and, further, there is a substantial likelihood that the  
 1475 | defendant will injure another person or continues to present a  
 1476 | danger of escape, and all available less restrictive  
 1477 | alternatives, including services in community residential  
 1478 | facilities or other community settings, which would offer an  
 1479 | opportunity for improvement of the condition have been judged to  
 1480 | be inappropriate, the agency, the state attorney, or the  
 1481 | defendant's counsel may request the committing court to continue  
 1482 | the defendant's placement in a secure facility pursuant to this  
 1483 | part. Any placement so continued ~~under this subsection~~ must be  
 1484 | reviewed by the court at least annually at a hearing. The annual

1485 review and hearing must ~~shall~~ determine whether the defendant  
 1486 continues to meet the criteria described in this subsection and,  
 1487 if so, whether the defendant still requires involuntary  
 1488 placement in a secure facility and whether the defendant is  
 1489 receiving adequate care, treatment, habilitation, and  
 1490 rehabilitation, including psychotropic medication and behavioral  
 1491 programming. Notice of the annual review and review hearing  
 1492 shall be given to the state attorney and the defendant's  
 1493 attorney. ~~In no instance may~~ A defendant's placement in a secure  
 1494 facility may not exceed the maximum sentence for the crime for  
 1495 which the defendant was charged.

1496 Section 36. Subsection (1) of section 916.304, Florida  
 1497 Statutes, is amended to read:

1498 916.304 Conditional release.—

1499 (1) Except for an inmate currently serving a prison  
 1500 sentence, the committing court may order a conditional release  
 1501 of any defendant who has been found to be incompetent to proceed  
 1502 due to intellectual disability ~~retardation~~ or autism, based on  
 1503 an approved plan for providing community-based training. The  
 1504 committing criminal court may order a conditional release of any  
 1505 defendant to a civil facility in lieu of an involuntary  
 1506 commitment to a forensic facility pursuant to s. 916.302. Upon a  
 1507 recommendation that community-based training for the defendant  
 1508 is appropriate, a written plan for community-based training,  
 1509 including recommendations from qualified professionals, may be  
 1510 filed with the court, with copies to all parties. Such a plan  
 1511 may also be submitted by the defendant and filed with the court,  
 1512 with copies to all parties. The plan must include:

HB 1119

2013

1513           (a) Special provisions for residential care and adequate  
 1514 supervision of the defendant, including recommended location of  
 1515 placement.

1516           (b) Recommendations for auxiliary services such as  
 1517 vocational training, psychological training, educational  
 1518 services, leisure services, and special medical care.

1519  
 1520 In its order of conditional release, the court shall specify the  
 1521 conditions of release based upon the release plan and shall  
 1522 direct the appropriate agencies or persons to submit periodic  
 1523 reports to the courts regarding the defendant's compliance with  
 1524 the conditions of the release and progress in training, with  
 1525 copies to all parties.

1526           Section 37. Section 918.16, Florida Statutes, is amended  
 1527 to read:

1528           918.16 Sex offenses; testimony of person under age 16 or  
 1529 who has an intellectual disability ~~person with mental~~  
 1530 ~~retardation~~; testimony of victim; courtroom cleared;  
 1531 exceptions.—

1532           (1) Except as provided in subsection (2), in the trial of  
 1533 any case, civil or criminal, if ~~when~~ any person under the age of  
 1534 16 or any person with an intellectual disability ~~mental~~  
 1535 ~~retardation~~ as defined in s. 393.063 is testifying concerning  
 1536 any sex offense, the court shall clear the courtroom of all  
 1537 persons except parties to the cause and their immediate families  
 1538 or guardians, attorneys and their secretaries, officers of the  
 1539 court, jurors, newspaper reporters or broadcasters, court  
 1540 reporters, and, at the request of the victim, victim or witness

1541 advocates designated by the state attorney's office.

1542 (2) If ~~When~~ the victim of a sex offense is testifying  
 1543 concerning that offense in any civil or criminal trial, the  
 1544 court shall clear the courtroom of all persons upon the request  
 1545 of the victim, regardless of the victim's age or mental  
 1546 capacity, except that parties to the cause and their immediate  
 1547 families or guardians, attorneys and their secretaries, officers  
 1548 of the court, jurors, newspaper reporters or broadcasters, court  
 1549 reporters, and, at the request of the victim, victim or witness  
 1550 advocates designated by the state attorney may remain in the  
 1551 courtroom.

1552 Section 38. Section 921.137, Florida Statutes, is amended  
 1553 to read:

1554 921.137 Imposition of the death sentence upon an  
 1555 intellectually disabled a defendant ~~with mental retardation~~  
 1556 prohibited.—

1557 (1) As used in this section, the term "intellectually  
 1558 disabled" or "intellectual disability" ~~"mental retardation"~~  
 1559 means significantly subaverage general intellectual functioning  
 1560 existing concurrently with deficits in adaptive behavior and  
 1561 manifested during the period from conception to age 18. The term  
 1562 "significantly subaverage general intellectual functioning," for  
 1563 the purpose of this section, means performance that is two or  
 1564 more standard deviations from the mean score on a standardized  
 1565 intelligence test specified in the rules of the Agency for  
 1566 Persons with Disabilities. The term "adaptive behavior," for the  
 1567 purpose of this definition, means the effectiveness or degree  
 1568 with which an individual meets the standards of personal

1569 independence and social responsibility expected of his or her  
 1570 age, cultural group, and community. The Agency for Persons with  
 1571 Disabilities shall adopt rules to specify the standardized  
 1572 intelligence tests as provided in this subsection.

1573 (2) A sentence of death may not be imposed upon a  
 1574 defendant convicted of a capital felony if it is determined in  
 1575 accordance with this section that the defendant is  
 1576 intellectually disabled ~~has mental retardation~~.

1577 (3) A defendant charged with a capital felony who intends  
 1578 to raise intellectual disability ~~mental retardation~~ as a bar to  
 1579 the death sentence must give notice of such intention in  
 1580 accordance with the rules of court governing notices of intent  
 1581 to offer expert testimony regarding mental health mitigation  
 1582 during the penalty phase of a capital trial.

1583 (4) After a defendant who has given notice of his or her  
 1584 intention to raise intellectual disability ~~mental retardation~~ as  
 1585 a bar to the death sentence is convicted of a capital felony and  
 1586 an advisory jury has returned a recommended sentence of death,  
 1587 the defendant may file a motion to determine whether the  
 1588 defendant is intellectually disabled ~~has mental retardation~~.  
 1589 Upon receipt of the motion, the court shall appoint two experts  
 1590 in the field of intellectual disabilities ~~mental retardation~~ who  
 1591 shall evaluate the defendant and report their findings to the  
 1592 court and all interested parties prior to the final sentencing  
 1593 hearing. Notwithstanding s. 921.141 or s. 921.142, the final  
 1594 sentencing hearing shall be held without a jury. At the final  
 1595 sentencing hearing, the court shall consider the findings of the  
 1596 court-appointed experts and consider the findings of any other

HB 1119

2013

1597 expert which is offered by the state or the defense on the issue  
1598 of whether the defendant has an intellectual disability ~~mental~~  
1599 ~~retardation~~. If the court finds, by clear and convincing  
1600 evidence, that the defendant has an intellectual disability  
1601 ~~mental retardation~~ as defined in subsection (1), the court may  
1602 not impose a sentence of death and shall enter a written order  
1603 that sets forth with specificity the findings in support of the  
1604 determination.

1605 (5) If a defendant waives his or her right to a  
1606 recommended sentence by an advisory jury following a plea of  
1607 guilt or nolo contendere to a capital felony and adjudication of  
1608 guilt by the court, or following a jury finding of guilt of a  
1609 capital felony, upon acceptance of the waiver by the court, a  
1610 defendant who has given notice as required in subsection (3) may  
1611 file a motion for a determination of intellectual disability  
1612 ~~mental retardation~~. Upon granting the motion, the court shall  
1613 proceed as provided in subsection (4).

1614 (6) If, following a recommendation by an advisory jury  
1615 that the defendant be sentenced to life imprisonment, the state  
1616 intends to request the court to order that the defendant be  
1617 sentenced to death, the state must inform the defendant of such  
1618 request if the defendant has notified the court of his or her  
1619 intent to raise intellectual disability ~~mental retardation~~ as a  
1620 bar to the death sentence. After receipt of the notice from the  
1621 state, the defendant may file a motion requesting a  
1622 determination by the court of whether the defendant is  
1623 intellectually disabled ~~has mental retardation~~. Upon granting  
1624 the motion, the court shall proceed as provided in subsection

HB 1119

2013

1625 (4).

1626 (7) Pursuant to s. 924.07, the state may appeal, pursuant  
 1627 to ~~s. 924.07~~, a determination of intellectual disability ~~mental~~  
 1628 ~~retardation~~ made under subsection (4).

1629 (8) This section does not apply to a defendant who was  
 1630 sentenced to death before June 12, 2001 ~~prior to the effective~~  
 1631 ~~date of this act.~~

1632 (9) For purposes of the application of the criminal laws  
 1633 and procedural rules of this state to any matters relating to  
 1634 the imposition and execution of the death penalty, the terms  
 1635 "intellectual disability" or "intellectually disabled" are  
 1636 interchangeable with and have the same meaning as the terms  
 1637 "mental retardation" or "retardation" and "mentally retarded" as  
 1638 those terms were defined before July 1, 2013.

1639 Section 39. Paragraph (b) of subsection (2) of section  
 1640 941.38, Florida Statutes, is amended to read:

1641 941.38 Extradition of persons alleged to be of unsound  
 1642 mind.—

1643 (2) For the purpose of this section:

1644 (b) A "mentally incompetent person" is one who because of  
 1645 mental illness, intellectual disability ~~mental retardation~~,  
 1646 senility, excessive use of drugs or alcohol, or other mental  
 1647 incapacity is incapable of ~~either~~ managing his or her property  
 1648 or caring for himself or herself or both.

1649 Section 40. Section 944.602, Florida Statutes, is amended  
 1650 to read:

1651 944.602 Agency notification before release of  
 1652 intellectually disabled ~~mentally retarded~~ inmates.—Before the

HB 1119

2013

1653 release by parole, release by reason of gain-time allowances  
 1654 provided for in s. 944.291, or expiration of sentence of any  
 1655 inmate who has been diagnosed as having an intellectual  
 1656 disability ~~mentally retarded~~ as defined in s. 393.063, the  
 1657 Department of Corrections shall notify the Agency for Persons  
 1658 with Disabilities in order that sufficient time be allowed to  
 1659 notify the inmate or the inmate's representative, in writing, at  
 1660 least 7 days before ~~prior to~~ the inmate's release, of available  
 1661 community services.

