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1  
2 An act relating to the Agency for Persons with  
3 Disabilities; amending s. 393.063, F.S.; revising and  
4 defining terms; repealing s. 393.0641, F.S., relating  
5 to a program for the prevention and treatment of  
6 severe self-injurious behavior; amending s. 393.065,  
7 F.S.; providing for the assignment of priority to  
8 clients waiting for waiver services; requiring an  
9 agency to allow a certain individual to receive such  
10 services if the individual's parent or legal guardian  
11 is an active-duty military servicemember; requiring  
12 the agency to send an annual letter to clients and  
13 their guardians or families; providing that certain  
14 agency action does not establish a right to a hearing  
15 or an administrative proceeding; amending s. 393.066,  
16 F.S.; providing for the use of an agency data  
17 management system; providing requirements for persons  
18 or entities under contract with the agency; amending  
19 s. 393.0662, F.S.; adding client needs that qualify as  
20 extraordinary needs, which may result in the approval  
21 of an increase in a client's allocated funds; revising  
22 duties of the Agency for Health Care Administration  
23 relating to the iBudget system; creating s. 393.0679,  
24 F.S.; requiring the Agency for Persons with  
25 Disabilities to conduct a certain utilization review;  
26 requiring certain intermediate care facilities to



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27 |       comply with certain requests and inspections by the  
28 |       agency; amending s. 393.11, F.S.; providing for annual  
29 |       reviews for persons involuntarily admitted to  
30 |       residential services provided by the agency; requiring  
31 |       the agency to contract with a qualified evaluator;  
32 |       providing requirements for annual reviews; requiring a  
33 |       hearing to be held to consider the results of an  
34 |       annual review; requiring the agency to provide a copy  
35 |       of the review to certain persons; providing a  
36 |       definition; repealing ss. 24 and 26 of chapter 2015-  
37 |       222, Laws of Florida; abrogating the scheduled  
38 |       expiration and reversion of amendments to ss.  
39 |       393.067(15) and 393.18, F.S.; providing for contingent  
40 |       retroactive operation; reenacting s. 393.067(15),  
41 |       F.S., relating to a provision specifying that the  
42 |       agency is not required to contract with certain  
43 |       licensed facilities; reenacting and amending s.  
44 |       393.18, F.S.; revising the purposes of comprehensive  
45 |       transitional education programs; providing  
46 |       qualification requirements for the supervisor of the  
47 |       clinical director of a specified licensee; revising  
48 |       the organization and operation of components of such a  
49 |       program; providing for the integration of educational  
50 |       components with the local school district; providing  
51 |       that failure of certain licensees to comply with the  
52 |       terms of a settlement agreement is grounds for



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53 | discipline; authorizing the agency to approve the  
 54 | admission or readmission of an individual to such a  
 55 | program; amending ss. 383.141 and 1002.385, F.S.;  
 56 | conforming cross-references to changes made by the  
 57 | act; providing an appropriation; providing a  
 58 | contingent appropriation; providing effective dates.  
 59 |

60 | Be It Enacted by the Legislature of the State of Florida:

61 |

62 | Section 1. Section 393.063, Florida Statutes, is amended  
 63 | to read:

64 | 393.063 Definitions.—For the purposes of this chapter, the  
 65 | term:

66 | (1)~~(2)~~ "Adult day training" means training services that  
 67 | ~~which~~ take place in a nonresidential setting, separate from the  
 68 | home or facility in which the client resides, and~~;~~ are intended  
 69 | to support the participation of clients in daily, meaningful,  
 70 | and valued routines of the community. Such training~~;~~ and may be  
 71 | provided in ~~include~~ work-like settings that do not meet the  
 72 | definition of supported employment.

73 | (2)~~(1)~~ "Agency" means the Agency for Persons with  
 74 | Disabilities.

75 | (3) "Algorithm" means the mathematical formula used by the  
 76 | agency to calculate budget amounts for clients which uses  
 77 | variables that have statistically validated relationships to



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78 clients' needs for services provided by the home and community-  
79 based services Medicaid waiver program.

80 (4) "Allocation methodology" is the process used to  
81 determine a client's iBudget by summing the amount generated by  
82 the algorithm, and, if applicable, any funding authorized by the  
83 agency for the client pursuant to s. 393.0662(1)(b).

84 (5)~~(3)~~ "Autism" means a pervasive, neurologically based  
85 developmental disability of extended duration which causes  
86 severe learning, communication, and behavior disorders with age  
87 of onset during infancy or childhood. Individuals with autism  
88 exhibit impairment in reciprocal social interaction, impairment  
89 in verbal and nonverbal communication and imaginative ability,  
90 and a markedly restricted repertoire of activities and  
91 interests.

92 (6)~~(4)~~ "Cerebral palsy" means a group of disabling  
93 symptoms of extended duration which results from damage to the  
94 developing brain that may occur before, during, or after birth  
95 and that results in the loss or impairment of control over  
96 voluntary muscles. For the purposes of this definition, cerebral  
97 palsy does not include those symptoms or impairments resulting  
98 solely from a stroke.

99 (7)~~(5)~~ "Client" means any person determined eligible by  
100 the agency for services under this chapter.

101 (8)~~(6)~~ "Client advocate" means a friend or relative of the  
102 client, or of the client's immediate family, who advocates for  
103 the best interests of the client in any proceedings under this



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104 chapter in which the client or his or her family has the right  
105 or duty to participate.

106 (9)~~(7)~~ "Comprehensive assessment" means the process used  
107 to determine eligibility for services under this chapter.

108 (10)~~(8)~~ "Comprehensive transitional education program"  
109 means the program established in s. 393.18.

110 (11)~~(10)~~ "Developmental disabilities center" means a  
111 state-owned and state-operated facility, formerly known as a  
112 "Sunland Center," providing for the care, habilitation, and  
113 rehabilitation of clients with developmental disabilities.

114 (12)~~(9)~~ "Developmental disability" means a disorder or  
115 syndrome that is attributable to intellectual disability,  
116 cerebral palsy, autism, spina bifida, Down syndrome, or Prader-  
117 Willi syndrome; that manifests before the age of 18; and that  
118 constitutes a substantial handicap that can reasonably be  
119 expected to continue indefinitely.

