

By the Committees on Budget Subcommittee on Health and Human Services Appropriations; Health Regulation; and Children, Families, and Elder Affairs; and Senators Negrón and García

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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 current definitions and  
8           providing definitions for the terms "adult day  
9           services," "nonwaiver resources," and "waiver";  
10          amending s. 393.065, F.S.; clarifying provisions  
11          relating to eligibility requirements based on  
12          citizenship and state residency; amending s. 393.066,  
13          F.S.; revising provisions relating to community  
14          services and treatment; revising an express list of  
15          services; requiring the agency to promote partnerships  
16          and collaborative efforts to enhance the availability  
17          of nonwaiver services; deleting a requirement that the  
18          agency promote day habilitation services for certain  
19          individuals; amending s. 393.0661, F.S.; revising  
20          provisions relating to eligibility under the Medicaid  
21          waiver redesign; providing that final tier eligibility  
22          be determined at the time a waiver slot and funding  
23          are available; providing criteria for moving an  
24          individual between tiers; deleting a cap on tier one  
25          expenditures for certain individuals; authorizing the  
26          agency and the Agency for Health Care Administration  
27          to adopt rules; deleting certain directions relating  
28          to the adjustment of an individual's cost plan;  
29          providing criteria for reviewing Medicaid waiver

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30 provider agreements, including support coordinators;  
31 deleting obsolete provisions; amending s. 393.0662,  
32 F.S.; providing criteria for calculating an  
33 individual's iBudget; deleting obsolete provisions;  
34 amending s. 393.067, F.S.; requiring that facilities  
35 that are accredited by certain organizations be  
36 inspected and reviewed by the agency every 2 years;  
37 providing agency criteria for monitoring licensees;  
38 amending s. 393.068, F.S.; conforming a cross-  
39 reference and terminology; amending s. 393.11, F.S.;  
40 clarifying eligibility for involuntary admission to  
41 residential services; amending s. 393.125, F.S.;  
42 requiring the Department of Children and Family  
43 Services to submit its hearing recommendations to the  
44 agency; amending s. 393.23, F.S.; providing that  
45 receipts from the operation of canteens, vending  
46 machines, and other activities may be used to pay  
47 certain wages; creating s. 393.28, F.S.; directing the  
48 agency to adopt sanitation standards by rule;  
49 providing penalties for violations; authorizing the  
50 agency to contract for food services and inspection  
51 services to enforce standards; amending s. 393.502,  
52 F.S.; revising the membership of family care councils;  
53 amending s. 514.072, F.S.; conforming a cross-  
54 reference; deleting an obsolete provision; providing  
55 an effective date.

56  
57 Be It Enacted by the Legislature of the State of Florida:  
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59 Section 1. Section 393.062, Florida Statutes, is amended to  
60 read:

61 393.062 Legislative findings and declaration of intent.—

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

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

101 (2) The Legislature finds that in order to maximize the  
102 delivery of services to individuals in the community who have  
103 developmental disabilities and remain within appropriated funds,  
104 service delivery must blend natural supports, community  
105 resources, and state funds. The Legislature also finds that,  
106 given the traditional role of state government in ensuring the  
107 health, safety, and welfare of state residents, and the intent  
108 that waiver funds be used to avoid institutionalization, state  
109 funds, including waiver funds, appropriated to the agency must  
110 be reserved and prioritized for those services needed to ensure  
111 the health, safety, and welfare of individuals who have  
112 developmental disabilities in noninstitutional settings. It is  
113 therefore the intent of the Legislature that the agency develop  
114 sound fiscal strategies that allow the agency to predict,  
115 control, manage, and operate within available funding as  
116 provided in the General Appropriations Act in order to ensure

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117 that state funds are available for health, safety, and welfare,  
118 to avoid institutionalization, and to maximize the number of  
119 individuals who have developmental disabilities who receive  
120 services. It is further the intent of the Legislature that the  
121 agency provide services for individuals residing in  
122 developmental disability centers that promote the individual's  
123 health, safety, and welfare and enhance their quality of life.  
124 Finally, the Legislature intends that the agency continue the  
125 tradition of involving families, stakeholders, and other  
126 interested parties as it recasts its role as a collaborative  
127 partner in the larger context of family and community-supported  
128 services and develops new opportunities and supports for  
129 individuals with developmental disabilities.

130 Section 2. Section 393.063, Florida Statutes, is reordered  
131 and amended to read:

132 393.063 Definitions.—As used in ~~For the purposes of~~ this  
133 chapter, the term:

134 (1) "Agency" means the Agency for Persons with  
135 Disabilities.

136 (2) "Adult day services" means services that are provided  
137 in a nonresidential setting, separate from the home or facility  
138 in which the individual resides, unless he or she resides in a  
139 planned residential community as defined in s. 419.001(1), and  
140 that are intended to support the participation of individuals in  
141 meaningful activities that do not require formal training, which  
142 may include a variety of activities, including social  
143 activities.

144 (3) ~~(2)~~ "Adult day training" means training that is  
145 conducted ~~services which take place~~ in a nonresidential setting,

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146 separate from the home or facility in which the individual  
147 ~~client~~ resides, unless he or she resides in a planned  
148 residential community as defined in s. 419.001(1)(d); are  
149 intended to support the individual's participation ~~of clients~~ in  
150 daily, meaningful, and valued routines of the community; and may  
151 include work-like settings that do not meet the definition of  
152 supported employment.

153 ~~(4)(3)~~ "Autism" means a pervasive, neurologically based  
154 developmental disability of extended duration which causes  
155 severe learning, communication, and behavior disorders and which  
156 has an ~~with~~ age of onset during infancy or childhood.  
157 Individuals who have ~~with~~ autism exhibit impairment in  
158 reciprocal social interaction, impairment in verbal and  
159 nonverbal communication and imaginative ability, and a markedly  
160 restricted repertoire of activities and interests.

161 ~~(5)(4)~~ "Cerebral palsy" means a group of disabling symptoms  
162 of extended duration which results from damage to the developing  
163 brain which ~~that~~ may occur before, during, or after birth and  
164 which ~~that~~ results in the loss or impairment of control over  
165 voluntary muscles. The term ~~For the purposes of this definition,~~  
166 ~~cerebral palsy~~ does not include those symptoms or impairments  
167 resulting solely from a stroke.

168 ~~(6)(5)~~ "Client" means an individual ~~any person~~ determined  
169 eligible by the agency for services under this chapter.

170 ~~(7)(6)~~ "Client advocate" means a friend or relative of an  
171 individual ~~the client~~, or ~~of~~ the individual's ~~client's~~ immediate  
172 family, who advocates for the individual's best interests ~~of the~~  
173 ~~client~~ in any proceedings under this chapter in which the  
174 individual ~~client~~ or his or her family has the right or duty to

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175 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 individuals who have ~~clients with~~  
190 developmental 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 an  
193 individual ~~a client~~ while providing services to that individual  
194 ~~the client~~ or who has access to his or her ~~a client's~~ living  
195 areas, or to a client's funds, or 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 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 disability ~~disabilities~~ under s.  
226 393.12.

227 (19) "Habilitation" means the process by which an  
228 individual who has a developmental disability ~~a client~~ is  
229 assisted to acquire and maintain those life skills that ~~which~~  
230 enable the individual ~~client~~ to cope more effectively with the  
231 demands of his or her condition and environment and to raise the  
232 level of his or her physical, mental, and social efficiency. It

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233 includes, but is not limited to, programs of formal structured  
234 education and treatment.

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

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

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

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

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

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

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

260 (23) "Nonwaiver resources" means supports or services that  
261 may be obtained through private insurance, the Medicaid state

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262 plan, nonprofit organizations, charitable donations from private  
263 businesses, other government programs, family, natural supports,  
264 community resources, and any other source other than a waiver.

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

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

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

284 (27)-(26) "Resident" means an individual who has a any  
285 person with developmental disability and who resides  
286 disabilities residing at a residential facility, regardless of  
287 whether he or she has been determined eligible for agency  
288 services or not such person is a client of the agency.

289 (28)-(27) "Residential facility" means a facility providing  
290 room and board and personal care for individuals who have

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291 ~~persons with~~ developmental disabilities.

292 (29)~~(28)~~ "Residential habilitation" means supervision and  
293 training in ~~with~~ the acquisition, retention, or improvement in  
294 skills related to activities of daily living, such as personal  
295 hygiene skills, homemaking skills, and the social and adaptive  
296 skills necessary to enable the individual to reside in the  
297 community.

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

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

310 (32)~~(31)~~ "Restraint" means a physical device, method, or  
311 drug used to control dangerous behavior.

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

317 (b) A drug used as a restraint is a medication used to  
318 control the individual's ~~person's~~ behavior or to restrict his or  
319 her freedom of movement and is not a standard treatment for the

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320 individual's ~~person's~~ medical or psychiatric condition.  
321 Physically holding an individual ~~a person~~ during a procedure to  
322 forcibly administer psychotropic medication is a physical  
323 restraint.

324 (c) Restraint does not include physical devices, such as  
325 orthopedically prescribed appliances, surgical dressings and  
326 bandages, supportive body bands, seatbelts or wheelchair tie-  
327 downs, or other physical holding when necessary for routine  
328 physical examinations and tests; for purposes of orthopedic,  
329 surgical, or other similar medical treatment; when used to  
330 provide support for the achievement of functional body position  
331 or proper balance; ~~or~~ when used to protect an individual ~~a~~  
332 ~~person~~ from falling out of bed or a wheelchair; or when used for  
333 safety during transportation.

