

By the Committee on Children, Families, and Elder Affairs; and  
Senators Negrón and García

586-02378-12

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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; revising 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; deleting obsolete  
31 provisions; amending s. 393.0662, F.S.; providing  
32 criteria for calculating a client's initial iBudget;  
33 deleting obsolete provisions; amending s. 393.067,  
34 F.S.; providing that facilities that are accredited by  
35 certain organizations must be inspected and reviewed  
36 by the agency every 2 years; providing agency criteria  
37 for monitoring licensees; amending s. 393.068, F.S.;  
38 conforming a cross-reference; amending s. 393.11,  
39 F.S.; clarifying eligibility for involuntary admission  
40 to residential services; amending s. 393.125, F.S.;  
41 requiring the Department of Children and Family  
42 Services to submit its hearing recommendations to the  
43 agency; amending s. 393.23, F.S.; providing that  
44 receipts from the operation of canteens, vending  
45 machines, and other activities may be used to pay  
46 client wages at sheltered workshops; amending s.  
47 409.906, F.S.; providing limitations on the amount of  
48 cost sharing which may be required of parents for home  
49 and community-based services provided to their minor  
50 children; authorizing the adoption of rules relating  
51 to cost sharing; amending s. 514.072, F.S.; conforming  
52 a cross-reference; deleting an obsolete provision;  
53 providing an effective date.

54  
55 Be It Enacted by the Legislature of the State of Florida:

56  
57 Section 1. Section 393.062, Florida Statutes, is amended to  
58 read:

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59 393.062 Legislative findings and declaration of intent.—

60 (1) The Legislature finds ~~and declares~~ that existing state  
61 programs for the treatment of individuals with developmental  
62 disabilities, which often unnecessarily place clients in  
63 institutions, are unreasonably costly, are ineffective in  
64 bringing the ~~individual~~ client to his or her maximum potential,  
65 and are in fact debilitating to many clients. A redirection in  
66 state treatment programs ~~for individuals with developmental~~  
67 ~~disabilities~~ is therefore necessary if any significant  
68 amelioration of the problems faced by such individuals is ~~ever~~  
69 to take place. Such redirection should place primary emphasis on  
70 programs that prevent or reduce the severity of developmental  
71 disabilities. Further, ~~the greatest~~ priority should ~~shall~~ be  
72 given to the development and implementation of community-based  
73 services that will enable individuals with developmental  
74 disabilities to achieve their greatest potential for independent  
75 and productive living, ~~enable them~~ to live in their own homes or  
76 in residences located in their own communities, and to permit  
77 them to be diverted or removed from unnecessary institutional  
78 placements. This goal cannot be met without ensuring the  
79 availability of community residential opportunities in the  
80 residential areas of this state. The Legislature, therefore,  
81 declares that individuals ~~all persons~~ with developmental  
82 disabilities who live in licensed community homes ~~shall~~ have a  
83 family living environment comparable to that of other state  
84 residents ~~Floridians~~ and that such homes must ~~residences shall~~  
85 be considered and treated as a functional equivalent of a family  
86 unit and not as an institution, business, or boarding home. The  
87 Legislature further declares that, ~~in developing community-based~~

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88 ~~programs and services for individuals with developmental~~  
89 ~~disabilities,~~ private businesses, not-for-profit corporations,  
90 units of local government, and other organizations capable of  
91 providing needed services to clients in a cost-efficient manner  
92 ~~shall~~ be given preference in lieu of operation of programs  
93 directly by state agencies. Finally, it is the intent of the  
94 Legislature that ~~all~~ caretakers who are unrelated to individuals  
95 with developmental disabilities receiving care ~~shall~~ be of good  
96 moral character.

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

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

133 Section 2. Section 393.063, Florida Statutes, is reordered  
134 and amended to read:

135 393.063 Definitions.—As used in ~~For the purposes of this~~  
136 chapter, the term:

137 (1) "Agency" means the Agency for Persons with  
138 Disabilities.

139 (2) "Adult day services" means services that are provided  
140 in a nonresidential setting, separate from the home or facility  
141 in which the client resides, unless the client resides in a  
142 planned residential community as defined in s. 419.001(1); that  
143 are intended to support the participation of clients in daily,  
144 meaningful, and valued routines of the community; and that may  
145 provide social activities.

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146        (3)~~(2)~~ "Adult day training" means training services that  
147 ~~which~~ take place in a nonresidential setting, separate from the  
148 home or facility in which the client resides, unless the client  
149 resides in a planned residential community as defined in s.  
150 419.001(1)(d); are intended to support the participation of  
151 clients in daily, meaningful, and valued routines of the  
152 community; and may include work-like settings that do not meet  
153 the definition of supported employment.

154        (4)~~(3)~~ "Autism" means a pervasive, neurologically based  
155 developmental disability of extended duration which causes  
156 severe learning, communication, and behavior disorders and which  
157 has an ~~with~~ age of onset during infancy or childhood.  
158 Individuals who have ~~with~~ autism exhibit impairment in  
159 reciprocal social interaction, impairment in verbal and  
160 nonverbal communication and imaginative ability, and a markedly  
161 restricted repertoire of activities and interests.

162        (5)~~(4)~~ "Cerebral palsy" means a group of disabling symptoms  
163 of extended duration which results from damage to the developing  
164 brain which ~~that~~ may occur before, during, or after birth and  
165 which ~~that~~ results in the loss or impairment of control over  
166 voluntary muscles. The term ~~For the purposes of this definition,~~  
167 ~~cerebral palsy~~ does not include those symptoms or impairments  
168 resulting solely from a stroke.