120 (13)~~(11)~~ "Direct service provider" means a person 18 years  
121 of age or older who has direct face-to-face contact with a  
122 client while providing services to the client or has access to a  
123 client's living areas or to a client's funds or personal  
124 property.

125 (14)~~(12)~~ "Domicile" means the place where a client legally  
126 resides and~~7~~ which ~~place~~ is his or her permanent home. Domicile  
127 may be established as provided in s. 222.17. Domicile may not be  
128 established in Florida by a minor who has no parent domiciled in



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129 Florida, or by a minor who has no legal guardian domiciled in  
130 Florida, or by any alien not classified as a resident alien.

131 (15)~~(13)~~ "Down syndrome" means a disorder caused by the  
132 presence of an extra chromosome 21.

133 (16)~~(14)~~ "Express and informed consent" means consent  
134 voluntarily given in writing with sufficient knowledge and  
135 comprehension of the subject matter to enable the person giving  
136 consent to make a knowing decision without any element of force,  
137 fraud, deceit, duress, or other form of constraint or coercion.

138 (17)~~(15)~~ "Family care program" means the program  
139 established in s. 393.068.

140 (18)~~(16)~~ "Foster care facility" means a residential  
141 facility licensed under this chapter which provides a family  
142 living environment including supervision and care necessary to  
143 meet the physical, emotional, and social needs of its residents.  
144 The capacity of such a facility may not be more than three  
145 residents.

146 (19)~~(17)~~ "Group home facility" means a residential  
147 facility licensed under this chapter which provides a family  
148 living environment including supervision and care necessary to  
149 meet the physical, emotional, and social needs of its residents.  
150 The capacity of such a facility shall be at least 4 but not more  
151 than 15 residents.

152 (20) "Guardian" has the same meaning as in s. 744.102.



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153        ~~(21)-(18)~~ "Guardian advocate" means a person appointed by a  
154 written order of the court to represent a person with  
155 developmental disabilities under s. 393.12.

156        ~~(22)-(19)~~ "Habilitation" means the process by which a  
157 client is assisted in acquiring and maintaining ~~to acquire and~~  
158 ~~maintain~~ those life skills that ~~which~~ enable the client to cope  
159 more effectively with the demands of his or her condition and  
160 environment and to raise the level of his or her physical,  
161 mental, and social efficiency. It includes, but is not limited  
162 to, programs of formal structured education and treatment.

163        ~~(23)-(20)~~ "High-risk child" means, for the purposes of this  
164 chapter, a child from 3 to 5 years of age with one or more of  
165 the following characteristics:

166            (a) A developmental delay in cognition, language, or  
167 physical development.

168            (b) A child surviving a catastrophic infectious or  
169 traumatic illness known to be associated with developmental  
170 delay, when funds are specifically appropriated.

171            (c) A child with a parent or guardian with developmental  
172 disabilities who requires assistance in meeting the child's  
173 developmental needs.

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

176        ~~(24)-(21)~~ "Intellectual disability" means significantly  
177 subaverage general intellectual functioning existing  
178 concurrently with deficits in adaptive behavior which manifests



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179 | before the age of 18 and can reasonably be expected to continue  
180 | indefinitely. For the purposes of this definition, the term:

181 |       (a) "Adaptive behavior" means the effectiveness or degree  
182 | with which an individual meets the standards of personal  
183 | independence and social responsibility expected of his or her  
184 | age, cultural group, and community.

185 |       (b) "Significantly subaverage general intellectual  
186 | functioning" means performance that is two or more standard  
187 | deviations from the mean score on a standardized intelligence  
188 | test specified in the rules of the agency.

189 |

190 | For purposes of the application of the criminal laws and  
191 | procedural rules of this state to matters relating to pretrial,  
192 | trial, sentencing, and any matters relating to the imposition  
193 | and execution of the death penalty, the terms "intellectual  
194 | disability" or "intellectually disabled" are interchangeable  
195 | with and have the same meaning as the terms "mental retardation"  
196 | or "retardation" and "mentally retarded" as defined in this  
197 | section before July 1, 2013.

198 |       (25)~~(22)~~ "Intermediate care facility for the  
199 | developmentally disabled" ~~or "ICF/DD"~~ means a residential  
200 | facility licensed and certified under part VIII of chapter 400.

201 |       (26)~~(23)~~ "Medical/dental services" means medically  
202 | necessary services that are provided or ordered for a client by  
203 | a person licensed under chapter 458, chapter 459, or chapter  
204 | 466. Such services may include, but are not limited to,





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205 prescription drugs, specialized therapies, nursing supervision,  
206 hospitalization, dietary services, prosthetic devices, surgery,  
207 specialized equipment and supplies, adaptive equipment, and  
208 other services as required to prevent or alleviate a medical or  
209 dental condition.

210 (27)~~(24)~~ "Personal care services" means individual  
211 assistance with or supervision of essential activities of daily  
212 living for self-care, including ambulation, bathing, dressing,  
213 eating, grooming, and toileting, and other similar services that  
214 are incidental to the care furnished and essential to the  
215 health, safety, and welfare of the client if no one else is  
216 available to perform those services.

217 (28)~~(25)~~ "Prader-Willi syndrome" means an inherited  
218 condition typified by neonatal hypotonia with failure to thrive,  
219 hyperphagia or an excessive drive to eat which leads to obesity  
220 usually at 18 to 36 months of age, mild to moderate intellectual  
221 disability, hypogonadism, short stature, mild facial  
222 dysmorphism, and a characteristic neurobehavior.

223 (29)~~(26)~~ "Relative" means an individual who is connected  
224 by affinity or consanguinity to the client and who is 18 years  
225 of age or older.

226 (30)~~(27)~~ "Resident" means a person who has a developmental  
227 disability and resides at a residential facility, whether or not  
228 such person is a client of the agency.



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229        (31)~~(28)~~ "Residential facility" means a facility providing  
230 room and board and personal care for persons who have  
231 developmental disabilities.

232        (32)~~(29)~~ "Residential habilitation" means supervision and  
233 training with the acquisition, retention, or improvement in  
234 skills related to activities of daily living, such as personal  
235 hygiene skills, homemaking skills, and the social and adaptive  
236 skills necessary to enable the individual to reside in the  
237 community.