1662 Section 41. Subsection (2) of section 945.025, Florida  
 1663 Statutes, is amended to read:

1664 945.025 Jurisdiction of department.—

1665 (2) In establishing, operating, and using ~~utilizing~~ these  
 1666 facilities, the department shall attempt, whenever possible, to  
 1667 avoid the placement of nondangerous offenders who have potential  
 1668 for rehabilitation with repeat offenders or dangerous offenders.  
 1669 Medical, mental, and psychological problems must ~~shall~~ be  
 1670 diagnosed and treated whenever possible. The Department of  
 1671 Children and Family Services and the Agency for Persons with  
 1672 Disabilities shall cooperate to ensure the delivery of services  
 1673 to persons under the custody or supervision of the department.  
 1674 If ~~When it is the intent of the department~~ intends to transfer a  
 1675 ~~mentally ill or retarded~~ prisoner who has a mental illness or  
 1676 intellectual disability to the Department of Children and Family  
 1677 Services or the Agency for Persons with Disabilities, an  
 1678 involuntary commitment hearing shall be held in accordance with  
 1679 ~~according to the provisions of~~ chapter 393 or chapter 394.

1680 Section 42. Subsection (5) of section 945.12, Florida



HB 1119

2013

1681 Statutes, is amended to read:

1682 945.12 Transfers for rehabilitative treatment.—

1683 (5) When the department plans to release an offender who  
 1684 is a mentally ill or intellectually disabled ~~retarded offender,~~  
 1685 an involuntary commitment hearing shall be held as soon as  
 1686 possible before ~~prior to~~ his or her release in accordance with,  
 1687 ~~according to the provisions of~~ chapter 393 or chapter 394.

1688 Section 43. Subsection (9) of section 945.42, Florida  
 1689 Statutes, is amended to read:

1690 945.42 Definitions; ss. 945.40-945.49.—As used in ss.  
 1691 945.40-945.49, the following terms shall have the meanings  
 1692 ascribed to them, unless the context shall clearly indicate  
 1693 otherwise:

1694 (9) "Mentally ill" means an impairment of the mental or  
 1695 emotional processes that, ~~of the ability to~~ exercise conscious  
 1696 control of one's actions, ~~or of the ability to~~ perceive or  
 1697 understand reality, which impairment substantially interferes  
 1698 with the ~~a~~ person's ability to meet the ordinary demands of  
 1699 living. However, ~~regardless of etiology, except that,~~ for the  
 1700 purposes of transferring ~~transfer of~~ an inmate to a mental  
 1701 health treatment facility, the term does not include a  
 1702 ~~retardation or~~ developmental disability as defined in s. 393.063  
 1703 ~~chapter 393,~~ simple intoxication, or conditions manifested only  
 1704 by antisocial behavior or substance abuse addiction. However, an  
 1705 individual who is ~~mentally retarded or~~ developmentally disabled  
 1706 may also have a mental illness.

1707 Section 44. Section 947.185, Florida Statutes, is amended  
 1708 to read:

HB 1119

2013

1709           947.185 Application for intellectual disability ~~mental~~  
 1710 ~~retardation~~ services as condition of parole.—The Parole  
 1711 Commission may require as a condition of parole that any inmate  
 1712 who has been diagnosed as having an intellectual disability  
 1713 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,  
 1714 apply for services from the Agency for Persons with  
 1715 Disabilities.

1716           Section 45. Subsection (4) of section 984.19, Florida  
 1717 Statutes, is amended to read:

1718           984.19 Medical screening and treatment of child;  
 1719 examination of parent, guardian, or person requesting custody.—

1720           (4) A judge may order that a child alleged to be or  
 1721 adjudicated a child in need of services be treated by a licensed  
 1722 health care professional. The judge may also order such child to  
 1723 receive mental health or intellectual disability ~~retardation~~  
 1724 services from a psychiatrist, psychologist, or other appropriate  
 1725 service provider. If it is necessary to place the child in a  
 1726 residential facility for such services, ~~then~~ the procedures and  
 1727 criteria established in s. 394.467 or chapter 393 shall be used,  
 1728 as whichever is applicable. A child may be provided ~~mental~~  
 1729 ~~health or retardation~~ services in emergency situations, pursuant  
 1730 to the procedures and criteria contained in s. 394.463(1) or  
 1731 chapter 393, as whichever is applicable.

1732           Section 46. Paragraph (a) of subsection (3) of section  
 1733 985.14, Florida Statutes, is amended to read:

1734           985.14 Intake and case management system.—

1735           (3) The intake and case management system shall facilitate  
 1736 consistency in the recommended placement of each child, and in

1737 the assessment, classification, and placement process, with the  
 1738 following purposes:

1739 (a) An individualized, multidisciplinary assessment  
 1740 process that identifies the priority needs of each ~~individual~~  
 1741 child for rehabilitation and treatment and identifies any needs  
 1742 of the child's parents or guardians for services that would  
 1743 enhance their ability to provide adequate support, guidance, and  
 1744 supervision for the child. The ~~This~~ process begins ~~shall begin~~  
 1745 with the detention risk assessment instrument and decision,  
 1746 includes ~~shall include~~ the intake preliminary screening and  
 1747 comprehensive assessment for substance abuse treatment services,  
 1748 mental health services, intellectual disability ~~retardation~~  
 1749 services, literacy services, and other educational and treatment  
 1750 services as components, additional assessment of the child's  
 1751 treatment needs, and classification regarding the child's risks  
 1752 to the community. The completed multidisciplinary assessment  
 1753 process must ~~shall~~ result in the predisposition report.

1754 Section 47. Paragraph (g) of subsection (1) and subsection  
 1755 (5) of section 985.145, Florida Statutes, are amended to read:

1756 985.145 Responsibilities of juvenile probation officer  
 1757 during intake; screenings and assessments.—

1758 (1) The juvenile probation officer shall serve as the  
 1759 primary case manager for the purpose of managing, coordinating,  
 1760 and monitoring the services provided to the child. Each program  
 1761 administrator within the Department of Children and Family  
 1762 Services shall cooperate with the primary case manager in  
 1763 carrying out the duties and responsibilities described in this  
 1764 section. In addition to duties specified in other sections and

1765 through departmental rules, the assigned juvenile probation  
 1766 officer shall be responsible for the following:

1767 (g) *Comprehensive assessment.*—The juvenile probation  
 1768 officer, pursuant to uniform procedures established by the  
 1769 department and upon determining that the report, affidavit, or  
 1770 complaint is complete, shall:

1771 1. Perform the preliminary screening and make referrals  
 1772 for a comprehensive assessment regarding the child's need for  
 1773 substance abuse treatment services, mental health services,  
 1774 intellectual disability ~~retardation~~ services, literacy services,  
 1775 or other educational or treatment services.

1776 2. If ~~When~~ indicated by the preliminary screening, provide  
 1777 for a comprehensive assessment of the child and family for  
 1778 substance abuse problems, using community-based licensed  
 1779 programs with clinical expertise and experience in the  
 1780 assessment of substance abuse problems.

1781 3. If ~~When~~ indicated by the preliminary screening, provide  
 1782 for a comprehensive assessment of the child and family for  
 1783 mental health problems, using community-based psychologists,  
 1784 psychiatrists, or other licensed mental health professionals who  
 1785 have clinical expertise and experience in the assessment of  
 1786 mental health problems.

1787 (5) If the screening and assessment indicate that the  
 1788 interests of the child and the public will be best served  
 1789 ~~thereby~~, the juvenile probation officer, with the approval of  
 1790 the state attorney, may refer the child for care, diagnostic,  
 1791 and evaluation services; substance abuse treatment services;  
 1792 mental health services; intellectual disability ~~retardation~~

1793 services; a diversionary, arbitration, or mediation program;  
 1794 community service work; or other programs or treatment services  
 1795 voluntarily accepted by the child and the child's parents or  
 1796 legal guardian. If ~~Whenever~~ a child volunteers to participate in  
 1797 any work program under this chapter or volunteers to work in a  
 1798 specified state, county, municipal, or community service  
 1799 organization supervised work program or to work for the victim,  
 1800 the child is ~~shall be~~ considered an employee of the state for  
 1801 the purposes of liability. In determining the child's average  
 1802 weekly wage, unless otherwise determined by a specific funding  
 1803 program, all remuneration received from the employer is  
 1804 considered a gratuity, and the child is not entitled to any  
 1805 benefits otherwise payable under s. 440.15, regardless of  
 1806 whether the child may be receiving wages and remuneration from  
 1807 other employment with another employer and regardless of the  
 1808 child's future wage-earning capacity.

1809 Section 48. Subsections (2) and (6) of section 985.18,  
 1810 Florida Statutes, are amended to read:

1811 985.18 Medical, psychiatric, psychological, substance  
 1812 abuse, and educational examination and treatment.-

1813 (2) If ~~Whenever~~ a child has been found to have committed a  
 1814 delinquent act, or before such finding with the consent of any  
 1815 parent or legal custodian of the child, the court may order the  
 1816 child to be treated by a physician. The court may also order the  
 1817 child to receive mental health, substance abuse, or intellectual  
 1818 disability ~~retardation~~ services from a psychiatrist,  
 1819 psychologist, or other appropriate service provider. If it is  
 1820 necessary to place the child in a residential facility for such

HB 1119

2013

1821 services, the procedures and criteria established in chapter  
 1822 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable,  
 1823 must ~~shall~~ be used. After a child has been adjudicated  
 1824 delinquent, if an educational needs assessment by the district  
 1825 school board or the Department of Children and Family Services  
 1826 has been ~~previously~~ conducted, the court shall order the report  
 1827 ~~of such needs assessment~~ included in the child's court record in  
 1828 lieu of a new assessment. For purposes of this section, an  
 1829 educational needs assessment includes, but is not limited to,  
 1830 reports of intelligence and achievement tests, screening for  
 1831 learning and other disabilities ~~and other handicaps~~, and  
 1832 screening for the need for alternative education.