169        (6)~~(5)~~ "Client" means an individual ~~any person~~ determined  
170 eligible by the agency for services under this chapter.

171        (7)~~(6)~~ "Client advocate" means a friend or relative of the  
172 client, or of the client's immediate family, who advocates for  
173 the best interests of the client in any proceedings under this  
174 chapter in which the client or his or her family has the right

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175 or duty to participate.

176 ~~(8)-(7)~~ "Comprehensive assessment" means the process used to  
177 determine eligibility for services under this chapter.

178 ~~(9)-(8)~~ "Comprehensive transitional education program" means  
179 the program established under ~~in~~ s. 393.18.

180 ~~(11)-(9)~~ "Developmental disability" means a disorder or  
181 syndrome that is attributable to retardation, cerebral palsy,  
182 autism, spina bifida, Down syndrome, or Prader-Willi syndrome;  
183 that manifests before the age of 18; and that constitutes a  
184 substantial handicap that can reasonably be expected to continue  
185 indefinitely.

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

191 ~~(12)-(11)~~ "Direct service provider" means a person, 18 years  
192 of age or older, who has direct face-to-face contact with a  
193 client while providing services to that ~~the~~ client or who has  
194 access to a client's living areas or to a client's funds or  
195 personal property.

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

202 (13) "Down syndrome" means a disorder caused by the  
203 presence of an extra copy of chromosome 21.

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

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

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

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

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

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



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

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

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

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

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

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

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

258 (23) "Nonwaiver resources" means supports or services  
259 obtainable through private insurance, the Medicaid state plan,  
260 nonprofit organizations, charitable donations from private  
261 businesses, other government programs, family, natural supports,

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262 community resources, and any other source other than a waiver.

263 (24)~~(23)~~ "Personal care services" means individual  
264 assistance with or supervision of essential activities of daily  
265 living for self-care, including ambulation, bathing, dressing,  
266 eating, grooming, and toileting, and other similar services that  
267 are incidental to the care furnished and are essential, and that  
268 are provided in the amount, duration, frequency, intensity, and  
269 scope determined by the agency to be necessary for the client's  
270 health and safety ~~to the health, safety, and welfare of the~~  
271 ~~client~~ when there is no one else available or able to perform  
272 those services.

273 (25)~~(24)~~ "Prader-Willi syndrome" means an inherited  
274 condition typified by neonatal hypotonia with failure to thrive,  
275 hyperphagia or an excessive drive to eat which leads to obesity  
276 usually at 18 to 36 months of age, mild to moderate mental  
277 retardation, hypogonadism, short stature, mild facial  
278 dysmorphism, and a characteristic neurobehavior.

279 (26)~~(25)~~ "Relative" means an individual who is connected by  
280 affinity or consanguinity to the client and who is 18 years of  
281 age or older.

282 (27)~~(26)~~ "Resident" means an individual who has ~~any person~~  
283 ~~with~~ developmental disabilities and who resides ~~residing~~ at a  
284 residential facility, whether or not such person is a client of  
285 the agency.

286 (28)~~(27)~~ "Residential facility" means a facility providing  
287 room and board and personal care for an individual who has  
288 ~~persons with~~ developmental disabilities.

289 (29)~~(28)~~ "Residential habilitation" means supervision and  
290 training in ~~with~~ the acquisition, retention, or improvement in

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291 skills related to activities of daily living, such as personal  
292 hygiene skills, homemaking skills, and the social and adaptive  
293 skills necessary to enable the individual to reside in the  
294 community.

295 (30)~~(29)~~ "Residential habilitation center" means a  
296 community residential facility licensed under this chapter which  
297 provides habilitation services. The capacity of such a facility  
298 may shall not be fewer than nine residents. After October 1,  
299 1989, new residential habilitation centers may not be licensed  
300 and the licensed capacity for any existing residential  
301 habilitation center may not be increased.

302 (31)~~(30)~~ "Respite service" means appropriate, short-term,  
303 temporary care that is provided to an individual who has a  
304 ~~person with~~ developmental disabilities in order to meet the  
305 planned or emergency needs of the individual ~~person~~ or the  
306 family or other direct service provider.

307 (32)~~(31)~~ "Restraint" means a physical device, method, or  
308 drug used to control dangerous behavior.

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

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

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

328 (33)~~(32)~~ "Retardation" means significantly subaverage  
329 general intellectual functioning existing concurrently with  
330 deficits in adaptive behavior which manifest ~~that manifests~~  
331 before the age of 18 and can reasonably be expected to continue  
332 indefinitely. For the purposes of this definition, the term:

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

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

343 (34)~~(33)~~ "Seclusion" means the involuntary isolation of a  
344 person in a room or area from which the person is prevented from  
345 leaving. The prevention may be by physical barrier or by a staff  
346 member who is acting in a manner, or who is physically situated,  
347 so as to prevent the person from leaving the room or area. For  
348 the purposes of this chapter, the term does not mean isolation

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349 due to the medical condition or symptoms of the person.

350 (35)~~(34)~~ "Self-determination" means an individual's freedom  
351 to exercise the same rights as all other citizens, authority to  
352 exercise control over funds needed for one's own support,  
353 including prioritizing those ~~these~~ funds when necessary,  
354 responsibility for the wise use of public funds, and self-  
355 advocacy to speak and advocate for oneself in order to gain  
356 independence and ensure that individuals who have ~~with~~ a  
357 developmental disability are treated equally.

358 (36)~~(35)~~ "Specialized therapies" means those treatments or  
359 activities prescribed by and provided by an appropriately  
360 trained, licensed, or certified professional or staff person and  
361 may include, but are not limited to, physical therapy, speech  
362 therapy, respiratory therapy, occupational therapy, behavior  
363 therapy, physical management services, and related specialized  
364 equipment and supplies.

