

By Senator Negrón

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1                                   A bill to be entitled  
2       An act relating to the Agency for Persons with  
3       Disabilities; amending s. 393.062, F.S.; providing  
4       additional legislative findings relating to the  
5       provision of services for individuals who have  
6       developmental disabilities; reordering and amending s.  
7       393.063, F.S.; revising definitions and providing new  
8       definitions for "adult day services," "nonwaiver  
9       resources," and "waiver"; amending s. 393.065, F.S.;  
10      clarifying provisions relating to eligibility  
11      requirements based on citizenship and state residency;  
12      amending s. 393.066, F.S.; revising provisions  
13      relating to community services and treatment;  
14      requiring the agency to promote partnerships and  
15      collaborative efforts to enhance the availability of  
16      nonwaiver services; deleting an express list of  
17      services; deleting a requirement that the agency  
18      promote day habilitation services for certain clients;  
19      amending s. 393.0661, F.S.; revising provisions  
20      relating to eligibility under the Medicaid waiver  
21      redesign; providing that final tier eligibility be  
22      determined at the time a waiver slot and funding are  
23      available; providing criteria for moving a client  
24      between tiers; deleting a cap on tier one expenditures  
25      for certain clients; authorizing the agency and the  
26      Agency for Health Care Administration to adopt rules;  
27      deleting certain directions relating to the adjustment  
28      of a client's cost plan; providing criteria for  
29      reviewing Medicaid waiver provider agreements for

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30 support coordinator services; providing that a client  
31 may not apply for additional funding if waiver  
32 expenditures are expected to exceed the amount  
33 appropriated unless the client is in crisis; deleting  
34 obsolete provisions; amending s. 393.0662, F.S.;  
35 providing criteria for calculating a client's initial  
36 iBudget; deleting obsolete provisions; amending s.  
37 393.067, F.S.; providing that facilities that are  
38 accredited by certain organizations must be inspected  
39 and reviewed by the agency every 2 years; providing  
40 agency criteria for monitoring licensees; amending s.  
41 393.068, F.S.; conforming a cross-reference; amending  
42 s. 393.11, F.S.; clarifying eligibility for  
43 involuntary admission to residential services;  
44 amending s. 393.125, F.S.; requiring the Department of  
45 Children and Family Services to submit its hearing  
46 recommendations to the agency; amending s. 393.23,  
47 F.S.; providing that receipts from the operation of  
48 canteens, vending machines, and other activities may  
49 be used to pay client wages at sheltered workshops;  
50 amending s. 409.906, F.S.; providing limitations on  
51 the amount of cost sharing which may be required of  
52 parents for home and community-based services provided  
53 to their minor children; authorizing the adoption of  
54 rules relating to cost sharing; amending s. 514.072,  
55 F.S.; conforming a cross-reference; deleting an  
56 obsolete provision; providing an effective date.

57  
58 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 393.062, Florida Statutes, is amended to read:

393.062 Legislative findings and declaration of intent.—

(1) The Legislature finds ~~and declares~~ that existing state programs for the treatment of individuals with developmental disabilities, which often unnecessarily place clients in institutions, are unreasonably costly, are ineffective in bringing the ~~individual~~ client to his or her maximum potential, and are in fact debilitating to many clients. A redirection in state treatment programs ~~for individuals with developmental disabilities~~ is therefore necessary if any significant amelioration of the problems faced by such individuals is ~~ever~~ to take place. Such redirection should place primary emphasis on programs that prevent or reduce the severity of developmental disabilities. Further, ~~the greatest~~ priority should ~~shall~~ be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, ~~enable them~~ to live in their own homes or in residences located in their own communities, and to permit them to be diverted or removed from unnecessary institutional placements. This goal cannot be met without ensuring the availability of community residential opportunities in the residential areas of this state. The Legislature, therefore, declares that individuals ~~all persons~~ with developmental disabilities who live in licensed community homes ~~shall~~ have a family living environment comparable to that of other state residents ~~Floridians~~ and that such homes must ~~residences shall~~

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88 be considered and treated as a functional equivalent of a family  
89 unit and not as an institution, business, or boarding home. The  
90 Legislature further declares that, ~~in developing community-based~~  
91 ~~programs and services for individuals with developmental~~  
92 ~~disabilities,~~ private businesses, not-for-profit corporations,  
93 units of local government, and other organizations capable of  
94 providing needed services to clients in a cost-efficient manner  
95 ~~shall~~ be given preference in lieu of operation of programs  
96 directly by state agencies. Finally, it is the intent of the  
97 Legislature that ~~all~~ caretakers who are unrelated to individuals  
98 with developmental disabilities receiving care ~~shall~~ be of good  
99 moral character.

100 (2) The Legislature finds that in order to maximize the  
101 delivery of services to individuals in the community who have  
102 developmental disabilities and remain within appropriated funds,  
103 service delivery must blend natural supports, community  
104 resources, and state funds. The Legislature also finds that,  
105 given the traditional role of state government to ensure the  
106 health, safety, and welfare of state residents, state funds,  
107 including waiver funds, appropriated to the agency must be  
108 reserved and prioritized for those services needed to ensure the  
109 health and safety of individuals with disabilities, and that  
110 supplemental programs and other services be supported through  
111 natural supports and community resources. To achieve this goal,  
112 the Legislature intends that the agency implement policies and  
113 procedures that establish the Medicaid waiver as the payor of  
114 last resort for home and community-based programs and services,  
115 and promote partnerships with community resources, including,  
116 but not limited to, families, volunteers, nonprofit agencies,

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117 foundations, places of worship, schools, community organizations  
118 and clubs, businesses, local governments, and federal and state  
119 agencies to provide supplemental programs and services. Further,  
120 it is the intent of the Legislature that the agency develop  
121 sound fiscal strategies that allow the agency to predict,  
122 control, manage, and operate within available funding as  
123 provided in the General Appropriations Act in order to ensure  
124 that state funds are available for health and safety needs and  
125 to maximize the number of clients served. It is further the  
126 intent of the Legislature that the agency provide services for  
127 clients residing in developmental disability centers which  
128 promote the individual's life, health, and safety and enhance  
129 their quality of life. Finally, it is the intent of the  
130 Legislature that the agency continue the tradition of involving  
131 families, stakeholders, and other interested parties as it  
132 recasts its role to become a collaborative partner in the larger  
133 context of family and community-supported services while  
134 developing new opportunities and supports for individuals with  
135 developmental disabilities.

136 Section 2. Section 393.063, Florida Statutes, is reordered  
137 and amended to read:

138 393.063 Definitions.—As used in ~~For the purposes of~~ this  
139 chapter, the term:

140 (1) "Agency" means the Agency for Persons with  
141 Disabilities.

142 (2) "Adult day services" means services that are provided  
143 in a nonresidential setting, separate from the home or facility  
144 in which the client resides; that are intended to support the  
145 participation of clients in daily, meaningful, and valued

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146 routines of the community; and that may provide social  
147 activities.

148 (3)-(2) "Adult day training" means training services that  
149 are provided ~~which take place~~ in a nonresidential setting,  
150 separate from the home or facility in which the client resides,  
151 ~~are intended to support the participation of clients in daily,~~  
152 ~~meaningful, and valued routines of the community; and may~~  
153 ~~include work-like settings that do not meet the definition of~~  
154 ~~supported employment.~~

155 (4)-(3) "Autism" means a pervasive, neurologically based  
156 developmental disability of extended duration which causes  
157 severe learning, communication, and behavior disorders and which  
158 has an ~~with~~ age of onset during infancy or childhood.  
159 Individuals who have ~~with~~ autism exhibit impairment in  
160 reciprocal social interaction, impairment in verbal and  
161 nonverbal communication and imaginative ability, and a markedly  
162 restricted repertoire of activities and interests.

163 (5)-(4) "Cerebral palsy" means a group of disabling symptoms  
164 of extended duration which results from damage to the developing  
165 brain which ~~that~~ may occur before, during, or after birth and  
166 which ~~that~~ results in the loss or impairment of control over  
167 voluntary muscles. The term ~~For the purposes of this definition,~~  
168 ~~cerebral palsy~~ does not include those symptoms or impairments  
169 resulting solely from a stroke.

170 (6)-(5) "Client" means an individual ~~any person~~ determined  
171 eligible by the agency for services under this chapter.

172 (7)-(6) "Client advocate" means a friend or relative of the  
173 client, or of the client's immediate family, who advocates for  
174 the best interests of the client in any proceedings under this

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175 chapter in which the client or his or her family has the right  
176 or duty to participate.

177 ~~(8)-(7)~~ "Comprehensive assessment" means the process used to  
178 determine eligibility for services under this chapter.

179 ~~(9)-(8)~~ "Comprehensive transitional education program" means  
180 the program established under ~~in~~ s. 393.18.

181 ~~(11)-(9)~~ "Developmental disability" means a disorder or  
182 syndrome that is attributable to retardation, cerebral palsy,  
183 autism, spina bifida, Down syndrome, or Prader-Willi syndrome;  
184 that manifests before the age of 18; and that constitutes a  
185 substantial handicap that can reasonably be expected to continue  
186 indefinitely.

187 (10) "Developmental disabilities center" means a state-  
188 owned and state-operated facility, formerly known as a "Sunland  
189 Center," providing for the care, habilitation, and  
190 rehabilitation of clients who have ~~with~~ developmental  
191 disabilities.