334 (33) ~~(32)~~ "Retardation" means significantly subaverage  
335 general intellectual functioning existing concurrently with  
336 deficits in adaptive behavior which manifest ~~that manifests~~  
337 before the age of 18 and can reasonably be expected to continue  
338 indefinitely. As used in this subsection, the term:

339 (a) "Significantly subaverage general intellectual  
340 functioning," ~~for the purpose of this definition,~~ means  
341 performance that ~~which~~ is two or more standard deviations from  
342 the mean score on a standardized intelligence test specified in  
343 the rules of the agency.

344 (b) "Adaptive behavior," ~~for the purpose of this~~  
345 ~~definition,~~ means the effectiveness or degree with which an  
346 individual meets the standards of personal independence and  
347 social responsibility expected of his or her age, cultural  
348 group, and community.

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349        (34)~~(33)~~ "Seclusion" means the involuntary isolation of an  
350 individual ~~a person~~ in a room or area from which the individual  
351 ~~person~~ is prevented from leaving. The prevention may be by  
352 physical barrier or by a staff member who is acting in a manner,  
353 or who is physically situated, so as to prevent the individual  
354 ~~person~~ from leaving the room or area. For the purposes of this  
355 chapter, the term does not mean isolation due to the  
356 individual's medical condition or symptoms ~~of the person~~.

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

365        (36)~~(35)~~ "Specialized therapies" means those treatments or  
366 activities prescribed by and provided by an appropriately  
367 trained, licensed, or certified professional or staff person and  
368 may include, but are not limited to, physical therapy, speech  
369 therapy, respiratory therapy, occupational therapy, behavior  
370 therapy, physical management services, and related specialized  
371 equipment and supplies.

372        (37)~~(36)~~ "Spina bifida" means an individual who has been  
373 given, ~~for purposes of this chapter,~~ ~~a person with~~ a medical  
374 diagnosis of spina bifida cystica or myelomeningocele.

375        (38)~~(37)~~ "Support coordinator" means a person who is  
376 contracting with ~~designated by~~ the agency to assist individuals  
377 and families in identifying their capacities, needs, and

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378 resources, as well as finding and gaining access to necessary  
379 supports and services; assisting with locating or developing  
380 employment opportunities; coordinating the delivery of supports  
381 and services; advocating on behalf of the individual and family;  
382 maintaining relevant records; and monitoring and evaluating the  
383 delivery of supports and services to determine the extent to  
384 which they meet the needs ~~and expectations~~ identified by the  
385 individual, family, and others who participated in the  
386 development of the support plan.

387 (39)~~(38)~~ "Supported employment" means employment located or  
388 provided in an integrated work setting, with earnings paid on a  
389 commensurate wage basis, and for which continued support is  
390 needed for job maintenance.

391 (40)~~(39)~~ "Supported living" means a category of  
392 individually determined services designed and coordinated in  
393 ~~such~~ a manner that provides ~~as to provide~~ assistance to adults  
394 ~~adult clients~~ who require ongoing supports to live as  
395 independently as possible in their own homes, to be integrated  
396 into the community, and to participate in community life to the  
397 fullest extent possible.

398 (41)~~(40)~~ "Training" means a planned approach to assisting  
399 an individual ~~a client~~ to attain or maintain his or her maximum  
400 potential and includes services ranging from sensory stimulation  
401 to instruction in skills for independent living and employment.

402 (42)~~(41)~~ "Treatment" means the prevention, amelioration, or  
403 cure of an individual's ~~a client's~~ physical and mental  
404 disabilities or illnesses.

405 (43) "Waiver" means a federally approved Medicaid waiver  
406 program, including, but not limited to, the Developmental

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407 Disabilities Home and Community-Based Services Waivers Tiers 1-  
408 4, the Developmental Disabilities Individual Budget Waiver, and  
409 the Consumer-Directed Care Plus Program, authorized pursuant to  
410 s. 409.906 and administered by the agency to provide home and  
411 community-based services to individuals who have developmental  
412 disabilities.

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

415 393.065 Application and eligibility determination.—

416 (1) Application for services shall be made, in writing, to  
417 the agency, ~~in the service area in which the applicant resides.~~  
418 The agency shall review each applicant for eligibility within 45  
419 days after the date the application is signed for children under  
420 6 years of age and within 60 days after the date the application  
421 is signed for all other applicants. ~~If when~~ necessary to  
422 definitively identify individual conditions or needs, the agency  
423 shall provide a comprehensive assessment. Eligibility is limited  
424 to United States citizens and to qualified noncitizens who meet  
425 the criteria provided in s. 414.095(3), and who have established  
426 domicile in Florida pursuant to s. 222.17 or are otherwise  
427 determined to be legal residents of this state. ~~Only applicants~~  
428 ~~whose domicile is in Florida are eligible for services.~~

429 Information accumulated by other agencies, including  
430 professional reports and collateral data, shall be considered if  
431 ~~in this process when~~ available.

432 (6) The individual, or the individual's client, ~~the~~  
433 ~~client's~~ guardian, ~~or the client's~~ family, must ensure that  
434 accurate, up-to-date contact information is provided to the  
435 agency at all times. The agency shall remove from the wait list

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436 an any individual who cannot be located using the contact  
437 information provided to the agency, fails to meet eligibility  
438 requirements, or no longer qualifies as a legal resident of this  
439 state becomes domiciled outside the state.

440 Section 4. Section 393.066, Florida Statutes, is amended to  
441 read:

442 393.066 Community services and treatment.—

443 (1) The agency shall plan, develop, organize, and implement  
444 its programs of services and treatment for individuals who have  
445 persons with developmental disabilities in order to assist them  
446 in living allow clients to live as independently as possible in  
447 their own homes or communities, to support them in maximizing  
448 their independence using innovative, effective, efficient, and  
449 sustainable solutions, and to avoid institutionalization and to  
450 achieve productive lives as close to normal as possible. All  
451 elements of community-based services shall be made available,  
452 and eligibility for these services shall be consistent across  
453 the state.

454 (2) ~~All~~ Services that are not available through nonwaiver  
455 resources or that are not donated needed shall be purchased  
456 instead of provided directly by the agency if, ~~when~~ such  
457 arrangement is more cost-efficient than having those services  
458 provided directly. All purchased services must be approved by  
459 the agency. Authorization for such services is dependent on the  
460 availability of agency funding.

461 (3) Community ~~Community-based~~ services that are medically  
462 necessary to prevent the institutionalization of individuals  
463 with developmental disabilities must be provided in the most  
464 cost-effective manner to the extent of the availability of

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465 agency resources as specified in the General Appropriations Act.

466 These services may ~~shall, to the extent of available resources,~~  
467 include:

468 (a) Adult day training and adult day services.

469 (b) Family care services.

470 (c) Guardian advocate referral services.

471 (d) Medical/dental services, except that medical services  
472 shall not be provided to individuals ~~clients~~ with spina bifida  
473 except as specifically appropriated by the Legislature.

474 ~~(e) Parent training.~~

475 (e) ~~(f)~~ Personal care services and personal support  
476 services.

477 ~~(g) Recreation.~~

478 (f) ~~(h)~~ Residential habilitation facility services.

479 (g) ~~(i)~~ Respite services.

480 (h) ~~(j)~~ Support coordination ~~Social services.~~

481 (i) ~~(k)~~ Specialized therapies.

482 (j) ~~(l)~~ Supported employment.

483 (k) ~~(m)~~ Supported living.

484 (l) ~~(n)~~ Training, including behavioral analysis services.

485 (m) ~~(o)~~ Transportation.

486 (n) ~~(p)~~ Other habilitative and rehabilitative services as  
487 needed.

488 (4) The agency or the agency's agents shall identify and  
489 engage in efforts to develop, increase, or enhance the  
490 availability of nonwaiver resources to individuals who have  
491 developmental disabilities. The agency shall promote  
492 partnerships and collaborative efforts with families;  
493 organizations, such as nonprofit agencies and foundations;

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494 places of worship; schools; community organizations and clubs;  
495 businesses; local governments; and state and federal agencies  
496 ~~shall utilize the services of private businesses, not-for-profit~~  
497 ~~organizations, and units of local government whenever such~~  
498 ~~services are more cost-efficient than such services provided~~  
499 ~~directly by the department, including arrangements for provision~~  
500 ~~of residential facilities.~~

501 ~~(5) In order to improve the potential for utilization of~~  
502 ~~more cost-effective, community-based residential facilities, the~~  
503 ~~agency shall promote the statewide development of day~~  
504 ~~habilitation services for clients who live with a direct service~~  
505 ~~provider in a community-based residential facility and who do~~  
506 ~~not require 24-hour-a-day care in a hospital or other health~~  
507 ~~care institution, but who may, in the absence of day~~  
508 ~~habilitation services, require admission to a developmental~~  
509 ~~disabilities center. Each day service facility shall provide a~~  
510 ~~protective physical environment for clients, ensure that direct~~  
511 ~~service providers meet minimum screening standards as required~~  
512 ~~in s. 393.0655, make available to all day habilitation service~~  
513 ~~participants at least one meal on each day of operation, provide~~  
514 ~~facilities to enable participants to obtain needed rest while~~  
515 ~~attending the program, as appropriate, and provide social and~~  
516 ~~educational activities designed to stimulate interest and~~  
517 ~~provide socialization skills.~~

518 (5)(6) To promote independence and productivity, the agency  
519 shall provide supports and services, within available resources,  
520 to assist individuals ~~clients~~ enrolled in Medicaid waivers who  
521 choose to pursue gainful employment.

522 (6)(7) For the purpose of making needed community-based

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523 residential facilities available at the least possible cost to  
524 the state, the agency may ~~is authorized to~~ lease privately owned  
525 residential facilities under long-term rental agreements, if  
526 such ~~rental~~ agreements are projected to be less costly to the  
527 state over the useful life of the facility than state purchase  
528 or state construction of ~~such~~ a facility.