365 (37)~~(36)~~ "Spina bifida" means, ~~for purposes of this~~  
366 ~~chapter,~~ a person with a medical diagnosis of spina bifida  
367 cystica or myelomeningocele.

368 (38)~~(37)~~ "Support coordinator" means a person who is  
369 contracting with ~~designated by~~ the agency to assist clients  
370 ~~individuals~~ and families in identifying their capacities, needs,  
371 and resources, as well as finding and gaining access to  
372 necessary supports and services; locating or developing  
373 employment opportunities; coordinating the delivery of supports  
374 and services; advocating on behalf of the client ~~individual~~ and  
375 family; maintaining relevant records; and monitoring and  
376 evaluating the delivery of supports and services to determine  
377 the extent to which they meet the needs ~~and expectations~~

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378 identified by the client individual, family, and others who  
379 participated in the development of the support plan.

380 (39)~~(38)~~ "Supported employment" means employment located or  
381 provided in an integrated work setting, with earnings paid on a  
382 commensurate wage basis, and for which continued support is  
383 needed for job maintenance.

384 (40)~~(39)~~ "Supported living" means a category of  
385 individually determined services designed and coordinated in  
386 ~~such~~ a manner that provides ~~as to provide~~ assistance to adult  
387 clients who require ongoing supports to live as independently as  
388 possible in their own homes, to be integrated into the  
389 community, and to participate in community life to the fullest  
390 extent possible.

391 (41)~~(40)~~ "Training" means a planned approach to assisting a  
392 client to attain or maintain his or her maximum potential and  
393 includes services ranging from sensory stimulation to  
394 instruction in skills for independent living and employment.

395 (42)~~(41)~~ "Treatment" means the prevention, amelioration, or  
396 cure of a client's physical and mental disabilities or  
397 illnesses.

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

405 Section 3. Subsections (1) and (6) of section 393.065,  
406 Florida Statutes, are amended to read:

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407 393.065 Application and eligibility determination.—

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

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

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

433 393.066 Community services and treatment.—

434 (1) The agency shall plan, develop, organize, and implement  
435 its programs of services and treatment for individuals who have

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

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

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

- 456 (a) Adult day training and adult day 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 (e)-(f) Personal care services.  
464 ~~(g) Recreation.~~



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465       ~~(f)(h)~~ Residential habilitation ~~facility~~ services.  
466       ~~(g)(i)~~ Respite services.  
467       ~~(h)(j)~~ Support coordination ~~Social~~ services.  
468       ~~(i)(k)~~ Specialized therapies.  
469       ~~(j)(l)~~ Supported employment.  
470       ~~(k)(m)~~ Supported living.  
471       ~~(l)(n)~~ Training, including behavioral analysis services.  
472       ~~(m)(o)~~ Transportation.  
473       ~~(n)(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 persons with  
557 developmental disabilities pursuant to a federally approved  
558 waiver shall be reimbursed according to a rate methodology based  
559 upon an analysis of the expenditure history and prospective  
560 costs of providers participating in the waiver program, or under  
561 any other methodology developed by the Agency for Health Care  
562 Administration, in consultation with the agency for Persons with  
563 Disabilities, and approved by the Federal Government in  
564 accordance with the waiver.

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

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

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

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

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

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

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

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

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639 ~~may adopt rules necessary to administer this subsection.~~

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

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

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

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

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

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

667 ~~6. Massage therapy, medication review, and psychological~~

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668 ~~assessment services are eliminated.~~

669 ~~5.7.~~ The agency shall conduct supplemental cost plan  
670 reviews to verify the medical necessity of authorized services  
671 for plans that have increased by more than 8 percent during  
672 either of the 2 preceding fiscal years.

673 ~~6.8.~~ The agency shall implement a consolidated residential  
674 habilitation rate structure to increase savings to the state  
675 through a more cost-effective payment method and establish  
676 uniform rates for intensive behavioral residential habilitation  
677 services.

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

685 ~~7.10.~~ The agency shall develop a plan to eliminate  
686 redundancies and duplications between in-home support services,  
687 companion services, personal care services, and supported living  
688 coaching by limiting or consolidating such services.

689 ~~8.11.~~ The agency shall develop a plan to reduce the  
690 intensity and frequency of supported employment services to  
691 clients in stable employment situations who have a documented  
692 history of at least 3 years' employment with the same company or  
693 in the same industry.

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



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

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

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

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

733 (6)(7) The agency shall collect premiums, fees, or other  
734 cost sharing from the parents of children being served by the  
735 agency through a waiver pursuant to s. 409.906(13) (d).

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

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

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

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755       4. The use of family resources.

756       5. The use of private resources.

757       6. The use of community resources.

758       7. The use of charitable resources.

759       8. The use of volunteer resources.

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

761       10. The overall outcome in securing nonwaiver resources.

