

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 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

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, and reenacting ss. 393.067(15)  
38 |       and 393.18, F.S.; abrogating the scheduled expiration  
39 |       and reversion of amendments to ss. 393.067(15) and  
40 |       393.18, F.S., relating to a provision specifying that  
41 |       the agency is not required to contract with certain  
42 |       licensed facilities and the capacity of comprehensive  
43 |       transitional education programs and the residential  
44 |       units of their component centers; providing for  
45 |       contingent retroactive operation; amending ss. 383.141  
46 |       and 1002.385, F.S.; conforming cross-references to  
47 |       changes made by the act; providing an appropriation;  
48 |       providing a contingent appropriation; providing  
49 |       effective dates.

50 |  
51 | Be It Enacted by the Legislature of the State of Florida:  
52 |

53 Section 1. Section 393.063, Florida Statutes, is amended  
 54 to read:

55 393.063 Definitions.—For the purposes of this chapter, the  
 56 term:

57 (1)~~(2)~~ "Adult day training" means training services that  
 58 ~~which~~ take place in a nonresidential setting, separate from the  
 59 home or facility in which the client resides, and~~;~~ are intended  
 60 to support the participation of clients in daily, meaningful,  
 61 and valued routines of the community. Such training;~~and~~ may be  
 62 provided in ~~include~~ work-like settings that do not meet the  
 63 definition of supported employment.

64 (2)~~(1)~~ "Agency" means the Agency for Persons with  
 65 Disabilities.

66 (3) "Algorithm" means the mathematical formula used by the  
 67 agency to calculate budget amounts for clients which uses  
 68 variables that have statistically validated relationships to  
 69 clients' needs for services provided by the home and community-  
 70 based services Medicaid waiver program.

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

75 (5)~~(3)~~ "Autism" means a pervasive, neurologically based  
 76 developmental disability of extended duration which causes  
 77 severe learning, communication, and behavior disorders with age  
 78 of onset during infancy or childhood. Individuals with autism

79 exhibit impairment in reciprocal social interaction, impairment  
80 in verbal and nonverbal communication and imaginative ability,  
81 and a markedly restricted repertoire of activities and  
82 interests.

83 (6)~~(4)~~ "Cerebral palsy" means a group of disabling  
84 symptoms of extended duration which results from damage to the  
85 developing brain that may occur before, during, or after birth  
86 and that results in the loss or impairment of control over  
87 voluntary muscles. For the purposes of this definition, cerebral  
88 palsy does not include those symptoms or impairments resulting  
89 solely from a stroke.

90 (7)~~(5)~~ "Client" means any person determined eligible by  
91 the agency for services under this chapter.

92 (8)~~(6)~~ "Client advocate" means a friend or relative of the  
93 client, or of the client's immediate family, who advocates for  
94 the best interests of the client in any proceedings under this  
95 chapter in which the client or his or her family has the right  
96 or duty to participate.

97 (9)~~(7)~~ "Comprehensive assessment" means the process used  
98 to determine eligibility for services under this chapter.

99 (10)~~(8)~~ "Comprehensive transitional education program"  
100 means the program established in s. 393.18.

101 (11)~~(10)~~ "Developmental disabilities center" means a  
102 state-owned and state-operated facility, formerly known as a  
103 "Sunland Center," providing for the care, habilitation, and  
104 rehabilitation of clients with developmental disabilities.

105        (12)~~(9)~~ "Developmental disability" means a disorder or  
106        syndrome that is attributable to intellectual disability,  
107        cerebral palsy, autism, spina bifida, Down syndrome, or Prader-  
108        Willi syndrome; that manifests before the age of 18; and that  
109        constitutes a substantial handicap that can reasonably be  
110        expected to continue indefinitely.

111        (13)~~(11)~~ "Direct service provider" means a person 18 years  
112        of age or older who has direct face-to-face contact with a  
113        client while providing services to the client or has access to a  
114        client's living areas or to a client's funds or personal  
115        property.

116        (14)~~(12)~~ "Domicile" means the place where a client legally  
117        resides and~~7~~ which ~~place~~ is his or her permanent home. Domicile  
118        may be established as provided in s. 222.17. Domicile may not be  
119        established in Florida by a minor who has no parent domiciled in  
120        Florida, or by a minor who has no legal guardian domiciled in  
121        Florida, or by any alien not classified as a resident alien.

122        (15)~~(13)~~ "Down syndrome" means a disorder caused by the  
123        presence of an extra chromosome 21.

124        (16)~~(14)~~ "Express and informed consent" means consent  
125        voluntarily given in writing with sufficient knowledge and  
126        comprehension of the subject matter to enable the person giving  
127        consent to make a knowing decision without any element of force,  
128        fraud, deceit, duress, or other form of constraint or coercion.

129        (17)~~(15)~~ "Family care program" means the program  
130        established in s. 393.068.