529 ~~(7)(8)~~ The agency may adopt rules providing definitions,  
530 eligibility criteria, and procedures for the purchase of  
531 services provided pursuant to this section.

532 Section 5. Section 393.0661, Florida Statutes, is amended  
533 to read:

534 393.0661 Home and community-based services delivery system;  
535 comprehensive redesign.—The Legislature finds that the home and  
536 community-based services delivery system for individuals who  
537 have persons with developmental disabilities and the  
538 availability of appropriated funds are two of the critical  
539 elements in making services available. ~~Therefore, it is the~~  
540 ~~intent of the Legislature that the Agency for Persons with~~  
541 ~~Disabilities shall develop and implement a comprehensive~~  
542 ~~redesign of the system.~~

543 (1) The ~~redesign of the~~ home and community-based services  
544 system must ~~shall~~ include, at a minimum, ~~all actions necessary~~  
545 ~~to achieve~~ an appropriate rate structure, individual ~~client~~  
546 choice within a specified service package, appropriate  
547 assessment strategies, an efficient billing process that  
548 contains reconciliation and monitoring components, and a  
549 ~~redefined~~ role for support coordinators which that avoids  
550 conflicts of interest and ensures that an individual's needs for  
551 critical services, which maximize his or her independence and

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552 avoid institutionalization through the use of innovative,  
553 effective, efficient, and sustainable solutions, are addressed  
554 ~~potential conflicts of interest and ensures that family/client~~  
555 ~~budgets are linked to levels of need.~~

556 (a) The agency shall use the Questionnaire for Situational  
557 Information or another needs an assessment instrument deemed by  
558 ~~instrument that the agency deems to be reliable and valid,~~  
559 ~~including, but not limited to, the Department of Children and~~  
560 ~~Family Services' Individual Cost Guidelines or the agency's~~  
561 ~~Questionnaire for Situational Information.~~ The agency may  
562 contract with an external vendor ~~or may use support coordinators~~  
563 to complete individual needs ~~client~~ assessments if it develops  
564 sufficient safeguards and training to ensure ongoing inter-rater  
565 reliability.

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

569 (2) A provider of services rendered to individuals who have  
570 ~~persons with~~ developmental disabilities pursuant to a federally  
571 approved waiver shall be reimbursed according to a rate  
572 methodology based upon an analysis of the expenditure history  
573 and prospective costs of providers participating in the waiver  
574 program, or under any other methodology developed by the Agency  
575 for Health Care Administration, in consultation with the agency  
576 for Persons with Disabilities, and approved by the Federal  
577 Government in accordance with the waiver.

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

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581 ~~individuals~~ ~~clients~~ through the developmental disabilities and  
582 ~~family and supported living waivers~~. For the purpose of the this  
583 waiver program, eligible individuals ~~clients~~ shall include  
584 individuals who have ~~with a diagnosis of Down syndrome or a~~  
585 developmental disability as ~~defined in s. 393.063~~. The agency  
586 shall assign all individuals ~~clients~~ receiving services through  
587 the ~~developmental disabilities~~ waiver to a tier based on the  
588 ~~Department of Children and Family Services' Individual Cost~~  
589 ~~Guidelines~~, ~~the agency's~~ Questionnaire for Situational  
590 Information, ~~or another such assessment instrument deemed to be~~  
591 valid and reliable by the agency; individual ~~client~~  
592 characteristics, including, but not limited to, age; and other  
593 appropriate assessment methods. Final determination of tier  
594 eligibility may not be made until a waiver slot and funding  
595 become available and only then may the individual be enrolled in  
596 the appropriate tier. If an individual is later determined  
597 eligible for a higher tier, assignment to the higher tier must  
598 be based on crisis criteria as adopted by rule. The agency may  
599 also later move an individual to a lower tier if his or her  
600 service needs change and can be met by services provided in a  
601 lower tier. The agency may not authorize the provision of  
602 services that are duplicated by, or that are above the coverage  
603 limits of, the Medicaid state plan.

604 (a) Tier one is limited to individuals ~~clients~~ who have  
605 intensive medical or adaptive service needs that cannot be met  
606 in tier two, three, or four ~~for intensive medical or adaptive~~  
607 ~~needs and that are essential for avoiding institutionalization,~~  
608 or who possess behavioral problems that are exceptional in  
609 intensity, duration, or frequency and present a substantial risk

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610 of harm to themselves or others. ~~Total annual expenditures under~~  
611 ~~tier one may not exceed \$150,000 per client each year, provided~~  
612 ~~that expenditures for clients in tier one with a documented~~  
613 ~~medical necessity requiring intensive behavioral residential~~  
614 ~~habilitation services, intensive behavioral residential~~  
615 ~~habilitation services with medical needs, or special medical~~  
616 ~~home care, as provided in the Developmental Disabilities Waiver~~  
617 ~~Services Coverage and Limitations Handbook, are not subject to~~  
618 ~~the \$150,000 limit on annual expenditures.~~

619 (b) Tier two is limited to individuals ~~clients~~ whose  
620 service needs include a licensed residential facility and who  
621 are authorized to receive a moderate level of support for  
622 standard residential habilitation services or a minimal level of  
623 support for behavior focus residential habilitation services, or  
624 individuals ~~clients~~ in supported living who receive more than 6  
625 hours a day of in-home support services. Tier two also includes  
626 individuals whose need for authorized services meets the  
627 criteria for tier one but can be met within the expenditure  
628 limit of tier two. Total annual expenditures under tier two may  
629 not exceed \$53,625 per individual ~~client~~ each year.

630 (c) Tier three includes, but is not limited to, individuals  
631 who require ~~clients requiring~~ residential placements,  
632 individuals who are ~~clients~~ in independent or supported living  
633 situations, and individuals ~~clients~~ who live in their family  
634 home. Tier three also includes individuals whose need for  
635 authorized services meets the criteria for tiers one or two but  
636 can be met within the expenditure limit of tier three. Total  
637 annual expenditures under tier three may not exceed \$34,125 per  
638 individual ~~client~~ each year.

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639 (d) Tier four includes individuals who were enrolled in the  
640 family and supported living waiver on July 1, 2007, and were ~~who~~  
641 ~~shall be~~ assigned to this tier without the assessments required  
642 by this section. Tier four also includes, but is not limited to,  
643 individuals ~~clients~~ in independent or supported living  
644 situations and individuals ~~clients~~ who live in their family  
645 home. Total annual expenditures under tier four may not exceed  
646 \$14,422 per individual ~~client~~ each year.

647 (e) The Agency for Health Care Administration shall also  
648 seek federal approval to provide a consumer-directed option for  
649 individuals who have ~~persons with~~ developmental disabilities  
650 ~~which corresponds to the funding levels in each of the waiver~~  
651 ~~tiers. The agency shall implement the four-tiered waiver system~~  
652 ~~beginning with tiers one, three, and four and followed by tier~~  
653 ~~two. The agency and the Agency for Health Care Administration~~  
654 ~~may adopt rules necessary to administer this subsection.~~

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

658 1. Supported living coaching services may not exceed 20  
659 hours per month for individuals ~~persons~~ who also receive in-home  
660 support services.

661 2. Limited support coordination services is the only type  
662 of support coordination service that may be provided to  
663 individuals ~~persons~~ under the age of 18 who live in the family  
664 home.

665 3. Personal care assistance services are limited to 180  
666 hours per calendar month and may not include rate modifiers.  
667 Additional hours may be authorized for individuals ~~persons~~ who

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668 have intensive physical, medical, or adaptive needs if such  
669 hours are essential for avoiding institutionalization.

670 4. Residential habilitation services are limited to 8 hours  
671 per day. Additional hours may be authorized for individuals  
672 ~~persons~~ who have intensive medical or adaptive needs and if such  
673 hours are essential for avoiding institutionalization, or for  
674 individuals ~~persons~~ who possess behavioral problems that are  
675 exceptional in intensity, duration, or frequency and present a  
676 substantial risk of harming themselves or others. This  
677 restriction shall be in effect until the four-tiered waiver  
678 system is fully implemented.

679 ~~5. Chore services, nonresidential support services, and~~  
680 ~~homemaker services are eliminated. The agency shall expand the~~  
681 ~~definition of in-home support services to allow the service~~  
682 ~~provider to include activities previously provided in these~~  
683 ~~eliminated services.~~

684 ~~6. Massage therapy, medication review, and psychological~~  
685 ~~assessment services are eliminated.~~

686 ~~5.7.~~ The agency shall conduct supplemental cost plan  
687 reviews to verify the medical necessity of authorized services  
688 for plans that have increased by more than 8 percent during  
689 either of the 2 preceding fiscal years.

690 ~~6.8.~~ The agency shall implement a consolidated residential  
691 habilitation rate structure to increase savings to the state  
692 through a more cost-effective payment method and establish  
693 uniform rates for intensive behavioral residential habilitation  
694 services.

695 ~~9. Pending federal approval, the agency may extend current~~  
696 ~~support plans for clients receiving services under Medicaid~~

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697 ~~waivers for 1 year beginning July 1, 2007, or from the date~~  
698 ~~approved, whichever is later. Clients who have a substantial~~  
699 ~~change in circumstances which threatens their health and safety~~  
700 ~~may be reassessed during this year in order to determine the~~  
701 ~~necessity for a change in their support plan.~~

702 7.10. The agency shall develop a plan to eliminate  
703 redundancies and duplications between in-home support services,  
704 companion services, personal care services, and supported living  
705 coaching by limiting or consolidating such services.