238        (33)~~(30)~~ "Residential habilitation center" means a  
239 community residential facility licensed under this chapter which  
240 provides habilitation services. The capacity of such a facility  
241 may not be fewer than nine residents. After October 1, 1989, new  
242 residential habilitation centers may not be licensed and the  
243 licensed capacity for any existing residential habilitation  
244 center may not be increased.

245        (34)~~(31)~~ "Respite service" means appropriate, short-term,  
246 temporary care that is provided to a person who has a  
247 developmental disability in order to meet the planned or  
248 emergency needs of the person or the family or other direct  
249 service provider.

250        (35)~~(32)~~ "Restraint" means a physical device, method, or  
251 drug used to control dangerous behavior.

252        (a) A physical restraint is any manual method or physical  
253 or mechanical device, material, or equipment attached or  
254 adjacent to an individual's body so that he or she cannot easily



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255 | remove the restraint and which restricts freedom of movement or  
256 | normal access to one's body.

257 |       (b) A drug used as a restraint is a medication used to  
258 | control the person's behavior or to restrict his or her freedom  
259 | of movement and is not a standard treatment for the person's  
260 | medical or psychiatric condition. Physically holding a person  
261 | during a procedure to forcibly administer psychotropic  
262 | medication is a physical restraint.

263 |       (c) Restraint does not include physical devices, such as  
264 | orthopedically prescribed appliances, surgical dressings and  
265 | bandages, supportive body bands, or other physical holding  
266 | necessary for routine physical examinations and tests; for  
267 | purposes of orthopedic, surgical, or other similar medical  
268 | treatment; to provide support for the achievement of functional  
269 | body position or proper balance; or to protect a person from  
270 | falling out of bed.

271 |       (36)~~(33)~~ "Seclusion" means the involuntary isolation of a  
272 | person in a room or area from which the person is prevented from  
273 | leaving. The prevention may be by physical barrier or by a staff  
274 | member who is acting in a manner, or who is physically situated,  
275 | so as to prevent the person from leaving the room or area. For  
276 | the purposes of this chapter, the term does not mean isolation  
277 | due to the medical condition or symptoms of the person.

278 |       (37)~~(34)~~ "Self-determination" means an individual's  
279 | freedom to exercise the same rights as all other citizens,  
280 | authority to exercise control over funds needed for one's own



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281 support, including prioritizing these funds when necessary,  
282 responsibility for the wise use of public funds, and self-  
283 advocacy to speak and advocate for oneself in order to gain  
284 independence and ensure that individuals with a developmental  
285 disability are treated equally.

286 (38)~~(35)~~ "Specialized therapies" means those treatments or  
287 activities prescribed by and provided by an appropriately  
288 trained, licensed, or certified professional or staff person and  
289 may include, but are not limited to, physical therapy, speech  
290 therapy, respiratory therapy, occupational therapy, behavior  
291 therapy, physical management services, and related specialized  
292 equipment and supplies.

293 (39)~~(36)~~ "Spina bifida" means, ~~for purposes of this~~  
294 ~~chapter,~~ a person with a medical diagnosis of spina bifida  
295 cystica or myelomeningocele.

296 (40)~~(37)~~ "Support coordinator" means a person who is  
297 designated by the agency to assist individuals and families in  
298 identifying their capacities, needs, and resources, as well as  
299 finding and gaining access to necessary supports and services;  
300 coordinating the delivery of supports and services; advocating  
301 on behalf of the individual and family; maintaining relevant  
302 records; and monitoring and evaluating the delivery of supports  
303 and services to determine the extent to which they meet the  
304 needs and expectations identified by the individual, family, and  
305 others who participated in the development of the support plan.



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306        ~~(41)-(38)~~ "Supported employment" means employment located  
307 or provided in an integrated work setting, with earnings paid on  
308 a commensurate wage basis, and for which continued support is  
309 needed for job maintenance.

310        ~~(42)-(39)~~ "Supported living" means a category of  
311 individually determined services designed and coordinated in  
312 such a manner as to provide assistance to adult clients who  
313 require ongoing supports to live as independently as possible in  
314 their own homes, to be integrated into the community, and to  
315 participate in community life to the fullest extent possible.

316        ~~(43)-(40)~~ "Training" means a planned approach to assisting  
317 a client to attain or maintain his or her maximum potential and  
318 includes services ranging from sensory stimulation to  
319 instruction in skills for independent living and employment.

320        ~~(44)-(41)~~ "Treatment" means the prevention, amelioration,  
321 or cure of a client's physical and mental disabilities or  
322 illnesses.

323        Section 2. Section 393.0641, Florida Statutes, is  
324 repealed.

325        Section 3. Subsections (3) and (5) of section 393.065,  
326 Florida Statutes, are amended, present subsections (6) and (7)  
327 are renumbered as subsections (7) and (9), respectively, and  
328 amended, and new subsections (6) and (8) are added to that  
329 section, to read:

330        393.065 Application and eligibility determination.—



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331 (3) The agency shall notify each applicant, in writing, of  
332 its eligibility decision. Any applicant determined by the agency  
333 to be ineligible for ~~developmental~~ services has the right to  
334 appeal this decision pursuant to ss. 120.569 and 120.57.

335 (5) ~~Except as otherwise directed by law, beginning July 1,~~  
336 ~~2010,~~ The agency shall assign and provide priority to clients  
337 waiting for waiver services in the following order:

338 (a) Category 1, which includes clients deemed to be in  
339 crisis as described in rule, shall be given first priority in  
340 moving from the waiting list to the waiver.

341 (b) Category 2, which includes individuals on the waiting  
342 children on the wait list who are:

343 1. From the child welfare system with an open case in the  
344 Department of Children and Families' statewide automated child  
345 welfare information system and who are either:

346 a. Transitioning out of the child welfare system at the  
347 finalization of an adoption, a reunification with family  
348 members, a permanent placement with a relative, or a  
349 guardianship with a nonrelative; or

350 b. At least 18 years old but not yet 22 years old and who  
351 need both waiver services and extended foster care services; or

352 2. At least 18 years old but not yet 22 years old and who  
353 withdrew consent pursuant to s. 39.6251(5)(c) to remain in the  
354 extended foster care system.