131        (18)~~(16)~~ "Foster care facility" means a residential  
 132 facility licensed under this chapter which provides a family  
 133 living environment including supervision and care necessary to  
 134 meet the physical, emotional, and social needs of its residents.  
 135 The capacity of such a facility may not be more than three  
 136 residents.

137        (19)~~(17)~~ "Group home facility" means a residential  
 138 facility licensed under this chapter which provides a family  
 139 living environment including supervision and care necessary to  
 140 meet the physical, emotional, and social needs of its residents.  
 141 The capacity of such a facility shall be at least 4 but not more  
 142 than 15 residents.

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

144        (21)~~(18)~~ "Guardian advocate" means a person appointed by a  
 145 written order of the court to represent a person with  
 146 developmental disabilities under s. 393.12.

147        (22)~~(19)~~ "Habilitation" means the process by which a  
 148 client is assisted in acquiring and maintaining ~~to acquire and~~  
 149 ~~maintain~~ those life skills that ~~which~~ enable the client to cope  
 150 more effectively with the demands of his or her condition and  
 151 environment and to raise the level of his or her physical,  
 152 mental, and social efficiency. It includes, but is not limited  
 153 to, programs of formal structured education and treatment.

154        (23)~~(20)~~ "High-risk child" means, for the purposes of this  
 155 chapter, a child from 3 to 5 years of age with one or more of  
 156 the following characteristics:

157 (a) A developmental delay in cognition, language, or  
 158 physical development.

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

162 (c) A child with a parent or guardian with developmental  
 163 disabilities who requires assistance in meeting the child's  
 164 developmental needs.

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

167 (24)~~(21)~~ "Intellectual disability" means significantly  
 168 subaverage general intellectual functioning existing  
 169 concurrently with deficits in adaptive behavior which manifests  
 170 before the age of 18 and can reasonably be expected to continue  
 171 indefinitely. For the purposes of this definition, the term:

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

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

180  
 181 For purposes of the application of the criminal laws and  
 182 procedural rules of this state to matters relating to pretrial,

183 trial, sentencing, and any matters relating to the imposition  
184 and execution of the death penalty, the terms "intellectual  
185 disability" or "intellectually disabled" are interchangeable  
186 with and have the same meaning as the terms "mental retardation"  
187 or "retardation" and "mentally retarded" as defined in this  
188 section before July 1, 2013.

189 (25)~~(22)~~ "Intermediate care facility for the  
190 developmentally disabled" ~~or "ICF/DD"~~ means a residential  
191 facility licensed and certified under part VIII of chapter 400.

192 (26)~~(23)~~ "Medical/dental services" means medically  
193 necessary services that are provided or ordered for a client by  
194 a person licensed under chapter 458, chapter 459, or chapter  
195 466. Such services may include, but are not limited to,  
196 prescription drugs, specialized therapies, nursing supervision,  
197 hospitalization, dietary services, prosthetic devices, surgery,  
198 specialized equipment and supplies, adaptive equipment, and  
199 other services as required to prevent or alleviate a medical or  
200 dental condition.

201 (27)~~(24)~~ "Personal care services" means individual  
202 assistance with or supervision of essential activities of daily  
203 living for self-care, including ambulation, bathing, dressing,  
204 eating, grooming, and toileting, and other similar services that  
205 are incidental to the care furnished and essential to the  
206 health, safety, and welfare of the client if no one else is  
207 available to perform those services.



208        (28)~~(25)~~ "Prader-Willi syndrome" means an inherited  
209 condition typified by neonatal hypotonia with failure to thrive,  
210 hyperphagia or an excessive drive to eat which leads to obesity  
211 usually at 18 to 36 months of age, mild to moderate intellectual  
212 disability, hypogonadism, short stature, mild facial  
213 dysmorphism, and a characteristic neurobehavior.

214        (29)~~(26)~~ "Relative" means an individual who is connected  
215 by affinity or consanguinity to the client and who is 18 years  
216 of age or older.

217        (30)~~(27)~~ "Resident" means a person who has a developmental  
218 disability and resides at a residential facility, whether or not  
219 such person is a client of the agency.

220        (31)~~(28)~~ "Residential facility" means a facility providing  
221 room and board and personal care for persons who have  
222 developmental disabilities.

223        (32)~~(29)~~ "Residential habilitation" means supervision and  
224 training with the acquisition, retention, or improvement in  
225 skills related to activities of daily living, such as personal  
226 hygiene skills, homemaking skills, and the social and adaptive  
227 skills necessary to enable the individual to reside in the  
228 community.

229        (33)~~(30)~~ "Residential habilitation center" means a  
230 community residential facility licensed under this chapter which  
231 provides habilitation services. The capacity of such a facility  
232 may not be fewer than nine residents. After October 1, 1989, new  
233 residential habilitation centers may not be licensed and the

234 licensed capacity for any existing residential habilitation  
235 center may not be increased.