706 8.11. The agency shall develop a plan to reduce the  
707 intensity and frequency of supported employment services to  
708 individuals ~~clients~~ in stable employment situations who have a  
709 documented history of at least 3 years' employment with the same  
710 company or in the same industry.

711 (g) The agency and the Agency for Health Care  
712 Administration may adopt rules to administer this subsection.

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

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

718 ~~(6) Effective January 1, 2010, and except as otherwise~~  
719 ~~provided in this section, a client served by the home and~~  
720 ~~community-based services waiver or the family and supported~~  
721 ~~living waiver funded through the agency shall have his or her~~  
722 ~~cost plan adjusted to reflect the amount of expenditures for the~~  
723 ~~previous state fiscal year plus 5 percent if such amount is less~~  
724 ~~than the client's existing cost plan. The agency shall use~~  
725 ~~actual paid claims for services provided during the previous~~

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726 ~~fiscal year that are submitted by October 31 to calculate the~~  
727 ~~revised cost plan amount. If the client was not served for the~~  
728 ~~entire previous state fiscal year or there was any single change~~  
729 ~~in the cost plan amount of more than 5 percent during the~~  
730 ~~previous state fiscal year, the agency shall set the cost plan~~  
731 ~~amount at an estimated annualized expenditure amount plus 5~~  
732 ~~percent. The agency shall estimate the annualized expenditure~~  
733 ~~amount by calculating the average of monthly expenditures,~~  
734 ~~beginning in the fourth month after the client enrolled,~~  
735 ~~interrupted services are resumed, or the cost plan was changed~~  
736 ~~by more than 5 percent and ending on August 31, 2009, and~~  
737 ~~multiplying the average by 12. In order to determine whether a~~  
738 ~~client was not served for the entire year, the agency shall~~  
739 ~~include any interruption of a waiver-funded service or services~~  
740 ~~lasting at least 18 days. If at least 3 months of actual~~  
741 ~~expenditure data are not available to estimate annualized~~  
742 ~~expenditures, the agency may not rebase a cost plan pursuant to~~  
743 ~~this subsection. The agency may not rebase the cost plan of any~~  
744 ~~client who experiences a significant change in recipient~~  
745 ~~condition or circumstance which results in a change of more than~~  
746 ~~5 percent to his or her cost plan between July 1 and the date~~  
747 ~~that a rebased cost plan would take effect pursuant to this~~  
748 ~~subsection.~~

749 ~~(6)(7)~~ The agency may ~~shall~~ collect premiums or cost  
750 sharing pursuant to s. 409.906(13)(d).

751 (7) In determining whether to continue Medicaid waiver  
752 provider agreements for service providers, including support  
753 coordinators, the agency shall review provider performance to  
754 ensure that the provider meets or exceeds the criteria

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755 established by the agency. The provider agreements and  
756 performance reviews shall be managed and conducted by the  
757 agency's area offices.

758 (a) Criteria for evaluating the performance of a service  
759 provider include, but are not limited to:

760 1. The protection of the health, safety, and welfare of the  
761 individual.

762 2. Assisting the individual and his or her support  
763 coordinator in identifying nonwaiver resources that may be  
764 available to meet the individual's needs. The waiver is the  
765 funding source of last resort for services.

766 3. Providing services that are authorized in the service  
767 authorization approved by the agency.

768 (b) The support coordinator is responsible for assisting  
769 the individual in meeting his or her service needs through  
770 nonwaiver resources, as well as through the individual's budget  
771 allocation or cost plan under the waiver. The waiver is the  
772 funding source of last resort for services. Criteria for  
773 evaluating the performance of a support coordinator include, but  
774 are not limited to:

775 1. The protection of the health, safety, and welfare of  
776 individuals.

777 2. Assisting individuals in obtaining employment and  
778 pursuing other meaningful activities.

779 3. Assisting individuals in accessing services that allow  
780 them to live in their community.

781 4. The use of family resources.

782 5. The use of private or third-party resources.

783 6. The use of community resources.

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- 784       7. The use of charitable resources.  
785       8. The use of volunteer resources.  
786       9. The use of services from other governmental entities.  
787       10. The overall outcome in securing nonwaiver resources.  
788       11. The cost-effective use of waiver resources.  
789       12. Coordinating all available resources to ensure that the  
790 individual's outcomes are met.

791       (c) The agency may recognize consistently superior  
792 performance by exempting a service provider, including support  
793 coordinators, from annual quality assurance reviews or other  
794 mechanisms established by the agency. The agency may issue  
795 sanctions for poor performance, including, but not limited to, a  
796 reduction in the number of individuals served by the provider,  
797 recoupment or other financial penalties, and termination of the  
798 waiver provider agreement.

799       (d) The agency may adopt rules to administer this  
800 subsection.

801       (8) This section or related rule does not prevent or limit  
802 the Agency for Health Care Administration, in consultation with  
803 the agency ~~for Persons with Disabilities~~, from adjusting fees,  
804 reimbursement rates, lengths of stay, number of visits, or  
805 number of services, or from limiting enrollment, or making any  
806 other adjustment necessary to comply with the availability of  
807 moneys and any limitations or directions provided in the General  
808 Appropriations Act.

809       (9) The agency ~~for Persons with Disabilities~~ shall submit  
810 quarterly status reports to the Executive Office of the Governor  
811 and, the chairs of the legislative appropriations committees  
812 ~~chair of the Senate Ways and Means Committee or its successor,~~

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813 ~~and the chair of the House Fiscal Council or its successor~~  
814 regarding the financial status of waiver ~~home and community-~~  
815 ~~based~~ services, including the number of enrolled individuals who  
816 are receiving services through one or more programs; the number  
817 of individuals who have requested services who are not enrolled  
818 but ~~who~~ are receiving services through one or more programs,  
819 including ~~with~~ a description indicating the programs from which  
820 the individual is receiving services; the number of individuals  
821 who have refused an offer of services but who choose to remain  
822 on the list of individuals waiting for services; the number of  
823 individuals who have requested services but ~~who~~ are not  
824 receiving ~~no~~ services; a frequency distribution indicating the  
825 length of time individuals have been waiting for services; and  
826 information concerning the actual and projected costs compared  
827 to the amount of the appropriation available to the program and  
828 any projected surpluses or deficits. If at any time an analysis  
829 by the agency, in consultation with the Agency for Health Care  
830 Administration, indicates that the cost of services is expected  
831 to exceed the amount appropriated, the agency shall submit a  
832 plan in accordance with subsection (8) to the Executive Office  
833 of the Governor and the chairs of the legislative appropriations  
834 committees, ~~the chair of the Senate Ways and Means Committee or~~  
835 ~~its successor, and the chair of the House Fiscal Council or its~~  
836 ~~successor~~ to remain within the amount appropriated. The agency  
837 shall work with the Agency for Health Care Administration to  
838 implement the plan so as to remain within the appropriation.

839 (10) Implementation of ~~Medicaid~~ waiver programs and  
840 services authorized under this chapter is limited by the funds  
841 appropriated for the individual budgets pursuant to s. 393.0662

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842 and the four-tiered waiver system pursuant to subsection (3).  
843 Contracts with independent support coordinators and service  
844 providers must include provisions requiring compliance with  
845 agency cost containment initiatives. The agency shall implement  
846 monitoring and accounting procedures necessary to track actual  
847 expenditures and project future spending compared to available  
848 appropriations for Medicaid waiver programs. If ~~When~~ necessary,  
849 based on projected deficits, the agency shall ~~must~~ establish  
850 specific corrective action plans that incorporate corrective  
851 actions for ~~of~~ contracted providers which ~~that~~ are sufficient to  
852 align program expenditures with annual appropriations. If  
853 deficits continue during the 2012-2013 fiscal year, the agency  
854 in conjunction with the Agency for Health Care Administration  
855 shall develop a plan to redesign the waiver program and submit  
856 the plan to the President of the Senate and the Speaker of the  
857 House of Representatives by September 30, 2013. At a minimum,  
858 the plan must include the following elements:

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

863 (b) *Services.*—The agency shall identify core services that  
864 are essential to provide for individual ~~client~~ health and safety  
865 and recommend the elimination of coverage for other services  
866 that are not affordable based on available resources.

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

870 (d) *Support coordination services.*—The plan must ~~shall~~

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871 modify the manner of providing support coordination services to  
872 improve management of service utilization and increase  
873 accountability and responsiveness to agency priorities.

874 (e) *Reporting.*—The agency shall provide monthly reports to  
875 the President of the Senate and the Speaker of the House of  
876 Representatives on plan progress and development on July 31,  
877 2013, and August 31, 2013.

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

883 Section 6. Section 393.0662, Florida Statutes, is amended  
884 to read:

885 393.0662 Individual budgets for delivery of home and  
886 community-based services; iBudget system established.—The  
887 Legislature finds that improved financial management of the  
888 existing home and community-based ~~Medicaid~~ waiver program is  
889 necessary to avoid deficits that impede the provision of  
890 services to individuals who are on the waiting list for  
891 enrollment in the program. The Legislature further finds that  
892 individuals ~~clients~~ and their families should have greater  
893 flexibility to choose the services that best allow them to live  
894 in their community within the limits of an established budget.  
895 Therefore, the Legislature intends that the agency, in  
896 consultation with the Agency for Health Care Administration,  
897 develop and implement a comprehensive redesign of the service  
898 delivery system using individual budgets as the basis for  
899 allocating the funds appropriated for the ~~home and community~~

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900 ~~based services Medicaid~~ waiver program among eligible enrolled  
901 individuals ~~clients~~. The service delivery system that uses  
902 individual budgets shall be called the iBudget system.