1833 (6) A physician must ~~shall~~ be immediately notified by the  
 1834 person taking the child into custody or the person having  
 1835 custody if there are indications of physical injury or illness,  
 1836 or the child shall be taken to the nearest available hospital  
 1837 for emergency care. A child may be provided mental health,  
 1838 substance abuse, or intellectual disability ~~retardation~~  
 1839 services<sup>7</sup> in emergency situations<sup>7</sup> pursuant to chapter 393,  
 1840 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a  
 1841 hearing, the court may order the custodial parent or parents,  
 1842 guardian, or other custodian, if found able to do so, to  
 1843 reimburse the county or state for the expense involved in such  
 1844 emergency treatment or care.

1845 Section 49. Paragraph (e) of subsection (1), subsections  
 1846 (2) through (4), and paragraph (a) of subsection (6) of section  
 1847 985.19, Florida Statutes, are amended to read:

1848 985.19 Incompetency in juvenile delinquency cases.—

1849 (1) If, at any time prior to or during a delinquency case,  
 1850 the court has reason to believe that the child named in the  
 1851 petition may be incompetent to proceed with the hearing, the  
 1852 court on its own motion may, or on the motion of the child's  
 1853 attorney or state attorney must, stay all proceedings and order  
 1854 an evaluation of the child's mental condition.

1855 (e) For incompetency evaluations related to intellectual  
 1856 disability ~~mental retardation~~ or autism, the court shall order  
 1857 the Agency for Persons with Disabilities to examine the child to  
 1858 determine if the child meets the definition of "intellectual  
 1859 disability" "~~retardation~~" or "autism" in s. 393.063 and, if so,  
 1860 whether the child is competent to proceed with delinquency  
 1861 proceedings.

1862 (2) A child who is adjudicated incompetent to proceed, and  
 1863 who has committed a delinquent act or violation of law, either  
 1864 of which would be a felony if committed by an adult, must be  
 1865 committed to the Department of Children and Family Services for  
 1866 treatment or training. A child who has been adjudicated  
 1867 incompetent to proceed because of age or immaturity, or for any  
 1868 reason other than for mental illness, intellectual disability,  
 1869 ~~or retardation~~ or autism, must not be committed to the  
 1870 department or to the Department of Children and Family Services  
 1871 for restoration-of-competency treatment or training services.  
 1872 For purposes of this section, a child who has committed a  
 1873 delinquent act or violation of law, either of which would be a  
 1874 misdemeanor if committed by an adult, may not be committed to  
 1875 the department or to the Department of Children and Family  
 1876 Services for restoration-of-competency treatment or training

HB 1119

2013

1877 services.

1878 (3) If the court finds that a child has mental illness,  
 1879 intellectual disability ~~mental retardation~~, or autism and  
 1880 adjudicates the child incompetent to proceed, the court must  
 1881 also determine whether the child meets the criteria for secure  
 1882 placement. A child may be placed in a secure facility or program  
 1883 if the court makes a finding by clear and convincing evidence  
 1884 that:

1885 (a) The child has mental illness, intellectual disability  
 1886 ~~mental retardation~~, or autism and because of the mental illness,  
 1887 intellectual disability ~~mental retardation~~, or autism:

1888 1. The child is manifestly incapable of surviving with the  
 1889 help of willing and responsible family or friends, including  
 1890 available alternative services, and without treatment or  
 1891 training the child is likely to ~~either~~ suffer from neglect or  
 1892 refuse to care for self, and such neglect or refusal poses a  
 1893 real and present threat of substantial harm to the child's well-  
 1894 being; or

1895 2. There is a substantial likelihood that in the near  
 1896 future the child will inflict serious bodily harm on self or  
 1897 others, as evidenced by recent behavior causing, attempting, or  
 1898 threatening such harm; and

1899 (b) All available less restrictive alternatives, including  
 1900 treatment or training in community residential facilities or  
 1901 community settings which would offer an opportunity for  
 1902 improvement of the child's condition, are inappropriate.

1903 (4) A child who is determined to have mental illness,  
 1904 intellectual disability ~~mental retardation~~, or autism, who has



1905 | been adjudicated incompetent to proceed, and who meets the  
 1906 | criteria set forth in subsection (3), must be committed to the  
 1907 | Department of Children and Family Services and receive treatment  
 1908 | or training in a secure facility or program that is the least  
 1909 | restrictive alternative consistent with public safety. Any  
 1910 | placement of a child to a secure residential program must be  
 1911 | separate from adult forensic programs. If the child attains  
 1912 | competency, ~~then~~ custody, case management, and supervision of  
 1913 | the child shall ~~will~~ be transferred to the department in order  
 1914 | to continue delinquency proceedings; however, the court retains  
 1915 | authority to order the Department of Children and Family  
 1916 | Services to provide continued treatment or training to maintain  
 1917 | competency.

1918 |         (a) A child adjudicated incompetent due to intellectual  
 1919 | disability ~~mental retardation~~ or autism may be ordered into a  
 1920 | secure program or facility designated by the Department of  
 1921 | Children and Family Services for children who have intellectual  
 1922 | disabilities ~~with mental retardation~~ or autism.

1923 |         (b) A child adjudicated incompetent due to mental illness  
 1924 | may be ordered into a secure program or facility designated by  
 1925 | the Department of Children and Family Services for children  
 1926 | having mental illnesses.

1927 |         (c) If ~~Whenever~~ a child is placed in a secure residential  
 1928 | facility, the department shall ~~will~~ provide transportation to  
 1929 | the secure residential facility for admission and from the  
 1930 | secure residential facility upon discharge.

1931 |         (d) The purpose of the treatment or training is the  
 1932 | restoration of the child's competency to proceed.

1933 (e) The service provider must file a written report with  
 1934 the court pursuant to the applicable Florida Rules of Juvenile  
 1935 Procedure within ~~not later than~~ 6 months after the date of  
 1936 commitment, or at the end of any period of extended treatment or  
 1937 training, and at any time the Department of Children and Family  
 1938 Services, through its service provider, determines the child has  
 1939 attained competency or no longer meets the criteria for secure  
 1940 placement, or at such shorter intervals as ordered by the court.  
 1941 A copy of a written report evaluating the child's competency  
 1942 must be filed by the provider with the court and with the state  
 1943 attorney, the child's attorney, the department, and the  
 1944 Department of Children and Family Services.

1945 (6) (a) If a child is determined to have mental illness,  
 1946 intellectual disability ~~mental retardation~~, or autism and is  
 1947 found to be incompetent to proceed but does not meet the  
 1948 criteria set forth in subsection (3), the court shall commit the  
 1949 child to the Department of Children and Family Services and  
 1950 ~~shall~~ order the Department of Children and Family Services to  
 1951 provide appropriate treatment and training in the community. The  
 1952 purpose of the treatment or training is the restoration of the  
 1953 child's competency to proceed.

1954 Section 50. Section 985.195, Florida Statutes, is amended  
 1955 to read:

1956 985.195 Transfer to other treatment services.—Any child  
 1957 committed to the department may be transferred to intellectual  
 1958 disability ~~retardation~~, mental health, or substance abuse  
 1959 treatment facilities for diagnosis and evaluation pursuant to  
 1960 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~

HB 1119

2013

1961 applicable, for up to a period not to exceed 90 days.

1962 Section 51. Paragraph (b) of subsection (1) of section  
 1963 985.61, Florida Statutes, is amended to read:

1964 985.61 Early delinquency intervention program; criteria.—

1965 (1) The Department of Juvenile Justice shall, contingent  
 1966 upon specific appropriation and with the cooperation of local  
 1967 law enforcement agencies, the judiciary, district school board  
 1968 personnel, the office of the state attorney, the office of the  
 1969 public defender, the Department of Children and Family Services,  
 1970 and community service agencies that work with children,  
 1971 establish an early delinquency intervention program, the  
 1972 components of which shall include, but not be limited to:

1973 (b) Treatment modalities, including substance abuse  
 1974 treatment services, mental health services, and ~~retardation~~  
 1975 services for intellectual disabilities.

1976 Section 52. It is the intent of the Legislature that this  
 1977 act not expand or contract the scope or application of any  
 1978 provision of the Florida Statutes. This act may not be construed  
 1979 to change the application of any provision of Florida Statutes  
 1980 to any person.

1981 Section 53. This act shall take effect July 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB HHSC 13-01 Comprehensive Health Information System  
**SPONSOR(S):** Health & Human Services Committee  
**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee		Entress <i>DE</i>	Calamas <i>CC</i>

### SUMMARY ANALYSIS

The Florida Center for Health Information and Policy Analysis (The Florida Center) is housed within the Agency for Health Care Administration (AHCA) and provides a comprehensive health information system that includes the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of health-related data.

The bill focuses AHCA's role on the collection and dissemination of health-related data by replacing the Florida Center with the Florida Health Information Transparency Initiative (Transparency Initiative). AHCA will no longer collect certain data such as the incidence of disease or mortality; instead the Transparency Initiative will collect data and information on:

- Health resources;
- Utilization of health resources;
- Health care costs and financing;
- The extent, source, and type of public and private health insurance coverage in the state; and
- Data necessary for measuring value and quality of care provided by various health care providers.

Instead of utilizing the data, the Transparency Initiative will make the data available in a manner that allows for and encourages multiple innovative uses. Subject to the General Appropriations Act, AHCA will contract with private-sector vendors to develop new methods of dissemination and to convert the data into easily usable electronic formats.

The bill specifies that AHCA may accept payments and use the funds for undertaking special studies and projects. AHCA must implement the Transparency Initiative in a manner that recognizes state-collected data as an asset and rewards taxpayer investment in information collection and management.

The bill has an insignificant recurring positive fiscal impact on state government.

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Florida Center for Health Information and Policy Analysis

The Florida Center for Health Information and Policy Analysis (the Florida Center) provides a comprehensive health information system (information system) that includes the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of health-related data.<sup>1</sup> The Florida Center is housed within the Agency for Health Care Administration (AHCA)<sup>2</sup> and is funded through appropriations in the General Appropriations Act, through grants, gifts, and other payments, and through fees charged for services.<sup>3</sup> There are five offices within the Florida Center, which serve different functions.<sup>4</sup> The offices are:

- Data Collection and Quality Assurance, which collects patient discharge data from all licensed acute care hospitals (including psychiatric and comprehensive rehabilitation units), comprehensive rehabilitation hospitals, ambulatory surgical centers and emergency departments.<sup>5</sup>
- Risk Management and Patient Safety, which conducts in-depth analyses of reported incidents to determine what happened and how the facility responded to the incident.<sup>6</sup>
- Data Dissemination and Communication, which maintains AHCA's health information website,<sup>7</sup> provides technical assistance to data users, and creates consumer brochures and other publications.<sup>8</sup>
- Health Policy and Research, which conducts research and analysis of health care data from facilities and develops policy recommendations aimed at improving the delivery of health care services in Florida.<sup>9</sup>
- Health Information Exchange, which monitors innovations in health information technology, informatics, and the exchange of health information and provides a clearinghouse of technical resources on health information exchange, electronic prescribing, privacy and security, and other relevant issues.<sup>10</sup>

The Florida Center identifies existing health-related data and collects data for use in the information system. The information collected by the Florida Center must include:

- The extent and nature of illness and disability of the state population, including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality;

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<sup>1</sup> S. 408.05(1), F.S.

