

By the Committee on Children, Families, and Elder Affairs

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1 A bill to be entitled
2 An act relating to the Agency for Persons with
3 Disabilities; amending s. 393.063, 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 service member; 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
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 committed to
30 residential services; requiring the agency to contract
31 with a qualified evaluator; providing requirements for
32 annual reviews; requiring a hearing to be held to

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33 consider the results of an annual review; requiring
34 the agency to provide a copy of the review to certain
35 persons; defining a term; repealing s. 26 of chapter
36 2015-222, Laws of Florida; abrogating the scheduled
37 expiration of an amendment to s. 393.18, F.S., and the
38 scheduled reversion of the text of that section;
39 reenacting and amending s. 393.18, F.S.; revising the
40 purposes of comprehensive transitional education
41 programs; providing qualification requirements for the
42 clinical director of a comprehensive transitional
43 education program; revising the organization and
44 operation of components of a program; providing for
45 the integration of educational components with the
46 local school district; authorizing the agency to
47 approve the admission or readmission of an individual
48 to a program; providing for video and audio recording
49 and monitoring of common areas and program activities
50 and facilities; providing for licensure of such
51 programs; amending s. 393.501, F.S.; conforming
52 provisions to changes made by the act; amending ss.
53 383.141 and 1002.385, F.S.; conforming cross
54 references; providing an effective date.

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

57
58 Section 1. Section 393.063, Florida Statutes, is amended to
59 read:

60 393.063 Definitions.—For the purposes of this chapter, the
61 term:

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62 (2)~~(1)~~ "Agency" means the Agency for Persons with
63 Disabilities.

64 (1)~~(2)~~ "Adult day training" means training services that
65 ~~which~~ take place in a nonresidential setting, separate from the
66 home or facility in which the client resides, and~~+~~ are intended
67 to support the participation of clients in daily, meaningful,
68 and valued routines of the community. Such training~~;~~ and may be
69 provided in ~~include~~ work-like settings that do not meet the
70 definition of supported employment.

71 (3) "Algorithm" means the mathematical formula developed by
72 the agency based upon statistically valid relationships between
73 the need for services and selected health and social
74 characteristics which is used to calculate a potential amount of
75 financial support through the home and community-based services
76 Medicaid waiver program.

77 (4) "Allocation methodology" means the process for
78 determining the iBudget allocation for an individual which
79 considers:

80 (a) The algorithm amount applicable to an individual based
81 on a formal assessment instrument used by the agency pursuant to
82 s. 393.0661(1)(a); and

83 (b) Any needs identified by the agency during the client
84 review process which cannot be accommodated within the funding
85 determined by the algorithm and are provided for in s.
86 393.0662(1)(b).

87 (5)~~(3)~~ "Autism" means a pervasive, neurologically based
88 developmental disability of extended duration which causes
89 severe learning, communication, and behavior disorders with age
90 of onset during infancy or childhood. Individuals with autism

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91 exhibit impairment in reciprocal social interaction, impairment
92 in verbal and nonverbal communication and imaginative ability,
93 and a markedly restricted repertoire of activities and
94 interests.

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

102 (7)~~(5)~~ "Client" means any person determined eligible by the
103 agency for services under this chapter.

104 (8)~~(6)~~ "Client advocate" means a friend or relative of the
105 client, or of the client's immediate family, who advocates for
106 the best interests of the client in any proceedings under this
107 chapter in which the client or his or her family has the right
108 or duty to participate.

109 (9)~~(7)~~ "Comprehensive assessment" means the process used to
110 determine eligibility for services under this chapter.

111 (10)~~(8)~~ "Comprehensive transitional education program"
112 means the program established in s. 393.18.

113 (12)~~(9)~~ "Developmental disability" means a disorder or
114 syndrome that is attributable to intellectual disability,
115 cerebral palsy, autism, spina bifida, Down syndrome, or Prader-
116 Willi syndrome; that manifests before the age of 18; and that
117 constitutes a substantial handicap that can reasonably be
118 expected to continue indefinitely.

119 (11)~~(10)~~ "Developmental disabilities center" means a state-

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120 owned and state-operated facility, formerly known as a "Sunland
121 Center," providing for the care, habilitation, and
122 rehabilitation of clients with developmental disabilities.

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

128 (14)~~(12)~~ "Domicile" means the place where a client legally
129 resides and~~r~~ which ~~place~~ is his or her permanent home. Domicile
130 may be established as provided in s. 222.17. Domicile may not be
131 established in Florida by a minor who has no parent domiciled in
132 Florida, or by a minor who has no legal guardian domiciled in
133 Florida, or by any alien not classified as a resident alien.

134 (15)~~(13)~~ "Down syndrome" means a disorder caused by the
135 presence of an extra chromosome 21.

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

141 (17)~~(15)~~ "Family care program" means the program
142 established in s. 393.068.

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

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

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

156 (21)~~(18)~~ "Guardian advocate" means a person appointed by a
157 written order of the court to represent a person with
158 developmental disabilities under s. 393.12.

