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1 A bill to be entitled
2 An act relating to developmental disabilities;
3 establishing the Developmental Disabilities Savings
4 Program to allow for the advance payment of services
5 for children who have developmental disabilities and
6 who will be ineligible for certain services due to
7 age; providing legislative intent; defining terms;
8 requiring the program to provide certain information;
9 providing that the program may not be implemented
10 until certain legal opinions are obtained;
11 establishing the Developmental Disabilities Savings
12 Program Board to administer the savings program;
13 providing for board membership; specifying the powers,
14 duties, and goals of the board; authorizing the board
15 to adopt rules; providing a contingent effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Developmental Disabilities Savings Program.—

20 (1) The Legislature recognizes that there is a need to
21 provide families that have children with developmental
22 disabilities who will become ineligible for services due to age
23 with sufficient access to services for those children. The
24 continued provision of educational, health, housing, employment,
25 and other support services for children with developmental
26 disabilities is critical. The Legislature finds that the
27 creation of a savings and investment program for families with
28 such children can offer continued accessibility to services,

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29 regardless of income, insurance, or Medicaid eligibility. It is,
30 therefore, the intent of the Legislature that the Developmental
31 Disabilities Savings Program be established through which many
32 of the later costs associated with services for these children
33 may be paid or saved for in advance. Such savings and investment
34 program must be conducted in a manner that maximizes program
35 efficiency and effectiveness.

36 (2) As used in this section, the term:

37 (a) "Advance payment contract" means the contract under
38 the savings program which allows a purchaser or benefactor to
39 make payments into an investment plan that will provide funds
40 that may be used to pay for eligible services for a qualified
41 beneficiary.

42 (b) "Benefactor" means any person making a deposit,
43 payment, contribution, gift, or other expenditure into the
44 investment plan for a qualified beneficiary, and may include a
45 noncustodial parent who is obligated to make payments into the
46 plan for his or her child.

47 (c) "Developmental disability" has the same meaning as
48 provided in s. 393.063, Florida Statutes, or means any severe,
49 chronic disability that:

50 1. Is attributable to a mental or physical impairment or a
51 combination of those impairments.

52 2. Occurs before the individual attains 18 years of age.

53 3. Is likely to continue indefinitely.

54 4. Results in substantial functional limitations in three
55 or more of the following areas of major life activity: self-
56 care, receptive and expressive language, learning, mobility,

57 self-direction, capacity for independent living, or economic
58 self-sufficiency.

59 5. Reflects the individual's need for a combination and
60 sequence of special, interdisciplinary, or generic services,
61 individualized supports, or other forms of assistance that are
62 of lifelong or extended duration and are individually planned
63 and coordinated.

64 6. For a child younger than 10 years of age, is likely to
65 meet the criteria in subparagraphs 1.-5. without intervention.

66 (d) "Eligible services" means:

67 1. Specific services that may include respite care,
68 provision of rehabilitation and habilitation services,
69 transportation, assistive technology, personal assistance
70 services, counseling, support for families headed by aging
71 caregivers, vehicular and home modifications, and assistance to
72 cover extraordinary expenses associated with the needs of
73 individuals with developmental disabilities.

74 2. Health-related services that may include medical,
75 dental, mental health, and other human and social services to
76 enhance the well-being of the individual, as well as durable and
77 consumable medical supplies.

78 3. Housing-related services that may result in individuals
79 with developmental disabilities having access to and use of
80 housing and housing supports and services in their communities,
81 including assistance related to modifying an apartment or home.

82 4. Education-related services to facilitate attendance in
83 a training or educational setting, such as technology and
84 personnel-related services that assist in obtaining and

85 maximizing the educational experience.

86 5. Employment-related services that are necessary to
87 assist the individual in meeting essential job functions through
88 technology, personnel-related expenses, and transportation
89 expenses.

90 (e) "Purchaser" means a resident of this state who is the
91 parent or grandparent of a qualified beneficiary and who enters
92 into an advance payment contract.

93 (f) "Qualified beneficiary" means an individual with a
94 developmental disability who is a resident of the state and who
95 is younger than 22 years of age at the time a purchaser enters
96 into an advance payment contract on his or her behalf.

97 (g) "Savings program" means the Developmental Disabilities
98 Savings Program.

99 (3) There is created the Developmental Disabilities
100 Savings Program.

101 (a) The savings program shall offer an investment plan
102 through which eligible services for a qualified beneficiary may
103 be paid for in advance.