192 ~~(12)-(11)~~ "Direct service provider" means a person, 18 years  
193 of age or older, who has direct face-to-face contact with a  
194 client while providing services to that ~~the~~ client or who has  
195 access to a client's living areas or to a client's funds or  
196 personal property.

197 ~~(12) "Domicile" means the place where a client legally~~  
198 ~~resides, which place is his or her permanent home. Domicile may~~  
199 ~~be established as provided in s. 222.17. Domicile may not be~~  
200 ~~established in Florida by a minor who has no parent domiciled in~~  
201 ~~Florida, or by a minor who has no legal guardian domiciled in~~  
202 ~~Florida, or by any alien not classified as a resident alien.~~

203 (13) "Down syndrome" means a disorder caused by the

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204 presence of an extra copy of chromosome 21.

205 (14) "Express and informed consent" means consent  
206 voluntarily given in writing with sufficient knowledge and  
207 comprehension of the subject matter to enable the person giving  
208 consent to make a knowing decision without any element of force,  
209 fraud, deceit, duress, or other form of constraint or coercion.

210 (15) "Family care program" means the program established  
211 under ~~in~~ s. 393.068.

212 (16) "Foster care facility" means a residential facility  
213 licensed under this chapter which provides a family living  
214 environment and includes ~~including~~ supervision and care  
215 necessary to meet the physical, emotional, and social needs of  
216 its residents. The capacity of such a facility may not be more  
217 than three residents.

218 (17) "Group home facility" means a residential facility  
219 licensed under this chapter which provides a family living  
220 environment and includes ~~including~~ supervision and care  
221 necessary to meet the physical, emotional, and social needs of  
222 its residents. The capacity of such a facility must ~~shall~~ be at  
223 least four ~~4~~ but not more than 15 residents.

224 (18) "Guardian advocate" means a person appointed by a  
225 written order of the court to represent an individual who has a  
226 ~~person with~~ developmental disabilities under s. 393.12.

227 (19) "Habilitation" means the process by which a client is  
228 assisted to acquire and maintain those life skills that ~~which~~  
229 enable the client to cope more effectively with the demands of  
230 his or her condition and environment and to raise the level of  
231 his or her physical, mental, and social efficiency. It includes,  
232 but is not limited to, programs of formal structured education



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233 and treatment.

234 (20) "High-risk child" means, for the purposes of this  
235 chapter, a child from 3 to 5 years of age who has ~~with~~ one or  
236 more of the following characteristics:

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

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

242 (c) A child who has ~~with~~ a parent or guardian who has ~~with~~  
243 developmental disabilities and ~~who~~ requires assistance in  
244 meeting the child's developmental needs.

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

247 (21) "Intermediate care facility for the developmentally  
248 disabled" or "ICF/DD" means a residential facility licensed and  
249 certified under ~~pursuant to~~ part VIII of chapter 400.

250 (22) "Medical/dental services" means medically necessary  
251 services that ~~which~~ are provided or ordered for a client by a  
252 person licensed under chapter 458, chapter 459, or chapter 466.  
253 Such services may include, but are not limited to, prescription  
254 drugs, specialized therapies, nursing supervision,  
255 hospitalization, dietary services, prosthetic devices, surgery,  
256 specialized equipment and supplies, adaptive equipment, and  
257 other services as required to prevent or alleviate a medical or  
258 dental condition.

259 (23) "Nonwaiver resources" means supports or services  
260 obtainable through private insurance, the Medicaid state plan,  
261 nonprofit organizations, charitable donations from private

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262 businesses, other government programs, family, natural supports,  
263 community resources, and any other source other than a waiver.

264 (24)~~(23)~~ "Personal care services" means individual  
265 assistance with or supervision of essential activities of daily  
266 living for self-care, including ambulation, bathing, dressing,  
267 eating, grooming, and toileting, and other similar services that  
268 are incidental to the care furnished and are essential, and that  
269 are provided in the amount, duration, frequency, intensity, and  
270 scope determined by the agency to be necessary for the client's  
271 health and safety ~~to the health, safety, and welfare of the~~  
272 ~~client~~ when there is no one else available or able to perform  
273 those services.

274 (25)~~(24)~~ "Prader-Willi syndrome" means an inherited  
275 condition typified by neonatal hypotonia with failure to thrive,  
276 hyperphagia or an excessive drive to eat which leads to obesity  
277 usually at 18 to 36 months of age, mild to moderate mental  
278 retardation, hypogonadism, short stature, mild facial  
279 dysmorphism, and ~~a~~ characteristic neurobehavior.

280 (26)~~(25)~~ "Relative" means an individual who is connected by  
281 affinity or consanguinity to the client and who is 18 years of  
282 age or older.

283 (27)~~(26)~~ "Resident" means an individual who has ~~any person~~  
284 ~~with~~ developmental disabilities and who resides ~~residing~~ at a  
285 residential facility, whether or not such person is a client of  
286 the agency.

287 (28)~~(27)~~ "Residential facility" means a facility providing  
288 room and board and personal care for an individual who has  
289 ~~persons with~~ developmental disabilities.

290 (29)~~(28)~~ "Residential habilitation" means supervision and

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291 training in ~~with~~ the acquisition, retention, or improvement in  
292 skills related to activities of daily living, such as personal  
293 hygiene skills, homemaking skills, and the social and adaptive  
294 skills necessary to enable the individual to reside in the  
295 community.

296 (30)~~(29)~~ "Residential habilitation center" means a  
297 community residential facility licensed under this chapter which  
298 provides habilitation services. The capacity of such a facility  
299 may ~~shall~~ not be fewer than nine residents. After October 1,  
300 1989, new residential habilitation centers may not be licensed  
301 and the licensed capacity for any existing residential  
302 habilitation center may not be increased.

303 (31)~~(30)~~ "Respite service" means appropriate, short-term,  
304 temporary care that is provided to an individual who has a  
305 ~~person with~~ developmental disabilities in order to meet the  
306 planned or emergency needs of the individual ~~person~~ or the  
307 family or other direct service provider.

308 (32)~~(31)~~ "Restraint" means a physical device, method, or  
309 drug used to control dangerous behavior.

310 (a) A physical restraint is any manual method or physical  
311 or mechanical device, material, or equipment attached or  
312 adjacent to the individual's body so that he or she cannot  
313 easily remove the restraint and which restricts freedom of  
314 movement or normal access to one's body.

315 (b) A drug used as a restraint is a medication used to  
316 control the person's behavior or to restrict his or her freedom  
317 of movement and is not a standard treatment for the person's  
318 medical or psychiatric condition. Physically holding a person  
319 during a procedure to forcibly administer psychotropic

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320 medication is a physical restraint.

321 (c) Restraint does not include physical devices, such as  
322 orthopedically prescribed appliances, surgical dressings and  
323 bandages, supportive body bands, or other physical holding when  
324 necessary for routine physical examinations and tests; for  
325 purposes of orthopedic, surgical, or other similar medical  
326 treatment; when used to provide support for the achievement of  
327 functional body position or proper balance; or when used to  
328 protect a person from falling out of bed.

329 (33)~~(32)~~ "Retardation" means significantly subaverage  
330 general intellectual functioning existing concurrently with  
331 deficits in adaptive behavior which manifest ~~that manifests~~  
332 before the age of 18 and can reasonably be expected to continue  
333 indefinitely. For the purposes of this definition, the term:

334 (a) "Significantly subaverage general intellectual  
335 functioning," ~~for the purpose of this definition,~~ means  
336 performance that ~~which~~ is two or more standard deviations from  
337 the mean score on a standardized intelligence test specified in  
338 the rules of the agency.

339 (b) "Adaptive behavior," ~~for the purpose of this~~  
340 ~~definition,~~ means the effectiveness or degree with which an  
341 individual meets the standards of personal independence and  
342 social responsibility expected of his or her age, cultural  
343 group, and community.

344 (34)~~(33)~~ "Seclusion" means the involuntary isolation of a  
345 person in a room or area from which the person is prevented from  
346 leaving. The prevention may be by physical barrier or by a staff  
347 member who is acting in a manner, or who is physically situated,  
348 so as to prevent the person from leaving the room or area. For

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349 the purposes of this chapter, the term does not mean isolation  
350 due to the medical condition or symptoms of the person.

351 (35)~~(34)~~ "Self-determination" means an individual's freedom  
352 to exercise the same rights as all other citizens, authority to  
353 exercise control over funds needed for one's own support,  
354 including prioritizing those ~~these~~ funds when necessary,  
355 responsibility for the wise use of public funds, and self-  
356 advocacy to speak and advocate for oneself in order to gain  
357 independence and ensure that individuals who have ~~with~~ a  
358 developmental disability are treated equally.

359 (36)~~(35)~~ "Specialized therapies" means those treatments or  
360 activities prescribed by and provided by an appropriately  
361 trained, licensed, or certified professional or staff person and  
362 may include, but are not limited to, physical therapy, speech  
363 therapy, respiratory therapy, occupational therapy, behavior  
364 therapy, physical management services, and related specialized  
365 equipment and supplies.

366 (37)~~(36)~~ "Spina bifida" means, ~~for purposes of this~~  
367 ~~chapter,~~ a person with a medical diagnosis of spina bifida  
368 cystica or myelomeningocele.