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

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

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

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

782       (9) The agency ~~for Persons with Disabilities~~ shall submit  
783 quarterly status reports to the Executive Office of the Governor

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

812 (10) Implementation of ~~Medicaid~~ waiver programs and

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813 services authorized under this chapter is limited by the funds  
814 appropriated for the individual budgets pursuant to s. 393.0662  
815 and the four-tiered waiver system pursuant to subsection (3).  
816 Contracts with independent support coordinators and service  
817 providers must include provisions requiring compliance with  
818 agency cost containment initiatives. The agency shall implement  
819 monitoring and accounting procedures necessary to track actual  
820 expenditures and project future spending compared to available  
821 appropriations for Medicaid waiver programs. If ~~When~~ necessary,  
822 based on projected deficits, the agency shall ~~must~~ establish  
823 specific corrective action plans that incorporate corrective  
824 actions for ~~of~~ contracted providers which ~~that~~ are sufficient to  
825 align program expenditures with annual appropriations. If  
826 deficits continue during the 2012-2013 fiscal year, the agency  
827 in conjunction with the Agency for Health Care Administration  
828 shall develop a plan to redesign the waiver program and submit  
829 the plan to the President of the Senate and the Speaker of the  
830 House of Representatives by September 30, 2013. At a minimum,  
831 the plan must include the following elements:

832 (a) *Budget predictability.*—Agency budget recommendations  
833 must include specific steps to restrict spending to budgeted  
834 amounts based on alternatives to the iBudget and four-tiered  
835 ~~Medicaid~~ waiver models.

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

840 (c) *Flexibility.*—The redesign must ~~shall~~ be responsive to  
841 individual needs and to the extent possible encourage client

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842 control over allocated resources for their needs.

843 (d) *Support coordination services.*—The plan must ~~shall~~  
844 modify the manner of providing support coordination services to  
845 improve management of service utilization and increase  
846 accountability and responsiveness to agency priorities.

847 (e) *Reporting.*—The agency shall provide monthly reports to  
848 the President of the Senate and the Speaker of the House of  
849 Representatives on plan progress and development on July 31,  
850 2013, and August 31, 2013.

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

856 Section 6. Section 393.0662, Florida Statutes, is amended  
857 to read:

858 393.0662 Individual budgets for delivery of home and  
859 community-based services; iBudget system established.—The  
860 Legislature finds that improved financial management of the  
861 existing home and community-based ~~Medicaid~~ waiver program is  
862 necessary to avoid deficits that impede the provision of  
863 services to individuals who are on the waiting list for  
864 enrollment in the program. The Legislature further finds that  
865 clients and their families should have greater flexibility to  
866 choose the services that best allow them to live in their  
867 community within the limits of an established budget. Therefore,  
868 the Legislature intends that the agency, in consultation with  
869 the Agency for Health Care Administration, develop and implement  
870 a comprehensive redesign of the service delivery system using

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871 individual budgets as the basis for allocating the funds  
872 appropriated for the ~~home and community-based services Medicaid~~  
873 waiver program among eligible enrolled clients. The service  
874 delivery system that uses individual budgets shall be called the  
875 iBudget system.

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

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

896 (a) The algorithm shall use variables that have been  
897 determined by the agency to have a statistically validated  
898 relationship to the client's level of need for services provided  
899 through the ~~home and community-based services Medicaid~~ waiver

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900 program. The algorithm ~~and methodology~~ may consider individual  
901 characteristics, including, but not limited to, a client's age  
902 and living situation, information from a formal assessment  
903 instrument that the agency determines is valid and reliable, and  
904 information from other assessment processes.

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

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

917 a. A documented history of significant, potentially life-  
918 threatening behaviors, such as recent attempts at suicide,  
919 arson, nonconsensual sexual behavior, or self-injurious behavior  
920 requiring medical attention;

921 b. A complex medical condition that requires active  
922 intervention by a licensed nurse on an ongoing basis that cannot  
923 be taught or delegated to a nonlicensed person;

924 c. A chronic comorbid condition. As used in this  
925 subparagraph, the term "comorbid condition" means a medical  
926 condition existing simultaneously but independently with another  
927 medical condition in a patient; or

928 d. A need for total physical assistance with activities



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929 such as eating, bathing, toileting, grooming, and personal  
930 hygiene.

931

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

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

950 3. A significant increase in the need for services after  
951 the beginning of the service plan year which ~~that~~ would place  
952 the health and safety of the client, the client's caregiver, or  
953 the public in serious jeopardy because of substantial changes in  
954 the client's circumstances, including, but not limited to,  
955 permanent or long-term loss or incapacity of a caregiver, loss  
956 of services authorized under the state Medicaid plan due to a  
957 change in age, or a significant change in medical or functional

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958 status which requires the provision of additional services on a  
959 permanent or long-term basis which ~~that~~ cannot be accommodated  
960 within the client's current iBudget. As used in this  
961 subparagraph, the term "long-term" means ~~a period of~~ 12 or more  
962 continuous months. However, such significant increase in need  
963 for services of a permanent or long-term nature alone does not  
964 warrant an increase in the amount of funds allocated to a  
965 client's iBudget as determined by the algorithm.

966  
967 The agency shall reserve portions of the appropriation for the  
968 ~~home and community-based services Medicaid~~ waiver program for  
969 adjustments required pursuant to this paragraph and may use the  
970 services of an independent actuary in determining the amount of  
971 the portions to be reserved.

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

975 (d) A client shall have the flexibility to determine the  
976 type, amount, frequency, duration, and scope of the services on  
977 his or her cost plan if the agency determines that such services  
978 meet his or her health and safety needs, meet the requirements  
979 contained in the Coverage and Limitations Handbook for each  
980 service included on the cost plan, and comply with the other  
981 requirements of this section.

982 (e) A client's annual expenditures for ~~home and community-~~  
983 ~~based services Medicaid~~ waiver services may not exceed the  
984 limits of his or her iBudget. The total of all clients'  
985 projected annual iBudget expenditures may not exceed the  
986 agency's appropriation for waiver services.

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987        ~~(3)(2)~~ The Agency for Health Care Administration, in  
988 consultation with the agency, shall seek federal approval to  
989 amend current waivers, request a new waiver, and amend contracts  
990 as necessary to implement the iBudget system to serve eligible,  
991 enrolled clients through the home and community-based services  
992 ~~Medicaid~~ waiver program and the Consumer-Directed Care Plus  
993 Program.