903 (1) The agency shall establish a ~~an individual~~ budget, to  
904 be referred to as an iBudget, for each individual served by the  
905 home and community-based services ~~Medicaid~~ waiver program. The  
906 funds appropriated to the agency shall be allocated through the  
907 iBudget system to eligible, Medicaid-enrolled individuals who  
908 have ~~clients~~. ~~For the iBudget system, Eligible clients shall~~  
909 ~~include individuals with a diagnosis of Down syndrome or a~~  
910 ~~developmental disability as defined in s. 393.063.~~ The iBudget  
911 system shall be designed to provide ~~for:~~ enhanced individual  
912 ~~client~~ choice within a specified service package; appropriate  
913 assessment strategies; an efficient consumer budgeting and  
914 billing process that includes reconciliation and monitoring  
915 components; a redefined role for support coordinators which ~~that~~  
916 avoids potential conflicts of interest; a flexible and  
917 streamlined service review process; and a methodology and  
918 process that ensures the equitable allocation of available funds  
919 to each individual ~~client~~ based on his or her ~~the client's~~ level  
920 of need, as determined by the variables in the allocation  
921 algorithm.

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

924 (a) The algorithm shall use variables that have been  
925 determined by the agency to have a statistically validated  
926 relationship to an individual's ~~the client's~~ level of need for  
927 services provided through the ~~home and community-based services~~  
928 ~~Medicaid~~ waiver program. The algorithm and methodology may

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929 consider individual characteristics, including, but not limited  
930 to, an individual's ~~a client's~~ age and living situation,  
931 information from a formal assessment instrument that the agency  
932 determines is valid and reliable, and information from other  
933 assessment processes.

934 (b) The allocation methodology shall provide the algorithm  
935 that determines the amount of funds allocated to an individual's  
936 ~~a client's~~ iBudget. The agency may approve an increase in the  
937 amount ~~of funds allocated, as determined~~ by the algorithm, based  
938 on the individual client having one or more of the following  
939 needs that cannot be accommodated within the ~~funding as~~  
940 ~~determined by the algorithm~~ allocation and having no other  
941 resources, supports, or services available to meet such needs  
942 ~~the need~~:

943 1. An extraordinary need that would place the health and  
944 safety of the individual client, the individual's client's  
945 caregiver, or the public in immediate, serious jeopardy unless  
946 the increase is approved. An extraordinary need may include, but  
947 is not limited to:

948 a. A documented history of significant, potentially life-  
949 threatening behaviors, such as recent attempts at suicide,  
950 arson, nonconsensual sexual behavior, or self-injurious behavior  
951 requiring medical attention;

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

955 ~~c. A chronic comorbid condition. As used in this~~  
956 ~~subparagraph, the term "comorbid condition" means a medical~~  
957 ~~condition existing simultaneously but independently with another~~

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958 ~~medical condition in a patient;~~ or

959 ~~c.d.~~ A need for significant ~~total~~ physical assistance with  
960 activities such as eating, bathing, toileting, grooming, and  
961 personal hygiene.

962

963 However, the presence of an extraordinary need alone does not  
964 warrant an increase in the amount of funds allocated to an  
965 individual's ~~a client's~~ iBudget as determined by the algorithm.

966 2. A significant need for one-time or temporary support or  
967 services that, if not provided, would place the health and  
968 safety of the individual ~~client~~, the individual's ~~client's~~  
969 caregiver, or the public in serious jeopardy, unless the  
970 increase is approved. A significant need may include, but is not  
971 limited to, the provision of environmental modifications,  
972 durable medical equipment, services to address the temporary  
973 loss of support from a caregiver, or special services or  
974 treatment for a serious temporary condition when the service or  
975 treatment is expected to ameliorate the underlying condition. As  
976 used in this subparagraph, the term "temporary" means less a  
977 ~~period of fewer~~ than 12 continuous months. However, the presence  
978 of such significant need for one-time or temporary supports or  
979 services alone does not warrant an increase in the amount of  
980 funds allocated to an individual's ~~a client's~~ iBudget as  
981 determined by the algorithm.

982 3. A significant increase in the need for services after  
983 the beginning of the service plan year which ~~that~~ would place  
984 the health and safety of the individual ~~client~~, the individual's  
985 ~~client's~~ caregiver, or the public in serious jeopardy because of  
986 substantial changes in the individual's ~~client's~~ circumstances,

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987 including, but not limited to, permanent or long-term loss or  
988 incapacity of a caregiver, loss of services authorized under the  
989 state Medicaid plan due to a change in age, or a significant  
990 change in medical or functional status which requires the  
991 provision of additional services on a permanent or long-term  
992 basis which ~~that~~ cannot be accommodated within the individual's  
993 ~~client's~~ current iBudget. As used in this subparagraph, the term  
994 "long-term" means ~~a period of~~ 12 or more continuous months.  
995 However, such significant increase in need for services of a  
996 permanent or long-term nature alone does not warrant an increase  
997 in the amount of funds allocated to an individual's ~~a client's~~  
998 iBudget as determined by the algorithm.

999  
1000 The agency shall reserve portions of the appropriation for the  
1001 ~~home and community-based services Medicaid~~ waiver program for  
1002 adjustments required pursuant to this paragraph and may use the  
1003 services of an independent actuary in determining the amount of  
1004 the portions to be reserved.

1005 (c) An individual's ~~A client's~~ iBudget shall be the total  
1006 of the amount determined by the algorithm and any additional  
1007 funding provided pursuant to paragraph (b).

1008 (d) An individual's iBudget cost plan must meet the  
1009 requirements contained in the Coverage and Limitation Handbook  
1010 for each service included, and must comply with the other  
1011 requirements of this section. An individual has the flexibility  
1012 to determine the type, amount, frequency, duration, and scope of  
1013 services included in the approved cost plan as long as the  
1014 agency determines that such services meet his or her health and  
1015 safety needs and are necessary to avoid institutionalization.

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1016 (e) An individual's ~~A client's~~ annual expenditures for home  
1017 ~~and community-based services Medicaid~~ waiver services may not  
1018 exceed the limits of his or her iBudget. The total of all  
1019 ~~clients'~~ projected annual iBudget expenditures may not exceed  
1020 the agency's appropriation for waiver services.

1021 (3)~~(2)~~ The Agency for Health Care Administration, in  
1022 consultation with the agency, shall seek federal approval to  
1023 amend current waivers, request a new waiver, and amend contracts  
1024 as necessary to implement the iBudget system to serve eligible,  
1025 enrolled individuals ~~clients~~ through the home and community-  
1026 based services ~~Medicaid~~ waiver program and the Consumer-Directed  
1027 Care Plus Program.

1028 (4)~~(3)~~ The agency shall transition all eligible, enrolled  
1029 individuals ~~clients~~ to the iBudget system. The agency may  
1030 gradually phase in the iBudget system.

1031 (a) During the phase-in of the iBudget system, the agency  
1032 shall determine an individual's initial iBudget by comparing the  
1033 individual's algorithm allocation to the individual's current  
1034 annualized cost plan and extraordinary needs. The individual's  
1035 algorithm allocation shall be the amount determined by the  
1036 algorithm, adjusted to the agency's appropriation and any set-  
1037 asides determined necessary by the agency, including, but not  
1038 limited to, funding for individuals who have extraordinary needs  
1039 as delineated in paragraph (2) (b). The amount of funding needed  
1040 to address each individual's extraordinary needs shall be  
1041 reviewed by the area office in order to determine the medical  
1042 necessity for each service in the amount, duration, frequency,  
1043 intensity, and scope that meets the individual's needs. The  
1044 agency shall consider the individual's characteristics based on

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1045 a needs assessment as well as the his or her living setting,  
1046 availability of natural supports, family circumstances, and  
1047 other factors that may affect the level of service needed by the  
1048 individual.

1049 (b) The individual's medical-necessity review must include  
1050 a comparison of the following:

1051 1. If the individual's algorithm allocation is greater than  
1052 the individual annualized cost plan, the individual's iBudget is  
1053 equal to the annualized cost plan amount.

1054 2. If the individual's algorithm allocation is less than  
1055 the individual's annualized cost plan but greater than the  
1056 amount for the individual's needs including extraordinary needs,  
1057 the individual's iBudget is equal to the algorithm allocation.

1058 3. If the individual's algorithm allocation is less than  
1059 the amount for the individual's needs including extraordinary  
1060 needs, the individual's iBudget is equal to the amount for the  
1061 individual's extraordinary needs.

1062  
1063 The individual's annualized iBudget amount may not be less than  
1064 50 percent of his or her annualized cost plan. If the  
1065 individual's iBudget is less than his or her annualized cost  
1066 plan, and is within \$1,000 of the current cost plan, the agency  
1067 may adjust the iBudget to equal the cost plan amount.

1068 (c) During the 2011-2012 and 2012-2013 fiscal years,  
1069 increases to an individual's initial iBudget amount may be  
1070 granted only if the criteria for extraordinary needs as  
1071 delineated in paragraph (2) (b) are met.

1072 (d) ~~(a)~~ While the agency phases in the iBudget system, the  
1073 agency may continue to serve eligible, enrolled individuals

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1074 ~~clients~~ under the four-tiered waiver system established under s.  
1075 393.065 while those individuals ~~clients~~ await transitioning to  
1076 the iBudget system.

1077 ~~(b) The agency shall design the phase-in process to ensure~~  
1078 ~~that a client does not experience more than one-half of any~~  
1079 ~~expected overall increase or decrease to his or her existing~~  
1080 ~~annualized cost plan during the first year that the client is~~  
1081 ~~provided an iBudget due solely to the transition to the iBudget~~  
1082 ~~system.~~

1083 ~~(5)-(4)~~ An individual ~~A client~~ must use all available  
1084 nonwaiver ~~services authorized under the state Medicaid plan,~~  
1085 ~~school-based services, private insurance and other benefits, and~~  
1086 ~~any other resources~~ that may be available to him or her ~~the~~  
1087 ~~client~~ before using funds from his or her iBudget to pay for  
1088 support and services.