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

166 (23)~~(20)~~ "High-risk child" means, for the purposes of this
167 chapter, a child from 3 to 5 years of age with one or more of
168 the following characteristics:

169 (a) A developmental delay in cognition, language, or
170 physical development.

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

174 (c) A child with a parent or guardian with developmental
175 disabilities who requires assistance in meeting the child's
176 developmental needs.

177 (d) A child who has a physical or genetic anomaly

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178 associated with developmental disability.

179 (24) "Initial support plan" means the first support plan
180 that identifies the needs of the individual for supports and
181 services prior to enrollment in the iBudget waiver.

182 (25)~~(21)~~ "Intellectual disability" means significantly
183 subaverage general intellectual functioning existing
184 concurrently with deficits in adaptive behavior which manifests
185 before the age of 18 and can reasonably be expected to continue
186 indefinitely. For the purposes of this definition, the term:

187 (a) "Adaptive behavior" means the effectiveness or degree
188 with which an individual meets the standards of personal
189 independence and social responsibility expected of his or her
190 age, cultural group, and community.

191 (b) "Significantly subaverage general intellectual
192 functioning" means performance that is two or more standard
193 deviations from the mean score on a standardized intelligence
194 test specified in the rules of the agency.

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

204 (26)~~(22)~~ "Intermediate care facility for the
205 developmentally disabled" ~~or "ICF/DD"~~ means a residential
206 facility licensed and certified under part VIII of chapter 400.

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207 (27)~~(23)~~ "Medical/dental services" means medically
208 necessary services that are provided or ordered for a client by
209 a person licensed under chapter 458, chapter 459, or chapter
210 466. Such services may include, but are not limited to,
211 prescription drugs, specialized therapies, nursing supervision,
212 hospitalization, dietary services, prosthetic devices, surgery,
213 specialized equipment and supplies, adaptive equipment, and
214 other services as required to prevent or alleviate a medical or
215 dental condition.

216 (28)~~(24)~~ "Personal care services" means individual
217 assistance with or supervision of essential activities of daily
218 living for self-care, including ambulation, bathing, dressing,
219 eating, grooming, and toileting, and other similar services that
220 are incidental to the care furnished and essential to the
221 health, safety, and welfare of the client if no one else is
222 available to perform those services.

223 (29)~~(25)~~ "Prader-Willi syndrome" means an inherited
224 condition typified by neonatal hypotonia with failure to thrive,
225 hyperphagia or an excessive drive to eat which leads to obesity
226 usually at 18 to 36 months of age, mild to moderate intellectual
227 disability, hypogonadism, short stature, mild facial
228 dysmorphism, and a characteristic neurobehavior.

229 (30)~~(26)~~ "Relative" means an individual who is connected by
230 affinity or consanguinity to the client and who is 18 years of
231 age or older.

232 (31)~~(27)~~ "Resident" means a person who has a developmental
233 disability and resides at a residential facility, whether or not
234 such person is a client of the agency.

235 (32) "Resident alien" means a person who is not a citizen

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236 of the United States but who currently resides in the United
237 States and is classified under Title 8 of the Code of Federal
238 Regulations as either a permanent resident, permanent resident
239 alien, lawful permanent resident, resident alien permit holder,
240 or green card holder.

241 (33)~~(28)~~ "Residential facility" means a facility providing
242 room and board and personal care for persons who have
243 developmental disabilities.

244 (34)~~(29)~~ "Residential habilitation" means supervision and
245 training with the acquisition, retention, or improvement in
246 skills related to activities of daily living, such as personal
247 hygiene skills, homemaking skills, and the social and adaptive
248 skills necessary to enable the individual to reside in the
249 community.

250 (35)~~(30)~~ "Residential habilitation center" means a
251 community residential facility licensed under this chapter which
252 provides habilitation services. The capacity of such a facility
253 may not be fewer than nine residents. After October 1, 1989, new
254 residential habilitation centers may not be licensed and the
255 licensed capacity for any existing residential habilitation
256 center may not be increased.

257 (36)~~(31)~~ "Respite service" means appropriate, short-term,
258 temporary care that is provided to a person who has a
259 developmental disability in order to meet the planned or
260 emergency needs of the person or the family or other direct
261 service provider.

262 (37)~~(32)~~ "Restraint" means a physical device, method, or
263 drug used to control dangerous behavior.

264 (a) A physical restraint is any manual method or physical

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265 or mechanical device, material, or equipment attached or
266 adjacent to an individual's body so that he or she cannot easily
267 remove the restraint and which restricts freedom of movement or
268 normal access to one's body.

269 (b) A drug used as a restraint is a medication used to
270 control the person's behavior or to restrict his or her freedom
271 of movement and is not a standard treatment for the person's
272 medical or psychiatric condition. Physically holding a person
273 during a procedure to forcibly administer psychotropic
274 medication is a physical restraint.

