

By the Committee on Budget

576-03466A-12

20121990\_\_

1                   A bill to be entitled  
2           An act relating to developmental disabilities;  
3           amending s. 393.063, F.S.; redefining the term  
4           "support coordinator"; amending s. 393.0661, F.S.;  
5           requiring that the Agency for Persons with  
6           Disabilities review a waiver support coordinator's  
7           performance to ensure that the support coordinator  
8           meets or exceeds criteria established by the agency;  
9           providing responsibilities of the support coordinator;  
10          providing that the waiver is the funding source of  
11          last resort for client services; requiring that the  
12          agency's area offices conduct and manage the provider  
13          agreements with the waiver support coordinators and  
14          the performance reviews; providing criteria for  
15          evaluating a support coordinator's performance;  
16          authorizing the agency to recognize superior  
17          performance by exempting a waiver support coordinator  
18          from annual quality assurance reviews or other  
19          mechanisms established by the agency; authorizing the  
20          agency to issue sanctions for poor performance;  
21          authorizing the agency to adopt rules; conforming a  
22          cross-reference; amending s. 393.0662, F.S.;  
23          conforming provisions to changes made by the act;  
24          providing that funds appropriated to the agency shall  
25          be allocated through the iBudget system to eligible,  
26          Medicaid-enrolled clients who have a developmental  
27          disability and not only Down syndrome; providing that  
28          a client has the flexibility to determine the type,  
29          amount, frequency, duration, and scope of the services

576-03466A-12

20121990\_\_

30 on his or her cost plan if certain criteria are met;  
31 requiring that the agency determine the client's  
32 initial iBudget amount; requiring that the area office  
33 review the amount of funding needed to address each  
34 client's extraordinary needs in order to determine the  
35 medical necessity for each service in the amount,  
36 duration, frequency, intensity, and scope that meets  
37 the client's needs; requiring that the agency to  
38 consider certain factors of the individual which may  
39 affect the level of services needed; requiring that  
40 the client's medical necessity review include a  
41 comparison of client's algorithm allocation, cost  
42 plan, and extraordinary needs; providing certain  
43 requirements for an client's initial annualized  
44 iBudget amount; authorizing increases to an client's  
45 initial iBudget amount under certain circumstances  
46 during specified fiscal years; deleting a provision  
47 regarding the phasing-in process of the iBudget  
48 system; requiring a client to use all available  
49 nonwaiver services before using funds from his or her  
50 iBudget to pay for support and services; creating s.  
51 393.28, F.S.; requiring that the agency adopt and  
52 enforce certain sanitation standards to protect  
53 individuals served in facilities licensed or regulated  
54 by the agency; requiring that the agency inspect or  
55 contract for the inspection of those facilities;  
56 authorizing the agency to adopt rules; requiring that  
57 the agency defer to certain preexisting standards if  
58 rules are not adopted; authorizing the agency to

576-03466A-12

20121990\_\_

59       consult with the Department of Health, the Agency for  
60       Health Care Administration, the Department of Business  
61       and Professional Regulation, and the Department of  
62       Agriculture and Consumer Services concerning  
63       procedures related to the storage, preparation,  
64       serving, or display of food and procedures related to  
65       the detection and prevention of diseases caused by  
66       certain factors in the environment; authorizing the  
67       agency to impose sanctions against certain  
68       establishments or operators for violation of sanitary  
69       standards; authorizing the agency to contract with  
70       another entity for food service protection and  
71       inspection services; providing an effective date.

72  
73   Be It Enacted by the Legislature of the State of Florida:

74  
75       Section 1. Subsection (37) of section 393.063, Florida  
76       Statutes, is amended to read:

77       393.063 Definitions.—For the purposes of this chapter, the  
78       term:

79       (37) "Support coordinator" means a person who is  
80       contracting with ~~designated by~~ the agency to assist clients  
81       ~~individuals~~ and families in identifying their capacities, needs,  
82       and resources, as well as finding and gaining access to  
83       necessary supports and services; locating or developing  
84       employment opportunities; coordinating the delivery of supports  
85       and services; advocating on behalf of the client ~~individual~~ and  
86       family; maintaining relevant records; and monitoring and  
87       evaluating the delivery of supports and services to determine

