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603-03455B-09

Proposed Committee Substitute by the Committee on Health and
Human Services Appropriations

A bill to be entitled

An act relating to the Agency for Persons with
Disabilities; amending s. 393.065, F.S.; requiring
that the agency assign and provide priority to clients
waiting for waiver services; specifying the order of
priority; authorizing the agency and the Agency for
Health Care Administration to adopt rules; amending s.
393.0661, F.S.; deleting a provision that permits all
developmental waiver services to be available in all
waiver tiers; deleting a provision that limits an
increase in the number of waiver services until after
a certain date; directing the Agency for Persons with
Disabilities to eliminate redundancies in certain
services and reduce the supported employment services
for certain clients; deleting the expiration date for
a provision relating to the calculation of the amount
of a waiver cost plan adjustment; deleting obsolete
provisions; amending s. 393.23, F.S.; revising how
moneys in trust accounts in developmental disability
centers may be spent; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 393.065,
Florida Statutes, are amended to read:

393.065 Application and eligibility determination.—

(5) Except as otherwise directed by law, the agency shall



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28 assign and provide priority to clients waiting for waiver
29 services in the following order:

30 (a) Category 1, which includes ~~With the exception of~~
31 ~~clients deemed to be in crisis whom the agency shall serve as~~
32 ~~described in rule., the agency shall place at the top of its~~
33 ~~wait list for waiver services those~~

34 (b) Category 2, which includes children on the wait list
35 who are from the child welfare system with an open case in the
36 Department of Children and Family Services' statewide automated
37 child welfare information system, individuals who have been
38 court-ordered to receive services, and clients who are members
39 of the class covered by the Brown versus Bush settlement
40 agreement.

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

43 1. Whose caregivers have a documented condition that is
44 expected to render them unable to provide care within the next
45 12 months and for whom a caregiver is required but no alternate
46 caregiver is available;

47 2. Whose caregivers are 70 years of age or older and for
48 whom a caregiver is required but no alternate caregiver is
49 available;

50 3. At substantial risk of incarceration or court commitment
51 without supports;

52 4. Whose documented behaviors or physical needs place them
53 or their caregivers at risk of serious harm and other supports
54 are not currently available to alleviate the situation;

55 5. Who are identified as ready for discharge within the
56 next year from a state mental health hospital or nursing home



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57 and require a caregiver but for whom no caregiver is available;

58 6. Who are defendants charged with felony offenses who have
59 been determined incompetent to proceed due to retardation or
60 autism and for whom the agency has submitted an evaluation to
61 the court concluding the defendant is unlikely to be restored to
62 competency; and

63 7. Who are expected to graduate within the next 12 months
64 from secondary school and need support to obtain or maintain
65 competitive employment, or to pursue an accredited program of
66 post-secondary education to which they have been accepted.

67 (d) Category 4, which are clients 21 years of age or older
68 who do not meet the criteria for category 1, category 2, or
69 category 3.

70 (e) Category 5, which are clients younger than 21 years of
71 age who do not meet the criteria for category 1, category 2, or
72 category 3.

73 (6) Within category 3, category 4, and category 5, the
74 agency shall maintain a wait list of clients in the order of the
75 date that the client is determined eligible for waiver services.

76 (7) The client, the client's guardian, or the client's
77 family must ensure that accurate contact information is
78 registered with the agency at all times. The agency shall remove
79 from the wait list any individual who cannot be located using
80 the contact information provided to the agency, refuses an offer
81 of waiver enrollment, fails to meet eligibility requirements, or
82 becomes domiciled outside of the state.

83 (8) ~~(6)~~ The agency and the Agency for Health Care
84 Administration may adopt rules specifying application
85 procedures, criteria associated with wait list categories,



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86 procedures for administering the wait list, and eligibility
87 criteria as needed to administer this section.

88 Section 2. Subsections (3) and (6) of section 393.0661,
89 Florida Statutes, are amended to read:

90 393.0661 Home and community-based services delivery system;
91 comprehensive redesign.—The Legislature finds that the home and
92 community-based services delivery system for persons with
93 developmental disabilities and the availability of appropriated
94 funds are two of the critical elements in making services
95 available. Therefore, it is the intent of the Legislature that
96 the Agency for Persons with Disabilities shall develop and
97 implement a comprehensive redesign of the system.