1089 ~~(6)-(5)~~ The service limitations in s. 393.0661(3)(f)1., 2.,  
1090 and 3. do not apply to the iBudget system.

1091 ~~(7)-(6)~~ Rates for any or all services established under  
1092 rules of the Agency for Health Care Administration must ~~shall~~ be  
1093 designated as the maximum rather than a fixed amount for  
1094 individuals who receive an iBudget, except for services  
1095 specifically identified in those rules that the agency  
1096 determines are not appropriate for negotiation, which may  
1097 include, but are not limited to, residential habilitation  
1098 services.

1099 ~~(8)-(7)~~ The agency must ~~shall~~ ensure that individuals  
1100 ~~clients~~ and caregivers have access to training and education  
1101 that informs ~~to inform~~ them about the iBudget system and  
1102 enhances ~~enhance~~ their ability for self-direction. Such training

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1103 must be provided ~~shall be offered~~ in a variety of formats and,  
1104 at a minimum, must ~~shall~~ address the policies and processes of  
1105 the iBudget system; the roles and responsibilities of consumers,  
1106 caregivers, waiver support coordinators, providers, and the  
1107 agency; information that is available to help the individual  
1108 ~~client~~ make decisions regarding the iBudget system; and examples  
1109 of nonwaiver support ~~and~~ resources that may be available in the  
1110 community.

1111 (9) ~~(8)~~ The agency shall collect data to evaluate the  
1112 implementation and outcomes of the iBudget system.

1113 (10) ~~(9)~~ The agency and the Agency for Health Care  
1114 Administration may adopt rules specifying the allocation  
1115 algorithm and methodology; criteria and processes that allow  
1116 individuals ~~for clients~~ to access reserved funds for  
1117 extraordinary needs, temporarily or permanently changed needs,  
1118 and one-time needs; and processes and requirements for the  
1119 selection and review of services, development of support and  
1120 cost plans, and management of the iBudget system as needed to  
1121 administer this section.

1122 Section 7. Subsection (2) of section 393.067, Florida  
1123 Statutes, is amended to read:

1124 393.067 Facility licensure.—

1125 (2) The agency shall conduct annual inspections and reviews  
1126 of facilities and programs licensed under this section unless  
1127 the facility or program is currently accredited by the Joint  
1128 Commission, the Commission on Accreditation of Rehabilitation  
1129 Facilities, or the Council on Accreditation. Facilities or  
1130 programs that are operating under such accreditation must be  
1131 inspected and reviewed by the agency once every 2 years. If,

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1132 upon inspection and review, the services and service delivery  
1133 sites are not those for which the facility or program is  
1134 accredited, the facilities and programs must be inspected and  
1135 reviewed in accordance with this section and related rules  
1136 adopted by the agency.

1137 (a) Notwithstanding current accreditation, the agency may  
1138 continue to monitor the facility or program as necessary with  
1139 respect to:

1140 1. Ensuring that services for which the agency is paying  
1141 are being provided.

1142 2. Investigating complaints, identifying problems that  
1143 would affect the safety or viability of the facility or program,  
1144 and monitoring the facility's or program's compliance with any  
1145 resulting negotiated terms and conditions, including provisions  
1146 relating to consent decrees which are unique to a specific  
1147 service and are not statements of general applicability.

1148 3. Ensuring compliance with federal and state laws, federal  
1149 regulations, or state rules if such monitoring does not  
1150 duplicate the accrediting organization's review pursuant to  
1151 accreditation standards.

1152 4. Ensuring Medicaid compliance with federal certification  
1153 and precertification review requirements.

1154 (b) The agency shall conduct ongoing health and safety  
1155 surveys that pertain to the regular monitoring and oversight of  
1156 agency-licensed residential facilities in accordance with the  
1157 frequency schedule specified in administrative rules.

1158 Section 8. Subsections (2), (3), and (4) of section  
1159 393.068, Florida Statutes, are amended to read:

1160 393.068 Family care program.—

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1161 (2) Services and support authorized under the family care  
1162 program shall, to the extent of available resources, include the  
1163 services listed under s. 393.0662(4) ~~393.066~~ and, in addition,  
1164 shall include, but not be limited to:

1165 (a) Attendant care.

1166 (b) Barrier-free modifications to the home.

1167 (c) Home visitation by agency workers.

1168 (d) In-home subsidies.

1169 (e) Low-interest loans.

1170 (f) Modifications for vehicles used to transport the  
1171 individual with a developmental disability.

1172 (g) Facilitated communication.

1173 (h) Family counseling.

1174 (i) Equipment and supplies.

1175 (j) Self-advocacy training.

1176 (k) Roommate services.

1177 (l) Integrated community activities.

1178 (m) Emergency services.

1179 (n) Support coordination.

1180 (o) Other support services as identified by the family or  
1181 individual.

1182 (3) If the agency determines that ~~When it is determined by~~  
1183 ~~the agency to be~~ more cost-effective and in the best interest of  
1184 the individual client to provide services ~~maintain such client~~  
1185 in the home of a direct service provider, the parent or guardian  
1186 of the individual client or, if competent, the individual client  
1187 may enroll ~~the client~~ in the family care program. The direct  
1188 service provider of an individual ~~a client~~ enrolled in the  
1189 family care program shall be reimbursed according to a rate

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1190 schedule set by the agency, except that in-home subsidies shall  
1191 be provided in accordance with s. 393.0695.

1192 (4) All existing nonwaiver ~~community~~ resources available to  
1193 an individual must be used ~~the client shall be utilized~~ to  
1194 support program objectives. Additional services may be  
1195 incorporated into the program as appropriate and to the extent  
1196 that resources are available. The agency may ~~is authorized to~~  
1197 accept gifts and grants in order to carry out the program.

1198 Section 9. Section 393.11, Florida Statutes, is amended to  
1199 read:

1200 393.11 Involuntary admission to residential services.—

1201 (1) JURISDICTION.—If an individual ~~When a person~~ is  
1202 determined to be eligible to receive services from the agency  
1203 ~~mentally retarded~~ and requires involuntary admission to  
1204 residential services provided by the agency, the circuit court  
1205 of the county in which the individual ~~person~~ resides shall have  
1206 jurisdiction to conduct a hearing and enter an order  
1207 involuntarily admitting the individual ~~person~~ in order to  
1208 provide ~~that the person may receive~~ the care, treatment,  
1209 habilitation, and rehabilitation that he or she ~~which the person~~  
1210 needs. For the purpose of identifying mental retardation or  
1211 autism, diagnostic capability shall be established by the  
1212 agency. Except as otherwise specified, the proceedings under  
1213 this section are ~~shall be~~ governed by the Florida Rules of Civil  
1214 Procedure.

1215 (2) PETITION.—

1216 (a) A petition for involuntary admission to residential  
1217 services may be executed by a petitioning commission or the  
1218 agency.

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1219 (b) The petitioning commission shall consist of three  
1220 persons, ~~of~~ one of whom ~~these persons~~ shall be a physician  
1221 licensed and practicing under chapter 458 or chapter 459.

1222 (c) The petition must ~~shall~~ be verified and must ~~shall~~:

1223 1. State the name, age, and present address of the  
1224 commissioners and their relationship to the individual who is  
1225 the subject of the petition ~~person with mental retardation or~~  
1226 ~~autism~~;

1227 2. State the name, age, county of residence, and present  
1228 address of the individual who is the subject of the petition  
1229 ~~person with mental retardation or autism~~;

1230 3. Allege that the individual ~~commission believes that the~~  
1231 ~~person~~ needs involuntary residential services and specify the  
1232 factual information on which the belief is based;

1233 4. Allege that the individual ~~person~~ lacks sufficient  
1234 capacity to give express and informed consent to a voluntary  
1235 application for services and lacks the basic survival and self-  
1236 care skills to provide for the individual's ~~person's~~ well-being  
1237 or is likely to physically injure others if allowed to remain at  
1238 liberty; and

1239 5. State which residential setting is the least restrictive  
1240 and most appropriate alternative and specify the factual  
1241 information on which the belief is based.

1242 (d) The petition shall be filed in the circuit court of the  
1243 county in which the individual who is the subject of the  
1244 petition ~~person with mental retardation or autism~~ resides.

1245 (3) NOTICE.—

1246 (a) Notice of the filing of the petition shall be given to  
1247 the individual and his or her legal guardian. The notice shall

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1248 be given both verbally and in writing in the language of the  
1249 individual ~~client~~, or in other modes of communication of the  
1250 individual ~~client~~, and in English. Notice shall also be given to  
1251 such other persons as the court may direct. The petition for  
1252 involuntary admission to residential services shall be served  
1253 with the notice.

1254 (b) ~~If Whenever~~ a motion or petition has been filed  
1255 pursuant to s. 916.303 to dismiss criminal charges against an  
1256 individual ~~a defendant with retardation or autism~~, and a  
1257 petition is filed to involuntarily admit the individual  
1258 ~~defendant~~ to residential services under this section, the notice  
1259 of the filing of the petition shall also be given to the  
1260 individual's ~~defendant's~~ attorney, the state attorney of the  
1261 circuit from which the individual ~~defendant~~ was committed, and  
1262 the agency.

1263 (c) The notice shall state that a hearing shall be set to  
1264 inquire into the need of the individual ~~person with mental~~  
1265 ~~retardation or autism~~ for involuntary residential services. The  
1266 notice shall also state the date of the hearing on the petition.