576-03466A-12

20121990\_\_

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

91 Section 2. Present subsections (8), (9), and (10) of  
92 section 393.0661, Florida Statutes, are redesignated as  
93 subsections (9), (10), and (11), respectively, present  
94 subsection (9) is amended, and a new subsection (8) is added to  
95 that section, to read:

96 393.0661 Home and community-based services delivery system;  
97 comprehensive redesign.—The Legislature finds that the home and  
98 community-based services delivery system for persons with  
99 developmental disabilities and the availability of appropriated  
100 funds are two of the critical elements in making services  
101 available. Therefore, it is the intent of the Legislature that  
102 the Agency for Persons with Disabilities shall develop and  
103 implement a comprehensive redesign of the system.

104 (8) In determining whether to continue a Medicaid waiver  
105 provider agreement for support coordinator services, the agency  
106 shall review the performance of the waiver support coordinator  
107 to ensure that the support coordinator meets or exceeds the  
108 criteria established by the agency. The support coordinator is  
109 responsible for assisting the client in meeting his or her  
110 service needs through nonwaiver resources, as well as through  
111 the client's budget allocation or cost plan under the waiver.  
112 The waiver is the funding source of last resort for client  
113 services. The agency's area offices shall conduct and manage the  
114 provider agreements with the waiver support coordinators and the  
115 performance reviews.

116 (a) Criteria for evaluating a support coordinator's

576-03466A-12

20121990\_\_

117 performance must include, but are not limited to:

118 1. The protection of the health and safety of clients.

119 2. The assistance provided to clients in obtaining  
120 employment and pursuing other meaningful activities.

121 3. The assistance provided to clients in accessing services  
122 that allow them to live in their community.

123 4. The use of family resources.

124 5. The use of private resources.

125 6. The use of community resources.

126 7. The use of charitable resources.

127 8. The use of volunteer resources.

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

129 10. The overall outcome in securing nonwaiver resources.

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

131 12. The coordination of all available resources to ensure  
132 that clients' outcomes are met.

133 (b) The agency may recognize consistently superior  
134 performance by exempting a waiver support coordinator from  
135 annual quality assurance reviews or other mechanisms established  
136 by the agency. The agency may issue sanctions for poor  
137 performance, including, but not limited to, a reduction in  
138 caseload size, recoupment or other financial penalties, and  
139 termination of the waiver support coordinator's provider  
140 agreement. The agency may adopt rules to administer this  
141 subsection.

142 (10)-(9) The Agency for Persons with Disabilities shall  
143 submit quarterly status reports to the Executive Office of the  
144 Governor, the chair of the Senate Ways and Means Committee or  
145 its successor, and the chair of the House Fiscal Council or its

576-03466A-12

20121990\_\_

146 successor regarding the financial status of home and community-  
147 based services, including the number of enrolled individuals who  
148 are receiving services through one or more programs; the number  
149 of individuals who have requested services who are not enrolled  
150 but who are receiving services through one or more programs,  
151 with a description indicating the programs from which the  
152 individual is receiving services; the number of individuals who  
153 have refused an offer of services but who choose to remain on  
154 the list of individuals waiting for services; the number of  
155 individuals who have requested services but who are receiving no  
156 services; a frequency distribution indicating the length of time  
157 individuals have been waiting for services; and information  
158 concerning the actual and projected costs compared to the amount  
159 of the appropriation available to the program and any projected  
160 surpluses or deficits. If at any time an analysis by the agency,  
161 in consultation with the Agency for Health Care Administration,  
162 indicates that the cost of services is expected to exceed the  
163 amount appropriated, the agency shall submit a plan in  
164 accordance with subsection (9) ~~(8)~~ to the Executive Office of  
165 the Governor, the chair of the Senate Ways and Means Committee  
166 or its successor, and the chair of the House Fiscal Council or  
167 its successor to remain within the amount appropriated. The  
168 agency shall work with the Agency for Health Care Administration  
169 to implement the plan so as to remain within the appropriation.