275 (c) Restraint does not include physical devices, such as
276 orthopedically prescribed appliances, surgical dressings and
277 bandages, supportive body bands, or other physical holding
278 necessary for routine physical examinations and tests; for
279 purposes of orthopedic, surgical, or other similar medical
280 treatment; to provide support for the achievement of functional
281 body position or proper balance; or to protect a person from
282 falling out of bed.

283 (38)~~(33)~~ "Seclusion" means the involuntary isolation of a
284 person in a room or area from which the person is prevented from
285 leaving. The prevention may be by physical barrier or by a staff
286 member who is acting in a manner, or who is physically situated,
287 so as to prevent the person from leaving the room or area. For
288 the purposes of this chapter, the term does not mean isolation
289 due to the medical condition or symptoms of the person.

290 (39)~~(34)~~ "Self-determination" means an individual's freedom
291 to exercise the same rights as all other citizens, authority to
292 exercise control over funds needed for one's own support,
293 including prioritizing these funds when necessary,

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294 responsibility for the wise use of public funds, and self-
295 advocacy to speak and advocate for oneself in order to gain
296 independence and ensure that individuals with a developmental
297 disability are treated equally.

298 (40)~~(35)~~ "Specialized therapies" means those treatments or
299 activities prescribed by and provided by an appropriately
300 trained, licensed, or certified professional or staff person and
301 may include, but are not limited to, physical therapy, speech
302 therapy, respiratory therapy, occupational therapy, behavior
303 therapy, physical management services, and related specialized
304 equipment and supplies.

305 (41)~~(36)~~ "Spina bifida" means, ~~for purposes of this~~
306 ~~chapter,~~ a person with a medical diagnosis of spina bifida
307 cystica or myelomeningocele.

308 (42)~~(37)~~ "Support coordinator" means a person who is
309 designated by the agency to assist individuals and families in
310 identifying their capacities, needs, and resources, as well as
311 finding and gaining access to necessary supports and services;
312 coordinating the delivery of supports and services; advocating
313 on behalf of the individual and family; maintaining relevant
314 records; and monitoring and evaluating the delivery of supports
315 and services to determine the extent to which they meet the
316 needs and expectations identified by the individual, family, and
317 others who participated in the development of the support plan.

318 (43)~~(38)~~ "Supported employment" means employment located or
319 provided in an integrated work setting, with earnings paid on a
320 commensurate wage basis, and for which continued support is
321 needed for job maintenance.

322 (44)~~(39)~~ "Supported living" means a category of

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323 individually determined services designed and coordinated in
324 such a manner as to provide assistance to adult clients who
325 require ongoing supports to live as independently as possible in
326 their own homes, to be integrated into the community, and to
327 participate in community life to the fullest extent possible.

328 ~~(45)(40)~~ "Training" means a planned approach to assisting a
329 client to attain or maintain his or her maximum potential and
330 includes services ranging from sensory stimulation to
331 instruction in skills for independent living and employment.

332 ~~(46)(41)~~ "Treatment" means the prevention, amelioration, or
333 cure of a client's physical and mental disabilities or
334 illnesses.

335 Section 2. Section 393.0641, Florida Statutes, is repealed.

336 Section 3. Subsections (3) and (5) of section 393.065,
337 Florida Statutes, are amended, present subsections (6) and (7)
338 of that section are amended and redesignated as subsections (7)
339 and (9), respectively, and new subsections (6) and (8) are added
340 to that section, to read:

341 393.065 Application and eligibility determination.—

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

346 ~~(5) Except as otherwise directed by law, beginning July 1,~~
347 ~~2010,~~ The agency shall assign and provide priority to clients
348 waiting for waiver services in the following order:

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

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(b) Category 2, which includes:~~, which includes children~~

1. Individuals on the waiting~~wait~~ list who are from the child welfare system with an open case in the Department of Children and Families' statewide automated child welfare information system and are:

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

b. At least 18 years old, but not yet 22 years old, and need both waiver services and extended foster care services. These individuals may receive both waiver services and services under s. 39.6251 but services may not duplicate services available through the Medicaid state plan.

2. Individuals on the waiting list who are at least 18 years old but not yet 22 years old and who withdrew consent to remain in the extended foster care system pursuant to s. 39.6251(5)(c).

3. Individuals who are at least 18 years old but not yet 22 years old and are eligible under sub-subparagraph 1.b. The agency shall provide waiver services, including residential habilitation, to these individuals. The community-based care lead agency shall fund room and board at the rate established in s. 409.145(4) and provide case management and related services as defined in s. 409.986(3)(e).

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

1. Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within

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381 the next 12 months and for whom a caregiver is required but no
382 alternate caregiver is available;

383 2. At substantial risk of incarceration or court commitment
384 without supports;

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

388 4. Who are identified as ready for discharge within the
389 next year from a state mental health hospital or skilled nursing
390 facility and who require a caregiver but for whom no caregiver
391 is available or whose caregiver is unable to provide the care
392 needed.

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

397 (e) Category 5, which includes, but is not required to be
398 limited to, clients who are expected to graduate within the next
399 12 months from secondary school and need support to obtain a
400 meaningful day activity, ~~or~~ maintain competitive employment, or
401 to pursue an accredited program of postsecondary education to
402 which they have been accepted.