369 (38)~~(37)~~ "Support coordinator" means a person who is  
370 contracting with ~~designated by~~ the agency to assist clients  
371 ~~individuals~~ and families in identifying their capacities, needs,  
372 and resources, as well as finding and gaining access to  
373 necessary supports and services; locating or developing  
374 employment opportunities; coordinating the delivery of supports  
375 and services; advocating on behalf of the client ~~individual~~ and  
376 family; maintaining relevant records; and monitoring and  
377 evaluating the delivery of supports and services to determine

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378 the extent to which they meet the needs ~~and expectations~~  
379 identified by the client individual, family, and others who  
380 participated in the development of the support plan.

381 ~~(39)-(38)~~ "Supported employment" means employment located or  
382 provided in an integrated work setting, with earnings paid on a  
383 commensurate wage basis, and for which continued support is  
384 needed for job maintenance.

385 ~~(40)-(39)~~ "Supported living" means a category of  
386 individually determined services designed and coordinated in  
387 ~~such~~ a manner that provides ~~as to provide~~ assistance to adult  
388 clients who require ongoing supports to live as independently as  
389 possible in their own homes, to be integrated into the  
390 community, and to participate in community life to the fullest  
391 extent possible.

392 ~~(41)-(40)~~ "Training" means a planned approach to assisting a  
393 client to attain or maintain his or her maximum potential and  
394 includes services ranging from sensory stimulation to  
395 instruction in skills for independent living and employment.

396 ~~(42)-(41)~~ "Treatment" means the prevention, amelioration, or  
397 cure of a client's physical and mental disabilities or  
398 illnesses.

399 (43) "Waiver" means a federally approved Medicaid waiver  
400 program, including, but not limited to, the Developmental  
401 Disabilities Home and Community-Based Services Waivers Tiers 1-  
402 4, the Developmental Disabilities Individual Budget Waiver, and  
403 the Consumer-Directed Care Plus Program, authorized pursuant to  
404 s. 409.906 and administered by the agency to provide home and  
405 community-based services to clients.

406 Section 3. Subsections (1) and (6) of section 393.065,

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407 Florida Statutes, are amended to read:

408 393.065 Application and eligibility determination.—

409 (1) Application for services shall be made, in writing, to  
410 the agency, ~~in~~ in the service area in which the applicant resides.  
411 The agency shall review each applicant for eligibility within 45  
412 days after the date the application is signed for children under  
413 6 years of age and within 60 days after the date the application  
414 is signed for all other applicants. ~~If when~~ When necessary to  
415 definitively identify individual conditions or needs, the agency  
416 shall provide a comprehensive assessment. Eligibility is limited  
417 to United States citizens and to qualified noncitizens who meet  
418 the criteria provided in s. 414.095(3), and who have established  
419 domicile in Florida pursuant to s. 222.17 or are otherwise  
420 determined to be legal residents of this state. Only applicants  
421 ~~whose domicile is in Florida are eligible for services.~~  
422 Information accumulated by other agencies, including  
423 professional reports and collateral data, shall be considered if  
424 ~~in this process when~~ available.

425 (6) The client, the client's guardian, or the client's  
426 family must ensure that accurate, up-to-date contact information  
427 is provided to the agency at all times. The agency shall remove  
428 from the wait list an any individual who cannot be located using  
429 the contact information provided to the agency, fails to meet  
430 eligibility requirements, or no longer qualifies as a legal  
431 resident of this state ~~becomes domiciled outside the state.~~

432 Section 4. Section 393.066, Florida Statutes, is amended to  
433 read:

434 393.066 Community services and treatment.—

435 (1) The agency shall plan, develop, organize, and implement

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436 its programs of services and treatment for individuals who have  
437 ~~persons with~~ developmental disabilities in order to assist them  
438 in living allow clients to live as independently as possible in  
439 their own homes or communities and avoid institutionalization  
440 ~~and to achieve productive lives as close to normal as possible.~~  
441 ~~All elements of community-based services shall be made~~  
442 ~~available, and eligibility for these services shall be~~  
443 ~~consistent across the state.~~

444 (2) ~~All~~ Services that are not available through nonwaiver  
445 resources or not donated needed shall be purchased instead of  
446 provided directly by the agency ~~if, when~~ such arrangement is  
447 more cost-efficient than having those services provided  
448 directly. All purchased services must be approved by the agency.  
449 Authorization for such services is dependent on the availability  
450 of agency funding.

451 (3) Community-based services ~~that are medically~~ necessary  
452 to prevent client institutionalization must be provided in the  
453 most cost-effective manner to the extent of the availability of  
454 agency resources as specified in the General Appropriations Act  
455 ~~shall, to the extent of available resources, include:~~

- 456 ~~(a) Adult day training services.~~  
457 ~~(b) Family care services.~~  
458 ~~(c) Guardian advocate referral services.~~  
459 ~~(d) Medical/dental services, except that medical services~~  
460 ~~shall not be provided to clients with spina bifida except as~~  
461 ~~specifically appropriated by the Legislature.~~  
462 ~~(e) Parent training.~~  
463 ~~(f) Personal care services.~~  
464 ~~(g) Recreation.~~



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465       ~~(h) Residential facility services.~~  
466       ~~(i) Respite services.~~  
467       ~~(j) Social services.~~  
468       ~~(k) Specialized therapies.~~  
469       ~~(l) Supported employment.~~  
470       ~~(m) Supported living.~~  
471       ~~(n) Training, including behavioral analysis services.~~  
472       ~~(o) Transportation.~~  
473       ~~(p) Other habilitative and rehabilitative services as~~  
474 needed.

475       (4) The agency or the agency's agents shall identify and  
476 engage in efforts to develop, increase, or enhance the  
477 availability of nonwaiver resources to individuals who have  
478 developmental disabilities. The agency shall promote  
479 partnerships and collaborative efforts with families and  
480 organizations, such as nonprofit agencies, foundations, places  
481 of worship, schools, community organizations and clubs,  
482 businesses, local governments, and state and federal agencies.  
483 The agency shall implement policies and procedures that  
484 establish waivers as the payor of last resort for home and  
485 community-based services and supports ~~shall utilize the services~~  
486 ~~of private businesses, not-for-profit organizations, and units~~  
487 ~~of local government whenever such services are more cost-~~  
488 ~~efficient than such services provided directly by the~~  
489 ~~department, including arrangements for provision of residential~~  
490 ~~facilities.~~

491       ~~(5) In order to improve the potential for utilization of~~  
492 ~~more cost-effective, community-based residential facilities, the~~  
493 ~~agency shall promote the statewide development of day~~

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494 ~~habilitation services for clients who live with a direct service~~  
495 ~~provider in a community-based residential facility and who do~~  
496 ~~not require 24-hour-a-day care in a hospital or other health~~  
497 ~~care institution, but who may, in the absence of day~~  
498 ~~habilitation services, require admission to a developmental~~  
499 ~~disabilities center. Each day service facility shall provide a~~  
500 ~~protective physical environment for clients, ensure that direct~~  
501 ~~service providers meet minimum screening standards as required~~  
502 ~~in s. 393.0655, make available to all day habilitation service~~  
503 ~~participants at least one meal on each day of operation, provide~~  
504 ~~facilities to enable participants to obtain needed rest while~~  
505 ~~attending the program, as appropriate, and provide social and~~  
506 ~~educational activities designed to stimulate interest and~~  
507 ~~provide socialization skills.~~

508 (5)~~(6)~~ To promote independence and productivity, the agency  
509 shall provide supports and services, within available resources,  
510 to assist clients enrolled in Medicaid waivers who choose to  
511 pursue gainful employment.

512 (6)~~(7)~~ For the purpose of making needed community-based  
513 residential facilities available at the least possible cost to  
514 the state, the agency may ~~is authorized to~~ lease privately owned  
515 residential facilities under long-term rental agreements, if  
516 such ~~rental~~ agreements are projected to be less costly to the  
517 state over the useful life of the facility than state purchase  
518 or state construction of ~~such~~ a facility.

519 (7)~~(8)~~ The agency may adopt rules providing definitions,  
520 eligibility criteria, and procedures for the purchase of  
521 services provided pursuant to this section.

522 Section 5. Section 393.0661, Florida Statutes, is amended

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523 to read:

524 393.0661 Home and community-based services delivery system;  
525 comprehensive redesign.—The Legislature finds that the home and  
526 community-based services delivery system for individuals who  
527 have ~~persons with~~ developmental disabilities and the  
528 availability of appropriated funds are two of the critical  
529 elements in making services available. ~~Therefore, it is the~~  
530 ~~intent of the Legislature that the Agency for Persons with~~  
531 ~~Disabilities shall develop and implement a comprehensive~~  
532 ~~redesign of the system.~~

533 (1) The ~~redesign of the~~ home and community-based services  
534 system must ~~shall~~ include, at a minimum, ~~all actions necessary~~  
535 ~~to achieve~~ an appropriate rate structure, client choice within a  
536 specified service package, appropriate assessment strategies, an  
537 efficient billing process that contains reconciliation and  
538 monitoring components, and a ~~redefined~~ role for support  
539 coordinators which that avoids conflicts of interest and ensures  
540 that the client's needs for critical services are addressed  
541 ~~potential conflicts of interest and ensures that family/client~~  
542 ~~budgets are linked to levels of need.~~

543 (a) The agency shall use the Questionnaire for Situational  
544 Information, or other ~~an~~ assessment instruments ~~deemed by~~  
545 ~~instrument that~~ the agency ~~deems~~ to be reliable and valid,  
546 ~~including, but not limited to, the Department of Children and~~  
547 ~~Family Services' Individual Cost Guidelines or the agency's~~  
548 ~~Questionnaire for Situational Information.~~ The agency may  
549 contract with an external vendor ~~or may use support coordinators~~  
550 to complete client assessments if it develops sufficient  
551 safeguards and training to ensure ongoing inter-rater

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552 reliability.