170 Section 3. Section 393.0662, Florida Statutes, is amended  
171 to read:

172 393.0662 Individual budgets for delivery of home and  
173 community-based services; iBudget system established.—The  
174 Legislature finds that improved financial management of the

576-03466A-12

20121990\_\_

175 existing home and community-based ~~Medicaid~~ waiver program is  
176 necessary to avoid deficits that impede the provision of  
177 services to individuals who are on the waiting list for  
178 enrollment in the program. The Legislature further finds that  
179 clients and their families should have greater flexibility to  
180 choose the services that best allow them to live in their  
181 community within the limits of an established budget. Therefore,  
182 the Legislature intends that the agency, in consultation with  
183 the Agency for Health Care Administration, develop and implement  
184 a comprehensive redesign of the service delivery system using  
185 individual budgets as the basis for allocating the funds  
186 appropriated for the ~~home and community-based services Medicaid~~  
187 waiver program among eligible enrolled clients. The service  
188 delivery system that uses individual budgets shall be called the  
189 iBudget system.

190 (1) The agency shall establish an individual budget, to be  
191 referred to as an iBudget, for each client ~~individual~~ served by  
192 the home and community-based services ~~Medicaid~~ waiver program.  
193 The funds appropriated to the agency shall be allocated through  
194 the iBudget system to eligible, Medicaid-enrolled clients who  
195 have. ~~For the iBudget system, eligible clients shall include~~  
196 ~~individuals with a diagnosis of Down syndrome or a developmental~~  
197 ~~disability as defined in s. 393.063.~~ The iBudget system shall be  
198 designed to provide for: enhanced client choice within a  
199 specified service package; appropriate assessment strategies; an  
200 efficient consumer budgeting and billing process that includes  
201 reconciliation and monitoring components; a redefined role for  
202 support coordinators which ~~that~~ avoids potential conflicts of  
203 interest; a flexible and streamlined service review process; and

576-03466A-12

20121990\_\_

204 a methodology and process that ensures the equitable allocation  
205 of available funds to each client based on the client's level of  
206 need, as determined by the variables in the allocation  
207 algorithm.

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

210 (a) The algorithm shall use variables that have been  
211 determined by the agency to have a statistically validated  
212 relationship to the client's level of need for services provided  
213 through the ~~home and community-based services Medicaid~~ waiver  
214 program. The algorithm ~~and methodology~~ may consider individual  
215 characteristics, including, but not limited to, a client's age  
216 and living situation, information from a formal assessment  
217 instrument that the agency determines is valid and reliable, and  
218 information from other assessment processes.

219 (b) The allocation methodology shall provide the algorithm  
220 that determines the amount of funds allocated to a client's  
221 iBudget. The agency may approve an increase in the amount ~~of~~  
222 ~~funds~~ allocated, ~~as determined~~ by the algorithm, based on the  
223 client having one or more of the following needs that cannot be  
224 accommodated within the ~~funding as determined by the algorithm~~  
225 allocation and having no other resources, supports, or services  
226 available to meet such needs ~~the need~~:

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

231 a. A documented history of significant, potentially life-  
232 threatening behaviors, such as recent attempts at suicide,

576-03466A-12

20121990\_\_

233 arson, nonconsensual sexual behavior, or self-injurious behavior  
234 requiring medical attention;

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

238       c. A chronic comorbid condition. As used in this  
239 subparagraph, the term "comorbid condition" means a medical  
240 condition existing simultaneously but independently with another  
241 medical condition in a patient; or

242       d. A need for total physical assistance with activities  
243 such as eating, bathing, toileting, grooming, and personal  
244 hygiene.

245

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

249       2. A significant need for one-time or temporary support or  
250 services that, if not provided, would place the health and  
251 safety of the client, the client's caregiver, or the public in  
252 serious jeopardy, unless the increase is approved. A significant  
253 need may include, but is not limited to, the provision of  
254 environmental modifications, durable medical equipment, services  
255 to address the temporary loss of support from a caregiver, or  
256 special services or treatment for a serious temporary condition  
257 when the service or treatment is expected to ameliorate the  
258 underlying condition. As used in this subparagraph, the term  
259 "temporary" means less ~~a period of fewer~~ than 12 continuous  
260 months. However, the presence of such significant need for one-  
261 time or temporary supports or services alone does not warrant an

576-03466A-12

20121990\_\_

262 increase in the amount of funds allocated to a client's iBudget  
263 as determined by the algorithm.

