

By Senator Peaden

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1 A bill to be entitled
2 An act relating to the Prepaid Developmental
3 Disabilities Savings Program; creating s. 393.507,
4 F.S.; providing legislative findings and intent;
5 providing definitions; creating the Prepaid
6 Developmental Disabilities Savings Program; providing
7 for administration and management of the savings
8 program by the Florida Prepaid College Board in
9 conjunction with the Stanley G. Tate Florida Prepaid
10 College Program; providing for membership on the board
11 for purposes of certain meetings; providing that the
12 savings program shall be supported by the direct-
13 support organization established by the Florida
14 Prepaid College Board; providing requirements for
15 administration of the savings program; requiring a
16 prepaid contract plan to provide for advance payment
17 for eligible services for a qualified beneficiary and
18 an investment plan to provide for the investment of
19 funds by a benefactor for a qualified beneficiary;
20 providing requirements for contract pricing and
21 redemption value; providing requirements that must be
22 met prior to implementation of the savings program;
23 requiring funds for the savings program to be
24 deposited in a separate account in the Florida Prepaid
25 College Trust Fund; providing that the prepaid
26 contract fund and the investment fund shall consist of
27 certain moneys; providing requirements for the use,
28 investment, and maintenance of moneys in savings
29 program accounts; requiring comprehensive asset

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30 allocation plans; requiring annual reports that
31 provide an accounting of the prepaid contract plan and
32 the investment plan; requiring annual audits;
33 providing for initial enrollment in the savings
34 program; creating the Prepaid Services for Parents of
35 Children with Developmental Disabilities Study Group;
36 requiring the study group to make recommendations
37 regarding the implementation of, and enrollment in,
38 the savings program; providing membership of the study
39 group; providing for abolishment of the study group;
40 providing severability; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 393.507, Florida Statutes, is created to
45 read:

46 393.507 Prepaid Developmental Disabilities Savings
47 Program.—

48 (1) (a) The Legislature recognizes the opportunity to
49 provide increased access to services, at the discretion of the
50 family, for those families who have children with developmental
51 disabilities. The years after a student with a developmental
52 disability ages out of the education system are critical for
53 learning and transition. The Legislature finds that the creation
54 of a savings program for families with children who have
55 developmental disabilities can offer accessibility to services,
56 regardless of income, insurance, or Medicaid eligibility.

57 (b) It is the intent of the Legislature that a prepaid
58 developmental disabilities savings program consisting of a

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59 prepaid contract plan and an investment plan be established
60 through which many of the costs associated with children with
61 developmental disabilities who age out of the education system
62 may be paid or saved for in advance. It is the intent that the
63 prepaid contract plan be interchangeable with an advance payment
64 plan of the Stanley G. Tate Florida Prepaid College Program,
65 thereby providing students with developmental disabilities the
66 ability to receive the same value and contract pricing offered
67 through the prepaid college program. It is further the intent
68 that the investment plan be established as a supplement or an
69 alternative to the prepaid contract plan to allow benefactors to
70 place funds in a designated trust fund savings account from
71 which future needs of the beneficiary can be met. Finally, it is
72 the intent that a prepaid developmental disabilities savings
73 program be conducted in a manner to maximize program efficiency
74 and effectiveness.

75 (2) For the purposes of this section, the term:

76 (a) "Benefactor" means any person making a deposit,
77 payment, contribution, gift, or other expenditure into the
78 investment plan of a qualified beneficiary.

79 (b) "Board" means the Florida Prepaid College Board
80 pursuant to s. 1009.971.

81 (c) "Developmental disability" means a disability defined
82 in s. 393.063(9) or a severe, chronic disability that:

83 1. Is attributable to a mental or physical impairment or a
84 combination of those impairments.

85 2. Occurs before the individual reaches 18 years of age.

86 3. Is likely to continue indefinitely.

87 4. Results in substantial functional limitations in three

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88 or more of the following areas of major life activity: self-
89 care, receptive and expressive language, learning, mobility,
90 self-direction, capacity for independent living, or economic
91 self-sufficiency.

92 5. Reflects the individual's need for a combination and
93 sequence of special, interdisciplinary, or generic services,
94 individualized supports, or other forms of assistance that are
95 of lifelong or extended duration and are individually planned
96 and coordinated.

97 6. For a child younger than 10 years of age, is likely to
98 meet the criteria in subparagraphs 1.-5. without intervention.

99 (d) "Eligible services" means:

100 1. Specific services that may include respite care,
101 provision of rehabilitation and habilitation services, assistive
102 technology, personal assistance services, counseling, support
103 for families headed by aging caregivers, vehicular and home
104 modifications, and assistance with extraordinary expenses
105 associated with the needs of individuals with developmental
106 disabilities.

107 2. Health-related services that may include medical,
108 dental, mental health, and other human and social services to
109 enhance the well-being of the individual, as well as durable and
110 consumable medical supplies.

111 3. Housing-related services that may result in individuals
112 with developmental disabilities having access to and use of
113 housing and housing supports and services in their communities,
114 including assistance related to renting, owning, or modifying an
115 apartment or home.