98 (3) The Agency for Health Care Administration, in
99 consultation with the agency, shall seek federal approval and
100 implement a four-tiered waiver system to serve eligible clients
101 through ~~with developmental disabilities in the developmental~~
102 ~~disabilities and family and supported living waivers.~~ The agency
103 shall assign all clients receiving services through the
104 developmental disabilities waiver to a tier based on a valid
105 assessment instrument, client characteristics, and other
106 appropriate assessment methods. ~~All services covered under the~~
107 ~~current developmental disabilities waiver shall be available to~~
108 ~~all clients in all tiers where appropriate, except as otherwise~~
109 ~~provided in this subsection or in the General Appropriations~~
110 ~~Act.~~

111 (a) Tier one is ~~shall be~~ limited to clients who have
112 service needs that cannot be met in tier two, three, or four for
113 intensive medical or adaptive needs and that are essential for
114 avoiding institutionalization, or who possess behavioral



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115 problems that are exceptional in intensity, duration, or
116 frequency and present a substantial risk of harm to themselves
117 or others.

118 (b) Tier two is ~~shall be~~ limited to clients whose service
119 needs include a licensed residential facility and who are
120 authorized to receive a moderate level of support for standard
121 residential habilitation services or a minimal level of support
122 for behavior focus residential habilitation services, or clients
123 in supported living who receive more ~~greater~~ than 6 hours a day
124 of in-home support services. Total annual expenditures under
125 tier two may not exceed \$55,000 per client each year.

126 (c) Tier three includes ~~shall include~~, but is not limited
127 to, clients requiring residential placements, clients in
128 independent or supported living situations, and clients who live
129 in their family home. Total annual expenditures under tier three
130 may not exceed \$35,000 per client each year.

131 (d) Tier four is the family and supported living waiver and
132 includes. ~~Tier four shall include~~, but is not limited to,
133 clients in independent or supported living situations and
134 clients who live in their family home. ~~An increase to the number~~
135 ~~of services available to clients in this tier shall not take~~
136 ~~effect prior to July 1, 2009~~. Total annual expenditures under
137 tier four may not exceed \$14,792 per client each year.

138 (e) The Agency for Health Care Administration shall also
139 seek federal approval to provide a consumer-directed option for
140 persons with developmental disabilities which corresponds to the
141 funding levels in each of the waiver tiers. The agency shall
142 implement the four-tiered waiver system beginning with tiers
143 one, three, and four and followed by tier two. The agency and



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144 the Agency for Health Care Administration may adopt any rules
145 necessary to administer this subsection.

146 (f) The agency shall seek federal waivers and amend
147 contracts as necessary to make changes to services defined in
148 federal waiver programs administered by the agency as follows:

149 1. Supported living coaching services may ~~shall~~ not exceed
150 20 hours per month for persons who also receive in-home support
151 services.

152 2. Limited support coordination services is ~~shall be~~ the
153 only type of support coordination service that may be provided
154 to persons under the age of 18 who live in the family home.

155 3. Personal care assistance services are ~~shall be~~ limited
156 to ~~no more than~~ 180 hours per calendar month and may ~~shall~~ not
157 include rate modifiers. Additional hours may be authorized for
158 persons who have intensive physical, medical, or adaptive needs
159 if such hours are essential for avoiding institutionalization.

160 4. Residential habilitation services are ~~shall be~~ limited
161 to 8 hours per day. Additional hours may be authorized for
162 persons who have intensive medical or adaptive needs and if such
163 hours are essential for avoiding institutionalization, or for
164 persons who possess behavioral problems that are exceptional in
165 intensity, duration, or frequency and present a substantial risk
166 of harming themselves or others. This restriction shall be in
167 effect until the four-tiered waiver system is fully implemented.

168 5. Chore services, nonresidential support services, and
169 homemaker services are ~~shall be~~ eliminated. The agency shall
170 expand the definition of in-home support services to allow
171 ~~enable~~ the service provider ~~of the service~~ to include activities
172 previously provided in the ~~these~~ eliminated services.