<sup>2</sup> S. 408.05(1), F.S.

<sup>3</sup> S. 408.05(7), F.S.

<sup>4</sup> Florida Center for Health Information and Policy Analysis, the Agency for Health Care Administration, *accessible at:* <http://ahca.myflorida.com/SCHS/index.shtml>, last visited on April 3, 2013.

<sup>5</sup> Office of Data Collection & Quality Assurance, the Agency for Health Care Administration, *accessible at:* <http://ahca.myflorida.com/SCHS/division.shtml#DataC>, last visited on April 3, 2013.

<sup>6</sup> Office of Risk Management and Patient Safety, the Agency for Health Care Administration, *accessible at:* <http://ahca.myflorida.com/SCHS/division.shtml#PatientSafety>, last visited on April 3, 2013.

<sup>7</sup> [www.FloridaHealthFinder.gov](http://www.FloridaHealthFinder.gov).

<sup>8</sup> Office of Data Dissemination and Communication, the Agency for Health Care Administration, *accessible at:* <http://ahca.myflorida.com/SCHS/division.shtml#DataD>, last visited on April 3, 2013.

<sup>9</sup> Office of Health Policy and Research, the Agency for Health Care Administration, *accessible at:* [http://ahca.myflorida.com/SCHS/division.shtml#Policy\\_Research](http://ahca.myflorida.com/SCHS/division.shtml#Policy_Research), last visited April 3, 2013.

<sup>10</sup> Office of Health Information Exchange, the Agency for Health Care Administration, *accessible at:* <http://ahca.myflorida.com/SCHS/division.shtml#HIE>, last visited April 3, 2013.

- The impact of illness and disability of the state population on the state economy and on other aspects of the well-being of the people in this state;
- Environmental, social, and other health hazards;
- Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status;
- Health resources, including physicians, dentists, nurses, and other health professionals, by specialty and type of practice and acute, long-term care and other institutional care facility supplies and specific services provided by hospitals, nursing homes, home health agencies, and other health care facilities;
- Utilization of health care by type of provider;
- Health care costs and financing, including trends in health care prices and costs, the sources of payment for health care services, and federal, state, and local expenditures for health care;
- Family formation, growth, and dissolution;
- The extent of public and private health insurance coverage in this state; and
- The quality of care provided by various health care providers.<sup>11</sup>

The Florida Center electronically collects patient data from every Florida licensed inpatient hospital, ambulatory surgery center (ASC), emergency department, and comprehensive rehabilitation hospital on a quarterly basis. The data is validated for accuracy and maintained in three major databases: the hospital inpatient database, the ambulatory surgery database, and the emergency department database.<sup>12</sup>

- **The hospital inpatient database** contains records for each patient stay at Florida acute care facilities, including long-term care hospitals and psychiatric hospitals. These records contain extensive patient information including discharge records, patient demographics, admission information, medical information, and charge data.<sup>13</sup> This database also includes comprehensive inpatient rehabilitation data on patient-level discharge information from Florida's licensed freestanding comprehensive inpatient rehabilitation hospitals and acute care hospital distinct part rehabilitation units.<sup>14</sup>
- **The ambulatory surgery database** contains "same-day surgery" data on reportable patient visits to Florida health care facilities, including freestanding ambulatory surgery centers, short-term acute care hospitals, lithotripsy centers, and cardiac catheterization laboratories.<sup>15</sup> Ambulatory surgery data records include, but are not limited to, patient demographics, medical information, and charge data.<sup>16</sup>
- **The emergency department database** collects reports of all patients who visited an emergency department, but were not admitted for inpatient care. Reports are electronically submitted to the AHCA and include the hour of arrival, the patient's chief complaint, principal diagnosis, race, ethnicity, and external causes of injury.<sup>17</sup>

In addition to these databases, the Office of Risk Management and Patient Safety collects adverse incident reports from health care providers including, hospitals, ambulatory surgical centers, nursing homes, and assisted living facilities.<sup>18</sup>

### Reporting

The Florida Center is required to publish and make available the following reports:

<sup>11</sup> S. 408.05(2), F.S.

<sup>12</sup> Florida Center for Health Information and Policy Analysis, 2011 Annual Report, p. 2, found at: [http://edocs.dlis.state.fl.us/fldocs/ahca/schs/schs\\_ar2011.pdf](http://edocs.dlis.state.fl.us/fldocs/ahca/schs/schs_ar2011.pdf), last visited on Mar. 5, 2013.

<sup>13</sup> *Id.*, p. 3.

<sup>14</sup> *Id.*, p. 4.

<sup>15</sup> *Id.*, p. 3.

<sup>16</sup> *Id.*, p. 4.

<sup>17</sup> *Id.*, p. 5.

<sup>18</sup> *Id.*

- Member satisfaction surveys;
- Publications providing health statistics on topical health policy issues;
- Publications that provide health status profiles of people in Florida;
- Various topical health statistics publications;
- Results of special health surveys, health care research, and health care evaluations required under s. 408.05, F.S.; and
- An annual report on the Florida Center's activities.<sup>19</sup>

The Florida Center must also provide indexing, abstracting, translation, publication and other services leading to a more effective and timely dissemination of health care statistics. The Florida Center is responsible for conducting a variety of special studies and surveys to expand the health care information and statistics available for policy analyses.<sup>20</sup>

### Public Access to Data

The Office of Data Dissemination and Communication, within the Florida Center, makes data collected available to the public in three ways: by updating and maintaining the AHCA's health information website at [www.FloridaHealthFinder.gov](http://www.FloridaHealthFinder.gov), by issuing standard and ad hoc reports, and by responding to requests for de-identified data.<sup>21</sup>

The Florida Center maintains [www.FloridaHealthFinder.gov](http://www.FloridaHealthFinder.gov), which was established to assist consumers in making informed health care decisions and lead to improvements in quality of care in Florida. The website provides a wide array of search and comparative tools to the public which allow easy access to information on hospitals, ambulatory surgery centers, emergency departments, hospice providers, physician volume, health plans, nursing homes, and prices for prescription drugs in Florida. The website also provides tools to researchers and professionals which allow specialized data queries, but requires users to have some knowledge of medical coding and terminology.<sup>22</sup> Some of the features and data available on the website include a multimedia encyclopedia and symptoms navigator, hospital and ambulatory surgery centers performance data, data on mortality, complication, and infection rates for hospitals, and a facility/provider locator.<sup>23</sup>

The Center disseminates three standard reports which detail hospital fiscal data including a prior year report, an audited financial statement, and a hospital financial data report. Also, ad hoc reports may be requested for customers looking for very specific information not included on a standard report or for customers who do not wish to purchase an entire data set to obtain information. One example of an ad hoc report would be a request for the average length of stay of patients admitted to a hospital with diabetes as a principle or secondary diagnosis.<sup>24</sup> The Center charges a set fee for standard reports<sup>25</sup> and a variable fee based on the extensiveness of an ad hoc report.<sup>26</sup>

The Center also sells hospital inpatient, ambulatory surgery, and emergency department data to the general public in a non-confidential format. However, the requester must sign a limited set data use agreement which binds the requester to only using the data in a way specified in the agreement. Information not available in these limited data sets include: patient ID number, medical record number,

<sup>19</sup> S. 408.05(5), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Florida Center for Health Information and Policy Analysis, 2011 Annual Report, p. 6-9, found at: [http://edocs.dlis.state.fl.us/fldocs/ahca/schs/schs\\_ar2011.pdf](http://edocs.dlis.state.fl.us/fldocs/ahca/schs/schs_ar2011.pdf), last visited on Mar. 5, 2013.

<sup>22</sup> *Id.*, p. 9.

<sup>23</sup> *Id.*, p. 9-13.

<sup>24</sup> *Id.*, p.8-9.

<sup>25</sup> The price list for purchasing data from the Center is available at:

<http://floridahealthfinderstore.blob.core.windows.net/documents/researchers/OrderData/documents/PriceList%20Jan%202011.pdf>, last visited on April 4, 2013.

<sup>26</sup> Florida Center for Health Information and Policy Analysis, 2011 Annual Report, p. 7, found at:

[http://edocs.dlis.state.fl.us/fldocs/ahca/schs/schs\\_ar2011.pdf](http://edocs.dlis.state.fl.us/fldocs/ahca/schs/schs_ar2011.pdf), last visited on Mar. 5, 2013.



social security number, dates of admission and discharge, visit beginning and end dates, age in days, payer, date of birth, and procedure dates.<sup>27</sup>

The Florida Center is required to provide technical assistance to persons or organizations engaged in health planning activities in the effective use of statistics collected and compiled by the Florida Center.<sup>28</sup>

### State Center Administration

AHCA is required to complete a number of responsibilities related to the information system, in order to produce comparable and uniform health information and statistics for the development of policy recommendations.<sup>29</sup> These responsibilities are listed in statute and include the following:

- Undertake research, development, and evaluation regarding the information system for the purpose of creating comparable health information.
- Coordinate the activities of state agencies involved in the design and implementation of the information system and review the statistical activities of state agencies to ensure that they are consistent with the information system.
- Develop written agreements with local, state, and federal agencies to share health-care-related data.
- Establish by rule the types of data collected, compiled, processed, used, or shared.
- Establish minimum health-care-related data sets which are necessary on a continuing basis to fulfill the collection requirements of the center and which shall be used by state agencies in collecting and compiling health-care-related data.
- Establish advisory standards to ensure the quality of health statistical and epidemiological data collection, processing, and analysis by local, state, and private organizations.
- Prescribe standards for the publication of health-care-related data, which ensure the reporting of accurate, valid, reliable, complete, and comparable data.
- Prescribe standards for the maintenance and preservation of the Florida Center's data.
- Ensure that strict quality control measures are maintained for the dissemination of data through publications, studies, or user requests.
- Develop and implement a long-range plan for making available health care quality measures and financial data that will allow consumers to compare health care services.
- Administer, manage, and monitor grants to not-for-profit organizations, regional health information organizations, public health departments, or state agencies that submit proposals for planning, implementation, or training projects to advance the development of a health information network.
- Initiate, oversee, manage, and evaluate the integration of healthcare data from each state agency that collects, stores, and reports on health care issues and make the data available to any health care practitioner through a state health information network.<sup>30</sup>

### State Consumer Health Information and Policy Advisory Council

The State Consumer Health Information and Policy Advisory Council (Advisory Council) assists the Florida Center in reviewing the information system. This includes the identification, collection, standardization, sharing and coordination of health-related data, fraud and abuse data, and professional and facility licensing data to recommend improvements for purposes of public health, policy analysis and transparency of consumer health care information.<sup>31</sup> The Advisory Council assists the AHCA in determining the method and format for the public disclosure of data collected by the Florida Center and also works with the Florida Center in the development and implementation of a long-range plan for making available health care quality measures and financial data that will allow

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<sup>27</sup> *Id.*, pp. 7-8.