1267 (d) The notice shall state that the individual ~~with mental~~  
1268 ~~retardation or autism~~ has the right to be represented by counsel  
1269 of his or her own choice and that, if the individual ~~person~~  
1270 cannot afford an attorney, the court shall appoint one.

1271 (4) AGENCY PARTICIPATION.—

1272 (a) Upon receiving the petition, the court shall  
1273 immediately order the developmental services program of the  
1274 agency to examine the individual ~~person~~ being considered for  
1275 involuntary admission to residential services.

1276 (b) Following examination, the agency shall file a written

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1277 report with the court not less than 10 working days before the  
1278 date of the hearing. The report must be served on the  
1279 petitioner, the individual who is the subject of the petition  
1280 ~~person with mental retardation~~, and the individual's ~~person's~~  
1281 attorney at the time the report is filed with the court.

1282 (c) The report must contain the findings of the agency's  
1283 evaluation, any recommendations deemed appropriate, and a  
1284 determination of whether the individual ~~person~~ is eligible for  
1285 services under this chapter.

1286 (5) EXAMINING COMMITTEE.—

1287 (a) Upon receiving the petition, the court shall  
1288 immediately appoint an examining committee to examine the  
1289 individual ~~person~~ being considered for involuntary admission to  
1290 residential services provided by the agency.

1291 (b) The court shall appoint no fewer than three  
1292 disinterested experts who have demonstrated to the court an  
1293 expertise in the diagnosis, evaluation, and treatment of  
1294 individuals ~~persons~~ with mental retardation. The committee must  
1295 include at least one licensed and qualified physician, one  
1296 licensed and qualified psychologist, and one qualified  
1297 professional with a minimum of a masters degree in social work,  
1298 special education, or vocational rehabilitation counseling, to  
1299 examine the individual ~~person~~ and to testify at the hearing on  
1300 the involuntary admission to residential services.

1301 (c) Counsel for the individual ~~person who is~~ being  
1302 considered for involuntary admission to residential services and  
1303 counsel for the petition commission have ~~has~~ the right to  
1304 challenge the qualifications of those appointed to the examining  
1305 committee.

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1306 (d) Members of the committee may not be employees of the  
1307 agency or be associated with each other in practice or in  
1308 employer-employee relationships. Members of the committee may  
1309 not have served as members of the petitioning commission.  
1310 Members of the committee may not be employees of the members of  
1311 the petitioning commission or be associated in practice with  
1312 members of the commission.

1313 (e) The committee shall prepare a written report for the  
1314 court. The report must explicitly document the extent that the  
1315 individual ~~person~~ meets the criteria for involuntary admission.  
1316 The report, and expert testimony, must include, but not be  
1317 limited to:

1318 1. The degree of the individual's ~~person's~~ mental  
1319 retardation and whether, using diagnostic capabilities  
1320 established by the agency, the individual ~~person~~ is eligible for  
1321 agency services;

1322 2. Whether, because of the individual's ~~person's~~ degree of  
1323 mental retardation, the individual ~~person~~:

1324 a. Lacks sufficient capacity to give express and informed  
1325 consent to a voluntary application for services pursuant to s.  
1326 393.065;

1327 b. Lacks basic survival and self-care skills to such a  
1328 degree that close supervision and habilitation in a residential  
1329 setting is necessary and if not provided would result in a real  
1330 and present threat of substantial harm to the individual's  
1331 ~~person's~~ well-being; or

1332 c. Is likely to physically injure others if allowed to  
1333 remain at liberty.

1334 3. The purpose to be served by residential care;

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1335 4. A recommendation on the type of residential placement  
1336 which would be the most appropriate and least restrictive for  
1337 the individual ~~person~~; and

1338 5. The appropriate care, habilitation, and treatment.

1339 (f) The committee shall file the report with the court not  
1340 less than 10 working days before the date of the hearing. The  
1341 report shall be served on the petitioner, the individual who is  
1342 the subject of the petition ~~person with mental retardation~~, the  
1343 individual's ~~person's~~ attorney at the time the report is filed  
1344 with the court, and the agency.

1345 (g) Members of the examining committee shall receive a  
1346 reasonable fee to be determined by the court. The fees are to be  
1347 paid from the general revenue fund of the county in which the  
1348 individual who is the subject of the petition ~~person with mental~~  
1349 ~~retardation~~ resided when the petition was filed.

1350 (h) The agency shall develop and prescribe by rule one or  
1351 more standard forms to be used as a guide for members of the  
1352 examining committee.

1353 (6) COUNSEL; GUARDIAN AD LITEM.—

1354 (a) The individual who is the subject of the petition must  
1355 ~~person with mental retardation~~ shall be represented by counsel  
1356 at all stages of the judicial proceeding. If ~~In the event~~ the  
1357 individual ~~person~~ is indigent and cannot afford counsel, the  
1358 court shall appoint a public defender not less than 20 working  
1359 days before the scheduled hearing. The individual's ~~person's~~  
1360 counsel shall have full access to the records of the service  
1361 provider and the agency. In all cases, the attorney shall  
1362 represent the rights and legal interests of the individual  
1363 ~~person with mental retardation~~, regardless of who initiates ~~may~~

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1364 ~~initiate~~ the proceedings or pays the attorney ~~pay the attorney's~~  
1365 fee.

1366 (b) If the attorney, during the course of his or her  
1367 representation, reasonably believes that the individual ~~person~~  
1368 ~~with mental retardation~~ cannot adequately act in his or her own  
1369 interest, the attorney may seek the appointment of a guardian ad  
1370 litem. A prior finding of incompetency is not required before a  
1371 guardian ad litem is appointed pursuant to this section.

1372 (7) HEARING.—

1373 (a) The hearing for involuntary admission shall be  
1374 conducted, and the order shall be entered, in the county in  
1375 which the petition is filed. The hearing shall be conducted in a  
1376 physical setting not likely to be injurious to the individual's  
1377 ~~person's~~ condition.

1378 (b) A hearing on the petition must be held as soon as  
1379 practicable after the petition is filed, but reasonable delay  
1380 for the purpose of investigation, discovery, or procuring  
1381 counsel or witnesses shall be granted.

1382 (c) The court may appoint a general or special magistrate  
1383 to preside. Except as otherwise specified, the magistrate's  
1384 proceeding shall be governed by the Florida Rules of Civil  
1385 Procedure.

1386 (d) The individual who is the subject of the petition may  
1387 ~~person with mental retardation~~ shall be physically present  
1388 throughout all or part of the entire proceeding. If the  
1389 defendant's ~~person's~~ attorney or any other interested party  
1390 believes that the individual's ~~person's~~ presence at the hearing  
1391 is not in the individual's ~~person's~~ best interest, or good cause  
1392 is otherwise shown, ~~the person's presence may be waived once the~~

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1393 court may order the individual to be excluded from the hearing  
1394 ~~has seen the person and the hearing has commenced.~~

1395 (e) The individual who is the subject of the petition  
1396 ~~person~~ has the right to present evidence and to cross-examine  
1397 all witnesses and other evidence alleging the appropriateness of  
1398 the individual's ~~person's~~ admission to residential care. Other  
1399 relevant and material evidence regarding the appropriateness of  
1400 the individual's ~~person's~~ admission to residential services; the  
1401 most appropriate, least restrictive residential placement; and  
1402 the appropriate care, treatment, and habilitation of the  
1403 individual ~~person~~, including written or oral reports, may be  
1404 introduced at the hearing by any interested person.

1405 (f) The petitioning commission may be represented by  
1406 counsel at the hearing. The petitioning commission shall have  
1407 the right to call witnesses, present evidence, cross-examine  
1408 witnesses, and present argument on behalf of the petitioning  
1409 commission.

1410 (g) All evidence shall be presented according to chapter  
1411 90. The burden of proof shall be on the party alleging the  
1412 appropriateness of the individual's ~~person's~~ admission to  
1413 residential services. The burden of proof shall be by clear and  
1414 convincing evidence.

1415 (h) All stages of each proceeding shall be stenographically  
1416 reported.

1417 (8) ORDER.—

1418 (a) In all cases, the court shall issue written findings of  
1419 fact and conclusions of law to support its decision. The order  
1420 must state the basis for the findings of fact.

1421 (b) An order of involuntary admission to residential

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1422 services may not be entered unless the court finds that:

1423 1. The individual ~~person~~ is mentally retarded or autistic;

1424 2. Placement in a residential setting is the least  
1425 restrictive and most appropriate alternative to meet the  
1426 individual's ~~person's~~ needs; and

1427 3. Because of the individual's ~~person's~~ degree of mental  
1428 retardation or autism, the individual ~~person~~:

1429 a. Lacks sufficient capacity to give express and informed  
1430 consent to a voluntary application for services pursuant to s.  
1431 393.065 and lacks basic survival and self-care skills to such a  
1432 degree that close supervision and habilitation in a residential  
1433 setting is necessary and, if not provided, would result in a  
1434 real and present threat of substantial harm to the individual's  
1435 ~~person's~~ well-being; or

1436 b. Is likely to physically injure others if allowed to  
1437 remain at liberty.

1438 (c) If the evidence presented to the court is not  
1439 sufficient to warrant involuntary admission to residential  
1440 services, but the court feels that residential services would be  
1441 beneficial, the court may recommend that the individual ~~person~~  
1442 seek voluntary admission.

1443 (d) If an order of involuntary admission to residential  
1444 services provided by the agency is entered by the court, a copy  
1445 of the written order shall be served upon the individual ~~person~~,  
1446 the individual's ~~person's~~ counsel, the agency, and the state  
1447 attorney and the individual's ~~person's~~ defense counsel, if  
1448 applicable. The order of involuntary admission sent to the  
1449 agency shall also be accompanied by a copy of the examining  
1450 committee's report and other reports contained in the court

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1451 file.