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

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

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

413 (6) The agency shall allow an individual who meets the
414 eligibility requirements under subsection (1) to receive home
415 and community-based services in this state if the individual's
416 parent or legal guardian is an active-duty military service
417 member and if at the time of the service member's transfer to
418 this state, the individual was receiving home and community-
419 based services in another state.

420 (7) ~~(6)~~ The client, the client's guardian, or the client's
421 family must ensure that accurate, up-to-date contact information
422 is provided to the agency at all times. Notwithstanding s.
423 393.0651, the agency shall send an annual letter requesting
424 updated information from the client, the client's guardian, or
425 the client's family. The agency shall remove from the waiting
426 ~~wait~~ list any individual who cannot be located using the contact
427 information provided to the agency, fails to meet eligibility
428 requirements, or becomes domiciled outside the state.

429 (8) Agency action that selects individuals to receive
430 waiver services pursuant to this section does not establish a
431 right to a hearing or an administrative proceeding under chapter
432 120 for individuals remaining on the waiting list.

433 (9) ~~(7)~~ The agency and the Agency for Health Care
434 Administration may adopt rules specifying application
435 procedures, criteria associated with the waiting list ~~wait-list~~
436 categories, procedures for administering the waiting ~~wait~~ list,
437 including tools for prioritizing waiver enrollment within
438 categories, and eligibility criteria as needed to administer

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439 this section.

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

442 393.066 Community services and treatment.—

443 (2) Necessary ~~All~~ services ~~needed~~ shall be purchased,
444 rather than ~~instead of~~ provided directly by the agency, when the
445 purchase of services ~~such arrangement~~ is more cost-efficient
446 than providing them ~~having those services provided~~ directly. All
447 purchased services must be approved by the agency. Persons or
448 entities under contract with the agency to provide services
449 shall use agency data management systems to document service
450 provision to clients. Contracted persons and entities shall meet
451 the minimum hardware and software technical requirements
452 established by the agency for the use of such systems. Such
453 persons or entities shall also meet any requirements established
454 by the agency for training and professional development of staff
455 providing direct services to clients.

456 Section 5. Section 393.0662, Florida Statutes, is amended
457 to read:

458 393.0662 Individual budgets for delivery of home and
459 community-based services; iBudget system established.—The
460 Legislature finds that improved financial management of the
461 existing home and community-based Medicaid waiver program is
462 necessary to avoid deficits that impede the provision of
463 services to individuals who are on the waiting list for
464 enrollment in the program. The Legislature further finds that
465 clients and their families should have greater flexibility to
466 choose the services that best allow them to live in their
467 community within the limits of an established budget. Therefore,

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468 the Legislature intends that the agency, in consultation with
469 the Agency for Health Care Administration, shall manage ~~develop~~
470 ~~and implement a comprehensive redesign of~~ the service delivery
471 system using individual budgets as the basis for allocating the
472 funds appropriated for the home and community-based services
473 Medicaid waiver program among eligible enrolled clients. The
474 service delivery system that uses individual budgets shall be
475 called the iBudget system.

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

494 (a) In developing each client's iBudget, the agency shall
495 use the allocation ~~an allocation algorithm and methodology as~~
496 defined in s. 393.063(4). ~~The algorithm shall use variables that~~

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497 ~~have been determined by the agency to have a statistically~~
498 ~~validated relationship to the client's level of need for~~
499 ~~services provided through the home and community-based services~~
500 ~~Medicaid waiver program. The algorithm and methodology may~~
501 ~~consider individual characteristics, including, but not limited~~
502 ~~to, a client's age and living situation, information from a~~
503 ~~formal assessment instrument that the agency determines is valid~~
504 ~~and reliable, and information from other assessment processes.~~

505 (b) The allocation methodology shall determine ~~provide the~~
506 ~~algorithm that determines~~ the amount of funds allocated to a
507 client's iBudget. The agency may approve an increase in the
508 amount of funds allocated, ~~as determined by the algorithm,~~ based
509 on a ~~the~~ client having one or more of the following needs that
510 cannot be accommodated within the funding ~~as~~ determined by the
511 algorithm and having no other resources, supports, or services
512 available to meet the need:

513 1. An extraordinary need that would place the health and
514 safety of the client, the client's caregiver, or the public in
515 immediate, serious jeopardy unless the increase is approved.
516 However, the presence of an extraordinary need in and of itself
517 does not warrant an increase in the amount of funds allocated to
518 a client's iBudget. An extraordinary need may include, but is
519 not limited to:

520 a. The client's age and living situation, a change in
521 living situation, the loss of or a change in the client's
522 caregiver arrangement, or a documented need based on a
523 behavioral or psychological assessment;

524 b.a. A documented history of significant, potentially life-
525 threatening behaviors, such as recent attempts at suicide,

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526 arson, nonconsensual sexual behavior, or self-injurious behavior
527 requiring medical attention;

528 c.b. A complex medical condition that requires active
529 intervention by a licensed nurse on an ongoing basis that cannot
530 be taught or delegated to a nonlicensed person;

531 d.e. A chronic comorbid condition. As used in this
532 subparagraph, the term "comorbid condition" means a medical
533 condition existing simultaneously but independently with another
534 medical condition in a patient; or

535 e.d. A need for total physical assistance with activities
536 such as eating, bathing, toileting, grooming, and personal
537 hygiene.