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356 For individuals who are at least 18 years old but not yet 22  
357 years old and who are eligible under sub-subparagraph 1.b., the  
358 agency shall provide waiver services, including residential  
359 habilitation, and the community-based care lead agency shall  
360 fund room and board at the rate established in s. 409.145(4) and  
361 provide case management and related services as defined in s.  
362 409.986(3)(e). Individuals may receive both waiver services and  
363 services under s. 39.6251. Services may not duplicate services  
364 available through the Medicaid state plan.

365 (c) Category 3, which includes, but is not required to be  
366 limited to, clients:

367 1. Whose caregiver has a documented condition that is  
368 expected to render the caregiver unable to provide care within  
369 the next 12 months and for whom a caregiver is required but no  
370 alternate caregiver is available;

371 2. At substantial risk of incarceration or court  
372 commitment without supports;

373 3. Whose documented behaviors or physical needs place them  
374 or their caregiver at risk of serious harm and other supports  
375 are not currently available to alleviate the situation; or

376 4. Who are identified as ready for discharge within the  
377 next year from a state mental health hospital or skilled nursing  
378 facility and who require a caregiver but for whom no caregiver  
379 is available or whose caregiver is unable to provide the care  
380 needed.



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381 (d) Category 4, which includes, but is not required to be  
382 limited to, clients whose caregivers are 70 years of age or  
383 older and for whom a caregiver is required but no alternate  
384 caregiver is available.

385 (e) Category 5, which includes, but is not required to be  
386 limited to, clients who are expected to graduate within the next  
387 12 months from secondary school and need support to obtain a  
388 meaningful day activity, ~~or~~ maintain competitive employment, or  
389 ~~to~~ pursue an accredited program of postsecondary education to  
390 which they have been accepted.

391 (f) Category 6, which includes clients 21 years of age or  
392 older who do not meet the criteria for category 1, category 2,  
393 category 3, category 4, or category 5.

394 (g) Category 7, which includes clients younger than 21  
395 years of age who do not meet the criteria for category 1,  
396 category 2, category 3, or category 4.

397  
398 Within categories 3, 4, 5, 6, and 7, the agency shall maintain a  
399 waiting ~~wait~~ list of clients placed in the order of the date  
400 that the client is determined eligible for waiver services.

401 (6) The agency shall allow an individual who meets the  
402 eligibility requirements under subsection (1) to receive home  
403 and community-based services in this state if the individual's  
404 parent or legal guardian is an active-duty military  
405 servicemember and if at the time of the servicemember's transfer





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406 to this state, the individual was receiving home and community-  
407 based services in another state.

408 (7)~~(6)~~ The client, the client's guardian, or the client's  
409 family must ensure that accurate, up-to-date contact information  
410 is provided to the agency at all times. Notwithstanding s.  
411 393.0651, the agency shall send an annual letter requesting  
412 updated information from the client, the client's guardian, or  
413 the client's family. The agency shall remove from the waiting  
414 ~~wait~~ list any individual who cannot be located using the  
415 contact information provided to the agency, fails to meet  
416 eligibility requirements, or becomes domiciled outside the  
417 state.

418 (8) Agency action that selects individuals to receive  
419 waiver services pursuant to this section does not establish a  
420 right to a hearing or an administrative proceeding under chapter  
421 120 for individuals remaining on the waiting list.

422 (9)~~(7)~~ The agency and the Agency for Health Care  
423 Administration may adopt rules specifying application  
424 procedures, criteria associated with the waiting list ~~wait-list~~  
425 categories, procedures for administering the waiting ~~wait~~ list,  
426 including tools for prioritizing waiver enrollment within  
427 categories, and eligibility criteria as needed to administer  
428 this section.

429 Section 4. Subsection (2) of section 393.066, Florida  
430 Statutes, is amended to read:

431 393.066 Community services and treatment.—



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432           (2) Necessary ~~All~~ services ~~needed~~ shall be purchased,  
433 rather than ~~instead of~~ provided directly by the agency, when the  
434 purchase of services ~~such arrangement~~ is more cost-efficient  
435 than providing them ~~having those services provided~~ directly. All  
436 purchased services must be approved by the agency. Persons or  
437 entities under contract with the agency to provide services  
438 shall use agency data management systems to document service  
439 provision to clients. Contracted persons and entities shall meet  
440 the minimum hardware and software technical requirements  
441 established by the agency for the use of such systems. Such  
442 persons or entities shall also meet any requirements established  
443 by the agency for training and professional development of staff  
444 providing direct services to clients.

445           Section 5. Section 393.0662, Florida Statutes, is amended  
446 to read:

447           393.0662 Individual budgets for delivery of home and  
448 community-based services; iBudget system established.—The  
449 Legislature finds that improved financial management of the  
450 existing home and community-based Medicaid waiver program is  
451 necessary to avoid deficits that impede the provision of  
452 services to individuals who are on the waiting list for  
453 enrollment in the program. The Legislature further finds that  
454 clients and their families should have greater flexibility to  
455 choose the services that best allow them to live in their  
456 community within the limits of an established budget. Therefore,  
457 the Legislature intends that the agency, in consultation with



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458 the Agency for Health Care Administration, shall manage ~~develop~~  
459 ~~and implement a comprehensive redesign of~~ the service delivery  
460 system using individual budgets as the basis for allocating the  
461 funds appropriated for the home and community-based services  
462 Medicaid waiver program among eligible enrolled clients. The  
463 service delivery system that uses individual budgets shall be  
464 called the iBudget system.

465 (1) The agency shall administer ~~establish~~ an individual  
466 budget, referred to as an iBudget, for each individual served by  
467 the home and community-based services Medicaid waiver program.  
468 The funds appropriated to the agency shall be allocated through  
469 the iBudget system to eligible, Medicaid-enrolled clients. For  
470 the iBudget system, eligible clients shall include individuals  
471 ~~with a diagnosis of Down syndrome or~~ a developmental disability  
472 as defined in s. 393.063. The iBudget system shall ~~be designed~~  
473 ~~to~~ provide for: enhanced client choice within a specified  
474 service package; appropriate assessment strategies; an efficient  
475 consumer budgeting and billing process that includes  
476 reconciliation and monitoring components; a ~~redefined~~ role for  
477 support coordinators that avoids potential conflicts of  
478 interest; a flexible and streamlined service review process; and  
479 ~~a methodology and process that ensures~~ the equitable allocation  
480 of available funds ~~to each client~~ based on the client's level of  
481 need, as determined by the ~~variables in the~~ allocation  
482 methodology ~~algorithm~~.