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

556 (2) A provider of services rendered to clients ~~persons with~~  
557 ~~developmental disabilities~~ pursuant to a ~~federally approved~~  
558 waiver shall be reimbursed in accordance with rates adopted  
559 ~~according to a rate methodology based upon an analysis of the~~  
560 ~~expenditure history and prospective costs of providers~~  
561 ~~participating in the waiver program, or under any other~~  
562 ~~methodology developed by the Agency for Health Care~~  
563 ~~Administration, in consultation with the agency for Persons with~~  
564 ~~Disabilities, and approved by the Federal Government in~~  
565 accordance with the waiver.

566 (3) The Agency for Health Care Administration, in  
567 consultation with the agency, shall seek federal approval and  
568 implement a four-tiered waiver system to serve eligible clients  
569 ~~through the developmental disabilities and family and supported~~  
570 ~~living waivers~~. For the purpose of the ~~this~~ waiver program,  
571 eligible clients ~~shall~~ include individuals who have ~~with a~~  
572 ~~diagnosis of Down syndrome or~~ a developmental disability ~~as~~  
573 ~~defined in s. 393.063~~. The agency shall assign all clients  
574 receiving services through the ~~developmental disabilities~~ waiver  
575 to a tier based on the ~~Department of Children and Family~~  
576 ~~Services' Individual Cost Guidelines, the agency's Questionnaire~~  
577 ~~for Situational Information, or another such assessment~~  
578 ~~instrument deemed to be~~ valid and reliable by the agency; client  
579 characteristics, including, but not limited to, age; and other  
580 appropriate assessment methods. Final determination of tier

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581 eligibility may not be made until a waiver slot and funding  
582 become available and only then may the client be enrolled in the  
583 appropriate tier. If a client is later determined eligible for a  
584 higher tier, assignment to the higher tier must be based on  
585 crisis criteria as adopted by rule. The agency may also later  
586 move a client to a lower tier if the client's service needs  
587 change and can be met by services provided in a lower tier. The  
588 agency may not authorize the provision of services that are  
589 duplicated by, or above the coverage limits of, the Medicaid  
590 state plan.

591 (a) Tier one is limited to clients who have intensive  
592 medical or adaptive service needs that cannot be met in tier  
593 ~~two, three, or four for intensive medical or adaptive needs and~~  
594 ~~that are essential for avoiding institutionalization, or who~~  
595 possess behavioral problems that are exceptional in intensity,  
596 duration, or frequency and present a substantial risk of harm to  
597 themselves or others. ~~Total annual expenditures under tier one~~  
598 ~~may not exceed \$150,000 per client each year, provided that~~  
599 ~~expenditures for clients in tier one with a documented medical~~  
600 ~~necessity requiring intensive behavioral residential~~  
601 ~~habilitation services, intensive behavioral residential~~  
602 ~~habilitation services with medical needs, or special medical~~  
603 ~~home care, as provided in the Developmental Disabilities Waiver~~  
604 ~~Services Coverage and Limitations Handbook, are not subject to~~  
605 ~~the \$150,000 limit on annual expenditures.~~

606 (b) Tier two is limited to clients whose service needs  
607 include a licensed residential facility and who are authorized  
608 to receive a moderate level of support for standard residential  
609 habilitation services or a minimal level of support for behavior

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610 focus residential habilitation services, or clients in supported  
611 living who receive more than 6 hours a day of in-home support  
612 services. Tier two also includes clients whose need for  
613 authorized services meets the criteria for tier one but which  
614 can be met within the expenditure limit of tier two. Total  
615 annual expenditures under tier two may not exceed \$53,625 per  
616 client each year.

617 (c) Tier three includes, but is not limited to, clients  
618 requiring residential placements, clients in independent or  
619 supported living situations, and clients who live in their  
620 family home. Tier three also includes clients whose need for  
621 authorized services meet the criteria for tiers one or two but  
622 which can be met within the expenditure limit of tier three.  
623 Total annual expenditures under tier three may not exceed  
624 \$34,125 per client each year.

625 (d) Tier four includes clients ~~individuals~~ who were  
626 enrolled in the family and supported living waiver on July 1,  
627 2007, who were ~~shall be~~ assigned to this tier without the  
628 assessments required by this section. Tier four also includes,  
629 but is not limited to, clients in independent or supported  
630 living situations and clients who live in their family home.  
631 Total annual expenditures under tier four may not exceed \$14,422  
632 per client each year.

633 (e) The Agency for Health Care Administration shall also  
634 seek federal approval to provide a consumer-directed option for  
635 clients ~~persons with developmental disabilities which~~  
636 ~~corresponds to the funding levels in each of the waiver tiers.~~  
637 ~~The agency shall implement the four-tiered waiver system~~  
638 ~~beginning with tiers one, three, and four and followed by tier~~

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639 ~~two. The agency and the Agency for Health Care Administration~~  
640 ~~may adopt rules necessary to administer this subsection.~~

641 (f) The agency shall seek federal waivers and amend  
642 contracts as necessary to make changes to services defined in  
643 ~~federal~~ waiver programs administered by the agency as follows:

644 1. Supported living coaching services may not exceed 20  
645 hours per month for clients ~~persons~~ who also receive in-home  
646 support services.

647 2. Limited support coordination services is the only type  
648 of support coordination service that may be provided to clients  
649 ~~persons~~ under the age of 18 who live in the family home.

650 3. Personal care assistance services are limited to 180  
651 hours per calendar month and may not include rate modifiers.  
652 Additional hours may be authorized for clients ~~persons~~ who have  
653 intensive physical, medical, or adaptive needs if such hours are  
654 essential for avoiding institutionalization.

655 4. Residential habilitation services are limited to 8 hours  
656 per day. Additional hours may be authorized for clients ~~persons~~  
657 who have intensive medical or adaptive needs and if such hours  
658 are essential for avoiding institutionalization, or for clients  
659 ~~persons~~ who possess behavioral problems that are exceptional in  
660 intensity, duration, or frequency and present a substantial risk  
661 of harming themselves or others. This restriction shall be in  
662 effect until the four-tiered waiver system is fully implemented.

663 ~~5. Chore services, nonresidential support services, and~~  
664 ~~homemaker services are eliminated. The agency shall expand the~~  
665 ~~definition of in-home support services to allow the service~~  
666 ~~provider to include activities previously provided in these~~  
667 ~~eliminated services.~~

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668 ~~6. Massage therapy, medication review, and psychological~~  
669 ~~assessment services are eliminated.~~

670 5.7. The agency shall conduct supplemental cost plan  
671 reviews to verify the medical necessity of authorized services  
672 for plans that have increased by more than 8 percent during  
673 either of the 2 preceding fiscal years.

674 ~~6.8.~~ The agency shall implement a consolidated residential  
675 habilitation rate structure to increase savings to the state  
676 through a more cost-effective payment method and establish  
677 uniform rates for intensive behavioral residential habilitation  
678 services.

679 ~~9. Pending federal approval, the agency may extend current~~  
680 ~~support plans for clients receiving services under Medicaid~~  
681 ~~waivers for 1 year beginning July 1, 2007, or from the date~~  
682 ~~approved, whichever is later. Clients who have a substantial~~  
683 ~~change in circumstances which threatens their health and safety~~  
684 ~~may be reassessed during this year in order to determine the~~  
685 ~~necessity for a change in their support plan.~~

686 7.10. The agency shall develop a plan to eliminate  
687 redundancies and duplications between in-home support services,  
688 companion services, personal care services, and supported living  
689 coaching by limiting or consolidating such services.

690 ~~8.11.~~ The agency shall develop a plan to reduce the  
691 intensity and frequency of supported employment services to  
692 clients in stable employment situations who have a documented  
693 history of at least 3 years' employment with the same company or  
694 in the same industry.

695 (g) The agency and the Agency for Health Care  
696 Administration may adopt rules as necessary to administer this



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697 subsection.

698 (4) The geographic differential for Miami-Dade, Broward,  
699 and Palm Beach Counties for residential habilitation services is  
700 ~~shall be~~ 7.5 percent.

701 (5) The geographic differential for Monroe County for  
702 residential habilitation services is ~~shall be~~ 20 percent.