236 (34)~~(31)~~ "Respite service" means appropriate, short-term,  
237 temporary care that is provided to a person who has a  
238 developmental disability in order to meet the planned or  
239 emergency needs of the person or the family or other direct  
240 service provider.

241 (35)~~(32)~~ "Restraint" means a physical device, method, or  
242 drug used to control dangerous behavior.

243 (a) A physical restraint is any manual method or physical  
244 or mechanical device, material, or equipment attached or  
245 adjacent to an individual's body so that he or she cannot easily  
246 remove the restraint and which restricts freedom of movement or  
247 normal access to one's body.

248 (b) A drug used as a restraint is a medication used to  
249 control the person's behavior or to restrict his or her freedom  
250 of movement and is not a standard treatment for the person's  
251 medical or psychiatric condition. Physically holding a person  
252 during a procedure to forcibly administer psychotropic  
253 medication is a physical restraint.

254 (c) Restraint does not include physical devices, such as  
255 orthopedically prescribed appliances, surgical dressings and  
256 bandages, supportive body bands, or other physical holding  
257 necessary for routine physical examinations and tests; for  
258 purposes of orthopedic, surgical, or other similar medical  
259 treatment; to provide support for the achievement of functional

260 body position or proper balance; or to protect a person from  
261 falling out of bed.

262 (36)~~(33)~~ "Seclusion" means the involuntary isolation of a  
263 person in a room or area from which the person is prevented from  
264 leaving. The prevention may be by physical barrier or by a staff  
265 member who is acting in a manner, or who is physically situated,  
266 so as to prevent the person from leaving the room or area. For  
267 the purposes of this chapter, the term does not mean isolation  
268 due to the medical condition or symptoms of the person.

269 (37)~~(34)~~ "Self-determination" means an individual's  
270 freedom to exercise the same rights as all other citizens,  
271 authority to exercise control over funds needed for one's own  
272 support, including prioritizing these funds when necessary,  
273 responsibility for the wise use of public funds, and self-  
274 advocacy to speak and advocate for oneself in order to gain  
275 independence and ensure that individuals with a developmental  
276 disability are treated equally.

277 (38)~~(35)~~ "Specialized therapies" means those treatments or  
278 activities prescribed by and provided by an appropriately  
279 trained, licensed, or certified professional or staff person and  
280 may include, but are not limited to, physical therapy, speech  
281 therapy, respiratory therapy, occupational therapy, behavior  
282 therapy, physical management services, and related specialized  
283 equipment and supplies.

284        (39)~~(36)~~ "Spina bifida" means, ~~for purposes of this~~  
 285 ~~chapter,~~ a person with a medical diagnosis of spina bifida  
 286 cystica or myelomeningocele.

287        (40)~~(37)~~ "Support coordinator" means a person who is  
 288 designated by the agency to assist individuals and families in  
 289 identifying their capacities, needs, and resources, as well as  
 290 finding and gaining access to necessary supports and services;  
 291 coordinating the delivery of supports and services; advocating  
 292 on behalf of the individual and family; maintaining relevant  
 293 records; and monitoring and evaluating the delivery of supports  
 294 and services to determine the extent to which they meet the  
 295 needs and expectations identified by the individual, family, and  
 296 others who participated in the development of the support plan.

297        (41)~~(38)~~ "Supported employment" means employment located  
 298 or provided in an integrated work setting, with earnings paid on  
 299 a commensurate wage basis, and for which continued support is  
 300 needed for job maintenance.

301        (42)~~(39)~~ "Supported living" means a category of  
 302 individually determined services designed and coordinated in  
 303 such a manner as to provide assistance to adult clients who  
 304 require ongoing supports to live as independently as possible in  
 305 their own homes, to be integrated into the community, and to  
 306 participate in community life to the fullest extent possible.

307        (43)~~(40)~~ "Training" means a planned approach to assisting  
 308 a client to attain or maintain his or her maximum potential and

309 includes services ranging from sensory stimulation to  
 310 instruction in skills for independent living and employment.

311 ~~(44)-(41)~~ "Treatment" means the prevention, amelioration,  
 312 or cure of a client's physical and mental disabilities or  
 313 illnesses.