<sup>28</sup> S. 408.05(4), F.S.

<sup>29</sup> S. 408.05(3), F.S.

<sup>30</sup> S. 408.05(3), F.S., s. 408.05(4), F.S.

<sup>31</sup> S. 408.05(8), F.S.

consumers to compare health care services.<sup>32</sup> The Advisory Council consists of thirteen members, who each serve for two year appointments. The Advisory Council meets at least quarterly and has the following responsibilities:

- Develop a mission statement, goals, and a plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities;
- Develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data; and
- Create ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the Advisory Council.<sup>33</sup>

### **Effect of Proposed Changes**

The bill replaces the Florida Center with the Florida Health Information Transparency Initiative (Transparency Initiative). The bill states that the Transparency Initiative's purpose is to coordinate a comprehensive health information system in order to promote accessibility, transparency, and utility of state-collected data and information about health providers, facilities, services, and payment sources.

The bill requires AHCA to make data available in a manner that allows for and encourages multiple and innovative uses of data sets collected under the state. Subject to the General Appropriations Act, the bill requires AHCA to contract with one or more vendors to develop new methods of dissemination and to convert the data into easily useable electronic formats.

The bill amends the information required to be contained in the information system. The bill requires the information system to include:

- Health resources regarding licensed health professionals, licensed health care facilities, managed care organizations, and other health services regulated or funded by the state. This is required instead of including health resources related to physicians, dentist, nurses and other health professionals in the information system.
- Information regarding the utilization of health resources. This is required instead of including the utilization of health care by type of provider in the information system.
- Medicaid claims and encounter data and data from other public and private payers in the health care costs and financing. This is required instead of including trends in health care prices and costs, sources of payment for health care services, and federal, state, and local expenditures for healthcare in the healthcare costs and financing in the information system.
- The extent, source and type of public and private health insurance coverage in Florida. This is required instead of including only the extent of public and private health insurance coverage in Florida in the information system.
- The data necessary to measure the value and quality of care provided by various health care providers, including applicable credentials, accreditation status, utilization, revenues and expenses, outcomes, site visits, and other regulatory reports, and the results of administrative and civil litigation. This is required instead of including data on the quality of care provided by various health care providers in the information system.

Under the bill, the information system would no longer be required to include data on:

- The extent and nature of illness and disability of the state population, including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality;
- The impact of illness and disability of the state population on the state economy and on other aspects of the well-being of the people in this state;
- Environmental, social, and other health hazards;

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<sup>32</sup> State Consumer Health Information and Policy Advisory Council, *Executive Summary*, found at: <http://ahca.myflorida.com/SCHS/CommitteesCouncils/docs/AC-ExecutiveSummary0113.pdf>, last visited on April 4, 2013.

<sup>33</sup> S. 408.05(8), F.S.

- Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status; and
- Family formation, growth, and dissolution.

The bill also changes AHCA's functions related to the information system. The bill requires AHCA to:

- Collect and compile data from all state agencies and programs involved in providing, regulating, and paying for health services. This is required instead of the current requirement that AHCA coordinate the activities of state agencies involved in the design and implementation of the information system, review the statistical activities of state agencies to ensure that they are consistent with the information system.
- Promote data sharing through the dissemination of state-collected health data by making such data available, transferable, and readily useable. This is required instead of the current requirement that AHCA undertake research, development, and evaluation regarding the information system for the purpose of creating comparable health information.
- Enable and facilitate the sharing and use of all state-collected health data to the maximum extent possible. This is required instead of the current requirement that AHCA establish by rule the types of data collected, compiled, processed, used, or shared.
- Monitor data collection procedures, test data quality, and take corrective actions as necessary to ensure that data and information disseminated under the initiative are accurate, valid, reliable, and complete. This is required instead of the current requirement that AHCA prescribe standards for the publication of health-care-related data, which ensures the reporting of accurate, valid, reliable, complete, and comparable data.
- Initiate and maintain activities necessary to collect, edit, verify, archive, and retrieve data compiled. This is required instead of the current requirement that AHCA prescribe standards for the maintenance and preservation of the Florida Center's data.

The bill deletes a number of functions, which are currently required to be performed by AHCA in relation to the information system. The functions that are deleted by the bill require AHCA to:

- Review the statistical activities of state agencies to ensure that they are consistent with the information system
- Establish minimum health-care-related data sets which are necessary on a continuing basis to fulfill the collection requirements of the center and which shall be used by state agencies in collecting and compiling health-care-related data.
- Establish advisory standards to ensure the quality of health statistical and epidemiological data collection, processing, and analysis by local, state, and private organizations.
- Ensure that strict quality control measures are maintained for the dissemination of data through publications, studies, or user requests
- Develop and implement a long-range plan for making available health care quality measures and financial data that will allow consumers to compare health care services.
- Administer, manage, and monitor grants to not-for-profit organizations, regional health information organizations, public health departments, or state agencies that submit proposals for planning, implementation, or training projects to advance the development of a health information network.
- Initiate, oversee, manage, and evaluate the integration of healthcare data from each state agency that collects, stores, and reports on health care issues and make the data available to any health care practitioner through a state health information network.

The bill removes the requirement that the Florida Center provide technical assistance to persons or organizations engaged in health planning activities in the effective use of statistics collected and compiled by the Florida Center. The bill also removes the requirement that the written agreements (for the sharing of health-care-related data with local, state, and federal agencies) specify the types, methods, and periodicity of data exchanges and specify the types of data to be transferred.

The bill abolishes the Policy Advisory Council, which is tasked with making recommendations to The Florida Center. The bill deletes the requirements that the Florida Center publish and make available data which it collects and analyses. This includes health statistic publications, health surveys, healthcare research, health care evaluations, and the Florida Center's annual report.

The bill directs the AHCA to implement the transparency initiative in a manner that recognizes state-collected data as an asset and rewards taxpayer investment in information collection and management. AHCA must ensure that a vendor who enters into a contract with the state does not inhibit or impede consumer access to state-collected health data and information.

The bill specifies that AHCA may accept payments and use such funds for undertaking special studies and projects. The bill removes the limitation on the use of such funds to offset annual appropriations from the General Revenue Fund.

To implement the bill, AHCA plans to use the state health data directory that is currently displayed on the Florida Health Finder website as a starting point for the development of a strategic plan for the transparency initiative. AHCA anticipates convening a work group of representatives of departments that are currently linked to the health data directory to gain a perspective on the technical IT-related aspects of the existing databases and to create a plan for promoting and prioritizing connectivity. AHCA believes that system changes that will be needed to locate all Florida health related data in a single location will be reviewed, described and prioritized. Issues such as limitations on data sharing due to the presence of personal health information will also be explored and described by AHCA. Other states, researchers and private organizations will be consulted to gain up-to-date knowledge of the type of cloud-based information system anticipated by the bill.<sup>34</sup>

The bill removes references to language made obsolete by the bill in ss. 381.026, 395.301, 465.0244, 627.6499, and 641.54, F.S.

The bill provides an effective date of July 1, 2013.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 408.05, F.S., relating to Florida Center for Health Information and Policy Analysis.
- Section 2:** Amends s. 381.026, F.S., relating to Florida Patient's Bill of Rights and Responsibility.
- Section 3:** Amends s. 395.301, F.S., relating to itemized patient bill.
- Section 4:** Amends s. 465.0244, F.S., relating to information disclosure.
- Section 5:** Amends s. 627.6499, F.S., relating to reporting by insurers and third-party administrators
- Section 6:** Amends s. 641.54, F.S., relating to information disclosure.
- Section 7:** Provides for an effective date of July 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Approximately \$2,000 would be saved annually in travel costs associated with the State Consumer Health Information and Policy Advisory Council.<sup>35</sup>

<sup>34</sup> Agency analysis of SB 1258, Agency for Health Care Administration, April 5, 2013.

<sup>35</sup> *Id.*

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

There is no fiscal impact on state agencies for fiscal year 2013-14. However, as the transparency initiative develops, it is reasonable to expect a future fiscal impact on any state agency that has data that could be made available as envisioned by the legislation.<sup>36</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill repeals law implemented under Rule 59E-8. It does not change the Agency's rule making authority.<sup>37</sup>

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

PCB HHSC 13-01

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to a comprehensive health information  
 3 system; amending s. 408.05, F.S.; renaming the Florida  
 4 Center for Health Information and Policy Analysis as  
 5 the Florida Health Information Transparency  
 6 Initiative; providing a statement of purpose for the  
 7 initiative; providing the duties of the Agency for  
 8 Health Care Administration; revising the data and  
 9 information required to be included in the health  
 10 information system; revising the functions that the  
 11 agency must perform in order to collect and  
 12 disseminate health information and statistics;  
 13 deleting provisions that require the center to provide  
 14 technical assistance to persons and organizations  
 15 engaged in health planning activities; deleting  
 16 provisions that require the center to provide  
 17 widespread dissemination of data; requiring the agency  
 18 to implement the transparency initiative in a manner  
 19 that recognizes state-collected data as an asset and  
 20 rewards taxpayer investment in information collection  
 21 and management; authorizing the agency to apply for,  
 22 receive, and accept grants, gifts, and other payments,  
 23 including property and services, from a governmental  
 24 or other public or private entity or person; requiring  
 25 the agency to ensure that certain vendors do not  
 26 inhibit or impede consumer access to state-collected  
 27 health data and information; abolishing the State  
 28 Consumer Health Information and Policy Advisory

PCB HHSC 13-01

ORIGINAL

YEAR

29 Council; amending ss. 381.026, 395.301, 465.0244,  
 30 627.6499, and 641.54, F.S.; conforming provisions to  
 31 changes made by the act; providing an effective date.