1452 (e) Upon receiving the order, the agency shall, within 45  
1453 days, provide the court with a copy of the individual's ~~person's~~  
1454 family or individual support plan and copies of all examinations  
1455 and evaluations, outlining his or her ~~the~~ treatment and  
1456 rehabilitative programs. The agency shall document that the  
1457 individual ~~person~~ has been placed in the most appropriate, least  
1458 restrictive and cost-beneficial residential setting. A copy of  
1459 the family or individual support plan and other examinations and  
1460 evaluations shall be served upon the individual ~~person~~ and the  
1461 individual's ~~person's~~ counsel at the same time the documents are  
1462 filed with the court.

1463 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO  
1464 RESIDENTIAL SERVICES.—

1465 (a) An order authorizing an admission to residential care  
1466 may not be considered an adjudication of mental incompetency. An  
1467 individual ~~A person~~ is not presumed incompetent solely by reason  
1468 of the individual's ~~person's~~ involuntary admission to  
1469 residential services. An individual ~~A person~~ may not be denied  
1470 the full exercise of all legal rights guaranteed to citizens of  
1471 this state and of the United States.

1472 (b) Any minor involuntarily admitted to residential  
1473 services shall, upon reaching majority, be given a hearing to  
1474 determine the continued appropriateness of his or her  
1475 involuntary admission.

1476 (10) COMPETENCY.—

1477 (a) The issue of competency shall be separate and distinct  
1478 from a determination of the appropriateness of involuntary  
1479 admission to residential services for a condition of mental

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1480 retardation.

1481 (b) The issue of the competency of an individual who is  
1482 mentally retarded ~~a person with mental retardation~~ for purposes  
1483 of assigning guardianship shall be determined in a separate  
1484 proceeding according to the procedures and requirements of  
1485 chapter 744. The issue of the competency of an individual who  
1486 has ~~a person with~~ mental retardation or autism for purposes of  
1487 determining whether the individual ~~person~~ is competent to  
1488 proceed in a criminal trial shall be determined in accordance  
1489 with chapter 916.

1490 (11) CONTINUING JURISDICTION.—The court that ~~which~~ issues  
1491 the initial order for involuntary admission to residential  
1492 services under this section has continuing jurisdiction to enter  
1493 further orders to ensure that the individual ~~person~~ is receiving  
1494 adequate care, treatment, habilitation, and rehabilitation,  
1495 including psychotropic medication and behavioral programming.  
1496 Upon request, the court may transfer ~~the~~ continuing jurisdiction  
1497 to the court where the individual ~~a client~~ resides if it is  
1498 different than the jurisdiction ~~from~~ where the original  
1499 involuntary admission order was issued. An individual ~~A person~~  
1500 may not be released from an order for involuntary admission to  
1501 residential services except by the order of the court.

1502 (12) APPEAL.—

1503 (a) Any party to the proceeding who is affected by an order  
1504 of the court, including the agency, may appeal to the  
1505 appropriate district court of appeal within the time and in the  
1506 manner prescribed by the Florida Rules of Appellate Procedure.

1507 (b) The filing of an appeal by the individual ordered to be  
1508 involuntarily admitted under this section stays the ~~person with~~

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1509 ~~mental retardation shall stay~~ admission of the individual person  
1510 into residential care. The stay shall remain in effect during  
1511 the pendency of all review proceedings in Florida courts until a  
1512 mandate issues.

1513 (13) HABEAS CORPUS.—At any time and without notice, an  
1514 individual ~~any person~~ involuntarily admitted into residential  
1515 care, or the individual's ~~person's~~ parent or legal guardian in  
1516 his or her behalf, is entitled to file a petition for a writ of  
1517 habeas corpus to question the cause, legality, and  
1518 appropriateness of the individual's ~~person's~~ involuntary  
1519 admission. Each individual person, or the individual's ~~person's~~  
1520 parent or legal guardian, shall receive specific written notice  
1521 of the right to petition for a writ of habeas corpus at the time  
1522 of his or her involuntary placement.

1523 Section 10. Paragraph (a) of subsection (1) of section  
1524 393.125, Florida Statutes, is amended to read:

1525 393.125 Hearing rights.—

1526 (1) REVIEW OF AGENCY DECISIONS.—

1527 (a) For Medicaid programs administered by the agency, any  
1528 developmental services applicant or client, or his or her  
1529 parent, guardian advocate, or authorized representative, may  
1530 request a hearing in accordance with federal law and rules  
1531 applicable to Medicaid cases and has the right to request an  
1532 administrative hearing pursuant to ss. 120.569 and 120.57. The  
1533 hearing ~~These hearings~~ shall be provided by the Department of  
1534 Children and Family Services pursuant to s. 409.285 and shall  
1535 follow procedures consistent with federal law and rules  
1536 applicable to Medicaid cases. At the conclusion of the hearing,  
1537 the department shall submit its recommended order to the agency

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1538 as provided in s. 120.57(1)(k) and the agency shall issue final  
1539 orders as provided in s. 120.57(1)(i).

1540 Section 11. Subsection (1) of section 393.23, Florida  
1541 Statutes, is amended to read:

1542 393.23 Developmental disabilities centers; trust accounts.—  
1543 All receipts from the operation of canteens, vending machines,  
1544 hobby shops, sheltered workshops, activity centers, farming  
1545 projects, and other like activities operated in a developmental  
1546 disabilities center, and moneys donated to the center, must be  
1547 deposited in a trust account in any bank, credit union, or  
1548 savings and loan association authorized by the State Treasury as  
1549 a qualified depository to do business in this state, if the  
1550 moneys are available on demand.

1551 (1) Moneys in the trust account must be expended for the  
1552 benefit, education, or welfare of individuals receiving services  
1553 from the agency ~~clients~~. However, if specified, moneys that are  
1554 donated to the center must be expended in accordance with the  
1555 intentions of the donor. Trust account money may not be used for  
1556 the benefit of agency employees or to pay the wages of such  
1557 employees. The welfare of individuals receiving services ~~clients~~  
1558 includes the expenditure of funds for the purchase of items for  
1559 resale at canteens or vending machines; ~~and~~ for the  
1560 establishment of, maintenance of, and operation of canteens,  
1561 hobby shops, recreational or entertainment facilities, ~~sheltered~~  
1562 ~~workshops~~, activity centers, and farming projects; for the  
1563 employment wages of individuals receiving services; and for, ~~or~~  
1564 other like facilities or programs established at the center for  
1565 the benefit of such individuals ~~clients~~.

1566 Section 12. Section 393.28, Florida Statutes, is created to

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1567 read:

1568 393.28 Food service and environmental sanitation  
1569 standards.-

1570 (1) STANDARDS.-The agency shall adopt sanitation standards  
1571 by rule related to food-borne illnesses and environmental  
1572 hazards to ensure the protection of individuals served in  
1573 facilities licensed or regulated by the agency pursuant to s.  
1574 393.067. Such rules may include sanitation requirements for the  
1575 storage, preparation, and serving of food as well as for  
1576 detecting and preventing diseases caused by natural and manmade  
1577 factors in the environment.

1578 (2) VIOLATIONS.-The agency may impose sanctions pursuant to  
1579 s. 393.0673 against any establishment or operator licensed  
1580 pursuant to s. 393.067 for violations of sanitary standards.

1581 (3) FOOD AND INSPECTION SERVICES.-The agency shall provide  
1582 or contract with another entity for the provision of food  
1583 services and for inspection services to enforce food and  
1584 environmental sanitation standards.

1585 Section 13. Paragraph (b) of subsection (2) of section  
1586 393.502, Florida Statutes, is amended to read:

1587 393.502 Family care councils.-

1588 (2) MEMBERSHIP.-

1589 (b) At least three of the members of the council must be  
1590 individuals receiving or waiting to receive services from the  
1591 agency consumers. One such member shall be an individual a  
1592 consumer who has been receiving received services within the 4  
1593 years before prior to the date of recommendation, or the legal  
1594 guardian of such a consumer. The remainder of the council  
1595 members shall be parents, grandparents, nonpaid full-time

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1596 caregivers, nonpaid legal guardians, or siblings of individuals  
1597 who have ~~persons with~~ developmental disabilities and who qualify  
1598 for services pursuant to this chapter. A nonpaid full-time  
1599 caregiver or nonpaid legal guardian may not serve at the same  
1600 time as the individual who is receiving care from the caregiver  
1601 or who is the ward of the guardian.

1602 Section 14. Section 514.072, Florida Statutes, is amended  
1603 to read:

1604 514.072 Certification of swimming instructors for people  
1605 who have developmental disabilities ~~required.~~—Any person working  
1606 at a swimming pool who holds himself or herself out as a  
1607 swimming instructor specializing in training people who have  
1608 developmental disabilities, as defined in s. 393.063  
1609 ~~393.063(10)~~, may be certified by the Dan Marino Foundation,  
1610 Inc., in addition to being certified under s. 514.071. The Dan  
1611 Marino Foundation, Inc., must develop certification requirements  
1612 and a training curriculum for swimming instructors for people  
1613 who have developmental disabilities and must submit the  
1614 certification requirements to the Department of Health for  
1615 review ~~by January 1, 2007. A person certified under s. 514.071~~  
1616 ~~before July 1, 2007, must meet the additional certification~~  
1617 ~~requirements of this section before January 1, 2008. A person~~  
1618 ~~certified under s. 514.071 on or after July 1, 2007, must meet~~  
1619 ~~the additional certification requirements of this section within~~  
1620 ~~6 months after receiving certification under s. 514.071.~~

1621 Section 15. This act shall take effect upon becoming a law.