314 Section 2. Section 393.0641, Florida Statutes, is  
 315 repealed.

316 Section 3. Subsections (3) and (5) of section 393.065,  
 317 Florida Statutes, are amended, present subsections (6) and (7)  
 318 are renumbered as subsections (7) and (9), respectively, and  
 319 amended, and new subsections (6) and (8) are added to that  
 320 section, to read:

321 393.065 Application and eligibility determination.—

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

326 ~~(5) Except as otherwise directed by law, beginning July 1,~~  
 327 ~~2010,~~ The agency shall assign and provide priority to clients  
 328 waiting for waiver services in the following order:

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

332 (b) Category 2, which includes individuals on the waiting  
 333 ~~children on the wait~~ list who are:

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

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

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

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

346  
347 For individuals who are at least 18 years old but not yet 22  
348 years old and who are eligible under sub-subparagraph 1.b., the  
349 agency shall provide waiver services, including residential  
350 habilitation, and the community-based care lead agency shall  
351 fund room and board at the rate established in s. 409.145(4) and  
352 provide case management and related services as defined in s.  
353 409.986(3)(e). Individuals may receive both waiver services and  
354 services under s. 39.6251. Services may not duplicate services  
355 available through the Medicaid state plan.

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

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

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

362 2. At substantial risk of incarceration or court  
363 commitment without supports;

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

367 4. Who are identified as ready for discharge within the  
368 next year from a state mental health hospital or skilled nursing  
369 facility and who require a caregiver but for whom no caregiver  
370 is available or whose caregiver is unable to provide the care  
371 needed.

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

376 (e) Category 5, which includes, but is not required to be  
377 limited to, clients who are expected to graduate within the next  
378 12 months from secondary school and need support to obtain a  
379 meaningful day activity, ~~or~~ maintain competitive employment, or  
380 ~~to~~ pursue an accredited program of postsecondary education to  
381 which they have been accepted.

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

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

388

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

392 (6) The agency shall allow an individual who meets the  
393 eligibility requirements under subsection (1) to receive home  
394 and community-based services in this state if the individual's  
395 parent or legal guardian is an active-duty military  
396 servicemember and if at the time of the servicemember's transfer  
397 to this state, the individual was receiving home and community-  
398 based services in another state.

399 (7) ~~(6)~~ The client, the client's guardian, or the client's  
400 family must ensure that accurate, up-to-date contact information  
401 is provided to the agency at all times. Notwithstanding s.  
402 393.0651, the agency shall send an annual letter requesting  
403 updated information from the client, the client's guardian, or  
404 the client's family. The agency shall remove from the waiting  
405 ~~wait~~ list any individual who cannot be located using the  
406 contact information provided to the agency, fails to meet  
407 eligibility requirements, or becomes domiciled outside the  
408 state.

409 (8) Agency action that selects individuals to receive  
410 waiver services pursuant to this section does not establish a



411 right to a hearing or an administrative proceeding under chapter  
 412 120 for individuals remaining on the waiting list.

413 (9)~~(7)~~ The agency and the Agency for Health Care  
 414 Administration may adopt rules specifying application  
 415 procedures, criteria associated with the waiting list ~~wait-list~~  
 416 categories, procedures for administering the waiting ~~wait~~ list,  
 417 including tools for prioritizing waiver enrollment within  
 418 categories, and eligibility criteria as needed to administer  
 419 this section.

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

422 393.066 Community services and treatment.-

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

436 Section 5. Section 393.0662, Florida Statutes, is amended  
 437 to read:

438 393.0662 Individual budgets for delivery of home and  
 439 community-based services; iBudget system established.—The  
 440 Legislature finds that improved financial management of the  
 441 existing home and community-based Medicaid waiver program is  
 442 necessary to avoid deficits that impede the provision of  
 443 services to individuals who are on the waiting list for  
 444 enrollment in the program. The Legislature further finds that  
 445 clients and their families should have greater flexibility to  
 446 choose the services that best allow them to live in their  
 447 community within the limits of an established budget. Therefore,  
 448 the Legislature intends that the agency, in consultation with  
 449 the Agency for Health Care Administration, shall manage ~~develop~~  
 450 ~~and implement a comprehensive redesign of the service delivery~~  
 451 system using individual budgets as the basis for allocating the  
 452 funds appropriated for the home and community-based services  
 453 Medicaid waiver program among eligible enrolled clients. The  
 454 service delivery system that uses individual budgets shall be  
 455 called the iBudget system.

456 (1) The agency shall administer ~~establish~~ an individual  
 457 budget, referred to as an iBudget, for each individual served by  
 458 the home and community-based services Medicaid waiver program.  
 459 The funds appropriated to the agency shall be allocated through  
 460 the iBudget system to eligible, Medicaid-enrolled clients. For  
 461 the iBudget system, eligible clients shall include individuals

462 with a ~~diagnosis of Down syndrome or~~ a developmental disability  
463 as defined in s. 393.063. The iBudget system shall ~~be designed~~  
464 ~~to~~ provide for: enhanced client choice within a specified  
465 service package; appropriate assessment strategies; an efficient  
466 consumer budgeting and billing process that includes  
467 reconciliation and monitoring components; a ~~redefined~~ role for  
468 support coordinators that avoids potential conflicts of  
469 interest; a flexible and streamlined service review process; and  
470 ~~a methodology and process that ensures~~ the equitable allocation  
471 of available funds ~~to each client~~ based on the client's level of  
472 need, as determined by the ~~variables in the~~ allocation  
473 methodology algorithm.