538

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

542 2. A significant need for one-time or temporary support or
543 services that, if not provided, would place the health and
544 safety of the client, the client's caregiver, or the public in
545 serious jeopardy, ~~unless the increase is approved.~~ A significant
546 need may include, but is not limited to, the provision of
547 environmental modifications, durable medical equipment, services
548 to address the temporary loss of support from a caregiver, or
549 special services or treatment for a serious temporary condition
550 when the service or treatment is expected to ameliorate the
551 underlying condition. As used in this subparagraph, the term
552 "temporary" means a period of fewer than 12 continuous months.
553 However, the presence of such significant need for one-time or
554 temporary supports or services alone does not warrant an

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555 increase in the amount of funds allocated to a client's iBudget
556 ~~as determined by the algorithm.~~

557 3. A significant increase in the need for services after
558 the beginning of the service plan year that would place the
559 health and safety of the client, the client's caregiver, or the
560 public in serious jeopardy because of substantial changes in the
561 client's circumstances, including, but not limited to, permanent
562 or long-term loss or incapacity of a caregiver, loss of services
563 authorized under the state Medicaid plan due to a change in age,
564 or a significant change in medical or functional status which
565 requires the provision of additional services on a permanent or
566 long-term basis that cannot be accommodated within the client's
567 current iBudget. As used in this subparagraph, the term "long-
568 term" means a period of 12 or more continuous months. However,
569 such significant increase in need for services of a permanent or
570 long-term nature ~~alone~~ does not in and of itself warrant an
571 increase in the amount of funds allocated to a client's iBudget
572 ~~as determined by the algorithm.~~

573 4. A significant need for transportation services to a
574 waiver-funded adult day training program or to waiver-funded
575 employment services when such need cannot be accommodated within
576 a client's iBudget as determined by the algorithm without
577 affecting the health and safety of the client, if public
578 transportation is not an option due to the unique needs of the
579 client or other transportation resources are not reasonably
580 available.

581
582 The agency shall reserve portions of the appropriation for the
583 home and community-based services Medicaid waiver program for

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584 adjustments required pursuant to this paragraph and may use the
585 services of an independent actuary in determining the amount of
586 the portions to be reserved.

587 ~~(c) A client's iBudget shall be the total of the amount~~
588 ~~determined by the algorithm and any additional funding provided~~
589 ~~pursuant to paragraph (b).~~ A client's annual expenditures for
590 home and community-based ~~services~~ Medicaid waiver services may
591 not exceed the limits of his or her iBudget. The total of all
592 clients' projected annual iBudget expenditures may not exceed
593 the agency's appropriation for waiver services.

594 (2) The Agency for Health Care Administration, in
595 consultation with the agency, shall seek federal approval to
596 amend current waivers, request a new waiver, and amend contracts
597 as necessary to manage the iBudget system, to improve services
598 for eligible and enrolled clients, and to improve the delivery
599 of services ~~implement the iBudget system to serve eligible,~~
600 ~~enrolled clients~~ through the home and community-based services
601 Medicaid waiver program and the Consumer-Directed Care Plus
602 Program to persons with a dual diagnosis of a developmental
603 disability and a mental health diagnosis.

604 ~~(3) The agency shall transition all eligible, enrolled~~
605 ~~clients to the iBudget system. The agency may gradually phase in~~
606 ~~the iBudget system.~~

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

611 ~~(b) The agency shall design the phase-in process to ensure~~
612 ~~that a client does not experience more than one-half of any~~

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613 ~~expected overall increase or decrease to his or her existing~~
614 ~~annualized cost plan during the first year that the client is~~
615 ~~provided an iBudget due solely to the transition to the iBudget~~
616 ~~system.~~

617 (3)~~(4)~~ A client must use all available services authorized
618 under the state Medicaid plan, school-based services, private
619 insurance and other benefits, and any other resources that may
620 be available to the client before using funds from his or her
621 iBudget to pay for support and services.

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

624 (4)~~(6)~~ Rates for any or all services established under
625 rules of the Agency for Health Care Administration must ~~shall~~ be
626 designated as the maximum rather than a fixed amount for
627 individuals who receive an iBudget, except for services
628 specifically identified in those rules that the agency
629 determines are not appropriate for negotiation, which may
630 include, but are not limited to, residential habilitation
631 services.