104 (b) The savings program shall provide information and
105 training concerning the program and its benefits for a qualified
106 beneficiary to advance his or her goals and become a
107 contributing member of society.

108 (c) The savings program must inform the purchaser of the
109 potential impact of plan participation on eligibility for
110 Medicaid or other state or federally funded programs.

111 (4) The savings program may not be implemented until the
112 board created under subsection (6) which is administering the

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113 savings program has obtained the following:

114 (a) A written opinion of qualified counsel specializing in
115 federal securities law that the savings program and the offering
116 of participation in the investment plan does not violate federal
117 securities law; and

118 (b) A private letter ruling from the federal Internal
119 Revenue Service indicating that under the savings program taxes
120 on any payments made, moneys deposited, investments made, and
121 resulting earnings may be deferred under the Internal Revenue
122 Code. If the Internal Revenue Service declines to rule on the
123 request for a private letter ruling, the program may rely on
124 legal opinion rendered by a qualified attorney specializing in
125 tax law.

126 (5) The savings program is not a promise or guarantee that
127 a qualified beneficiary or a designated beneficiary will become
128 eligible for Medicaid, receive permanent services, be enrolled
129 in the Medicaid waiver program, or receive any other state or
130 federal assistance.

131 (6) The savings program shall be administered by the
132 Developmental Disabilities Savings Program Board as a body
133 corporate with all the powers of a body corporate for the
134 purposes delineated in this section.

135 (a) The board shall consist of seven members, including:

136 1. The director of the Agency for Persons with
137 Disabilities.

138 2. The director of the Division of Vocational
139 Rehabilitation of the Department of Education.

140 3. The president of the Arc of Florida.

141 4. The chair of the Family Care Council of Florida, or his
142 or her designee.

143 5. Three members, appointed by the Governor for 3-year
144 terms, who possess knowledge, skill, and experience in the areas
145 of accounting, actuary, risk management, or investment
146 management. Any person appointed to fill a vacancy for such
147 members shall serve only for the unexpired term and until a
148 successor qualifies, but is eligible for reappointment.

149 (b) The board shall annually elect a chair and vice chair
150 from the board members, and shall designate a secretary-
151 treasurer who need not be a member of the board. The secretary-
152 treasurer shall keep a record of the proceedings of the board
153 and shall be the custodian of all printed material filed with or
154 by the board and its official seal.

155 1. The board shall, at a minimum, meet on a quarterly
156 basis at the call of the chair.

157 2. Notwithstanding the existence of vacancies on the
158 board, a majority of the members constitutes a quorum. The board
159 shall take no official action in the absence of a quorum.

160 3. Members of the board shall serve without compensation,
161 and each member shall file a full and public disclosure of his
162 or her financial interests pursuant to s. 8, Art. II of the
163 State Constitution and corresponding statute.

164 (c) The board shall have the powers and duties necessary
165 or proper to carry out the following provisions, including, but
166 not limited to:

167 1. Appointing an executive director, whose compensation
168 shall be provided from revenue generated by the program, to

169 serve as the chief administrative and operational officer of the
170 program and to perform other duties assigned to him or her by
171 the board.

172 2. Delegating responsibility for administration of the
173 savings program to persons the board determines are qualified.

174 3. Adopting an official seal and rules.

175 4. Making and executing contracts and other necessary
176 instruments.

177 5. Establishing agreements or other transactions with
178 federal, state, and local agencies.

179 6. Forming strategic alliances with public and private
180 entities to provide benefits to the savings program.

181 7. Appearing on its own behalf before boards, commissions,
182 or other governmental agencies.

183 8. Procuring and contracting for goods and services,
184 employing personnel, and engaging the services of private
185 consultants, actuaries, managers, legal counsel, and auditors in
186 a manner determined to be necessary and appropriate by the
187 board.

188 9. Adopting procedures to govern contract dispute
189 proceedings between the board and its vendors.

190 10. Soliciting proposals and contracting for the marketing
191 of the savings program. Any materials produced for the purpose
192 of marketing must be submitted to the board for review.
193 Materials may not be made available to the public before the
194 materials are approved by the board. The state and the board are
195 not liable for misrepresentation of the savings program by a
196 marketing agent.

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197 11. Investing funds not required for immediate
198 disbursement.

199 12. Holding, buying, and selling any instruments,
200 obligations, securities, and property determined appropriate by
201 the board.