703 ~~(6) Effective January 1, 2010, and except as otherwise~~  
704 ~~provided in this section, a client served by the home and~~  
705 ~~community-based services waiver or the family and supported~~  
706 ~~living waiver funded through the agency shall have his or her~~  
707 ~~cost plan adjusted to reflect the amount of expenditures for the~~  
708 ~~previous state fiscal year plus 5 percent if such amount is less~~  
709 ~~than the client's existing cost plan. The agency shall use~~  
710 ~~actual paid claims for services provided during the previous~~  
711 ~~fiscal year that are submitted by October 31 to calculate the~~  
712 ~~revised cost plan amount. If the client was not served for the~~  
713 ~~entire previous state fiscal year or there was any single change~~  
714 ~~in the cost plan amount of more than 5 percent during the~~  
715 ~~previous state fiscal year, the agency shall set the cost plan~~  
716 ~~amount at an estimated annualized expenditure amount plus 5~~  
717 ~~percent. The agency shall estimate the annualized expenditure~~  
718 ~~amount by calculating the average of monthly expenditures,~~  
719 ~~beginning in the fourth month after the client enrolled,~~  
720 ~~interrupted services are resumed, or the cost plan was changed~~  
721 ~~by more than 5 percent and ending on August 31, 2009, and~~  
722 ~~multiplying the average by 12. In order to determine whether a~~  
723 ~~client was not served for the entire year, the agency shall~~  
724 ~~include any interruption of a waiver-funded service or services~~  
725 ~~lasting at least 18 days. If at least 3 months of actual~~

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726 ~~expenditure data are not available to estimate annualized~~  
727 ~~expenditures, the agency may not rebase a cost plan pursuant to~~  
728 ~~this subsection. The agency may not rebase the cost plan of any~~  
729 ~~client who experiences a significant change in recipient~~  
730 ~~condition or circumstance which results in a change of more than~~  
731 ~~5 percent to his or her cost plan between July 1 and the date~~  
732 ~~that a rebased cost plan would take effect pursuant to this~~  
733 ~~subsection.~~

734 (6) ~~(7)~~ The agency shall collect premiums, fees, or other  
735 cost sharing from the parents of children being served by the  
736 agency through a waiver pursuant to s. 409.906(13) (d).

737 (7) In determining whether to continue a Medicaid waiver  
738 provider agreement for support coordinator services, the agency  
739 shall review waiver support coordination performance to ensure  
740 that the support coordinator meets or exceeds the criteria  
741 established by the agency. The support coordinator is  
742 responsible for assisting the client in meeting his or her  
743 service needs through nonwaiver resources, as well as through  
744 the client's budget allocation or cost plan under the waiver.  
745 The waiver is the funding source of last resort for client  
746 services. The waiver support coordinator provider agreements and  
747 performance reviews shall be conducted and managed by the  
748 agency's area offices.

749 (a) Criteria for evaluating support coordinator performance  
750 must include, but is not limited to:

- 751 1. The protection of the health and safety of clients.
- 752 2. Assisting clients to obtain employment and pursue other  
753 meaningful activities.
- 754 3. Assisting clients to access services that allow them to

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755 live in their community.

756 4. The use of family resources.

757 5. The use of private resources.

758 6. The use of community resources.

759 7. The use of charitable resources.

760 8. The use of volunteer resources.

761 9. The use of services from other governmental entities.

762 10. The overall outcome in securing nonwaiver resources.

763 11. The cost-effective use of waiver resources.

764 12. Coordinating all available resources to ensure that  
765 clients' outcomes are met.

766 (b) The agency may recognize consistently superior  
767 performance by exempting a waiver support coordinator from  
768 annual quality assurance reviews or other mechanisms established  
769 by the agency. The agency may issue sanctions for poor  
770 performance, including, but not limited to, a reduction in  
771 caseload size, recoupment or other financial penalties, and  
772 termination of the waiver support coordinator's provider  
773 agreement. The agency may adopt rules to administer this  
774 subsection.

775 (8) This section or related rule does not prevent or limit  
776 the Agency for Health Care Administration, in consultation with  
777 the agency ~~for Persons with Disabilities~~, from adjusting fees,  
778 reimbursement rates, lengths of stay, number of visits, or  
779 number of services, or from limiting enrollment, or making any  
780 other adjustment necessary to comply with the availability of  
781 moneys and any limitations or directions provided in the General  
782 Appropriations Act.

783 (9) The agency ~~for Persons with Disabilities~~ shall submit

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784 quarterly status reports to the Executive Office of the Governor  
785 and, the chairs of the legislative appropriations committees  
786 ~~chair of the Senate Ways and Means Committee or its successor,~~  
787 ~~and the chair of the House Fiscal Council or its successor~~  
788 regarding the financial status of waiver ~~home and community-~~  
789 ~~based~~ services, including the number of enrolled individuals who  
790 are receiving services through one or more programs; the number  
791 of individuals who have requested services who are not enrolled  
792 but ~~who~~ are receiving services through one or more programs,  
793 including with a description indicating the programs from which  
794 the individual is receiving services; the number of individuals  
795 who have refused an offer of services but who choose to remain  
796 on the list of individuals waiting for services; the number of  
797 individuals who have requested services but are not ~~who are~~  
798 receiving ~~no~~ services; a frequency distribution indicating the  
799 length of time individuals have been waiting for services; and  
800 information concerning the actual and projected costs compared  
801 to the amount of the appropriation available to the program and  
802 any projected surpluses or deficits. If at any time an analysis  
803 by the agency, in consultation with the Agency for Health Care  
804 Administration, indicates that the cost of services is expected  
805 to exceed the amount appropriated, the agency shall submit a  
806 plan in accordance with subsection (8) to the Executive Office  
807 of the Governor and the chairs of the legislative appropriations  
808 committees, ~~the chair of the Senate Ways and Means Committee or~~  
809 ~~its successor, and the chair of the House Fiscal Council or its~~  
810 ~~successor~~ to remain within the amount appropriated. The agency  
811 shall work with the Agency for Health Care Administration to  
812 implement the plan so as to remain within the appropriation.

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813 (10) Implementation of ~~Medicaid~~ waiver programs and  
814 services authorized under this chapter is limited by the funds  
815 appropriated for the individual budgets pursuant to s. 393.0662  
816 and the four-tiered waiver system pursuant to subsection (3).  
817 Contracts with independent support coordinators and service  
818 providers must include provisions requiring compliance with  
819 agency cost containment initiatives. Unless a client is  
820 determined to be in crisis based on criteria adopted by rule,  
821 neither the client nor the support coordinator may apply for  
822 additional waiver funding if the agency has determined pursuant  
823 to s. 393.0661(9) that the total cost of waiver services for  
824 agency clients is expected to exceed the amount appropriated.  
825 The agency shall implement monitoring and accounting procedures  
826 necessary to track actual expenditures and project future  
827 spending compared to available appropriations for Medicaid  
828 waiver programs. If ~~When~~ necessary, based on projected deficits,  
829 the agency shall ~~must~~ establish specific corrective action plans  
830 that incorporate corrective actions for ~~of~~ contracted providers  
831 which ~~that~~ are sufficient to align program expenditures with  
832 annual appropriations. If deficits continue during the 2012-2013  
833 fiscal year, the agency in conjunction with the Agency for  
834 Health Care Administration shall develop a plan to redesign the  
835 waiver program and submit the plan to the President of the  
836 Senate and the Speaker of the House of Representatives by  
837 September 30, 2013. At a minimum, the plan must include the  
838 following elements:

839 (a) *Budget predictability.*—Agency budget recommendations  
840 must include specific steps to restrict spending to budgeted  
841 amounts based on alternatives to the iBudget and four-tiered

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842 ~~Medicaid~~ waiver models.

843 (b) *Services.*—The agency shall identify core services that  
844 are essential to provide for client health and safety and  
845 recommend the elimination of coverage for other services that  
846 are not affordable based on available resources.

847 (c) *Flexibility.*—The redesign must ~~shall~~ be responsive to  
848 individual needs and to the extent possible encourage client  
849 control over allocated resources for their needs.

850 (d) *Support coordination services.*—The plan must ~~shall~~  
851 modify the manner of providing support coordination services to  
852 improve management of service utilization and increase  
853 accountability and responsiveness to agency priorities.

854 (e) *Reporting.*—The agency shall provide monthly reports to  
855 the President of the Senate and the Speaker of the House of  
856 Representatives on plan progress and development on July 31,  
857 2013, and August 31, 2013.

858 (f) *Implementation.*—The implementation of a redesigned  
859 program is subject to legislative approval and must ~~shall~~ occur  
860 by no later than July 1, 2014. The Agency for Health Care  
861 Administration shall seek federal waivers as needed to implement  
862 the redesigned plan approved by the Legislature.

863 Section 6. Section 393.0662, Florida Statutes, is amended  
864 to read:

865 393.0662 Individual budgets for delivery of home and  
866 community-based services; iBudget system established.—The  
867 Legislature finds that improved financial management of the  
868 existing home and community-based ~~Medicaid~~ waiver program is  
869 necessary to avoid deficits that impede the provision of  
870 services to individuals who are on the waiting list for

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871 enrollment in the program. The Legislature further finds that  
872 clients and their families should have greater flexibility to  
873 choose the services that best allow them to live in their  
874 community within the limits of an established budget. Therefore,  
875 the Legislature intends that the agency, in consultation with  
876 the Agency for Health Care Administration, develop and implement  
877 a comprehensive redesign of the service delivery system using  
878 individual budgets as the basis for allocating the funds  
879 appropriated for the ~~home and community-based services Medicaid~~  
880 waiver program among eligible enrolled clients. The service  
881 delivery system that uses individual budgets shall be called the  
882 iBudget system.