632 (5)~~(7)~~ The agency shall ensure that clients and caregivers
633 have access to training and education that ~~to~~ inform them about
634 the iBudget system and enhance their ability for self-direction.
635 Such training and education must ~~shall~~ be offered in a variety
636 of formats and, at a minimum, must ~~shall~~ address the policies
637 and processes of the iBudget system and, ~~the~~ roles and
638 responsibilities of consumers, caregivers, waiver support
639 coordinators, providers, and the agency, and must provide
640 ~~information available~~ to help the client make decisions
641 regarding the iBudget system, ~~and~~ examples of support and

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642 resources available in the community.

643 ~~(6)(8)~~ The agency shall collect data to evaluate the
644 implementation and outcomes of the iBudget system.

645 ~~(7)(9)~~ The agency and the Agency for Health Care
646 Administration may adopt rules specifying the allocation
647 algorithm and methodology; criteria and processes for clients to
648 access reserved funds for extraordinary needs, temporarily or
649 permanently changed needs, and one-time needs; and processes and
650 requirements for selection and review of services, development
651 of support and cost plans, and management of the iBudget system
652 as needed to administer this section.

653 Section 6. Section 393.0679, Florida Statutes, is created
654 to read:

655 393.0679 Utilization review.—The agency shall conduct
656 utilization review activities in intermediate care facilities
657 for individuals with developmental disabilities, both public and
658 private, as necessary to meet the requirements of the approved
659 Medicaid state plan and federal law, and such facilities shall
660 comply with any requests for information and documentation made
661 by the agency and permit any agency inspections in connection
662 with such activities.

663 Section 7. Subsection (1), paragraphs (a) and (b) of
664 subsection (4), paragraphs (b), (e), (f), (g), and (h) of
665 subsection (5), subsection (6), paragraph (d) of subsection (7),
666 subsection (10), and paragraph (b) of subsection (12) of section
667 393.11, Florida Statutes, are amended, and subsection (14) is
668 added to that section, to read:

669 393.11 Involuntary admission to residential services.—

670 (1) JURISDICTION.—If a person has an intellectual

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671 disability or autism and requires involuntary admission to
672 residential services provided by the agency, the circuit court
673 of the county in which the person resides has jurisdiction to
674 conduct a hearing and enter an order involuntarily admitting the
675 person in order for the person to receive the care, treatment,
676 habilitation, and rehabilitation that the person needs. For the
677 purpose of identifying intellectual disability or autism,
678 diagnostic capability shall be established by the agency. Except
679 as otherwise specified, the proceedings under this section are
680 governed by the Florida Rules of Civil Procedure.

681 (4) AGENCY PARTICIPATION.—

682 (a) Upon receiving the petition, the court shall
683 immediately order the ~~developmental services program of the~~
684 agency to examine the person being considered for involuntary
685 admission to residential services.

686 (b) Following examination, the agency shall file a written
687 report with the court at least 10 working days before the date
688 of the hearing. The report must be served on the petitioner, the
689 person who has the intellectual disability or autism, and the
690 person's attorney at the time the report is filed with the
691 court.

692 (5) EXAMINING COMMITTEE.—

693 (b) The court shall appoint at least three disinterested
694 experts who have demonstrated to the court an expertise in the
695 diagnosis, evaluation, and treatment of persons who have
696 intellectual disabilities or autism. The committee must include
697 at least one licensed and qualified physician, one licensed and
698 qualified psychologist, and one qualified professional who, at a
699 minimum, has a master's degree in social work, special

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700 education, or vocational rehabilitation counseling, to examine
701 the person and to testify at the hearing on the involuntary
702 admission to residential services.

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

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

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

712 a. Lacks sufficient capacity to give express and informed
713 consent to a voluntary application for services pursuant to s.
714 393.065 and lacks basic survival and self-care skills to such a
715 degree that close supervision and habilitation in a residential
716 setting is necessary and, if not provided, would result in a
717 threat of substantial harm to the person's well-being; or

718 ~~b. Lacks basic survival and self-care skills to such a~~
719 ~~degree that close supervision and habilitation in a residential~~
720 ~~setting is necessary and if not provided would result in a real~~
721 ~~and present threat of substantial harm to the person's well-~~
722 ~~being; or~~

723 ~~b.e.~~ Is likely to physically injure others if allowed to
724 remain at liberty.

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

726 4. A recommendation on the type of residential placement
727 which would be the most appropriate and least restrictive for
728 the person; and

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

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

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

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

743 (6) COUNSEL; GUARDIAN AD LITEM.—

744 (a) The person who has the intellectual disability or
745 autism must be represented by counsel at all stages of the
746 judicial proceeding. If the person is indigent and cannot afford
747 counsel, the court shall appoint a public defender at least 20
748 working days before the scheduled hearing. The person's counsel
749 shall have full access to the records of the service provider
750 and the agency. In all cases, the attorney shall represent the
751 rights and legal interests of the person, regardless of who
752 initiates the proceedings or pays the attorney ~~attorney's~~ fee.

753 (b) If the attorney, during the course of his or her
754 representation, reasonably believes that the person who has the
755 intellectual disability or autism cannot adequately act in his
756 or her own interest, the attorney may seek the appointment of a
757 guardian ad litem. A prior finding of incompetency is not

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758 required before a guardian ad litem is appointed pursuant to
759 this section.