994        ~~(4)(3)~~ The agency shall transition all eligible, enrolled  
995 clients to the iBudget system. The agency may gradually phase in  
996 the iBudget system.

997        (a) During the 2011-2012 and 2012-2013 fiscal years, the  
998 agency shall determine a client's initial iBudget by comparing  
999 the client's algorithm allocation to the client's existing  
1000 annual cost plan and the amount for the client's extraordinary  
1001 needs. The client's algorithm allocation shall be the amount  
1002 determined by the algorithm, adjusted to the agency's  
1003 appropriation and any set-asides determined necessary by the  
1004 agency, including, but not limited to, funding for extraordinary  
1005 needs. The amount for the client's extraordinary needs shall be  
1006 the annualized sum of any of the following services authorized  
1007 on the client's cost plan in the amount, duration, frequency,  
1008 intensity, and scope determined by the agency to be necessary  
1009 for the client's health and safety:

- 1010        1. Behavior assessment, behavior analysis services, and  
1011 behavior assistant services.
- 1012        2. Consumable medical supplies.
- 1013        3. Durable medical equipment.
- 1014        4. In-home support services.
- 1015        5. Nursing services.

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- 1016       6. Occupational therapy assessment and occupational  
1017 therapy.
- 1018       7. Personal care assistance.
- 1019       8. Physical therapy assessment and physical therapy.
- 1020       9. Residential habilitation.
- 1021       10. Respiratory therapy assessment and respiratory therapy.
- 1022       11. Special medical home care.
- 1023       12. Support coordination.
- 1024       13. Supported employment.
- 1025       14. Supported living coaching.
- 1026       (b) If the client's algorithm allocation is:
- 1027       1. Greater than the client's cost plan, the client's  
1028 initial iBudget is equal to the cost plan.
- 1029       2. Less than the client's cost plan but greater than the  
1030 amount for the client's extraordinary needs, the client's  
1031 initial iBudget is equal to the algorithm allocation.
- 1032       3. Less than the amount for the client's extraordinary  
1033 needs, the client's initial iBudget is equal to the amount for  
1034 the client's extraordinary needs.
- 1035
- 1036       However, the client's initial annualized iBudget amount may not  
1037 be less than 50 percent of that client's existing annualized  
1038 cost plan.
- 1039       (c) During the 2011-2012 and 2012-2013 fiscal years,  
1040 increases to a client's initial iBudget amount may be granted  
1041 only if his or her situation meets the crisis criteria provided  
1042 under agency rule.
- 1043       (d)-(a) While the agency phases in the iBudget system, the  
1044 agency may continue to serve eligible, enrolled clients under

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1045 the four-tiered waiver system established under s. 393.065 while  
1046 those clients await transitioning to the iBudget system.

1047 ~~(b) The agency shall design the phase-in process to ensure~~  
1048 ~~that a client does not experience more than one-half of any~~  
1049 ~~expected overall increase or decrease to his or her existing~~  
1050 ~~annualized cost plan during the first year that the client is~~  
1051 ~~provided an iBudget due solely to the transition to the iBudget~~  
1052 ~~system.~~

1053 (5)~~(4)~~ A client must use all available nonwaiver services  
1054 ~~authorized under the state Medicaid plan, school-based services,~~  
1055 ~~private insurance and other benefits, and any other resources~~  
1056 that may be available to the client before using funds from his  
1057 or her iBudget to pay for support and services.

1058 (6)~~(5)~~ The service limitations in s. 393.0661(3)(f)1., 2.,  
1059 and 3. do not apply to the iBudget system.

1060 (7)~~(6)~~ Rates for any or all services established under  
1061 rules of the Agency for Health Care Administration must ~~shall~~ be  
1062 designated as the maximum rather than a fixed amount for clients  
1063 ~~individuals~~ who receive an iBudget, except for services  
1064 specifically identified in those rules that the agency  
1065 determines are not appropriate for negotiation, which may  
1066 include, but are not limited to, residential habilitation  
1067 services.

1068 (8)~~(7)~~ The agency must ~~shall~~ ensure that clients and  
1069 caregivers have access to training and education that informs ~~to~~  
1070 ~~inform~~ them about the iBudget system and enhances ~~enhance~~ their  
1071 ability for self-direction. Such training must be provided ~~shall~~  
1072 ~~be offered~~ in a variety of formats and, at a minimum, must ~~shall~~  
1073 address the policies and processes of the iBudget system; the

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1074 roles and responsibilities of consumers, caregivers, waiver  
1075 support coordinators, providers, and the agency; information  
1076 that is available to help the client make decisions regarding  
1077 the iBudget system; and examples of nonwaiver ~~support and~~  
1078 resources that may be available in the community.

1079 ~~(9)-(8)~~ The agency shall collect data to evaluate the  
1080 implementation and outcomes of the iBudget system.

1081 ~~(10)-(9)~~ The agency and the Agency for Health Care  
1082 Administration may adopt rules specifying the allocation  
1083 algorithm and methodology; criteria and processes that allow for  
1084 clients to access reserved funds for extraordinary needs,  
1085 temporarily or permanently changed needs, and one-time needs;  
1086 and processes and requirements for the selection and review of  
1087 services, development of support and cost plans, and management  
1088 of the iBudget system as needed to administer this section.