116 4. Education-related services such as attendance in a

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117 training or educational setting, technology, and personnel-
118 related services that assist in obtaining and maximizing the
119 educational experience.

120 5. Employment-related services that are necessary to assist
121 the individual in meeting essential job functions through
122 technology, personnel-related expenses, and transportation
123 expenses.

124 (e) "Internal Revenue Code" means the Internal Revenue Code
125 of 1986, as defined in s. 220.03(1), and regulations adopted
126 pursuant thereto.

127 (f) "Investment fund" means the fund within the Florida
128 Prepaid College Trust Fund into which moneys belonging to the
129 investment plan are deposited and held.

130 (g) "Investment plan" means the plan under the Prepaid
131 Developmental Disabilities Savings Program that provides the
132 opportunity for a benefactor, in a self-directed manner, to
133 deposit funds on behalf of a qualified beneficiary into a
134 nonguaranteed fund that is among the specific fund options
135 provided by the Florida Prepaid College Board.

136 (h) "Prepaid college program" means the Stanley G. Tate
137 Florida Prepaid College Program pursuant to s. 1009.98.

138 (i) "Prepaid contract fund" means the fund within the
139 Florida Prepaid College Trust Fund into which moneys belonging
140 to the prepaid contract plan are deposited and held.

141 (j) "Prepaid contract plan" means the advance payment plan
142 under the Prepaid Developmental Disabilities Savings Program
143 that provides the opportunity for a purchaser to enter into a
144 guaranteed value advance payment contract to provide for future
145 college enrollment and attendance or other eligible services for

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146 a qualified beneficiary.

147 (k) "Purchaser" means a parent or grandparent who is a
148 resident of the state who makes or is obligated to make advance
149 payments for eligible services in accordance with a prepaid
150 contract plan for his or her child or grandchild or a
151 nonresident, noncustodial parent who makes or is obligated to
152 make advance payments for eligible services in accordance with a
153 prepaid contract plan for his or her child.

154 (l) "Qualified beneficiary" means a person with a
155 developmental disability who is a resident of the state and who
156 is under 22 years of age at the time a purchaser enters into an
157 advance payment contract or at the time a benefactor funds an
158 investment plan on his or her behalf.

159 (m) "Savings program" means the Prepaid Developmental
160 Disabilities Savings Program.

161 (n) "Trust fund" means the Florida Prepaid College Trust
162 Fund pursuant to s. 1009.972.

163 (3) (a) There is created the Prepaid Developmental
164 Disabilities Savings Program to be administered and managed in
165 conjunction with the Stanley G. Tate Florida Prepaid College
166 Program by the Florida Prepaid College Board. The director of
167 the Agency for Persons with Disabilities and one member
168 appointed by the Governor shall serve as members of the board
169 for the sole purpose of meetings conducted for the
170 implementation, management, and execution of the savings
171 program.

172 (b) The board shall administer the savings program
173 according to s. 1009.98, and the savings program shall be
174 supported by the direct-support organization of the prepaid

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175 college program pursuant to s. 1009.983.

176 (c) The savings program shall provide a prepaid contract
177 plan through which the costs of eligible services for
178 individuals with developmental disabilities may be paid in
179 advance and an investment plan through which a benefactor may
180 deposit funds for future needs of an individual with
181 developmental disabilities.

182 (d) The savings program shall provide education and
183 training opportunities and any other eligible services for
184 individuals with developmental disabilities to advance their
185 goals and become contributing members of society.

186 (e) Advance payment contracts offered under the savings
187 program shall inform the purchaser of the potential impact on
188 eligibility for Medicaid or other state or federally funded
189 programs.

190 (4) The board shall administer the savings program to
191 promote and enhance the affordability of services for
192 individuals with developmental disabilities and to enable
193 persons to contribute funds that are combined and invested to
194 pay the subsequent expenses for a designated beneficiary. Such
195 contributions shall be combined and invested in a manner that
196 yields, at a minimum, sufficient interest to generate the
197 difference between the prepaid amount and the accrued amount at
198 the time of actual disbursement, not to exceed the redemption
199 value of the advance payment contract. The contract pricing and
200 redemption value for the prepaid contract plan shall be equal or
201 comparable to the pricing options and redemption values
202 available under the prepaid college program. Individuals with
203 developmental disabilities who attend college may use the

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204 benefits of the prepaid contract plan, which will provide value
205 equal to that of a prepaid college program plan. Individuals
206 with a prepaid college program plan may convert the plan to a
207 prepaid contract plan under the savings program in the event the
208 beneficiary meets eligibility requirements for the savings
209 program.

210 (5) The board may not implement the savings program until
211 it has obtained all of the following:

212 (a) A written opinion from a qualified member of the United
213 States Patent Bar indicating that the implementation of the
214 savings program or the operation of the savings program will not
215 knowingly infringe upon any patent or copyright specifically
216 related to the financing of expenses.

217 (b) A written opinion of qualified counsel specializing in
218 federal securities law that the savings program and the offering
219 of participation in the savings program does not violate federal
220 securities law.