883 (1) The agency shall establish an individual budget, to be  
884 referred to as an iBudget, for each client ~~individual~~ served by  
885 the home and community-based services ~~Medicaid~~ waiver program.  
886 The funds appropriated to the agency shall be allocated through  
887 the iBudget system to eligible, Medicaid-enrolled clients who  
888 have. ~~For the iBudget system, Eligible clients shall include~~  
889 ~~individuals with a diagnosis of Down syndrome or a developmental~~  
890 ~~disability as defined in s. 393.063.~~ The iBudget system shall be  
891 designed to provide ~~for:~~ enhanced client choice within a  
892 specified service package; appropriate assessment strategies; an  
893 efficient consumer budgeting and billing process that includes  
894 reconciliation and monitoring components; a redefined role for  
895 support coordinators which ~~that~~ avoids potential conflicts of  
896 interest; a flexible and streamlined service review process; and  
897 a methodology and process that ensures the equitable allocation  
898 of available funds to each client based on the client's level of  
899 need, as determined by the variables in the allocation

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900 algorithm.

901 ~~(2)(a)~~ In developing each client's iBudget, the agency  
902 shall use an allocation algorithm and methodology.

903 (a) The algorithm shall use variables that have been  
904 determined by the agency to have a statistically validated  
905 relationship to the client's level of need for services provided  
906 through the ~~home and community-based services Medicaid~~ waiver  
907 program. The algorithm ~~and methodology~~ may consider individual  
908 characteristics, including, but not limited to, a client's age  
909 and living situation, information from a formal assessment  
910 instrument that the agency determines is valid and reliable, and  
911 information from other assessment processes.

912 (b) The allocation methodology shall provide the algorithm  
913 that determines the amount of funds allocated to a client's  
914 iBudget. The agency may approve an increase in the amount ~~of~~  
915 ~~funds allocated, as determined~~ by the algorithm, based on the  
916 client having one or more of the following needs that cannot be  
917 accommodated within the ~~funding as determined by the algorithm~~  
918 allocation and having no other resources, supports, or services  
919 available to meet such needs ~~the need~~:

920 1. An extraordinary need that would place the health and  
921 safety of the client, the client's caregiver, or the public in  
922 immediate, serious jeopardy unless the increase is approved. An  
923 extraordinary need may include, but is not limited to:

924 a. A documented history of significant, potentially life-  
925 threatening behaviors, such as recent attempts at suicide,  
926 arson, nonconsensual sexual behavior, or self-injurious behavior  
927 requiring medical attention;

928 b. A complex medical condition that requires active



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929 intervention by a licensed nurse on an ongoing basis that cannot  
930 be taught or delegated to a nonlicensed person;

931 c. A chronic comorbid condition. As used in this  
932 subparagraph, the term "comorbid condition" means a medical  
933 condition existing simultaneously but independently with another  
934 medical condition in a patient; or

935 d. A need for total physical assistance with activities  
936 such as eating, bathing, toileting, grooming, and personal  
937 hygiene.

938

939 However, the presence of an extraordinary need alone does not  
940 warrant an increase in the amount of funds allocated to a  
941 client's iBudget as determined by the algorithm.

942 2. A significant need for one-time or temporary support or  
943 services that, if not provided, would place the health and  
944 safety of the client, the client's caregiver, or the public in  
945 serious jeopardy, unless the increase is approved. A significant  
946 need may include, but is not limited to, the provision of  
947 environmental modifications, durable medical equipment, services  
948 to address the temporary loss of support from a caregiver, or  
949 special services or treatment for a serious temporary condition  
950 when the service or treatment is expected to ameliorate the  
951 underlying condition. As used in this subparagraph, the term  
952 "temporary" means less ~~a period of fewer~~ than 12 continuous  
953 months. However, the presence of such significant need for one-  
954 time or temporary supports or services alone does not warrant an  
955 increase in the amount of funds allocated to a client's iBudget  
956 as determined by the algorithm.

957 3. A significant increase in the need for services after

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958 the beginning of the service plan year which ~~that~~ would place  
959 the health and safety of the client, the client's caregiver, or  
960 the public in serious jeopardy because of substantial changes in  
961 the client's circumstances, including, but not limited to,  
962 permanent or long-term loss or incapacity of a caregiver, loss  
963 of services authorized under the state Medicaid plan due to a  
964 change in age, or a significant change in medical or functional  
965 status which requires the provision of additional services on a  
966 permanent or long-term basis which ~~that~~ cannot be accommodated  
967 within the client's current iBudget. As used in this  
968 subparagraph, the term "long-term" means ~~a period of~~ 12 or more  
969 continuous months. However, such significant increase in need  
970 for services of a permanent or long-term nature alone does not  
971 warrant an increase in the amount of funds allocated to a  
972 client's iBudget as determined by the algorithm.

973  
974 The agency shall reserve portions of the appropriation for the  
975 ~~home and community-based services Medicaid~~ waiver program for  
976 adjustments required pursuant to this paragraph and may use the  
977 services of an independent actuary in determining the amount of  
978 the portions to be reserved.

979 (c) A client's iBudget shall be the total of the amount  
980 determined by the algorithm and any additional funding provided  
981 pursuant to paragraph (b).

982 (d) A client shall have the flexibility to determine the  
983 type, amount, frequency, duration, and scope of the services on  
984 his or her cost plan if the agency determines that such services  
985 meet his or her health and safety needs, meet the requirements  
986 contained in the Coverage and Limitations Handbook for each

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987 service included on the cost plan, and comply with the other  
988 requirements of this section.

989 (e) A client's annual expenditures for ~~home and community-~~  
990 ~~based services~~ Medicaid waiver services may not exceed the  
991 limits of his or her iBudget. The total of all clients'  
992 projected annual iBudget expenditures may not exceed the  
993 agency's appropriation for waiver services.

994 (3)-(2) The Agency for Health Care Administration, in  
995 consultation with the agency, shall seek federal approval to  
996 amend current waivers, request a new waiver, and amend contracts  
997 as necessary to implement the iBudget system to serve eligible,  
998 enrolled clients through the home and community-based services  
999 Medicaid waiver program and the Consumer-Directed Care Plus  
1000 Program.

1001 (4)-(3) The agency shall transition all eligible, enrolled  
1002 clients to the iBudget system. The agency may gradually phase in  
1003 the iBudget system.

1004 (a) During the 2011-2012 and 2012-2013 fiscal years, the  
1005 agency shall determine a client's initial iBudget by comparing  
1006 the client's algorithm allocation to the client's existing  
1007 annual cost plan and the amount for the client's extraordinary  
1008 needs. The client's algorithm allocation shall be the amount  
1009 determined by the algorithm, adjusted to the agency's  
1010 appropriation and any set-asides determined necessary by the  
1011 agency, including, but not limited to, funding for extraordinary  
1012 needs. The amount for the client's extraordinary needs shall be  
1013 the annualized sum of any of the following services authorized  
1014 on the client's cost plan in the amount, duration, frequency,  
1015 intensity, and scope determined by the agency to be necessary

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1016 for the client's health and safety:

1017 1. Behavior assessment, behavior analysis services, and  
1018 behavior assistant services.

1019 2. Consumable medical supplies.

1020 3. Durable medical equipment.

1021 4. In-home support services.

1022 5. Nursing services.

1023 6. Occupational therapy assessment and occupational  
1024 therapy.

1025 7. Personal care assistance.

1026 8. Physical therapy assessment and physical therapy.

1027 9. Residential habilitation.

1028 10. Respiratory therapy assessment and respiratory therapy.

1029 11. Special medical home care.

1030 12. Support coordination.

1031 13. Supported employment.

1032 14. Supported living coaching.

1033 (b) If the client's algorithm allocation is:

1034 1. Greater than the client's cost plan, the client's  
1035 initial iBudget is equal to the cost plan.

1036 2. Less than the client's cost plan but greater than the  
1037 amount for the client's extraordinary needs, the client's  
1038 initial iBudget is equal to the algorithm allocation.

1039 3. Less than the amount for the client's extraordinary  
1040 needs, the client's initial iBudget is equal to the amount for  
1041 the client's extraordinary needs.

1042  
1043 However, the client's initial annualized iBudget amount may not  
1044 be less than 50 percent of that client's existing annualized

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1045 cost plan.

1046 (c) During the 2011-2012 and 2012-2013 fiscal years,  
1047 increases to a client's initial iBudget amount may be granted  
1048 only if his or her situation meets the crisis criteria provided  
1049 under agency rule.

1050 (d) ~~(a)~~ While the agency phases in the iBudget system, the  
1051 agency may continue to serve eligible, enrolled clients under  
1052 the four-tiered waiver system established under s. 393.065 while  
1053 those clients await transitioning to the iBudget system.

1054 ~~(b) The agency shall design the phase-in process to ensure~~  
1055 ~~that a client does not experience more than one-half of any~~  
1056 ~~expected overall increase or decrease to his or her existing~~  
1057 ~~annualized cost plan during the first year that the client is~~  
1058 ~~provided an iBudget due solely to the transition to the iBudget~~  
1059 ~~system.~~

1060 (5) ~~(4)~~ A client must use all available nonwaiver services  
1061 ~~authorized under the state Medicaid plan, school-based services,~~  
1062 ~~private insurance and other benefits, and any other resources~~  
1063 that may be available to the client before using funds from his  
1064 or her iBudget to pay for support and services.

1065 (6) ~~(5)~~ The service limitations in s. 393.0661(3)(f)1., 2.,  
1066 and 3. do not apply to the iBudget system.

1067 (7) ~~(6)~~ Rates for any or all services established under  
1068 rules of the Agency for Health Care Administration must ~~shall~~ be  
1069 designated as the maximum rather than a fixed amount for clients  
1070 ~~individuals~~ who receive an iBudget, except for services  
1071 specifically identified in those rules that the agency  
1072 determines are not appropriate for negotiation, which may  
1073 include, but are not limited to, residential habilitation

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1074 services.