1089 Section 7. Subsection (2) of section 393.067, Florida  
1090 Statutes, is amended to read:

1091 393.067 Facility licensure.—

1092 (2) The agency shall conduct annual inspections and reviews  
1093 of facilities and programs licensed under this section unless  
1094 the facility or program is currently accredited by the Joint  
1095 Commission, the Commission on Accreditation of Rehabilitation  
1096 Facilities, or the Council on Accreditation. Facilities or  
1097 programs that are operating under such accreditation must be  
1098 inspected and reviewed by the agency once every 2 years. If,  
1099 upon inspection and review, the services and service delivery  
1100 sites are not those for which the facility or program is  
1101 accredited, the facilities and programs must be inspected and  
1102 reviewed in accordance with this section and related rules

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1103 adopted by the agency. Notwithstanding current accreditation,  
1104 the agency may continue to monitor the facility or program as  
1105 necessary with respect to:

1106 (a) Ensuring that services for which the agency is paying  
1107 are being provided.

1108 (b) Investigating complaints, identifying problems that  
1109 would affect the safety or viability of the facility or program,  
1110 and monitoring the facility or program's compliance with any  
1111 resulting negotiated terms and conditions, including provisions  
1112 relating to consent decrees which are unique to a specific  
1113 service and are not statements of general applicability.

1114 (c) Ensuring compliance with federal and state laws,  
1115 federal regulations, or state rules if such monitoring does not  
1116 duplicate the accrediting organization's review pursuant to  
1117 accreditation standards.

1118 (d) Ensuring Medicaid compliance with federal certification  
1119 and precertification review requirements.

1120 Section 8. Subsections (2) and (4) of section 393.068,  
1121 Florida Statutes, are amended to read:

1122 393.068 Family care program.—

1123 (2) Services and support authorized under the family care  
1124 program shall, to the extent of available resources, include the  
1125 services listed under s. 393.0662(4) ~~393.066~~ and, in addition,  
1126 shall include, but not be limited to:

- 1127 (a) Attendant care.
- 1128 (b) Barrier-free modifications to the home.
- 1129 (c) Home visitation by agency workers.
- 1130 (d) In-home subsidies.
- 1131 (e) Low-interest loans.

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1132 (f) Modifications for vehicles used to transport the  
1133 individual with a developmental disability.

1134 (g) Facilitated communication.

1135 (h) Family counseling.

1136 (i) Equipment and supplies.

1137 (j) Self-advocacy training.

1138 (k) Roommate services.

1139 (l) Integrated community activities.

1140 (m) Emergency services.

1141 (n) Support coordination.

1142 (o) Other support services as identified by the family or  
1143 client individual.

1144 (4) All existing nonwaiver ~~community~~ resources available to  
1145 the client must be used ~~shall be utilized~~ to support program  
1146 objectives. Additional services may be incorporated into the  
1147 program as appropriate and to the extent that resources are  
1148 available. The agency may ~~is authorized to~~ accept gifts and  
1149 grants in order to carry out the program.

1150 Section 9. Subsections (1) through (3), paragraph (b) of  
1151 subsection (4), paragraphs (f) and (g) of subsection (5),  
1152 subsection (6), paragraphs (d) and (e) of subsection (7), and  
1153 paragraph (b) of subsection (12) of section 393.11, Florida  
1154 Statutes, are amended to read:

1155 393.11 Involuntary admission to residential services.—

1156 (1) JURISDICTION.—If ~~When~~ a person is determined to be  
1157 eligible to receive services from the agency ~~mentally retarded~~  
1158 and requires involuntary admission to residential services  
1159 provided by the agency, the circuit court of the county in which  
1160 the person resides shall have jurisdiction to conduct a hearing



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1161 and enter an order involuntarily admitting the person in order  
1162 for ~~that~~ the person to ~~may~~ receive the care, treatment,  
1163 habilitation, and rehabilitation that he or she ~~which the person~~  
1164 needs. For the purpose of identifying mental retardation or  
1165 autism, diagnostic capability shall be established by the  
1166 agency. Except as otherwise specified, the proceedings under  
1167 this section are ~~shall be~~ governed by the Florida Rules of Civil  
1168 Procedure.

1169 (2) PETITION.—

1170 (a) A petition for involuntary admission to residential  
1171 services may be executed by a petitioning commission or the  
1172 agency.

1173 (b) The petitioning commission shall consist of three  
1174 persons. One of whom ~~these persons~~ shall be a physician licensed  
1175 and practicing under chapter 458 or chapter 459.

1176 (c) The petition shall be verified and shall:

1177 1. State the name, age, and present address of the  
1178 commissioners and their relationship to the person who is the  
1179 subject of the petition ~~with mental retardation or autism;~~

1180 2. State the name, age, county of residence, and present  
1181 address of the person who is the subject of the petition ~~with~~  
1182 ~~mental retardation or autism;~~

1183 3. Allege that ~~the commission believes that~~ the person  
1184 needs involuntary residential services and specify the factual  
1185 information on which the belief is based;

1186 4. Allege that the person lacks sufficient capacity to give  
1187 express and informed consent to a voluntary application for  
1188 services and lacks the basic survival and self-care skills to  
1189 provide for the person's well-being or is likely to physically

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1190 injure others if allowed to remain at liberty; and

1191 5. State which residential setting is the least restrictive  
1192 and most appropriate alternative and specify the factual  
1193 information on which the belief is based.

1194 (d) The petition shall be filed in the circuit court of the  
1195 county in which the person who is the subject of the petition  
1196 ~~with mental retardation or autism~~ resides.

1197 (3) NOTICE.—

1198 (a) Notice of the filing of the petition shall be given to  
1199 the defendant individual and his or her legal guardian. The  
1200 notice shall be given both verbally and in writing in the  
1201 language of the defendant client, or in other modes of  
1202 communication of the defendant client, and in English. Notice  
1203 shall also be given to such other persons as the court may  
1204 direct. The petition for involuntary admission to residential  
1205 services shall be served with the notice.