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

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

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

494            1. An extraordinary need that would place the health and  
495 safety of the client, the client's caregiver, or the public in  
496 immediate, serious jeopardy unless the increase is approved.  
497 However, the presence of an extraordinary need in and of itself  
498 does not warrant authorized funding by the agency. An  
499 extraordinary need may include, but is not limited to:

500            a. A documented history of significant, potentially life-  
501 threatening behaviors, such as recent attempts at suicide,  
502 arson, nonconsensual sexual behavior, or self-injurious behavior  
503 requiring medical attention;

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

507            c. A chronic comorbid condition. As used in this  
508 subparagraph, the term "comorbid condition" means a medical  
509 condition existing simultaneously but independently with another  
510 medical condition in a patient; or

511            d. A need for total physical assistance with activities  
512 such as eating, bathing, toileting, grooming, and personal  
513 hygiene.

514  
515 ~~However, the presence of an extraordinary need alone does not~~  
516 ~~warrant an increase in the amount of funds allocated to a~~  
517 ~~client's iBudget as determined by the algorithm.~~

518       2. A significant need for one-time or temporary support or  
519 services that, if not provided, would place the health and  
520 safety of the client, the client's caregiver, or the public in  
521 serious jeopardy, ~~unless the increase is approved.~~ A significant  
522 need may include, but is not limited to, the provision of  
523 environmental modifications, durable medical equipment, services  
524 to address the temporary loss of support from a caregiver, or  
525 special services or treatment for a serious temporary condition  
526 when the service or treatment is expected to ameliorate the  
527 underlying condition. As used in this subparagraph, the term  
528 "temporary" means a period of fewer than 12 continuous months.  
529 However, the presence of such significant need for one-time or  
530 temporary supports or services in and of itself ~~alone~~ does not  
531 warrant authorized funding by the agency ~~an increase in the~~  
532 ~~amount of funds allocated to a client's iBudget as determined by~~  
533 ~~the algorithm.~~

534       3. A significant increase in the need for services after  
535 the beginning of the service plan year that would place the  
536 health and safety of the client, the client's caregiver, or the  
537 public in serious jeopardy because of substantial changes in the  
538 client's circumstances, including, but not limited to, permanent  
539 or long-term loss or incapacity of a caregiver, loss of services

540 authorized under the state Medicaid plan due to a change in age,  
541 or a significant change in medical or functional status which  
542 requires the provision of additional services on a permanent or  
543 long-term basis that cannot be accommodated within the client's  
544 current iBudget. As used in this subparagraph, the term "long-  
545 term" means a period of 12 or more continuous months. However,  
546 such significant increase in need for services of a permanent or  
547 long-term nature in and of itself ~~alone~~ does not warrant  
548 authorized funding by the agency ~~an increase in the amount of~~  
549 ~~funds allocated to a client's iBudget as determined by the~~  
550 ~~algorithm.~~

551 4. A significant need for transportation services to a  
552 waiver-funded adult day training program or to waiver-funded  
553 employment services when such need cannot be accommodated within  
554 a client's iBudget as determined by the algorithm without  
555 affecting the health and safety of the client, if public  
556 transportation is not an option due to the unique needs of the  
557 client or other transportation resources are not reasonably  
558 available.

559  
560 The agency shall reserve portions of the appropriation for the  
561 home and community-based services Medicaid waiver program for  
562 adjustments required pursuant to this paragraph and may use the  
563 services of an independent actuary in determining the amount ~~of~~  
564 ~~the portions~~ to be reserved.

565           (c) ~~A client's iBudget shall be the total of the amount~~  
566 ~~determined by the algorithm and any additional funding provided~~  
567 ~~pursuant to paragraph (b).~~ A client's annual expenditures for  
568 home and community-based ~~services~~ Medicaid waiver services may  
569 not exceed the limits of his or her iBudget. The total of all  
570 clients' projected annual iBudget expenditures may not exceed  
571 the agency's appropriation for waiver services.

572           (2) The Agency for Health Care Administration, in  
573 consultation with the agency, shall seek federal approval to  
574 amend current waivers, request a new waiver, and amend contracts  
575 as necessary to manage the iBudget system, improve services for  
576 eligible and enrolled clients, and improve the delivery of  
577 services ~~implement the iBudget system to serve eligible,~~  
578 ~~enrolled clients~~ through the home and community-based services  
579 Medicaid waiver program and the Consumer-Directed Care Plus  
580 Program, including, but not limited to, enrollees with a dual  
581 diagnosis of a developmental disability and a mental health  
582 disorder.