202 13. Administering the savings program in a manner that is
203 sufficiently actuarially sound to defray the obligations of the
204 savings program. The board shall annually evaluate the actuarial
205 soundness of the investment plan.

206 14. Soliciting and accepting gifts, grants, loans, and
207 other aids from any source or participating in any other way in
208 any government program to carry out the purposes of the savings
209 program.

210 15. Requiring and collecting administrative fees and
211 charges in connection with any transaction and imposing
212 reasonable penalties, including default, for delinquent payments
213 or for entering into an advance payment contract on a fraudulent
214 basis.

215 16. Suing and being sued.

216 17. Endorsing insurance coverage written exclusively for
217 the purpose of protecting the investment plan, and the
218 purchasers, benefactors, and beneficiaries thereof.

219 18. Procuring insurance against any loss in connection
220 with the property, assets, and activities of the savings program
221 or the board.

222 19. Providing for the receipt of contributions in lump
223 sums or installment payments.

224 20. Imposing reasonable time limits on use of the benefits

225 provided by the savings program. However, such limitations must
226 be specified in the contract.

227 21. Delineating the terms and conditions under which
228 payments may be withdrawn from the investment plan and impose
229 reasonable fees and charges for such withdrawal. Such terms and
230 conditions must be specified within the advance payment
231 contract.

232 22. Establishing other policies, procedures, and criteria
233 to implement and administer the savings program.

234 (d) The board shall solicit proposals and contract for:

235 1. Investment managers to provide investment portfolios
236 for the savings program. Investment managers are limited to
237 authorized insurers as defined in s. 624.09, Florida Statutes,
238 banks as defined in s. 658.12, Florida Statutes, associations as
239 defined in s. 665.012, Florida Statutes, authorized Securities
240 and Exchange Commission investment advisers, and investment
241 companies as defined in the Investment Company Act of 1940. All
242 investment managers shall have their principal place of business
243 and corporate charter located and registered in the United
244 States. In addition, each investment manager must agree to meet
245 the obligations of the board to qualified beneficiaries if
246 moneys in the fund fail to offset the obligations of the board
247 as a result of imprudent investing by such manager. Each
248 authorized insurer shall evidence superior performance overall
249 on an acceptable level of surety in meeting its obligations to
250 its policyholders and other contractual obligations. Only
251 qualified public depositories approved by the Chief Financial
252 Officer are eligible for board consideration. Each investment

253 company shall provide investment plans as specified within the
254 request for proposals.

255 2. Investment consultants to review the performance of the
256 board's investment managers and advise the board on investment
257 management and performance and investment policy, including the
258 contents of investment plans.

259 3. Trustee services firms to provide trustee and related
260 services to the board. The trustee services firm must agree to
261 meet the obligations of the board to qualified beneficiaries if
262 moneys in the plan fail to offset the obligations of the board
263 as a result of imprudent selection or supervision of investment
264 plans by such firm.

265 4. The services of records administrators.

266 (e) The goals of the board in procuring investment
267 services shall be to provide all purchasers and benefactors with
268 the most secure, well-diversified, and beneficially administered
269 savings program possible, to allow all qualified firms
270 interested in providing such services equal consideration, and
271 to provide such services to the state at no cost and to the
272 purchasers and benefactors at the lowest cost possible.

273 Evaluations of proposals submitted pursuant to paragraph (d)
274 must consider, without limitation, fees and other costs that are
275 charged to purchasers or benefactors that affect account values,
276 or that impact the operational costs of the savings program;
277 past experience and past performance in providing the required
278 services; financial history and current financial strength and
279 capital adequacy to provide the required services; and
280 capabilities and experience of proposed personnel who will

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281 provide the required services.

282 (f) The board may adopt rules necessary for the savings
283 program to qualify for or retain its status as a qualified tax-
284 deferred program or other similar status of the program,
285 purchasers, and qualified beneficiaries under the Internal
286 Revenue Code. The board shall inform participants in the savings
287 program of changes to the tax or securities status of the
288 investment plan.

289 Section 2. This act shall take effect July 1, 2013, or
290 upon the date that the Governor, by executive order filed with
291 the Secretary of State, certifies that the United States
292 Congress has passed the federal "Achieving a Better Life
293 Experience Act of 2011" or "ABLE Act of 2011," S.1872/H.R.3423,
294 or similar legislation, whichever occurs later, if such
295 legislation becomes law before October 5, 2015.