1206 (b) ~~If Whenever~~ a motion or petition has been filed  
1207 pursuant to s. 916.303 to dismiss criminal charges against a  
1208 defendant ~~with retardation or autism~~, and a petition is filed to  
1209 involuntarily admit the defendant to residential services under  
1210 this section, the notice of the filing of the petition shall  
1211 also be given to the defendant's attorney, the state attorney of  
1212 the circuit from which the defendant was committed, and the  
1213 agency.

1214 (c) The notice shall state that a hearing shall be set to  
1215 inquire into the need of the defendant person ~~with mental~~  
1216 ~~retardation or autism~~ for involuntary residential services. The  
1217 notice shall also state the date of the hearing on the petition.

1218 (d) The notice shall state that the defendant individual

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1219 ~~with mental retardation or autism~~ has the right to be  
1220 represented by counsel of his or her own choice and that, if the  
1221 defendant person cannot afford an attorney, the court shall  
1222 appoint one.

1223 (4) AGENCY PARTICIPATION.—

1224 (b) Following examination, the agency shall file a written  
1225 report with the court not less than 10 working days before the  
1226 date of the hearing. The report must be served on the  
1227 petitioner, the defendant ~~person with mental retardation~~, and  
1228 the defendant's ~~person's~~ attorney at the time the report is  
1229 filed with the court.

1230 (5) EXAMINING COMMITTEE.—

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

1236 (g) Members of the examining committee shall receive a  
1237 reasonable fee to be determined by the court. The fees are to be  
1238 paid from the general revenue fund of the county in which the  
1239 defendant person ~~with mental retardation~~ resided when the  
1240 petition was filed.

1241 (6) COUNSEL; GUARDIAN AD LITEM.—

1242 (a) The defendant must ~~person with mental retardation~~ shall  
1243 be represented by counsel at all stages of the judicial  
1244 proceeding. ~~If In the event~~ the defendant person is indigent and  
1245 cannot afford counsel, the court shall appoint a public defender  
1246 not less than 20 working days before the scheduled hearing. The  
1247 defendant's ~~person's~~ counsel shall have full access to the

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1248 records of the service provider and the agency. In all cases,  
1249 the attorney shall represent the rights and legal interests of  
1250 the defendant ~~person with mental retardation~~, regardless of who  
1251 may initiate the proceedings or pay the attorney's fee.

1252 (b) If the attorney, during the course of his or her  
1253 representation, reasonably believes that the defendant ~~person~~  
1254 ~~with mental retardation~~ cannot adequately act in his or her own  
1255 interest, the attorney may seek the appointment of a guardian ad  
1256 litem. A prior finding of incompetency is not required before a  
1257 guardian ad litem is appointed pursuant to this section.

1258 (7) HEARING.—

1259 (d) The defendant may ~~person with mental retardation shall~~  
1260 be physically present throughout all or part of the entire  
1261 proceeding. If the defendant's ~~person's~~ attorney or any other  
1262 interested party believes that the person's presence at the  
1263 hearing is not in the person's best interest, or good cause is  
1264 otherwise shown, the person's presence may be waived once the  
1265 court may order that the defendant be excluded from the hearing  
1266 ~~has seen the person and the hearing has commenced.~~

1267 (e) The defendant ~~person~~ has the right to present evidence  
1268 and to cross-examine all witnesses and other evidence alleging  
1269 the appropriateness of the person's admission to residential  
1270 care. Other relevant and material evidence regarding the  
1271 appropriateness of the person's admission to residential  
1272 services; the most appropriate, least restrictive residential  
1273 placement; and the appropriate care, treatment, and habilitation  
1274 of the person, including written or oral reports, may be  
1275 introduced at the hearing by any interested person.

1276 (12) APPEAL.—

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1277 (b) The filing of an appeal by the person ordered to be  
1278 involuntarily admitted under this section ~~with mental~~  
1279 ~~retardation~~ shall stay admission of the person into residential  
1280 care. The stay shall remain in effect during the pendency of all  
1281 review proceedings in Florida courts until a mandate issues.

1282 Section 10. Paragraph (a) of subsection (1) of section  
1283 393.125, Florida Statutes, is amended to read:

1284 393.125 Hearing rights.—

1285 (1) REVIEW OF AGENCY DECISIONS.—

1286 (a) For Medicaid programs administered by the agency, any  
1287 developmental services applicant or client, or his or her  
1288 parent, guardian advocate, or authorized representative, may  
1289 request a hearing in accordance with federal law and rules  
1290 applicable to Medicaid cases and has the right to request an  
1291 administrative hearing pursuant to ss. 120.569 and 120.57. The  
1292 hearing ~~These hearings~~ shall be provided by the Department of  
1293 Children and Family Services pursuant to s. 409.285 and shall  
1294 follow procedures consistent with federal law and rules  
1295 applicable to Medicaid cases. At the conclusion of the hearing,  
1296 the department shall submit its recommended order to the agency  
1297 as provided in s. 120.57(1)(k) and the agency shall issue final  
1298 orders as provided in s. 120.57(1)(i).

1299 Section 11. Subsection (1) of section 393.23, Florida  
1300 Statutes, is amended to read:

1301 393.23 Developmental disabilities centers; trust accounts.—  
1302 All receipts from the operation of canteens, vending machines,  
1303 hobby shops, sheltered workshops, activity centers, farming  
1304 projects, and other like activities operated in a developmental  
1305 disabilities center, and moneys donated to the center, must be

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1306 deposited in a trust account in any bank, credit union, or  
1307 savings and loan association authorized by the State Treasury as  
1308 a qualified depository to do business in this state, if the  
1309 moneys are available on demand.