583           ~~(3) The agency shall transition all eligible, enrolled~~  
584 ~~clients to the iBudget system. The agency may gradually phase in~~  
585 ~~the iBudget system.~~

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

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

596 (3)~~(4)~~ A client must use all available services authorized  
597 under the state Medicaid plan, school-based services, private  
598 insurance and other benefits, and any other resources that may  
599 be available to the client before using funds from his or her  
600 iBudget to pay for support and services.

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

603 (4)~~(6)~~ Rates for any or all services established under  
604 rules of the Agency for Health Care Administration must ~~shall~~ be  
605 designated as the maximum rather than a fixed amount for  
606 individuals who receive an iBudget, except for services  
607 specifically identified in those rules that the agency  
608 determines are not appropriate for negotiation, which may  
609 include, but are not limited to, residential habilitation  
610 services.

611 (5)~~(7)~~ The agency shall ensure that clients and caregivers  
612 have access to training and education that ~~to~~ inform them about  
613 the iBudget system and enhance their ability for self-direction.  
614 Such training and education must ~~shall~~ be offered in a variety  
615 of formats and, at a minimum, must ~~shall~~ address the policies



616 and processes of the iBudget system ~~and~~ the roles and  
 617 responsibilities of consumers, caregivers, waiver support  
 618 coordinators, providers, and the agency, and must provide  
 619 information ~~available~~ to help the client make decisions  
 620 regarding the iBudget system ~~and~~ examples of support and  
 621 resources available in the community.

622 ~~(6)(8)~~ The agency shall collect data to evaluate the  
 623 implementation and outcomes of the iBudget system.

624 ~~(7)(9)~~ The agency and the Agency for Health Care  
 625 Administration may adopt rules specifying the allocation  
 626 algorithm and methodology; criteria and processes for clients to  
 627 access reserved funds for extraordinary needs, temporarily or  
 628 permanently changed needs, and one-time needs; and processes and  
 629 requirements for selection and review of services, development  
 630 of support and cost plans, and management of the iBudget system  
 631 as needed to administer this section.

632 Section 6. Section 393.0679, Florida Statutes, is created  
 633 to read:

634 393.0679 Utilization review.—The agency shall conduct  
 635 utilization review activities in intermediate care facilities  
 636 for individuals with developmental disabilities, both public and  
 637 private, as necessary to meet the requirements of the approved  
 638 Medicaid state plan and federal law, and such facilities shall  
 639 comply with any requests for information and documentation made  
 640 by the agency and permit any agency inspections in connection  
 641 with such activities.

642 Section 7. Effective upon this act becoming a law,  
 643 subsection (1), paragraphs (a) and (b) of subsection (4),  
 644 paragraphs (b), (e), (f), (g), and (h) of subsection (5),  
 645 subsection (6), paragraph (d) of subsection (7), subsection  
 646 (10), and paragraph (b) of subsection (12) of section 393.11,  
 647 Florida Statutes, are amended, and subsection (14) is added to  
 648 that section, to read:

649 393.11 Involuntary admission to residential services.—

650 (1) JURISDICTION.—If a person has an intellectual  
 651 disability or autism and requires involuntary admission to  
 652 residential services provided by the agency, the circuit court  
 653 of the county in which the person resides has jurisdiction to  
 654 conduct a hearing and enter an order involuntarily admitting the  
 655 person in order for the person to receive the care, treatment,  
 656 habilitation, and rehabilitation that the person needs. For the  
 657 purpose of identifying intellectual disability or autism,  
 658 diagnostic capability shall be established by the agency. Except  
 659 as otherwise specified, the proceedings under this section are  
 660 governed by the Florida Rules of Civil Procedure.

661 (4) AGENCY PARTICIPATION.—

662 (a) Upon receiving the petition, the court shall  
 663 immediately order the ~~developmental services program of the~~  
 664 agency to examine the person being considered for involuntary  
 665 admission to residential services.

666 (b) Following examination, the agency shall file a written  
 667 report with the court at least 10 working days before the date

668 of the hearing. The report must be served on the petitioner, the  
669 person who has the intellectual disability or autism, and the  
670 person's attorney at the time the report is filed with the  
671 court.

672 (5) EXAMINING COMMITTEE.—

673 (b) The court shall appoint at least three disinterested  
674 experts who have demonstrated to the court an expertise in the  
675 diagnosis, evaluation, and treatment of persons who have  
676 intellectual disabilities or autism. The committee must include  
677 at least one licensed and qualified physician, one licensed and  
678 qualified psychologist, and one qualified professional who, at a  
679 minimum, has a master's degree in social work, special  
680 education, or vocational rehabilitation counseling, to examine  
681 the person and to testify at the hearing on the involuntary  
682 admission to residential services.

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

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

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

692 a. Lacks sufficient capacity to give express and informed  
 693 consent to a voluntary application for services pursuant to s.  
 694 393.065 and;

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

700 ~~b.e.~~ Is likely to physically injure others if allowed to  
 701 remain at liberty.