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483 (a) In developing each client's iBudget, the agency shall  
484 use the allocation ~~an allocation algorithm and methodology as~~  
485 defined in s. 393.063(4). ~~The algorithm shall use variables that~~  
486 ~~have been determined by the agency to have a statistically~~  
487 ~~validated relationship to the client's level of need for~~  
488 ~~services provided through the home and community-based services~~  
489 ~~Medicaid waiver program. The algorithm and methodology may~~  
490 ~~consider individual characteristics, including, but not limited~~  
491 ~~to, a client's age and living situation, information from a~~  
492 ~~formal assessment instrument that the agency determines is valid~~  
493 ~~and reliable, and information from other assessment processes.~~

494 (b) The allocation methodology shall determine ~~provide the~~  
495 ~~algorithm that determines~~ the amount of funds allocated to a  
496 client's iBudget.

497 (b) The agency may authorize funding ~~approve an increase~~  
498 ~~in the amount of funds allocated, as determined by the~~  
499 ~~algorithm,~~ based on a ~~the~~ client having one or more of the  
500 following needs that cannot be accommodated within the funding  
501 ~~as~~ determined by the algorithm and having no other resources,  
502 supports, or services available to meet the need:

503 1. An extraordinary need that would place the health and  
504 safety of the client, the client's caregiver, or the public in  
505 immediate, serious jeopardy unless the increase is approved.  
506 However, the presence of an extraordinary need in and of itself  
507 does not warrant authorized funding by the agency. An  
508 extraordinary need may include, but is not limited to:



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509 a. A documented history of significant, potentially life-  
510 threatening behaviors, such as recent attempts at suicide,  
511 arson, nonconsensual sexual behavior, or self-injurious behavior  
512 requiring medical attention;

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

516 c. A chronic comorbid condition. As used in this  
517 subparagraph, the term "comorbid condition" means a medical  
518 condition existing simultaneously but independently with another  
519 medical condition in a patient; or

520 d. A need for total physical assistance with activities  
521 such as eating, bathing, toileting, grooming, and personal  
522 hygiene.

523

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

527 2. A significant need for one-time or temporary support or  
528 services that, if not provided, would place the health and  
529 safety of the client, the client's caregiver, or the public in  
530 serious jeopardy, ~~unless the increase is approved.~~ A significant  
531 need may include, but is not limited to, the provision of  
532 environmental modifications, durable medical equipment, services  
533 to address the temporary loss of support from a caregiver, or  
534 special services or treatment for a serious temporary condition



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535 | when the service or treatment is expected to ameliorate the  
536 | underlying condition. As used in this subparagraph, the term  
537 | "temporary" means a period of fewer than 12 continuous months.  
538 | However, the presence of such significant need for one-time or  
539 | temporary supports or services in and of itself ~~alone~~ does not  
540 | warrant authorized funding by the agency ~~an increase in the~~  
541 | ~~amount of funds allocated to a client's iBudget as determined by~~  
542 | ~~the algorithm.~~

543 |         3. A significant increase in the need for services after  
544 | the beginning of the service plan year that would place the  
545 | health and safety of the client, the client's caregiver, or the  
546 | public in serious jeopardy because of substantial changes in the  
547 | client's circumstances, including, but not limited to, permanent  
548 | or long-term loss or incapacity of a caregiver, loss of services  
549 | authorized under the state Medicaid plan due to a change in age,  
550 | or a significant change in medical or functional status which  
551 | requires the provision of additional services on a permanent or  
552 | long-term basis that cannot be accommodated within the client's  
553 | current iBudget. As used in this subparagraph, the term "long-  
554 | term" means a period of 12 or more continuous months. However,  
555 | such significant increase in need for services of a permanent or  
556 | long-term nature in and of itself ~~alone~~ does not warrant  
557 | authorized funding by the agency ~~an increase in the amount of~~  
558 | ~~funds allocated to a client's iBudget as determined by the~~  
559 | ~~algorithm.~~



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560           4. A significant need for transportation services to a  
561 waiver-funded adult day training program or to waiver-funded  
562 employment services when such need cannot be accommodated within  
563 a client's iBudget as determined by the algorithm without  
564 affecting the health and safety of the client, if public  
565 transportation is not an option due to the unique needs of the  
566 client or other transportation resources are not reasonably  
567 available.

568  
569 The agency shall reserve portions of the appropriation for the  
570 home and community-based services Medicaid waiver program for  
571 adjustments required pursuant to this paragraph and may use the  
572 services of an independent actuary in determining the amount ~~of~~  
573 ~~the portions~~ to be reserved.

574           ~~(c) A client's iBudget shall be the total of the amount~~  
575 ~~determined by the algorithm and any additional funding provided~~  
576 ~~pursuant to paragraph (b).~~ A client's annual expenditures for  
577 home and community-based ~~services~~ Medicaid waiver services may  
578 not exceed the limits of his or her iBudget. The total of all  
579 clients' projected annual iBudget expenditures may not exceed  
580 the agency's appropriation for waiver services.

581           (2) The Agency for Health Care Administration, in  
582 consultation with the agency, shall seek federal approval to  
583 amend current waivers, request a new waiver, and amend contracts  
584 as necessary to manage the iBudget system, improve services for  
585 eligible and enrolled clients, and improve the delivery of



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586 services ~~implement the iBudget system to serve eligible,~~  
587 ~~enrolled clients~~ through the home and community-based services  
588 Medicaid waiver program and the Consumer-Directed Care Plus  
589 Program, including, but not limited to, enrollees with a dual  
590 diagnosis of a developmental disability and a mental health  
591 disorder.