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173 6. Massage therapy and psychological assessment services
174 are ~~shall be~~ eliminated.

175 7. The agency shall conduct supplemental cost plan reviews
176 to verify the medical necessity of authorized services for plans
177 that have increased by more than 8 percent during either of the
178 2 preceding fiscal years.

179 8. The agency shall implement a consolidated residential
180 habilitation rate structure to increase savings to the state
181 through a more cost-effective payment method and establish
182 uniform rates for intensive behavioral residential habilitation
183 services.

184 9. Pending federal approval, the agency may ~~is authorized~~
185 ~~to~~ extend current support plans for clients receiving services
186 under Medicaid waivers for 1 year beginning July 1, 2007, or
187 from the date approved, whichever is later. Clients who have a
188 substantial change in circumstances which threatens their health
189 and safety may be reassessed during this year in order to
190 determine the necessity for a change in their support plan.

191 10. The agency shall eliminate redundancies and
192 duplications between in-home support services, companion
193 services, personal care services, and supported living coaching
194 by limiting or consolidating such services.

195 11. The agency shall reduce the intensity and frequency of
196 supported employment services to clients in stable employment
197 situations who have a documented history of at least 3 years'
198 employment with the same company or in the same industry.

199 (6) ~~Effective January 1, 2009, and~~ Except as otherwise
200 provided in this section, a client ~~an individual~~ served by the
201 home and community-based services waiver or the family and



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202 supported living waiver funded through the agency ~~for Persons~~
203 ~~with Disabilities~~ shall have his or her cost plan adjusted to
204 reflect the amount of expenditures for the previous state fiscal
205 year plus 5 percent if such amount is less than the client's
206 ~~individual's~~ existing cost plan. The agency ~~for Persons with~~
207 ~~Disabilities~~ shall use actual paid claims for services provided
208 during the previous fiscal year that are submitted by October 31
209 to calculate the revised cost plan amount. If the client ~~an~~
210 ~~individual~~ was not served during ~~for~~ the ~~entire~~ previous state
211 fiscal year or there was any single change in the cost plan
212 amount of more than 5 percent during the previous state fiscal
213 year, the agency shall set the cost plan amount at an estimated
214 annualized expenditure amount plus 5 percent. The agency shall
215 estimate the annualized expenditure amount by calculating the
216 average of monthly expenditures, beginning in the fourth month
217 after the client ~~individual~~ enrolled or the cost plan was
218 changed by more than 5 percent and ending on August 31 ~~with~~
219 ~~August 31, 2008~~, and multiplying the average by 12. If ~~In the~~
220 ~~event that~~ at least 3 months of actual expenditure data are not
221 available to estimate annualized expenditures, the agency may
222 not rebase a cost plan pursuant to this subsection. ~~This~~
223 ~~subsection expires June 30, 2009, unless reenacted by the~~
224 ~~Legislature before that date.~~

225 Section 3. Subsection (1) of section 393.23, Florida
226 Statutes, is amended to read:

227 393.23 Developmental disabilities centers; trust accounts.—
228 All receipts from the operation of canteens, vending machines,
229 hobby shops, sheltered workshops, activity centers, farming
230 projects, and other like activities operated in a developmental



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231 disabilities center, and moneys donated to the center, must be
232 deposited in a trust account in any bank, credit union, or
233 savings and loan association authorized by the State Treasury as
234 a qualified depository to do business in this state, if the
235 moneys are available on demand.

236 (1) Moneys in the trust account must be expended for the
237 benefit, education, or ~~and~~ welfare of clients. However, if
238 specified, moneys that are donated to the center must be
239 expended in accordance with the intentions of the donor. Trust
240 account money may not be used for the benefit of agency
241 ~~employees of the agency~~ or to pay the wages of such employees.
242 The welfare of ~~the~~ clients includes the expenditure of funds for
243 the purchase of items for resale at canteens or vending
244 machines, and for the establishment of, maintenance of, and
245 operation of canteens, hobby shops, recreational or
246 entertainment facilities, sheltered workshops, activity centers,
247 farming projects, or other like facilities or programs
248 established at the center for the benefit of clients.

249 Section 4. This act shall take effect upon becoming a law.