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

703 4. A recommendation on the type of residential placement  
 704 which would be the most appropriate and least restrictive for  
 705 the person; and

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

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

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

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

720 (6) COUNSEL; GUARDIAN AD LITEM.—

721 (a) The person who has the intellectual disability or  
722 autism must be represented by counsel at all stages of the  
723 judicial proceeding. If the person is indigent and cannot afford  
724 counsel, the court shall appoint a public defender at least 20  
725 working days before the scheduled hearing. The person's counsel  
726 shall have full access to the records of the service provider  
727 and the agency. In all cases, the attorney shall represent the  
728 rights and legal interests of the person, regardless of who  
729 initiates the proceedings or pays the attorney ~~attorney's~~ fee.

730 (b) If the attorney, during the course of his or her  
731 representation, reasonably believes that the person who has the  
732 intellectual disability or autism cannot adequately act in his  
733 or her own interest, the attorney may seek the appointment of a  
734 guardian ad litem. A prior finding of incompetency is not  
735 required before a guardian ad litem is appointed pursuant to  
736 this section.

737 (7) HEARING.—

738 (d) The person who has the intellectual disability or  
739 autism must be physically present throughout the entire  
740 proceeding. If the person's attorney believes that the person's  
741 presence at the hearing is not in his or her best interest, the

742 person's presence may be waived once the court has seen the  
743 person and the hearing has commenced.

744 (10) COMPETENCY.—

745 (a) The issue of competency is separate and distinct from  
746 a determination of the appropriateness of involuntary admission  
747 to residential services due to intellectual disability or  
748 autism.

749 (b) The issue of the competency of a person who has an  
750 intellectual disability or autism for purposes of assigning  
751 guardianship shall be determined in a separate proceeding  
752 according to the procedures and requirements of chapter 744. The  
753 issue of the competency of a person who has an intellectual  
754 disability or autism for purposes of determining whether the  
755 person is competent to proceed in a criminal trial shall be  
756 determined in accordance with chapter 916.

757 (12) APPEAL.—

758 (b) The filing of an appeal by the person who has an  
759 intellectual disability or autism stays admission of the person  
760 into residential care. The stay remains in effect during the  
761 pendency of all review proceedings in Florida courts until a  
762 mandate issues.

763 (14) REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO  
764 RESIDENTIAL SERVICES.—

765 (a) If a person is involuntarily admitted to residential  
766 services provided by the agency, the agency shall employ or, if  
767 necessary, contract with a qualified evaluator to conduct a

768 review annually, unless otherwise ordered, to determine the  
769 propriety of the person's continued involuntary admission to  
770 residential services based on the criteria in paragraph (8) (b).  
771 The review shall include an assessment of the most appropriate  
772 and least restrictive type of residential placement for the  
773 person.

774 (b) A placement resulting from an involuntary admission to  
775 residential services must be reviewed by the court at a hearing  
776 annually, unless a shorter review period is ordered at a  
777 previous hearing. The agency shall provide to the court the  
778 completed reviews by the qualified evaluator. The review and  
779 hearing must determine whether the person continues to meet the  
780 criteria in paragraph (8) (b) and, if so, whether the person  
781 still requires involuntary placement in a residential setting  
782 and whether the person is receiving adequate care, treatment,  
783 habilitation, and rehabilitation in the residential setting.

784 (c) The agency shall provide a copy of the review and  
785 reasonable notice of the hearing to the appropriate state  
786 attorney, if applicable, the person's attorney, and the person's  
787 guardian or guardian advocate, if appointed.

788 (d) For purposes of this section, the term "qualified  
789 evaluator" means a psychiatrist licensed under chapter 458 or  
790 chapter 459, or a psychologist licensed under chapter 490, who  
791 has demonstrated to the court an expertise in the diagnosis,  
792 evaluation, and treatment of persons who have intellectual  
793 disabilities.

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

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

800           393.067 Facility licensure.—

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

803           Section 10. Section 393.18, Florida Statutes, is reenacted  
 804 to read:

805           393.18 Comprehensive transitional education program.—A  
 806 comprehensive transitional education program is a group of  
 807 jointly operating centers or units, the collective purpose of  
 808 which is to provide a sequential series of educational care,  
 809 training, treatment, habilitation, and rehabilitation services  
 810 to persons who have developmental disabilities and who have  
 811 severe or moderate maladaptive behaviors. However, this section  
 812 does not require such programs to provide services only to  
 813 persons with developmental disabilities. All such services shall  
 814 be temporary in nature and delivered in a structured residential  
 815 setting, having the primary goal of incorporating the principle  
 816 of self-determination in establishing permanent residence for  
 817 persons with maladaptive behaviors in facilities that are not  
 818 associated with the comprehensive transitional education  
 819 program. The staff shall include behavior analysts and teachers,



820 as appropriate, who shall be available to provide services in  
821 each component center or unit of the program. A behavior analyst  
822 must be certified pursuant to s. 393.17.