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

36 Section 1. Section 408.05, Florida Statutes, is amended to  
 37 read:

38 408.05 Florida ~~Center for~~ Health Information Transparency  
 39 Initiative and Policy Analysis.—

40 (1) PURPOSE ESTABLISHMENT.—The agency shall coordinate  
 41 ~~establish a Florida Center for Health Information and Policy~~  
 42 ~~Analysis. The center shall establish a comprehensive health~~  
 43 ~~information system to promote accessibility, transparency, and~~  
 44 ~~utility of state-collected data and information about health~~  
 45 ~~providers, facilities, services, and payment sources provide for~~  
 46 ~~the collection, compilation, coordination, analysis, indexing,~~  
 47 ~~dissemination, and utilization of both purposefully collected~~  
 48 ~~and extant health related data and statistics. The agency center~~  
 49 shall be responsible for making data available in a manner that  
 50 allows for and encourages multiple and innovative uses of data  
 51 sets collected under the auspices of the state. Subject to the  
 52 General Appropriations Act, the agency shall contract with one  
 53 or more vendors to develop new methods of dissemination and to  
 54 convert data into easily usable electronic formats ~~staffed with~~  
 55 ~~public health experts, biostatisticians, information system~~  
 56 ~~analysts, health policy experts, economists, and other staff~~

PCB HHSC 13-01

ORIGINAL

YEAR

57 ~~necessary to carry out its functions.~~

58 (2) HEALTH-RELATED DATA.—The comprehensive health  
 59 information system ~~operated by the Florida Center for Health~~  
 60 ~~Information and Policy Analysis shall include the following data~~  
 61 and information ~~identify the best available data sources and~~  
 62 ~~coordinate the compilation of extant health related data and~~  
 63 ~~statistics and purposefully collect data on:~~

64 ~~(a) The extent and nature of illness and disability of the~~  
 65 ~~state population, including life expectancy, the incidence of~~  
 66 ~~various acute and chronic illnesses, and infant and maternal~~  
 67 ~~morbidity and mortality.~~

68 ~~(b) The impact of illness and disability of the state~~  
 69 ~~population on the state economy and on other aspects of the~~  
 70 ~~well being of the people in this state.~~

71 ~~(c) Environmental, social, and other health hazards.~~

72 ~~(d) Health knowledge and practices of the people in this~~  
 73 ~~state and determinants of health and nutritional practices and~~  
 74 ~~status.~~

75 ~~(a)-(e)~~ Health resources, including licensed ~~physicians,~~  
 76 ~~dentists, nurses, and other health professionals, licensed by~~  
 77 ~~specialty and type of practice and acute, long term care and~~  
 78 ~~other institutional care facility supplies and specific services~~  
 79 ~~provided by hospitals, nursing homes, home health agencies, and~~  
 80 ~~other health care facilities, managed care organizations, and~~  
 81 ~~other health services regulated or funded by the state.~~

82 ~~(b)-(f)~~ Utilization of health resources ~~care by type of~~  
 83 ~~provider.~~

84 ~~(c)-(g)~~ Health care costs and financing, including Medicaid



PCB HHSC 13-01

ORIGINAL

YEAR

85 claims and encounter data and data from other public and private  
 86 payors trends in health care prices and costs, the sources of  
 87 payment for health care services, and federal, state, and local  
 88 expenditures for health care.

89 ~~(h) Family formation, growth, and dissolution.~~

90 (d)(i) The extent, source, and type of public and private  
 91 health insurance coverage in this state.

92 (e)(j) The data necessary for measuring value and quality  
 93 of care provided by various health care providers, including  
 94 applicable credentials, accreditation status, utilization,  
 95 revenues and expenses, outcomes, site visits, and other  
 96 regulatory reports, and the results of administrative and civil  
 97 litigation.

98 (3) COORDINATION ~~COMPREHENSIVE HEALTH INFORMATION SYSTEM.~~

99 In order to collect and disseminate comprehensive ~~produce~~  
 100 ~~comparable and uniform~~ health information and statistics for the  
 101 public as well as for development of policy recommendations, the  
 102 agency shall perform the following functions:

103 (a) Collect and compile data from all state agencies and  
 104 programs involved in providing, regulating, and paying for  
 105 health services ~~Coordinate the activities of state agencies~~  
 106 ~~involved in the design and implementation of the comprehensive~~  
 107 ~~health information system.~~

108 (b) Promote data sharing through the ~~Undertake research,~~  
 109 development, dissemination, and evaluation of state-collected  
 110 health data and by making such data available, transferable, and  
 111 readily useable ~~respecting the comprehensive health information~~  
 112 ~~system.~~

PCB HHSC 13-01

ORIGINAL

YEAR

113 ~~(c) Review the statistical activities of state agencies to~~  
 114 ~~ensure that they are consistent with the comprehensive health~~  
 115 ~~information system.~~

116 (c)~~(d)~~ Develop written agreements with local, state, and  
 117 federal agencies for the sharing of health-care-related data or  
 118 using the facilities and services of such agencies. State  
 119 agencies, local health councils, and other agencies under state  
 120 contract shall assist the agency center in obtaining, compiling,  
 121 and transferring health-care-related data maintained by state  
 122 and local agencies. ~~Written agreements must specify the types,~~  
 123 ~~methods, and periodicity of data exchanges and specify the types~~  
 124 ~~of data that will be transferred to the center.~~

125 (d)~~(e)~~ Enable and facilitate the sharing and use of all  
 126 state-collected health data to the maximum extent allowed by law  
 127 ~~Establish by rule the types of data collected, compiled,~~  
 128 ~~processed, used, or shared. Decisions regarding center data sets~~  
 129 ~~should be made based on consultation with the State Consumer~~  
 130 ~~Health Information and Policy Advisory Council and other public~~  
 131 ~~and private users regarding the types of data which should be~~  
 132 ~~collected and their uses. The center shall establish~~  
 133 ~~standardized means for collecting health information and~~  
 134 ~~statistics under laws and rules administered by the agency.~~

135 ~~(f) Establish minimum health care related data sets which~~  
 136 ~~are necessary on a continuing basis to fulfill the collection~~  
 137 ~~requirements of the center and which shall be used by state~~  
 138 ~~agencies in collecting and compiling health care related data.~~  
 139 ~~The agency shall periodically review ongoing health care data~~  
 140 ~~collections of the Department of Health and other state agencies~~

PCB HHSC 13-01

ORIGINAL

YEAR

141 ~~to determine if the collections are being conducted in~~  
 142 ~~accordance with the established minimum sets of data.~~

143 ~~(g) Establish advisory standards to ensure the quality of~~  
 144 ~~health statistical and epidemiological data collection,~~  
 145 ~~processing, and analysis by local, state, and private~~  
 146 ~~organizations.~~

147 ~~(e)-(h) Monitor data collection procedures, test data~~  
 148 ~~quality, and take such corrective actions as may be necessary to~~  
 149 ~~ensure that data and information disseminated under the~~  
 150 ~~initiative are accurate, valid, reliable, and complete Prescribe~~  
 151 ~~standards for the publication of health care related data~~  
 152 ~~reported pursuant to this section which ensure the reporting of~~  
 153 ~~accurate, valid, reliable, complete, and comparable data. Such~~  
 154 ~~standards should include advisory warnings to users of the data~~  
 155 ~~regarding the status and quality of any data reported by or~~  
 156 ~~available from the center.~~

157 ~~(f)-(i) Initiate and maintain activities necessary to~~  
 158 ~~collect, edit, verify, archive, and retrieve Prescribe standards~~  
 159 ~~for the maintenance and preservation of the center's data. This~~  
 160 ~~should include methods for archiving data, retrieval of archived~~  
 161 ~~data, and data compiled pursuant to this section editing and~~  
 162 ~~verification.~~

163 ~~(j) Ensure that strict quality control measures are~~  
 164 ~~maintained for the dissemination of data through publications,~~  
 165 ~~studies, or user requests.~~

166 ~~(k) Develop, in conjunction with the State Consumer Health~~  
 167 ~~Information and Policy Advisory Council, and implement a long-~~  
 168 ~~range plan for making available health care quality measures and~~

PCB HHSC 13-01

ORIGINAL

YEAR

169 ~~financial data that will allow consumers to compare health care~~  
 170 ~~services. The health care quality measures and financial data~~  
 171 ~~the agency must make available shall include, but is not limited~~  
 172 ~~to, pharmaceuticals, physicians, health care facilities, and~~  
 173 ~~health plans and managed care entities. The agency shall update~~  
 174 ~~the plan and report on the status of its implementation~~  
 175 ~~annually. The agency shall also make the plan and status report~~  
 176 ~~available to the public on its Internet website. As part of the~~  
 177 ~~plan, the agency shall identify the process and timeframes for~~  
 178 ~~implementation, any barriers to implementation, and~~  
 179 ~~recommendations of changes in the law that may be enacted by the~~  
 180 ~~Legislature to eliminate the barriers. As preliminary elements~~  
 181 ~~of the plan, the agency shall:~~

182       ~~1. Make available patient safety indicators, inpatient~~  
 183 ~~quality indicators, and performance outcome and patient charge~~  
 184 ~~data collected from health care facilities pursuant to s.~~  
 185 ~~408.061(1)(a) and (2). The terms "patient safety indicators" and~~  
 186 ~~"inpatient quality indicators" shall be as defined by the~~  
 187 ~~Centers for Medicare and Medicaid Services, the National Quality~~  
 188 ~~Forum, the Joint Commission on Accreditation of Healthcare~~  
 189 ~~Organizations, the Agency for Healthcare Research and Quality,~~  
 190 ~~the Centers for Disease Control and Prevention, or a similar~~  
 191 ~~national entity that establishes standards to measure the~~  
 192 ~~performance of health care providers, or by other states. The~~  
 193 ~~agency shall determine which conditions, procedures, health care~~  
 194 ~~quality measures, and patient charge data to disclose based upon~~  
 195 ~~input from the council. When determining which conditions and~~  
 196 ~~procedures are to be disclosed, the council and the agency shall~~

PCB HHSC 13-01

ORIGINAL

YEAR

197 ~~consider variation in costs, variation in outcomes, and~~  
 198 ~~magnitude of variations and other relevant information. When~~  
 199 ~~determining which health care quality measures to disclose, the~~  
 200 ~~agency:~~