760 (7) HEARING.—

761 (d) The person who has the intellectual disability or
762 autism must be physically present throughout the entire
763 proceeding. If the person's attorney believes that the person's
764 presence at the hearing is not in his or her best interest, the
765 person's presence may be waived once the court has seen the
766 person and the hearing has commenced.

767 (10) COMPETENCY.—

768 (a) The issue of competency is separate and distinct from a
769 determination of the appropriateness of involuntary admission to
770 residential services due to intellectual disability or autism.

771 (b) The issue of the competency of a person who has an
772 intellectual disability or autism for purposes of assigning
773 guardianship shall be determined in a separate proceeding
774 according to the procedures and requirements of chapter 744. The
775 issue of the competency of a person who has an intellectual
776 disability or autism for purposes of determining whether the
777 person is competent to proceed in a criminal trial shall be
778 determined in accordance with chapter 916.

779 (12) APPEAL.—

780 (b) The filing of an appeal by the person who has an
781 intellectual disability or autism stays admission of the person
782 into residential care. The stay remains in effect during the
783 pendency of all review proceedings in Florida courts until a
784 mandate issues.

785 (14) COMMITMENT REVIEW.—

786 (a) For persons involuntarily admitted to residential

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787 services by court order pursuant to this section, such
788 involuntary admission, unless otherwise ordered by the court,
789 must be reviewed annually. Placements resulting from an order
790 for involuntary admission must be part of the review. The agency
791 shall contract with a qualified evaluator to perform such
792 reviews which must be provided to the court upon completion.

793 (b) Upon receipt of an annual review by the court, a
794 hearing must be held to consider the results of the review and
795 to determine whether the person continues to meet the criteria
796 specified in paragraph (8) (b). If the person continues to meet
797 the criteria, the court shall determine whether he or she still
798 requires involuntary admission to a residential setting, whether
799 the person is in the most appropriate and least restrictive
800 setting, and whether the person is receiving adequate care,
801 treatment, habilitation, and rehabilitation in the residential
802 setting.

803 (c) The agency shall provide a copy of the annual review
804 and reasonable notice of the hearing to the appropriate state's
805 attorney, if applicable, and the person's attorney and guardian
806 or guardian advocate, if one is appointed.

807 (d) For purposes of this subsection, the term "qualified
808 evaluator" means a licensed psychologist with expertise in the
809 diagnosis, evaluation, and treatment of persons with
810 intellectual disabilities or autism.

811 Section 8. Section 26 of chapter 2015-222, Laws of Florida,
812 is repealed.

813 Section 9. Section 393.18, Florida Statutes, is reenacted
814 and amended to read:

815 393.18 Comprehensive transitional education program.—A

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

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845 (1) Comprehensive transitional education programs must
846 ~~shall include a minimum of two component centers or units, one~~
847 ~~of which shall be an intensive treatment and educational center~~
848 ~~or a transitional training and educational center, which~~
849 ~~provides services to persons with maladaptive behaviors in the~~
850 following components ~~sequential order:~~

851 (a) ~~Intensive treatment and education ~~educational center.~~~~
852 This component provides ~~is a self-contained residential unit~~
853 ~~providing~~ intensive behavioral and educational programming for
854 individuals whose conditions ~~persons with severe maladaptive~~
855 ~~behaviors whose behaviors~~ preclude placement in a less
856 restrictive environment due to the threat of danger or injury to
857 themselves or others. Continuous-shift staff are ~~shall be~~
858 required for this component.

859 (b) ~~Intensive Transitional training and education~~
860 ~~educational center.~~ This component provides ~~is a residential~~
861 ~~unit for persons with moderate maladaptive behaviors providing~~
862 concentrated psychological and educational programming that
863 emphasizes a transition toward a less restrictive environment.
864 Continuous-shift staff are ~~shall be~~ required for this component.

865 (c) ~~Community Transition residence.~~ This component provides
866 ~~is a residential center providing~~ educational programs and any
867 support services, training, and care that are needed ~~to assist~~
868 ~~persons with maladaptive behaviors~~ to avoid regression to more
869 restrictive environments while preparing them for more
870 independent living. Continuous-shift staff may ~~shall~~ be required
871 for this component.

872 (d) ~~Alternative living center.~~ This component ~~is a~~
873 ~~residential unit providing an educational and family living~~

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874 ~~environment for persons with maladaptive behaviors in a~~
875 ~~moderately unrestricted setting. Residential staff shall be~~
876 ~~required for this component.~~

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

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

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

898 (4) ~~For comprehensive transitional education programs,~~ The
899 total number of persons in a comprehensive transitional
900 education program residents who are being provided with services
901 may not ~~in any instance exceed the licensed capacity of~~ 120
902 residents, and each residential unit within the component

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903 centers of ~~a the~~ program authorized under this section may not
904 ~~in any instance~~ exceed 15 residents. However, a program that was
905 authorized to operate residential units with more than 15
906 residents before July 1, 2015, may continue to operate such
907 units.