823 (1) Comprehensive transitional education programs shall  
824 include a minimum of two component centers or units, one of  
825 which shall be an intensive treatment and educational center or  
826 a transitional training and educational center, which provides  
827 services to persons with maladaptive behaviors in the following  
828 sequential order:

829 (a) Intensive treatment and educational center.—This  
830 component is a self-contained residential unit providing  
831 intensive behavioral and educational programming for persons  
832 with severe maladaptive behaviors whose behaviors preclude  
833 placement in a less restrictive environment due to the threat of  
834 danger or injury to themselves or others. Continuous-shift staff  
835 shall be required for this component.

836 (b) Transitional training and educational center.—This  
837 component is a residential unit for persons with moderate  
838 maladaptive behaviors providing concentrated psychological and  
839 educational programming that emphasizes a transition toward a  
840 less restrictive environment. Continuous-shift staff shall be  
841 required for this component.

842 (c) Community transition residence.—This component is a  
843 residential center providing educational programs and any  
844 support services, training, and care that are needed to assist  
845 persons with maladaptive behaviors to avoid regression to more

846 restrictive environments while preparing them for more  
847 independent living. Continuous-shift staff shall be required for  
848 this component.

849 (d) Alternative living center.—This component is a  
850 residential unit providing an educational and family living  
851 environment for persons with maladaptive behaviors in a  
852 moderately unrestricted setting. Residential staff shall be  
853 required for this component.

854 (e) Independent living education center.—This component is  
855 a facility providing a family living environment for persons  
856 with maladaptive behaviors in a largely unrestricted setting and  
857 includes education and monitoring that is appropriate to support  
858 the development of independent living skills.

859 (2) Components of a comprehensive transitional education  
860 program are subject to the license issued under s. 393.067 to a  
861 comprehensive transitional education program and may be located  
862 on a single site or multiple sites.

863 (3) Comprehensive transitional education programs shall  
864 develop individual education plans for each person with  
865 maladaptive behaviors who receives services from the program.  
866 Each individual education plan shall be developed in accordance  
867 with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34  
868 C.F.R. part 300.

869 (4) For comprehensive transitional education programs, the  
870 total number of residents who are being provided with services  
871 may not in any instance exceed the licensed capacity of 120

872 residents and each residential unit within the component centers  
873 of the program authorized under this section may not in any  
874 instance exceed 15 residents. However, a program that was  
875 authorized to operate residential units with more than 15  
876 residents before July 1, 2015, may continue to operate such  
877 units.

878 Section 11. Paragraph (b) of subsection (1) of section  
879 383.141, Florida Statutes, is amended to read:

880 383.141 Prenatally diagnosed conditions; patient to be  
881 provided information; definitions; information clearinghouse;  
882 advisory council.—

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

884 (b) "Developmental disability" includes Down syndrome and  
885 other developmental disabilities defined by s. 393.063(12) ~~s.~~  
886 ~~393.063(9)~~.

887 Section 12. Paragraph (d) of subsection (2) of section  
888 1002.385, Florida Statutes, is amended to read:

889 1002.385 Florida personal learning scholarship accounts.—

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

891 (d) "Disability" means, for a 3- or 4-year-old child or  
892 for a student in kindergarten to grade 12, autism spectrum  
893 disorder, as defined in the Diagnostic and Statistical Manual of  
894 Mental Disorders, Fifth Edition, published by the American  
895 Psychiatric Association; cerebral palsy, as defined in s.  
896 393.063(6) ~~s. 393.063(4)~~; Down syndrome, as defined in s.  
897 393.063(15) ~~s. 393.063(13)~~; an intellectual disability, as

898 defined in s. 393.063(24) ~~s. 393.063(21)~~; Prader-Willi syndrome,  
899 as defined in s. 393.063(28) ~~s. 393.063(25)~~; or spina bifida, as  
900 defined in s. 393.063(39) ~~s. 393.063(36)~~; for a student in  
901 kindergarten, being a high-risk child, as defined in s.  
902 393.063(23) (a) ~~s. 393.063(20) (a)~~; muscular dystrophy; and  
903 Williams syndrome.

904 Section 13. Contingent upon CS/CS/CS/HB 919 or similar  
905 legislation adopted at the 2016 Regular Session of the  
906 Legislature failing to become law, for the 2016-2017 fiscal  
907 year, the sum of \$623,200 of nonrecurring funds from the General  
908 Revenue Fund is appropriated to the Agency for Persons with  
909 Disabilities to implement s. 393.11, Florida Statutes, as  
910 amended by this act.

911 Section 14. Except as otherwise expressly provided in this  
912 act and except for this section, which shall take effect upon  
913 this act becoming a law, this act shall take effect July 1,  
914 2016.