201       ~~a. Shall consider such factors as volume of cases; average~~  
 202 ~~patient charges; average length of stay; complication rates;~~  
 203 ~~mortality rates; and infection rates, among others, which shall~~  
 204 ~~be adjusted for case mix and severity, if applicable.~~

205       ~~b. May consider such additional measures that are adopted~~  
 206 ~~by the Centers for Medicare and Medicaid Studies, National~~  
 207 ~~Quality Forum, the Joint Commission on Accreditation of~~  
 208 ~~Healthcare Organizations, the Agency for Healthcare Research and~~  
 209 ~~Quality, Centers for Disease Control and Prevention, or a~~  
 210 ~~similar national entity that establishes standards to measure~~  
 211 ~~the performance of health care providers, or by other states.~~

212  
 213 ~~When determining which patient charge data to disclose, the~~  
 214 ~~agency shall include such measures as the average of~~  
 215 ~~undiscounted charges on frequently performed procedures and~~  
 216 ~~preventive diagnostic procedures, the range of procedure charges~~  
 217 ~~from highest to lowest, average net revenue per adjusted patient~~  
 218 ~~day, average cost per adjusted patient day, and average cost per~~  
 219 ~~admission, among others.~~

220       ~~2. Make available performance measures, benefit design,~~  
 221 ~~and premium cost data from health plans licensed pursuant to~~  
 222 ~~chapter 627 or chapter 641. The agency shall determine which~~  
 223 ~~health care quality measures and member and subscriber cost data~~  
 224 ~~to disclose, based upon input from the council. When determining~~

PCB HHSC 13-01

ORIGINAL

YEAR

225 ~~which data to disclose, the agency shall consider information~~  
 226 ~~that may be required by either individual or group purchasers to~~  
 227 ~~assess the value of the product, which may include membership~~  
 228 ~~satisfaction, quality of care, current enrollment or membership,~~  
 229 ~~coverage areas, accreditation status, premium costs, plan costs,~~  
 230 ~~premium increases, range of benefits, copayments and~~  
 231 ~~deductibles, accuracy and speed of claims payment, credentials~~  
 232 ~~of physicians, number of providers, names of network providers,~~  
 233 ~~and hospitals in the network. Health plans shall make available~~  
 234 ~~to the agency any such data or information that is not currently~~  
 235 ~~reported to the agency or the office.~~

236 ~~3. Determine the method and format for public disclosure~~  
 237 ~~of data reported pursuant to this paragraph. The agency shall~~  
 238 ~~make its determination based upon input from the State Consumer~~  
 239 ~~Health Information and Policy Advisory Council. At a minimum,~~  
 240 ~~the data shall be made available on the agency's Internet~~  
 241 ~~website in a manner that allows consumers to conduct an~~  
 242 ~~interactive search that allows them to view and compare the~~  
 243 ~~information for specific providers. The website must include~~  
 244 ~~such additional information as is determined necessary to ensure~~  
 245 ~~that the website enhances informed decisionmaking among~~  
 246 ~~consumers and health care purchasers, which shall include, at a~~  
 247 ~~minimum, appropriate guidance on how to use the data and an~~  
 248 ~~explanation of why the data may vary from provider to provider.~~

249 ~~4. Publish on its website undiscounted charges for no~~  
 250 ~~fewer than 150 of the most commonly performed adult and~~  
 251 ~~pediatric procedures, including outpatient, inpatient,~~  
 252 ~~diagnostic, and preventative procedures.~~

PCB HHSC 13-01

ORIGINAL

YEAR

253 |       ~~(4) TECHNICAL ASSISTANCE.~~

254 |       ~~(a) The center shall provide technical assistance to~~

255 | ~~persons or organizations engaged in health planning activities~~

256 | ~~in the effective use of statistics collected and compiled by the~~

257 | ~~center. The center shall also provide the following additional~~

258 | ~~technical assistance services:~~

259 |       ~~1. Establish procedures identifying the circumstances~~

260 | ~~under which, the places at which, the persons from whom, and the~~

261 | ~~methods by which a person may secure data from the center,~~

262 | ~~including procedures governing requests, the ordering of~~

263 | ~~requests, timeframes for handling requests, and other procedures~~

264 | ~~necessary to facilitate the use of the center's data. To the~~

265 | ~~extent possible, the center should provide current data timely~~

266 | ~~in response to requests from public or private agencies.~~

267 |       ~~2. Provide assistance to data sources and users in the~~

268 | ~~areas of database design, survey design, sampling procedures,~~

269 | ~~statistical interpretation, and data access to promote improved~~

270 | ~~health care related data sets.~~

271 |       ~~3. Identify health care data gaps and provide technical~~

272 | ~~assistance to other public or private organizations for meeting~~

273 | ~~documented health care data needs.~~

274 |       ~~4. Assist other organizations in developing statistical~~

275 | ~~abstracts of their data sets that could be used by the center.~~

276 |       ~~5. Provide statistical support to state agencies with~~

277 | ~~regard to the use of databases maintained by the center.~~

278 |       ~~6. To the extent possible, respond to multiple requests~~

279 | ~~for information not currently collected by the center or~~

280 | ~~available from other sources by initiating data collection.~~

PCB HHSC 13-01

ORIGINAL

YEAR

281 | ~~7. Maintain detailed information on data maintained by~~  
 282 | ~~other local, state, federal, and private agencies in order to~~  
 283 | ~~advise those who use the center of potential sources of data~~  
 284 | ~~which are requested but which are not available from the center.~~

285 | ~~8. Respond to requests for data which are not available in~~  
 286 | ~~published form by initiating special computer runs on data sets~~  
 287 | ~~available to the center.~~

288 | ~~9. Monitor innovations in health information technology,~~  
 289 | ~~informatics, and the exchange of health information and maintain~~  
 290 | ~~a repository of technical resources to support the development~~  
 291 | ~~of a health information network.~~

292 | ~~(b) The agency shall administer, manage, and monitor~~  
 293 | ~~grants to not for profit organizations, regional health~~  
 294 | ~~information organizations, public health departments, or state~~  
 295 | ~~agencies that submit proposals for planning, implementation, or~~  
 296 | ~~training projects to advance the development of a health~~  
 297 | ~~information network. Any grant contract shall be evaluated to~~  
 298 | ~~ensure the effective outcome of the health information project.~~

299 | ~~(c) The agency shall initiate, oversee, manage, and~~  
 300 | ~~evaluate the integration of health care data from each state~~  
 301 | ~~agency that collects, stores, and reports on health care issues~~  
 302 | ~~and make that data available to any health care practitioner~~  
 303 | ~~through a state health information network.~~

304 | ~~(5) PUBLICATIONS; REPORTS; SPECIAL STUDIES. The center~~  
 305 | ~~shall provide for the widespread dissemination of data which it~~  
 306 | ~~collects and analyzes. The center shall have the following~~  
 307 | ~~publication, reporting, and special study functions:~~

308 | ~~(a) The center shall publish and make available~~



PCB HHSC 13-01

ORIGINAL

YEAR

309 ~~periodically to agencies and individuals health statistics~~  
 310 ~~publications of general interest, including health plan consumer~~  
 311 ~~reports and health maintenance organization member satisfaction~~  
 312 ~~surveys; publications providing health statistics on topical~~  
 313 ~~health policy issues; publications that provide health status~~  
 314 ~~profiles of the people in this state; and other topical health~~  
 315 ~~statistics publications.~~

316 ~~(b) The center shall publish, make available, and~~  
 317 ~~disseminate, promptly and as widely as practicable, the results~~  
 318 ~~of special health surveys, health care research, and health care~~  
 319 ~~evaluations conducted or supported under this section. Any~~  
 320 ~~publication by the center must include a statement of the~~  
 321 ~~limitations on the quality, accuracy, and completeness of the~~  
 322 ~~data.~~

323 ~~(c) The center shall provide indexing, abstracting,~~  
 324 ~~translation, publication, and other services leading to a more~~  
 325 ~~effective and timely dissemination of health care statistics.~~

326 ~~(d) The center shall be responsible for publishing and~~  
 327 ~~disseminating an annual report on the center's activities.~~

328 ~~(e) The center shall be responsible, to the extent~~  
 329 ~~resources are available, for conducting a variety of special~~  
 330 ~~studies and surveys to expand the health care information and~~  
 331 ~~statistics available for health policy analyses, particularly~~  
 332 ~~for the review of public policy issues. The center shall develop~~  
 333 ~~a process by which users of the center's data are periodically~~  
 334 ~~surveyed regarding critical data needs and the results of the~~  
 335 ~~survey considered in determining which special surveys or~~  
 336 ~~studies will be conducted. The center shall select problems in~~

PCB HHSC 13-01

ORIGINAL

YEAR

337 ~~health care for research, policy analyses, or special data~~  
 338 ~~collections on the basis of their local, regional, or state~~  
 339 ~~importance; the unique potential for definitive research on the~~  
 340 ~~problem; and opportunities for application of the study~~  
 341 ~~findings.~~

342 (4)(6) PROVIDER DATA REPORTING.—This section does not  
 343 confer on the agency the power to demand or require that a  
 344 health care provider or professional furnish information,  
 345 records of interviews, written reports, statements, notes,  
 346 memoranda, or data other than as expressly required by law.