592 ~~(3) The agency shall transition all eligible, enrolled~~  
593 ~~clients to the iBudget system. The agency may gradually phase in~~  
594 ~~the iBudget system.~~

595 ~~(a) While the agency phases in the iBudget system, the~~  
596 ~~agency may continue to serve eligible, enrolled clients under~~  
597 ~~the four-tiered waiver system established under s. 393.065 while~~  
598 ~~those clients await transitioning to the iBudget system.~~

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

605 (3)~~(4)~~ A client must use all available services authorized  
606 under the state Medicaid plan, school-based services, private  
607 insurance and other benefits, and any other resources that may  
608 be available to the client before using funds from his or her  
609 iBudget to pay for support and services.

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





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612        (4)~~(6)~~ Rates for any or all services established under  
613 rules of the Agency for Health Care Administration must ~~shall~~ be  
614 designated as the maximum rather than a fixed amount for  
615 individuals who receive an iBudget, except for services  
616 specifically identified in those rules that the agency  
617 determines are not appropriate for negotiation, which may  
618 include, but are not limited to, residential habilitation  
619 services.

620        (5)~~(7)~~ The agency shall ensure that clients and caregivers  
621 have access to training and education that ~~to~~ inform them about  
622 the iBudget system and enhance their ability for self-direction.  
623 Such training and education must ~~shall~~ be offered in a variety  
624 of formats and, at a minimum, must ~~shall~~ address the policies  
625 and processes of the iBudget system and~~;~~ the roles and  
626 responsibilities of consumers, caregivers, waiver support  
627 coordinators, providers, and the agency, and must provide~~;~~  
628 information ~~available~~ to help the client make decisions  
629 regarding the iBudget system~~;~~ and examples of support and  
630 resources available in the community.

631        (6)~~(8)~~ The agency shall collect data to evaluate the  
632 implementation and outcomes of the iBudget system.

633        (7)~~(9)~~ The agency and the Agency for Health Care  
634 Administration may adopt rules specifying the allocation  
635 algorithm and methodology; criteria and processes for clients to  
636 access reserved funds for extraordinary needs, temporarily or  
637 permanently changed needs, and one-time needs; and processes and



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638 requirements for selection and review of services, development  
639 of support and cost plans, and management of the iBudget system  
640 as needed to administer this section.

641 Section 6. Section 393.0679, Florida Statutes, is created  
642 to read:

643 393.0679 Utilization review.—The agency shall conduct  
644 utilization review activities in intermediate care facilities  
645 for individuals with developmental disabilities, both public and  
646 private, as necessary to meet the requirements of the approved  
647 Medicaid state plan and federal law, and such facilities shall  
648 comply with any requests for information and documentation made  
649 by the agency and permit any agency inspections in connection  
650 with such activities.

651 Section 7. Effective upon this act becoming a law,  
652 subsection (1), paragraphs (a) and (b) of subsection (4),  
653 paragraphs (b), (e), (f), (g), and (h) of subsection (5),  
654 subsection (6), paragraph (d) of subsection (7), subsection  
655 (10), and paragraph (b) of subsection (12) of section 393.11,  
656 Florida Statutes, are amended, and subsection (14) is added to  
657 that section, to read:

658 393.11 Involuntary admission to residential services.—

659 (1) JURISDICTION.—If a person has an intellectual  
660 disability or autism and requires involuntary admission to  
661 residential services provided by the agency, the circuit court  
662 of the county in which the person resides has jurisdiction to  
663 conduct a hearing and enter an order involuntarily admitting the



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664 person in order for the person to receive the care, treatment,  
665 habilitation, and rehabilitation that the person needs. For the  
666 purpose of identifying intellectual disability or autism,  
667 diagnostic capability shall be established by the agency. Except  
668 as otherwise specified, the proceedings under this section are  
669 governed by the Florida Rules of Civil Procedure.

670 (4) AGENCY PARTICIPATION.—

671 (a) Upon receiving the petition, the court shall  
672 immediately order the ~~developmental services program of the~~  
673 agency to examine the person being considered for involuntary  
674 admission to residential services.

675 (b) Following examination, the agency shall file a written  
676 report with the court at least 10 working days before the date  
677 of the hearing. The report must be served on the petitioner, the  
678 person who has the intellectual disability or autism, and the  
679 person's attorney at the time the report is filed with the  
680 court.

681 (5) EXAMINING COMMITTEE.—

682 (b) The court shall appoint at least three disinterested  
683 experts who have demonstrated to the court an expertise in the  
684 diagnosis, evaluation, and treatment of persons who have  
685 intellectual disabilities or autism. The committee must include  
686 at least one licensed and qualified physician, one licensed and  
687 qualified psychologist, and one qualified professional who, at a  
688 minimum, has a master's degree in social work, special  
689 education, or vocational rehabilitation counseling, to examine



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690 the person and to testify at the hearing on the involuntary  
691 admission to residential services.

692 (e) The committee shall prepare a written report for the  
693 court. The report must explicitly document the extent that the  
694 person meets the criteria for involuntary admission. The report,  
695 and expert testimony, must include, but not be limited to:

696 1. The degree of the person's intellectual disability or  
697 autism and whether, using diagnostic capabilities established by  
698 the agency, the person is eligible for agency services;

699 2. Whether, because of the person's degree of intellectual  
700 disability or autism, the person:

701 a. Lacks sufficient capacity to give express and informed  
702 consent to a voluntary application for services pursuant to s.  
703 393.065 and;

704 ~~b.~~ lacks basic survival and self-care skills to such a  
705 degree that close supervision and habilitation in a residential  
706 setting is necessary and, if not provided, would result in a  
707 ~~real and present~~ threat of substantial harm to the person's  
708 well-being; or

709 ~~b.e.~~ Is likely to physically injure others if allowed to  
710 remain at liberty.

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

712 4. A recommendation on the type of residential placement  
713 which would be the most appropriate and least restrictive for  
714 the person; and

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



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716 (f) The committee shall file the report with the court at  
717 least 10 working days before the date of the hearing. The report  
718 must be served on the petitioner, the person who has the  
719 intellectual disability or autism, the person's attorney at the  
720 time the report is filed with the court, and the agency.

721 (g) Members of the examining committee shall receive a  
722 reasonable fee to be determined by the court. The fees shall be  
723 paid from the general revenue fund of the county in which the  
724 person who has the intellectual disability or autism resided  
725 when the petition was filed.