264 3. A significant increase in the need for services after  
265 the beginning of the service plan year which ~~that~~ would place  
266 the health and safety of the client, the client's caregiver, or  
267 the public in serious jeopardy because of substantial changes in  
268 the client's circumstances, including, but not limited to,  
269 permanent or long-term loss or incapacity of a caregiver, loss  
270 of services authorized under the state Medicaid plan due to a  
271 change in age, or a significant change in medical or functional  
272 status which requires the provision of additional services on a  
273 permanent or long-term basis which ~~that~~ cannot be accommodated  
274 within the client's current iBudget. As used in this  
275 subparagraph, the term "long-term" means ~~a period of~~ 12 or more  
276 continuous months. However, such significant increase in need  
277 for services of a permanent or long-term nature alone does not  
278 warrant an increase in the amount of funds allocated to a  
279 client's iBudget as determined by the algorithm.

280  
281 The agency shall reserve portions of the appropriation for the  
282 ~~home and community-based services Medicaid~~ waiver program for  
283 adjustments required pursuant to this paragraph and may use the  
284 services of an independent actuary in determining the amount of  
285 the portions to be reserved.

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

289 (d) A client shall have the flexibility to determine the  
290 type, amount, frequency, duration, and scope of the services on

576-03466A-12

20121990\_\_

291 his or her cost plan if the agency determines that such services  
292 meet his or her health and safety needs, meet the requirements  
293 contained in the Coverage and Limitations Handbook for each  
294 service included on the cost plan, and comply with the other  
295 requirements of this section.

296 (e) A client's annual expenditures for ~~home and community-~~  
297 ~~based services~~ Medicaid waiver services may not exceed the  
298 limits of his or her iBudget. The total of all clients'  
299 projected annual iBudget expenditures may not exceed the  
300 agency's appropriation for waiver services.

301 (3)~~(2)~~ The Agency for Health Care Administration, in  
302 consultation with the agency, shall seek federal approval to  
303 amend current waivers, request a new waiver, and amend contracts  
304 as necessary to implement the iBudget system to serve eligible,  
305 enrolled clients through the home and community-based services  
306 Medicaid waiver program and the Consumer-Directed Care Plus  
307 Program.

308 (4)~~(3)~~ The agency shall transition all eligible, enrolled  
309 clients to the iBudget system. The agency may gradually phase in  
310 the iBudget system.

311 (a) During the transition, the agency shall determine an  
312 client's initial iBudget amount by comparing the client's  
313 algorithm allocation to the client's current annual cost plan  
314 and the client's extraordinary needs. The client's algorithm  
315 allocation is the amount determined by the algorithm, adjusted  
316 to the agency's appropriation and any set-asides determined  
317 necessary by the agency, including, but not limited to, funding  
318 for individuals who have extraordinary needs as delineated in  
319 paragraph (2) (b). The area office shall review the amount of

576-03466A-12

20121990

320 funding needed to address the each client's extraordinary needs  
321 in order to determine the medical necessity for each service in  
322 the amount, duration, frequency, intensity, and scope that meets  
323 the client's needs. The agency shall consider the client's  
324 characteristics based on a needs assessment as well as the  
325 client's living setting, availability of natural supports,  
326 family circumstances, and other factors that may affect the  
327 level of service needed.

328 (b) The client's medical-necessity review must include a  
329 comparison of the following:

330 1. If the client's algorithm allocation is greater than the  
331 individual cost plan, the client's initial iBudget shall be  
332 equal to the total cost plan amount.

333 2. If the client's algorithm allocation is less than the  
334 client's cost plan but is greater than the amount for the  
335 client's extraordinary needs, the client's initial iBudget shall  
336 be equal to the algorithm allocation.

337 3. If the client's algorithm allocation is less than the  
338 amount for the client's extraordinary needs, the client's  
339 initial iBudget shall be equal to the amount for the client's  
340 extraordinary needs.

341  
342 The client's initial annualized iBudget amount may not be less  
343 than 50 percent of that client's existing annualized cost plan.  
344 If the client's initial iBudget is less than the client's  
345 current cost plan, and is within \$1,000 of the current cost  
346 plan, the agency may adjust the iBudget to equal the cost plan  
347 amount.

348 (c) During the 2011-2012 and 2012-2013 fiscal years,

576-03466A-12

20121990

349 increases to an client's initial iBudget amount may be granted  
350 only if a significant change in circumstances has occurred and  
351 if the criteria for extraordinary needs as described in  
352 paragraph (2) (b) are met.