1075 (8)~~(7)~~ The agency must ~~shall~~ ensure that clients and  
1076 caregivers have access to training and education that informs ~~to~~  
1077 ~~inform~~ them about the iBudget system and enhances ~~enhance~~ their  
1078 ability for self-direction. Such training must be provided ~~shall~~  
1079 ~~be offered~~ in a variety of formats and, at a minimum, must ~~shall~~  
1080 address the policies and processes of the iBudget system; the  
1081 roles and responsibilities of consumers, caregivers, waiver  
1082 support coordinators, providers, and the agency; information  
1083 that is available to help the client make decisions regarding  
1084 the iBudget system; and examples of nonwaiver ~~support and~~  
1085 resources that may be available in the community.

1086 (9)~~(8)~~ The agency shall collect data to evaluate the  
1087 implementation and outcomes of the iBudget system.

1088 (10)~~(9)~~ The agency and the Agency for Health Care  
1089 Administration may adopt rules specifying the allocation  
1090 algorithm and methodology; criteria and processes that allow ~~for~~  
1091 clients to access reserved funds for extraordinary needs,  
1092 temporarily or permanently changed needs, and one-time needs;  
1093 and processes and requirements for the selection and review of  
1094 services, development of support and cost plans, and management  
1095 of the iBudget system as needed to administer this section.

1096 Section 7. Subsection (2) of section 393.067, Florida  
1097 Statutes, is amended to read:

1098 393.067 Facility licensure.—

1099 (2) The agency shall conduct annual inspections and reviews  
1100 of facilities and programs licensed under this section unless  
1101 the facility or program is currently accredited by the Joint  
1102 Commission, the Commission on Accreditation of Rehabilitation

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1103 Facilities, or the Council on Accreditation. Facilities or  
1104 programs that are operating under such accreditation must be  
1105 inspected and reviewed by the agency once every 2 years. If,  
1106 upon inspection and review, the services and service delivery  
1107 sites are not those for which the facility or program is  
1108 accredited, the facilities and programs must be inspected and  
1109 reviewed in accordance with this section and related rules  
1110 adopted by the agency. Notwithstanding current accreditation,  
1111 the agency may continue to monitor the facility or program as  
1112 necessary with respect to:

1113 (a) Ensuring that services for which the agency is paying  
1114 are being provided.

1115 (b) Investigating complaints, identifying problems that  
1116 would affect the safety or viability of the facility or program,  
1117 and monitoring the facility or program's compliance with any  
1118 resulting negotiated terms and conditions, including provisions  
1119 relating to consent decrees which are unique to a specific  
1120 service and are not statements of general applicability.

1121 (c) Ensuring compliance with federal and state laws,  
1122 federal regulations, or state rules if such monitoring does not  
1123 duplicate the accrediting organization's review pursuant to  
1124 accreditation standards.

1125 (d) Ensuring Medicaid compliance with federal certification  
1126 and precertification review requirements.

1127 Section 8. Subsections (2) and (4) of section 393.068,  
1128 Florida Statutes, are amended to read:

1129 393.068 Family care program.—

1130 (2) Services and support authorized under the family care  
1131 program shall, to the extent of available resources, include the

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1132 services listed under s. 393.0662(4) ~~393.066~~ and, in addition,  
 1133 shall include, but not be limited to:

- 1134 (a) Attendant care.  
 1135 (b) Barrier-free modifications to the home.  
 1136 (c) Home visitation by agency workers.  
 1137 (d) In-home subsidies.  
 1138 (e) Low-interest loans.  
 1139 (f) Modifications for vehicles used to transport the  
 1140 individual with a developmental disability.  
 1141 (g) Facilitated communication.  
 1142 (h) Family counseling.  
 1143 (i) Equipment and supplies.  
 1144 (j) Self-advocacy training.  
 1145 (k) Roommate services.  
 1146 (l) Integrated community activities.  
 1147 (m) Emergency services.  
 1148 (n) Support coordination.  
 1149 (o) Other support services as identified by the family or  
 1150 client individual.

1151 (4) All existing nonwaiver ~~community~~ resources available to  
 1152 the client must be used ~~shall be utilized~~ to support program  
 1153 objectives. Additional services may be incorporated into the  
 1154 program as appropriate and to the extent that resources are  
 1155 available. The agency may ~~is authorized to~~ accept gifts and  
 1156 grants in order to carry out the program.

1157 Section 9. Subsections (1) through (3), paragraph (b) of  
 1158 subsection (4), paragraphs (f) and (g) of subsection (5),  
 1159 subsection (6), paragraphs (d) and (e) of subsection (7), and  
 1160 paragraph (b) of subsection (12) of section 393.11, Florida



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1161 Statutes, are amended to read:

1162 393.11 Involuntary admission to residential services.-

1163 (1) JURISDICTION.-If ~~When~~ a person is determined to be  
 1164 eligible to receive services from the agency ~~mentally retarded~~  
 1165 and requires involuntary admission to residential services  
 1166 provided by the agency, the circuit court of the county in which  
 1167 the person resides shall have jurisdiction to conduct a hearing  
 1168 and enter an order involuntarily admitting the person in order  
 1169 for ~~that~~ the person to ~~may~~ receive the care, treatment,  
 1170 habilitation, and rehabilitation that he or she ~~which the person~~  
 1171 needs. For the purpose of identifying mental retardation or  
 1172 autism, diagnostic capability shall be established by the  
 1173 agency. Except as otherwise specified, the proceedings under  
 1174 this section are ~~shall be~~ governed by the Florida Rules of Civil  
 1175 Procedure.

1176 (2) PETITION.-

1177 (a) A petition for involuntary admission to residential  
 1178 services may be executed by a petitioning commission or the  
 1179 agency.

1180 (b) The petitioning commission shall consist of three  
 1181 persons. One of whom ~~these persons~~ shall be a physician licensed  
 1182 and practicing under chapter 458 or chapter 459.

1183 (c) The petition shall be verified and shall:

1184 1. State the name, age, and present address of the  
 1185 commissioners and their relationship to the person who is the  
 1186 subject of the petition ~~with mental retardation or autism;~~

1187 2. State the name, age, county of residence, and present  
 1188 address of the person who is the subject of the petition ~~with~~  
 1189 ~~mental retardation or autism;~~

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1190 3. Allege that ~~the commission believes that~~ the person  
1191 needs involuntary residential services and specify the factual  
1192 information on which the belief is based;

1193 4. Allege that the person lacks sufficient capacity to give  
1194 express and informed consent to a voluntary application for  
1195 services and lacks the basic survival and self-care skills to  
1196 provide for the person's well-being or is likely to physically  
1197 injure others if allowed to remain at liberty; and

1198 5. State which residential setting is the least restrictive  
1199 and most appropriate alternative and specify the factual  
1200 information on which the belief is based.

1201 (d) The petition shall be filed in the circuit court of the  
1202 county in which the person who is the subject of the petition  
1203 ~~with mental retardation or autism~~ resides.

1204 (3) NOTICE.—

1205 (a) Notice of the filing of the petition shall be given to  
1206 the defendant individual and his or her legal guardian. The  
1207 notice shall be given both verbally and in writing in the  
1208 language of the defendant client, or in other modes of  
1209 communication of the defendant client, and in English. Notice  
1210 shall also be given to such other persons as the court may  
1211 direct. The petition for involuntary admission to residential  
1212 services shall be served with the notice.

1213 (b) ~~If Whenever~~ a motion or petition has been filed  
1214 pursuant to s. 916.303 to dismiss criminal charges against a  
1215 defendant ~~with retardation or autism~~, and a petition is filed to  
1216 involuntarily admit the defendant to residential services under  
1217 this section, the notice of the filing of the petition shall  
1218 also be given to the defendant's attorney, the state attorney of

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1219 the circuit from which the defendant was committed, and the  
1220 agency.

1221 (c) The notice shall state that a hearing shall be set to  
1222 inquire into the need of the defendant ~~person with mental~~  
1223 ~~retardation or autism~~ for involuntary residential services. The  
1224 notice shall also state the date of the hearing on the petition.

1225 (d) The notice shall state that the defendant ~~individual~~  
1226 ~~with mental retardation or autism~~ has the right to be  
1227 represented by counsel of his or her own choice and that, if the  
1228 defendant ~~person~~ cannot afford an attorney, the court shall  
1229 appoint one.

1230 (4) AGENCY PARTICIPATION.—

1231 (b) Following examination, the agency shall file a written  
1232 report with the court not less than 10 working days before the  
1233 date of the hearing. The report must be served on the  
1234 petitioner, the defendant ~~person with mental retardation~~, and  
1235 the defendant's ~~person's~~ attorney at the time the report is  
1236 filed with the court.

1237 (5) EXAMINING COMMITTEE.—

1238 (f) The committee shall file the report with the court not  
1239 less than 10 working days before the date of the hearing. The  
1240 report shall be served on the petitioner, the defendant ~~person~~  
1241 ~~with mental retardation~~, the defendant's ~~person's~~ attorney at  
1242 the time the report is filed with the court, and the agency.

1243 (g) Members of the examining committee shall receive a  
1244 reasonable fee to be determined by the court. The fees are to be  
1245 paid from the general revenue fund of the county in which the  
1246 defendant ~~person with mental retardation~~ resided when the  
1247 petition was filed.