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

729 (6) COUNSEL; GUARDIAN AD LITEM.—

730 (a) The person who has the intellectual disability or  
731 autism must be represented by counsel at all stages of the  
732 judicial proceeding. If the person is indigent and cannot afford  
733 counsel, the court shall appoint a public defender at least 20  
734 working days before the scheduled hearing. The person's counsel  
735 shall have full access to the records of the service provider  
736 and the agency. In all cases, the attorney shall represent the  
737 rights and legal interests of the person, regardless of who  
738 initiates the proceedings or pays the attorney ~~attorney's~~ fee.

739 (b) If the attorney, during the course of his or her  
740 representation, reasonably believes that the person who has the  
741 intellectual disability or autism cannot adequately act in his



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742 or her own interest, the attorney may seek the appointment of a  
743 guardian ad litem. A prior finding of incompetency is not  
744 required before a guardian ad litem is appointed pursuant to  
745 this section.

746 (7) HEARING.—

747 (d) The person who has the intellectual disability or  
748 autism must be physically present throughout the entire  
749 proceeding. If the person's attorney believes that the person's  
750 presence at the hearing is not in his or her best interest, the  
751 person's presence may be waived once the court has seen the  
752 person and the hearing has commenced.

753 (10) COMPETENCY.—

754 (a) The issue of competency is separate and distinct from  
755 a determination of the appropriateness of involuntary admission  
756 to residential services due to intellectual disability or  
757 autism.

758 (b) The issue of the competency of a person who has an  
759 intellectual disability or autism for purposes of assigning  
760 guardianship shall be determined in a separate proceeding  
761 according to the procedures and requirements of chapter 744. The  
762 issue of the competency of a person who has an intellectual  
763 disability or autism for purposes of determining whether the  
764 person is competent to proceed in a criminal trial shall be  
765 determined in accordance with chapter 916.

766 (12) APPEAL.—



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767 (b) The filing of an appeal by the person who has an  
768 intellectual disability or autism stays admission of the person  
769 into residential care. The stay remains in effect during the  
770 pendency of all review proceedings in Florida courts until a  
771 mandate issues.

772 (14) REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO  
773 RESIDENTIAL SERVICES.—

774 (a) If a person is involuntarily admitted to residential  
775 services provided by the agency, the agency shall employ or, if  
776 necessary, contract with a qualified evaluator to conduct a  
777 review annually, unless otherwise ordered, to determine the  
778 propriety of the person's continued involuntary admission to  
779 residential services based on the criteria in paragraph (8)(b).  
780 The review shall include an assessment of the most appropriate  
781 and least restrictive type of residential placement for the  
782 person.

783 (b) A placement resulting from an involuntary admission to  
784 residential services must be reviewed by the court at a hearing  
785 annually, unless a shorter review period is ordered at a  
786 previous hearing. The agency shall provide to the court the  
787 completed reviews by the qualified evaluator. The review and  
788 hearing must determine whether the person continues to meet the  
789 criteria in paragraph (8)(b) and, if so, whether the person  
790 still requires involuntary placement in a residential setting  
791 and whether the person is receiving adequate care, treatment,  
792 habilitation, and rehabilitation in the residential setting.



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793        (c) The agency shall provide a copy of the review and  
794 reasonable notice of the hearing to the appropriate state  
795 attorney, if applicable, the person's attorney, and the person's  
796 guardian or guardian advocate, if appointed.

797        (d) For purposes of this section, the term "qualified  
798 evaluator" means a psychiatrist licensed under chapter 458 or  
799 chapter 459, or a psychologist licensed under chapter 490, who  
800 has demonstrated to the court an expertise in the diagnosis,  
801 evaluation, and treatment of persons who have intellectual  
802 disabilities.

803        Section 8. Effective June 30, 2016, or if this act fails  
804 to become law until after that date, operating retroactively to  
805 June 30, 2016, sections 24 and 26 of chapter 2015-222, Laws of  
806 Florida, are repealed.

807        Section 9. Subsection (15) of section 393.067, Florida  
808 Statutes, is reenacted to read:

809        393.067 Facility licensure.—

810        (15) The agency is not required to contract with  
811 facilities licensed pursuant to this chapter.

812        Section 10. Section 393.18, Florida Statutes, is reenacted  
813 and amended to read:

814        393.18 Comprehensive transitional education program.—A  
815 comprehensive transitional education program serves individuals  
816 ~~is a group of jointly operating centers or units, the collective~~  
817 ~~purpose of which is to provide a sequential series of~~  
818 ~~educational care, training, treatment, habilitation, and~~





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819 ~~rehabilitation services to persons~~ who have developmental  
820 disabilities, ~~and who have severe or moderate maladaptive~~  
821 behaviors, severe maladaptive behaviors and co-occurring complex  
822 medical conditions, or a dual diagnosis of developmental  
823 disability and mental illness. ~~However, this section does not~~  
824 ~~require such programs to provide services only to persons with~~  
825 ~~developmental disabilities.~~ All such Services provided by the  
826 program must ~~shall~~ be temporary in nature and delivered in a  
827 manner designed to achieve structured residential setting,  
828 ~~having~~ the primary goal of incorporating the principles  
829 principle of self-determination and person-centered planning to  
830 transition individuals to the most appropriate, least  
831 restrictive community living option of their choice which is not  
832 operated as a in establishing permanent residence for persons  
833 ~~with maladaptive behaviors in facilities that are not associated~~  
834 ~~with the comprehensive transitional education program.~~ The  
835 supervisor of the clinical director of the program licensee must  
836 hold a doctorate degree with a primary focus in behavior  
837 analysis from an accredited university, be a certified behavior  
838 analyst pursuant to s. 393.17, and have at least 1 year of  
839 experience in providing behavior analysis services for  
840 individuals in developmental disabilities. The staff must ~~shall~~  
841 include behavior analysts and teachers, as appropriate, who must  
842 ~~shall~~ be available to provide services in each component center  
843 or unit of the program. A behavior analyst must be certified  
844 pursuant to s. 393.17.