1310 (1) Moneys in the trust account must be expended for the  
1311 benefit, education, or welfare of clients. However, if  
1312 specified, moneys that are donated to the center must be  
1313 expended in accordance with the intentions of the donor. Trust  
1314 account money may not be used for the benefit of agency  
1315 employees or to pay the wages of such employees. The welfare of  
1316 clients includes the expenditure of funds for the purchase of  
1317 items for resale at canteens or vending machines, and for the  
1318 establishment of, maintenance of, and operation of canteens,  
1319 hobby shops, recreational or entertainment facilities, sheltered  
1320 workshops that include client wages, activity centers, farming  
1321 projects, or other like facilities or programs established at  
1322 the center for the benefit of clients.

1323 Section 12. Paragraph (d) of subsection (13) of section  
1324 409.906, Florida Statutes, is amended to read:

1325 409.906 Optional Medicaid services.—Subject to specific  
1326 appropriations, the agency may make payments for services which  
1327 are optional to the state under Title XIX of the Social Security  
1328 Act and are furnished by Medicaid providers to recipients who  
1329 are determined to be eligible on the dates on which the services  
1330 were provided. Any optional service that is provided shall be  
1331 provided only when medically necessary and in accordance with  
1332 state and federal law. Optional services rendered by providers  
1333 in mobile units to Medicaid recipients may be restricted or  
1334 prohibited by the agency. Nothing in this section shall be

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1335 construed to prevent or limit the agency from adjusting fees,  
1336 reimbursement rates, lengths of stay, number of visits, or  
1337 number of services, or making any other adjustments necessary to  
1338 comply with the availability of moneys and any limitations or  
1339 directions provided for in the General Appropriations Act or  
1340 chapter 216. If necessary to safeguard the state's systems of  
1341 providing services to elderly and disabled persons and subject  
1342 to the notice and review provisions of s. 216.177, the Governor  
1343 may direct the Agency for Health Care Administration to amend  
1344 the Medicaid state plan to delete the optional Medicaid service  
1345 known as "Intermediate Care Facilities for the Developmentally  
1346 Disabled." Optional services may include:

1347 (13) HOME AND COMMUNITY-BASED SERVICES.—

1348 (d) The agency shall ~~request federal approval to~~ develop a  
1349 system to require payment of premiums, fees, or other cost  
1350 sharing by the parents of a child younger than 18 years of age  
1351 who is being served by a waiver under this subsection if the  
1352 adjusted household income is greater than 100 percent of the  
1353 federal poverty level. The amount of the premium, fee, or cost  
1354 sharing shall be calculated using a sliding scale based on the  
1355 size of the family, the amount of the parent's adjusted gross  
1356 income, and the federal poverty guidelines. The premium, fee, or  
1357 other cost sharing paid by a parent may not exceed the cost of  
1358 waiver services to the client. Parents who have more than one  
1359 child receiving services may not be required to pay more than  
1360 the amount required for the child who has the highest  
1361 expenditures. Parents who do not live with each other remain  
1362 responsible for paying the required contribution. The client may  
1363 not be denied waiver services due to nonpayment by a parent.

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1364 Adoptive and foster parents are exempt from payment of any  
1365 premiums, fees, or other cost-sharing for waiver services. The  
1366 agency shall request federal approval as necessary to implement  
1367 the program. ~~The premium and cost-sharing system developed by~~  
1368 ~~the agency shall not adversely affect federal funding to the~~  
1369 ~~state. Upon receiving~~ After the agency receives federal  
1370 approval, if required, the agency, the Agency for Persons with  
1371 Disabilities, and the Department of Children and Family Services  
1372 may implement the system and collect income information from  
1373 parents of children who will be affected by this paragraph. The  
1374 parents must provide information upon request. The agency shall  
1375 prepare a report to include the estimated operational cost of  
1376 implementing the premium, fee, and cost-sharing system and the  
1377 estimated revenues to be collected from parents of children in  
1378 the waiver program. The report shall be delivered to the  
1379 President of the Senate and the Speaker of the House of  
1380 Representatives by June 30, 2012. The agency, the Department of  
1381 Children and Family Services, and the Agency for Persons with  
1382 Disabilities may adopt rules to administer this paragraph.

1383 Section 13. Section 514.072, Florida Statutes, is amended  
1384 to read:

1385 514.072 Certification of swimming instructors for people  
1386 who have developmental disabilities ~~required~~.—Any person working  
1387 at a swimming pool who holds himself or herself out as a  
1388 swimming instructor specializing in training people who have a  
1389 developmental disability ~~developmental disabilities~~, as defined  
1390 in s. 393.063(11) ~~393.063(10)~~, may be certified by the Dan  
1391 Marino Foundation, Inc., in addition to being certified under s.  
1392 514.071. The Dan Marino Foundation, Inc., must develop



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1393 certification requirements and a training curriculum for  
1394 swimming instructors for people who have developmental  
1395 disabilities and must submit the certification requirements to  
1396 the Department of Health for review ~~by January 1, 2007. A person~~  
1397 ~~certified under s. 514.071 before July 1, 2007, must meet the~~  
1398 ~~additional certification requirements of this section before~~  
1399 ~~January 1, 2008. A person certified under s. 514.071 on or after~~  
1400 ~~July 1, 2007, must meet the additional certification~~  
1401 ~~requirements of this section within 6 months after receiving~~  
1402 ~~certification under s. 514.071.~~

1403 Section 14. This act shall take effect July 1, 2012.