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

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

363 (5)~~(4)~~ A client must use all available nonwaiver services  
364 ~~authorized under the state Medicaid plan, school-based services,~~  
365 ~~private insurance and other benefits, and any other resources~~  
366 that may be available to the client before using funds from his  
367 or her iBudget to pay for support and services.

368 (6)~~(5)~~ The service limitations in s. 393.0661(3)(f)1., 2.,  
369 and 3. do not apply to the iBudget system.

370 (7)~~(6)~~ Rates for any or all services established under  
371 rules of the Agency for Health Care Administration must ~~shall~~ be  
372 designated as the maximum rather than a fixed amount for clients  
373 ~~individuals~~ who receive an iBudget, except for services  
374 specifically identified in those rules that the agency  
375 determines are not appropriate for negotiation, which may  
376 include, but are not limited to, residential habilitation  
377 services.

576-03466A-12

20121990\_\_

378        (8)~~(7)~~ The agency shall ensure that clients and caregivers  
379 have access to training and education that informs ~~to inform~~  
380 them about the iBudget system and enhances ~~enhance~~ their ability  
381 for self-direction. Such training must be provided ~~shall be~~  
382 ~~offered~~ in a variety of formats and, at a minimum, must ~~shall~~  
383 address the policies and processes of the iBudget system; the  
384 roles and responsibilities of consumers, caregivers, waiver  
385 support coordinators, providers, and the agency; information  
386 that is available to help the client make decisions regarding  
387 the iBudget system; and examples of nonwaiver support ~~and~~  
388 resources that may be available in the community.

389        (9)~~(8)~~ The agency shall collect data to evaluate the  
390 implementation and outcomes of the iBudget system.

391        (10)~~(9)~~ The agency and the Agency for Health Care  
392 Administration may adopt rules specifying the allocation  
393 algorithm and methodology; criteria and processes that allow for  
394 clients to access reserved funds for extraordinary needs,  
395 temporarily or permanently changed needs, and one-time needs;  
396 and processes and requirements for the selection and review of  
397 services, development of support and cost plans, and management  
398 of the iBudget system as needed to administer this section.

399        Section 4. Section 393.28, Florida Statutes, is created to  
400 read:

401        393.28 Food service and environmental health protection and  
402 inspection.—

403        (1) AUTHORITY.—

404        (a) The Agency for Persons with Disabilities shall adopt  
405 and enforce sanitation standards related to food-borne illnesses  
406 and environmental sanitation hazards to ensure the protection of

576-03466A-12

20121990

407 individuals served in facilities licensed or regulated by the  
408 agency under s. 393.067 by inspecting or contracting for the  
409 inspection of those facilities.

410 (b) The agency may develop rules to administer this  
411 section. In the absence of rules, the agency shall defer to  
412 preexisting standards related to environmental health  
413 inspections of group care facilities as described in s. 381.006,  
414 preexisting standards related to food service establishments as  
415 described in s. 381.0072, and the rules relevant to these  
416 provisions.

417 (c) Rules under this section may provide additional or  
418 alternative standards to those referenced in paragraph (b), and  
419 may include sanitation requirements for the storage,  
420 preparation, and serving of food, as well as sanitation  
421 requirements to detect and prevent disease caused by natural and  
422 manmade factors in the environment.

423 (2) CONSULTATION.—The agency may consult with the  
424 Department of Health, the Agency for Health Care Administration,  
425 the Department of Business and Professional Regulation, and the  
426 Department of Agriculture and Consumer Services concerning  
427 procedures related to the storage, preparation, serving, or  
428 display of food and procedures related to the detection and  
429 prevention of diseases caused by natural and manmade factors in  
430 the environment.

431 (3) LICENSING SANCTIONS; PROCEDURES.—The agency may impose  
432 sanctions pursuant to s. 393.0673 against any establishment or  
433 operator licensed under s. 393.067 for violations of sanitary  
434 standards.

435 (4) CONTRACTING.—The agency may contract with another

576-03466A-12

20121990\_\_

436 entity for the provision of food service protection and  
437 inspection services.

438 Section 5. This act shall take effect July 1, 2012.