347 (5)(7) HEALTH INFORMATION ENTERPRISE BUDGET; FEES.—

348 (a) The agency shall implement the transparency initiative  
 349 in a manner that recognizes state-collected data as an asset and  
 350 rewards taxpayer investment in information collection and  
 351 management ~~Legislature intends that funding for the Florida~~  
 352 ~~Center for Health Information and Policy Analysis be~~  
 353 ~~appropriated from the General Revenue Fund.~~

354 (b) The agency ~~Florida Center for Health Information and~~  
 355 ~~Policy Analysis~~ may apply for, and receive, and accept grants,  
 356 gifts, and other payments, including property and services, from  
 357 a any governmental or other public or private entity or person  
 358 and make arrangements for as to the use of such funds ~~same,~~  
 359 including the undertaking of special studies and other projects  
 360 relating to health-care-related topics. ~~Funds obtained pursuant~~  
 361 ~~to this paragraph may not be used to offset annual~~  
 362 ~~appropriations from the General Revenue Fund.~~

363 (c) The agency shall ensure that a vendor who enters into  
 364 a contract with the state under this section does not inhibit or

PCB HHSC 13-01

ORIGINAL

YEAR

365 impede consumer access to state-collected health data and  
 366 information center may charge such reasonable fees for services  
 367 ~~as the agency prescribes by rule. The established fees may not~~  
 368 ~~exceed the reasonable cost for such services. Fees collected may~~  
 369 ~~not be used to offset annual appropriations from the General~~  
 370 ~~Revenue Fund.~~

371 ~~(8) STATE CONSUMER HEALTH INFORMATION AND POLICY ADVISORY~~  
 372 ~~COUNCIL.~~

373 ~~(a) There is established in the agency the State Consumer~~  
 374 ~~Health Information and Policy Advisory Council to assist the~~  
 375 ~~center in reviewing the comprehensive health information system,~~  
 376 ~~including the identification, collection, standardization,~~  
 377 ~~sharing, and coordination of health related data, fraud and~~  
 378 ~~abuse data, and professional and facility licensing data among~~  
 379 ~~federal, state, local, and private entities and to recommend~~  
 380 ~~improvements for purposes of public health, policy analysis, and~~  
 381 ~~transparency of consumer health care information. The council~~  
 382 ~~shall consist of the following members:~~

383 ~~1. An employee of the Executive Office of the Governor, to~~  
 384 ~~be appointed by the Governor.~~

385 ~~2. An employee of the Office of Insurance Regulation, to~~  
 386 ~~be appointed by the director of the office.~~

387 ~~3. An employee of the Department of Education, to be~~  
 388 ~~appointed by the Commissioner of Education.~~

389 ~~4. Ten persons, to be appointed by the Secretary of Health~~  
 390 ~~Care Administration, representing other state and local~~  
 391 ~~agencies, state universities, business and health coalitions,~~  
 392 ~~local health councils, professional health care related~~

PCB HHSC 13-01

ORIGINAL

YEAR

393 ~~associations, consumers, and purchasers.~~

394 ~~(b) Each member of the council shall be appointed to serve~~  
 395 ~~for a term of 2 years following the date of appointment, except~~  
 396 ~~the term of appointment shall end 3 years following the date of~~  
 397 ~~appointment for members appointed in 2003, 2004, and 2005. A~~  
 398 ~~vacancy shall be filled by appointment for the remainder of the~~  
 399 ~~term, and each appointing authority retains the right to~~  
 400 ~~reappoint members whose terms of appointment have expired.~~

401 ~~(c) The council may meet at the call of its chair, at the~~  
 402 ~~request of the agency, or at the request of a majority of its~~  
 403 ~~membership, but the council must meet at least quarterly.~~

404 ~~(d) Members shall elect a chair and vice chair annually.~~

405 ~~(e) A majority of the members constitutes a quorum, and~~  
 406 ~~the affirmative vote of a majority of a quorum is necessary to~~  
 407 ~~take action.~~

408 ~~(f) The council shall maintain minutes of each meeting and~~  
 409 ~~shall make such minutes available to any person.~~

410 ~~(g) Members of the council shall serve without~~  
 411 ~~compensation but shall be entitled to receive reimbursement for~~  
 412 ~~per diem and travel expenses as provided in s. 112.061.~~

413 ~~(h) The council's duties and responsibilities include, but~~  
 414 ~~are not limited to, the following:~~

415 ~~1. To develop a mission statement, goals, and a plan of~~  
 416 ~~action for the identification, collection, standardization,~~  
 417 ~~sharing, and coordination of health related data across federal,~~  
 418 ~~state, and local government and private sector entities.~~

419 ~~2. To develop a review process to ensure cooperative~~  
 420 ~~planning among agencies that collect or maintain health related~~

PCB HHSC 13-01

ORIGINAL

YEAR

421 ~~data.~~

422 ~~3. To create ad hoc issue oriented technical workgroups on~~  
 423 ~~an as needed basis to make recommendations to the council.~~

424 ~~(9) APPLICATION TO OTHER AGENCIES. Nothing in this section~~  
 425 ~~shall limit, restrict, affect, or control the collection,~~  
 426 ~~analysis, release, or publication of data by any state agency~~  
 427 ~~pursuant to its statutory authority, duties, or~~  
 428 ~~responsibilities.~~

429 Section 2. Paragraph (c) of subsection (4) of section  
 430 381.026, Florida Statutes, is amended to read:

431 381.026 Florida Patient's Bill of Rights and  
 432 Responsibilities.-

433 (4) RIGHTS OF PATIENTS.-Each health care facility or  
 434 provider shall observe the following standards:

435 (c) *Financial information and disclosure.*-

436 1. A patient has the right to be given, upon request, by  
 437 the responsible provider, his or her designee, or a  
 438 representative of the health care facility full information and  
 439 necessary counseling on the availability of known financial  
 440 resources for the patient's health care.

441 2. A health care provider or a health care facility shall,  
 442 upon request, disclose to each patient who is eligible for  
 443 Medicare, before treatment, whether the health care provider or  
 444 the health care facility in which the patient is receiving  
 445 medical services accepts assignment under Medicare reimbursement  
 446 as payment in full for medical services and treatment rendered  
 447 in the health care provider's office or health care facility.

448 3. A primary care provider may publish a schedule of

PCB HHSC 13-01

ORIGINAL

YEAR

449 charges for the medical services that the provider offers to  
 450 patients. The schedule must include the prices charged to an  
 451 uninsured person paying for such services by cash, check, credit  
 452 card, or debit card. The schedule must be posted in a  
 453 conspicuous place in the reception area of the provider's office  
 454 and must include, but is not limited to, the 50 services most  
 455 frequently provided by the primary care provider. The schedule  
 456 may group services by three price levels, listing services in  
 457 each price level. The posting must be at least 15 square feet in  
 458 size. A primary care provider who publishes and maintains a  
 459 schedule of charges for medical services is exempt from the  
 460 license fee requirements for a single period of renewal of a  
 461 professional license under chapter 456 for that licensure term  
 462 and is exempt from the continuing education requirements of  
 463 chapter 456 and the rules implementing those requirements for a  
 464 single 2-year period.

465 4. If a primary care provider publishes a schedule of  
 466 charges pursuant to subparagraph 3., he or she must continually  
 467 post it at all times for the duration of active licensure in  
 468 this state when primary care services are provided to patients.  
 469 If a primary care provider fails to post the schedule of charges  
 470 in accordance with this subparagraph, the provider must ~~shall be~~  
 471 ~~required to~~ pay any license fee and comply with ~~any~~ continuing  
 472 education requirements for which an exemption was received.

473 5. A health care provider or a health care facility shall,  
 474 upon request, furnish a person, before the provision of medical  
 475 services, a reasonable estimate of charges for such services.  
 476 The health care provider or the health care facility shall

PCB HHSC 13-01

ORIGINAL

YEAR

477 provide an uninsured person, before the provision of a planned  
 478 nonemergency medical service, a reasonable estimate of charges  
 479 for such service and information regarding the provider's or  
 480 facility's discount or charity policies for which the uninsured  
 481 person may be eligible. Such estimates by a primary care  
 482 provider must be consistent with the schedule posted under  
 483 subparagraph 3. To the extent possible, estimates shall, ~~to the~~  
 484 ~~extent possible,~~ be written in language comprehensible to an  
 485 ordinary layperson. Such reasonable estimate does not preclude  
 486 the health care provider or health care facility from exceeding  
 487 the estimate or making additional charges based on changes in  
 488 the patient's condition or treatment needs.

489 6. Each licensed facility not operated by the state shall  
 490 make available to the public on its Internet website or by other  
 491 electronic means a description of and a link to the performance  
 492 outcome and financial data that is published by the agency  
 493 ~~pursuant to s. 408.05(3)(k)~~. The facility shall place a notice  
 494 in the reception area that such information is available  
 495 electronically and the website address. The licensed facility  
 496 may indicate that the pricing information is based on a  
 497 compilation of charges for the average patient and that each  
 498 patient's bill may vary from the average depending upon the  
 499 severity of illness and individual resources consumed. The  
 500 licensed facility may also indicate that the price of service is  
 501 negotiable for eligible patients based upon the patient's  
 502 ability to pay.

503 7. A patient has the right to receive a copy of an  
 504 itemized bill upon request. A patient has a right to be given an

PCB HHSC 13-01

ORIGINAL

YEAR

505 explanation of charges upon request.

506 Section 3. Subsection (11) of section 395.301, Florida  
507 Statutes, is amended to read:

508 395.301 Itemized patient bill; form and content prescribed  
509 by the agency.—

510 (11) Each licensed facility shall make available on its  
511 Internet website a link to the performance outcome and financial  
512 data that is published by the Agency for Health Care  
513 Administration ~~pursuant to s. 408.05(3)(k)~~. The facility shall  
514 place a notice in the reception area that the information is  
515 available electronically and the facility's Internet website  
516 address.

517 Section 4. Section 465.0244, Florida Statutes, is amended  
518 to read:

519 465.0244 Information disclosure.—Every pharmacy shall make  
520 available on its Internet website a link to the performance  
521 outcome and financial data that is published by the Agency for  
522 Health Care Administration ~~pursuant to s. 408.05(3)(k)~~ and shall  
523 place in the area where customers receive filled prescriptions  
524 notice that such information is available electronically and the  
525 address of its Internet website.

526 Section 5. Subsection (2) of section 627.6499, Florida  
527 Statutes, is amended to read:

528 627.6499 Reporting by insurers and third-party  
529 administrators.—

530 (2) Each health insurance issuer shall make available on  
531 its Internet website a link to the performance outcome and  
532 financial data that is published by the Agency for Health Care



PCB HHSC 13-01

ORIGINAL

YEAR

533 Administration ~~pursuant to s. 408.05(3)(k)~~ and shall include in  
 534 every policy delivered or issued for delivery to any person in  
 535 the state or ~~any~~ materials provided as required by s. 627.64725  
 536 notice that such information is available electronically and the  
 537 address of its Internet website.

538 Section 6. Subsection (7) of section 641.54, Florida  
 539 Statutes, is amended to read:

540 641.54 Information disclosure.—

541 (7) Each health maintenance organization shall make  
 542 available on its Internet website a link to the performance  
 543 outcome and financial data that is published by the Agency for  
 544 Health Care Administration ~~pursuant to s. 408.05(3)(k)~~ and shall  
 545 include in every policy delivered or issued for delivery to any  
 546 person in the state or ~~any~~ materials provided as required by s.  
 547 627.64725 notice that such information is available  
 548 electronically and the address of its Internet website.

549 Section 7. This act shall take effect July 1, 2013.

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