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845  
846           (1) Comprehensive transitional education programs must  
847 ~~shall include a minimum of two component centers or units, one~~  
848 ~~of which shall be an intensive treatment and educational center~~  
849 ~~or a transitional training and educational center, which~~  
850 ~~provides services to persons with maladaptive behaviors in the~~  
851 ~~following components sequential order:~~  
852           (a) Intensive treatment and education ~~educational center.~~-  
853 This component provides ~~is a self-contained residential unit~~  
854 ~~providing~~ intensive behavioral and educational programming for  
855 individuals whose conditions ~~persons with severe maladaptive~~  
856 ~~behaviors whose behaviors~~ preclude placement in a less  
857 restrictive environment due to the threat of danger or injury to  
858 themselves or others. Continuous-shift staff are ~~shall be~~  
859 required for this component.  
860           (b) Intensive Transitional training and education  
861 ~~educational center.~~-This component provides ~~is a residential~~  
862 ~~unit for persons with moderate maladaptive behaviors providing~~  
863 concentrated psychological and educational programming that  
864 emphasizes a transition toward a less restrictive environment.  
865 Continuous-shift staff are ~~shall be~~ required for this component.  
866           (c) Community Transition residence.-This component  
867 provides ~~is a residential center providing~~ educational programs  
868 and any support services, training, and care that are needed ~~to~~  
869 ~~assist persons with maladaptive behaviors~~ to avoid regression to  
870 more restrictive environments while preparing them for more



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871 independent living. Continuous-shift staff are ~~shall~~ be required  
872 for this component.

873 ~~(d) Alternative living center. This component is a~~  
874 ~~residential unit providing an educational and family living~~  
875 ~~environment for persons with maladaptive behaviors in a~~  
876 ~~moderately unrestricted setting. Residential staff shall be~~  
877 ~~required for this component.~~

878 ~~(e) Independent living education center. This component is~~  
879 ~~a facility providing a family living environment for persons~~  
880 ~~with maladaptive behaviors in a largely unrestricted setting and~~  
881 ~~includes education and monitoring that is appropriate to support~~  
882 ~~the development of independent living skills.~~

883 (2) Components of a comprehensive transitional education  
884 program are subject to the license issued under s. 393.067 to a  
885 comprehensive transitional education program and may be located  
886 on a single site or multiple sites as long as such components  
887 are located within the same agency region.

888 (3) Comprehensive transitional education programs shall  
889 develop individual education plans for each school-aged person  
890 with maladaptive behaviors, severe maladaptive behaviors and co-  
891 occurring complex medical conditions, or a dual diagnosis of  
892 developmental disability and mental illness who receives  
893 services from the program. Each individual education plan shall  
894 be developed in accordance with the criteria specified in 20  
895 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300. Educational  
896 components of the program, including individual education plans,



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897 to the extent possible, must be integrated with the programs of  
898 the referring school district of each school-aged resident.

899 ~~(4) For comprehensive transitional education programs,~~ The  
900 total number of persons in a comprehensive transitional  
901 education program residents who are being provided with services  
902 may not ~~in any instance~~ exceed ~~the licensed capacity of~~ 120  
903 residents, and each residential unit within the component  
904 centers of ~~a~~ the program authorized under this section may not  
905 ~~in any instance~~ exceed 15 residents. However, a program that was  
906 authorized to operate residential units with more than 15  
907 residents before July 1, 2015, may continue to operate such  
908 units.

909 (5) Any licensee that has executed a settlement agreement  
910 with the agency that is enforceable by the court must comply  
911 with the terms of the settlement agreement or be subject to  
912 discipline as provided by law or rule.

913 (6) The agency may approve the proposed admission or  
914 readmission of individuals into a comprehensive transitional  
915 education program for up to 2 years subject to a specific review  
916 process. The agency may allow an individual to reside in this  
917 setting for a longer period of time if, after a clinical review  
918 is conducted by the agency, it is determined that remaining in  
919 the program for a longer period of time is in the best interest  
920 of the individual.

921 Section 11. Paragraph (b) of subsection (1) of section  
922 383.141, Florida Statutes, is amended to read:



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923 383.141 Prenatally diagnosed conditions; patient to be  
 924 provided information; definitions; information clearinghouse;  
 925 advisory council.-

926 (1) As used in this section, the term:

927 (b) "Developmental disability" includes Down syndrome and  
 928 other developmental disabilities defined by s. 393.063(12) ~~s.~~  
 929 ~~393.063(9)~~.

930 Section 12. Paragraph (d) of subsection (2) of section  
 931 1002.385, Florida Statutes, is amended to read:

932 1002.385 Florida personal learning scholarship accounts.-

933 (2) DEFINITIONS.-As used in this section, the term:

934 (d) "Disability" means, for a 3- or 4-year-old child or  
 935 for a student in kindergarten to grade 12, autism spectrum  
 936 disorder, as defined in the Diagnostic and Statistical Manual of  
 937 Mental Disorders, Fifth Edition, published by the American  
 938 Psychiatric Association; cerebral palsy, as defined in s.  
 939 393.063(6) ~~s. 393.063(4)~~; Down syndrome, as defined in s.  
 940 393.063(15) ~~s. 393.063(13)~~; an intellectual disability, as  
 941 defined in s. 393.063(24) ~~s. 393.063(21)~~; Prader-Willi syndrome,  
 942 as defined in s. 393.063(28) ~~s. 393.063(25)~~; or spina bifida, as  
 943 defined in s. 393.063(39) ~~s. 393.063(36)~~; for a student in  
 944 kindergarten, being a high-risk child, as defined in s.  
 945 393.063(23)(a) ~~s. 393.063(20)(a)~~; muscular dystrophy; and  
 946 Williams syndrome.

947 Section 13. Contingent upon CS/CS/CS/HB 919 or similar  
 948 legislation adopted at the 2016 Regular Session of the



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949 Legislature failing to become law, for the 2016-2017 fiscal  
950 year, the sum of \$623,200 of nonrecurring funds from the General  
951 Revenue Fund is appropriated to the Agency for Persons with  
952 Disabilities to implement s. 393.11, Florida Statutes, as  
953 amended by this act.

954       Section 14. Except as otherwise expressly provided in this  
955 act and except for this section, which shall take effect upon  
956 this act becoming a law, this act shall take effect July 1,  
957 2016.