908 (5) Beginning July 1, 2016, the agency may approve the
909 proposed admission or readmission of individuals into a
910 comprehensive transitional education program for up to 2 years
911 subject to a specific review process. The agency may allow an
912 individual to live in this setting for a longer period of time
913 if, after a clinical review is conducted by the agency, it is
914 determined that remaining in the program for a longer period of
915 time is in the best interest of the individual.

916 (6) Comprehensive transitional education programs shall
917 provide continuous recorded video and audio monitoring in all
918 residential common areas. Recordings must be maintained for at
919 least 60 days during which time the agency may review them at
920 any time. At the request of the agency, the comprehensive
921 transitional education program shall retain specified recordings
922 indefinitely throughout the course of an investigation into
923 allegations of potential abuse or neglect.

924 (7) Comprehensive transitional education programs shall
925 operate and maintain a video and audio monitoring system that
926 enables authorized agency staff to monitor program activities
927 and facilities in real time from an off-site location. To the
928 extent possible, such monitoring may be in a manner that
929 precludes detection or knowledge of the monitoring by staff who
930 may be present in monitored areas.

931 (8) Licensure is authorized for a comprehensive

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932 transitional education program that, by July 1, 1989:

933 (a) Was in actual operation; or

934 (b) Owned a fee simple interest in real property for which
935 a county or municipal government has approved zoning that allows
936 the placement of a facility operated by the program and has
937 registered an intent with the agency to operate a comprehensive
938 transitional education program. However, nothing prohibits the
939 assignment of licensure eligibility by such a registrant to
940 another entity at a different site within the state if the
941 entity is in compliance with the criteria of this subsection and
942 local zoning requirements and each residential facility within
943 the component centers or units of the program authorized under
944 this paragraph does not exceed a capacity of 15 persons.

945 (9) Notwithstanding subsection (8), in order to maximize
946 federal revenues and provide for children needing special
947 behavioral services, the agency may authorize the licensure of a
948 facility that:

949 (a) Provides residential services for children who have
950 developmental disabilities and intensive behavioral problems as
951 defined by the agency; and

952 (b) As of July 1, 2010, served children who were served by
953 the child welfare system and who have an open case in the State
954 Automated Child Welfare Information System.

955
956 The facility must be in compliance with all program criteria and
957 local land use and zoning requirements and may not exceed a
958 capacity of 15 children.

959 Section 10. Subsection (2) of section 393.501, Florida
960 Statutes, is amended to read:

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961 393.501 Rulemaking.—

962 (2) Such rules must address the number of facilities on a
963 single lot or on adjacent lots, except that there is no
964 restriction on the number of facilities designated as community
965 residential homes located within a planned residential community
966 as those terms are defined in s. 419.001(1). In adopting rules,
967 comprehensive transitional education programs ~~an alternative~~
968 ~~living center and an independent living education center~~, as
969 described in s. 393.18, are subject to s. 419.001, except that
970 such program centers are exempt from the 1,000-foot-radius
971 requirement of s. 419.001(2) if:

972 (a) The program centers are located on a site zoned in a
973 manner that permits all the components of a comprehensive
974 transitional education program center to be located on the site;
975 or

976 (b) There are no more than three such program centers
977 within a radius of 1,000 feet.

978 Section 11. Paragraph (b) of subsection (1) of section
979 383.141, Florida Statutes, is amended to read:

980 383.141 Prenatally diagnosed conditions; patient to be
981 provided information; definitions; information clearinghouse;
982 advisory council.—

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

984 (b) "Developmental disability" includes Down syndrome and
985 other developmental disabilities defined by s. 393.063(12) ~~s.~~
986 ~~393.063(9)~~.

987 Section 12. Paragraph (d) of subsection (2) of section
988 1002.385, Florida Statutes, is amended to read:

989 1002.385 Florida personal learning scholarship accounts.—

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990 (2) DEFINITIONS.—As used in this section, the term:

991 (d) "Disability" means, for a 3- or 4-year-old child or for
992 a student in kindergarten to grade 12, autism spectrum disorder,
993 as defined in the Diagnostic and Statistical Manual of Mental
994 Disorders, Fifth Edition, published by the American Psychiatric
995 Association; cerebral palsy, as defined in s. 393.063(6) ~~s.~~
996 ~~393.063(4)~~; Down syndrome, as defined in s. 393.063(15) ~~s.~~
997 ~~393.063(13)~~; an intellectual disability, as defined in s.
998 393.063(25) ~~s. 393.063(21)~~; Prader-Willi syndrome, as defined in
999 s. 393.063(29) ~~s. 393.063(25)~~; or spina bifida, as defined in s.
1000 393.063(41) ~~s. 393.063(36)~~; for a student in kindergarten, being
1001 a high-risk child, as defined in s. 393.063(23)(a) ~~s.~~
1002 ~~393.063(20)(a)~~; muscular dystrophy; and Williams syndrome.

1003 Section 13. This act shall take effect July 1, 2016.