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1248 (6) COUNSEL; GUARDIAN AD LITEM.—

1249 (a) The defendant must ~~person with mental retardation shall~~  
1250 be represented by counsel at all stages of the judicial  
1251 proceeding. ~~If In the event~~ the defendant ~~person~~ is indigent and  
1252 cannot afford counsel, the court shall appoint a public defender  
1253 not less than 20 working days before the scheduled hearing. The  
1254 defendant's ~~person's~~ counsel shall have full access to the  
1255 records of the service provider and the agency. In all cases,  
1256 the attorney shall represent the rights and legal interests of  
1257 the defendant ~~person with mental retardation~~, regardless of who  
1258 may initiate the proceedings or pay the attorney's fee.

1259 (b) If the attorney, during the course of his or her  
1260 representation, reasonably believes that the defendant ~~person~~  
1261 ~~with mental retardation~~ cannot adequately act in his or her own  
1262 interest, the attorney may seek the appointment of a guardian ad  
1263 litem. A prior finding of incompetency is not required before a  
1264 guardian ad litem is appointed pursuant to this section.

1265 (7) HEARING.—

1266 (d) The defendant may ~~person with mental retardation shall~~  
1267 be ~~physically~~ present throughout all or part of the entire  
1268 proceeding. If the defendant's ~~person's~~ attorney or any other  
1269 interested party believes that the person's presence at the  
1270 hearing is not in the person's best interest, or good cause is  
1271 otherwise shown, ~~the person's presence may be waived once the~~  
1272 court may order that the defendant be excluded from the hearing  
1273 ~~has seen the person and the hearing has commenced.~~

1274 (e) The defendant ~~person~~ has the right to present evidence  
1275 and to cross-examine all witnesses and other evidence alleging  
1276 the appropriateness of the person's admission to residential

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1277 care. Other relevant and material evidence regarding the  
1278 appropriateness of the person's admission to residential  
1279 services; the most appropriate, least restrictive residential  
1280 placement; and the appropriate care, treatment, and habilitation  
1281 of the person, including written or oral reports, may be  
1282 introduced at the hearing by any interested person.

1283 (12) APPEAL.—

1284 (b) The filing of an appeal by the person ordered to be  
1285 involuntarily admitted under this section ~~with mental~~  
1286 ~~retardation~~ shall stay admission of the person into residential  
1287 care. The stay shall remain in effect during the pendency of all  
1288 review proceedings in Florida courts until a mandate issues.

1289 Section 10. Paragraph (a) of subsection (1) of section  
1290 393.125, Florida Statutes, is amended to read:

1291 393.125 Hearing rights.—

1292 (1) REVIEW OF AGENCY DECISIONS.—

1293 (a) For Medicaid programs administered by the agency, any  
1294 developmental services applicant or client, or his or her  
1295 parent, guardian advocate, or authorized representative, may  
1296 request a hearing in accordance with federal law and rules  
1297 applicable to Medicaid cases and has the right to request an  
1298 administrative hearing pursuant to ss. 120.569 and 120.57. The  
1299 hearing ~~These hearings~~ shall be provided by the Department of  
1300 Children and Family Services pursuant to s. 409.285 and shall  
1301 follow procedures consistent with federal law and rules  
1302 applicable to Medicaid cases. At the conclusion of the hearing,  
1303 the department shall submit its recommended order to the agency  
1304 as provided in s. 120.57(1)(k) and the agency shall issue final  
1305 orders as provided in s. 120.57(1)(i).

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1306 Section 11. Subsection (1) of section 393.23, Florida  
1307 Statutes, is amended to read:

1308 393.23 Developmental disabilities centers; trust accounts.—  
1309 All receipts from the operation of canteens, vending machines,  
1310 hobby shops, sheltered workshops, activity centers, farming  
1311 projects, and other like activities operated in a developmental  
1312 disabilities center, and moneys donated to the center, must be  
1313 deposited in a trust account in any bank, credit union, or  
1314 savings and loan association authorized by the State Treasury as  
1315 a qualified depository to do business in this state, if the  
1316 moneys are available on demand.

1317 (1) Moneys in the trust account must be expended for the  
1318 benefit, education, or welfare of clients. However, if  
1319 specified, moneys that are donated to the center must be  
1320 expended in accordance with the intentions of the donor. Trust  
1321 account money may not be used for the benefit of agency  
1322 employees or to pay the wages of such employees. The welfare of  
1323 clients includes the expenditure of funds for the purchase of  
1324 items for resale at canteens or vending machines, and for the  
1325 establishment of, maintenance of, and operation of canteens,  
1326 hobby shops, recreational or entertainment facilities, sheltered  
1327 workshops that include client wages, activity centers, farming  
1328 projects, or other like facilities or programs established at  
1329 the center for the benefit of clients.

1330 Section 12. Paragraph (d) of subsection (13) of section  
1331 409.906, Florida Statutes, is amended to read:

1332 409.906 Optional Medicaid services.—Subject to specific  
1333 appropriations, the agency may make payments for services which  
1334 are optional to the state under Title XIX of the Social Security

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1335 Act and are furnished by Medicaid providers to recipients who  
1336 are determined to be eligible on the dates on which the services  
1337 were provided. Any optional service that is provided shall be  
1338 provided only when medically necessary and in accordance with  
1339 state and federal law. Optional services rendered by providers  
1340 in mobile units to Medicaid recipients may be restricted or  
1341 prohibited by the agency. Nothing in this section shall be  
1342 construed to prevent or limit the agency from adjusting fees,  
1343 reimbursement rates, lengths of stay, number of visits, or  
1344 number of services, or making any other adjustments necessary to  
1345 comply with the availability of moneys and any limitations or  
1346 directions provided for in the General Appropriations Act or  
1347 chapter 216. If necessary to safeguard the state's systems of  
1348 providing services to elderly and disabled persons and subject  
1349 to the notice and review provisions of s. 216.177, the Governor  
1350 may direct the Agency for Health Care Administration to amend  
1351 the Medicaid state plan to delete the optional Medicaid service  
1352 known as "Intermediate Care Facilities for the Developmentally  
1353 Disabled." Optional services may include:

1354 (13) HOME AND COMMUNITY-BASED SERVICES.—

1355 (d) The agency shall ~~request federal approval to~~ develop a  
1356 system to require payment of premiums, fees, or other cost  
1357 sharing by the parents of a child younger than 18 years of age  
1358 who is being served by a waiver under this subsection if the  
1359 adjusted household income is greater than 100 percent of the  
1360 federal poverty level. The amount of the premium, fee, or cost  
1361 sharing shall be calculated using a sliding scale based on the  
1362 size of the family, the amount of the parent's adjusted gross  
1363 income, and the federal poverty guidelines. The premium, fee, or

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1364 other cost sharing paid by a parent may not exceed the cost of  
1365 waiver services to the client. Parents who have more than one  
1366 child receiving services may not be required to pay more than  
1367 the amount required for the child who has the highest  
1368 expenditures. Parents who do not live with each other remain  
1369 responsible for paying the required contribution. The client may  
1370 not be denied waiver services due to nonpayment by a parent.  
1371 Adoptive and foster parents are exempt from payment of any  
1372 premiums, fees, or other cost-sharing for waiver services. The  
1373 agency shall request federal approval as necessary to implement  
1374 the program. ~~The premium and cost-sharing system developed by~~  
1375 ~~the agency shall not adversely affect federal funding to the~~  
1376 ~~state. Upon receiving~~ After the agency receives federal  
1377 approval, ~~if required,~~ the agency, the Agency for Persons with  
1378 Disabilities, and the Department of Children and Family Services  
1379 may implement the system and collect income information from  
1380 parents of children who will be affected by this paragraph. The  
1381 parents must provide information upon request. The agency shall  
1382 prepare a report to include the estimated operational cost of  
1383 implementing the premium, fee, and cost-sharing system and the  
1384 estimated revenues to be collected from parents of children in  
1385 the waiver program. The report shall be delivered to the  
1386 President of the Senate and the Speaker of the House of  
1387 Representatives by June 30, 2012. The agency, the Department of  
1388 Children and Family Services, and the Agency for Persons with  
1389 Disabilities may adopt rules to administer this paragraph.

1390 Section 13. Section 514.072, Florida Statutes, is amended  
1391 to read:

1392 514.072 Certification of swimming instructors for people



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1393 who have developmental disabilities ~~required~~.—Any person working  
1394 at a swimming pool who holds himself or herself out as a  
1395 swimming instructor specializing in training people who have a  
1396 developmental disability ~~developmental disabilities~~, as defined  
1397 in s. 393.063(11) ~~393.063(10)~~, may be certified by the Dan  
1398 Marino Foundation, Inc., in addition to being certified under s.  
1399 514.071. The Dan Marino Foundation, Inc., must develop  
1400 certification requirements and a training curriculum for  
1401 swimming instructors for people who have developmental  
1402 disabilities and must submit the certification requirements to  
1403 the Department of Health for review ~~by January 1, 2007~~. A person  
1404 ~~certified under s. 514.071 before July 1, 2007, must meet the~~  
1405 ~~additional certification requirements of this section before~~  
1406 ~~January 1, 2008. A person certified under s. 514.071 on or after~~  
1407 ~~July 1, 2007, must meet the additional certification~~  
1408 ~~requirements of this section within 6 months after receiving~~  
1409 ~~certification under s. 514.071.~~

1410 Section 14. This act shall take effect July 1, 2012.