221 (c) A written opinion from the board's litigation counsel
222 indicating that the implementation or operation of the savings
223 program will not adversely impact any pending litigation against
224 the board.

225 (6) (a) Funds for the savings program shall be deposited in
226 a separate account in the Florida Prepaid College Trust Fund
227 and, within that account, the moneys shall be segregated into
228 two separate funds, the prepaid contract fund and the investment
229 fund.

230 (b) The prepaid contract fund shall consist of, but not be
231 limited to, moneys acquired from governmental or private sources
232 for the prepaid contract plan, moneys remitted in accordance

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233 with prepaid contract plans, or state appropriations. Dividends,
234 interest, and gains accruing to the prepaid contract fund shall
235 increase the total funds available for the prepaid contract
236 plan. If dividends, interest, and gains for the prepaid contract
237 fund exceed the amount necessary for program administration and
238 disbursements, the board may designate an additional percentage
239 of the prepaid contract fund to serve as a contingency fund.

240 (c) The investment fund shall consist of, but not be
241 limited to, moneys acquired from governmental or private sources
242 for the investment plan, moneys remitted in accordance with
243 investment plans, or state appropriations. The amounts on
244 deposit in the investment fund shall remain in the fund and
245 shall be available solely for carrying out the purposes of the
246 investment plan.

247 (d) Any balance in the prepaid contract fund or the
248 investment fund at the end of a fiscal year shall remain in the
249 respective fund and shall be available for carrying out the
250 purposes of the fund and the direct-support organization. Moneys
251 in the prepaid contract fund or the investment fund shall be
252 exempt from the investment requirements pursuant to s. 17.57.
253 All funds deposited in the prepaid contract fund may be invested
254 pursuant to s. 215.47. Any funds of the direct-support
255 organization shall be exempt from the provisions of this
256 section.

257 (e) The assets of the prepaid contract fund and the
258 investment fund shall be maintained, invested, and expended
259 solely for the purposes of the prepaid contract plan and the
260 investment plan, respectively, and shall not be loaned,
261 transferred, or otherwise used by the state for any purpose

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262 other than the purposes of this section.

263 (f) All services purchased with funds from the prepaid
264 contract fund or the investment fund shall be purchased from
265 providers who have been certified, licensed, or otherwise
266 approved by the state.

267 (7) A benefactor retains ownership of all amounts on
268 deposit in his or her account with the savings program. Earnings
269 derived from investment of the contributions shall be considered
270 to be held in trust in the same manner as contributions, except
271 as applied for purposes of the designated beneficiary and for
272 purposes of maintaining and administering the savings program.

273 (8) All amounts attributable to penalties imposed by the
274 board for, but not limited to, delinquent payments or entering
275 into a contract under a fraudulent basis shall be used for
276 purposes of the savings program or as required by the Internal
277 Revenue Code, and amounts received other than contributions
278 shall be property of the savings program. Proceeds from
279 penalties shall remain with the savings program and may be used
280 for any costs or purposes of the savings program or used as
281 required by the Internal Revenue Code.

282 (9) The assets of the savings program shall be continuously
283 invested and reinvested in a manner consistent with the purposes
284 of the savings program, expended on expenses incurred by the
285 operation and management of the savings program, or refunded to
286 the purchaser under the conditions provided in the contract. The
287 board is not required to invest directly in obligations of the
288 state or any political subdivision of the state or in any
289 investment or other fund administered by the state.

290 (10) The board shall establish separate comprehensive asset

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291 allocation plans for the prepaid contract fund and the
292 investment fund, each subject to the approval of the State Board
293 of Administration. Each comprehensive asset allocation plan
294 shall specify the investment policies to be utilized by the
295 board in its administration of each respective fund. The board
296 may place assets of each fund in investment products pursuant to
297 the comprehensive asset allocation plan for each respective fund
298 and in such proportions as may be designated or approved under
299 the savings program. Such products shall be underwritten and
300 offered in compliance with the applicable federal and state
301 laws, regulations, and rules by persons authorized by applicable
302 federal and state authorities. A purchaser may not direct the
303 investment of his or her contribution to the prepaid contract
304 plan. A benefactor or designated beneficiary may not direct the
305 investment of any contributions to the investment plan other
306 than to the specific fund options provided by the board, if any.
307 Board members and employees of the board are not prohibited from
308 participating in the savings program by virtue of their
309 fiduciary responsibilities as members of the board or official
310 duties as employees of the board.

311 (11) On or before March 31 of each year, the board shall
312 prepare or cause to be prepared separate reports setting forth
313 in appropriate detail an accounting of the prepaid contract plan
314 and the investment plan that includes a description of the
315 financial condition of each respective plan at the close of the
316 fiscal year. The board shall submit copies of the reports to the
317 Governor, the President of the Senate, the Speaker of the House
318 of Representatives, and the minority leaders of the Senate and
319 the House of Representatives and shall make the report for the

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320 prepaid contract plan available to each purchaser and designated
321 beneficiary and the report for the investment plan available to
322 each benefactor and designated beneficiary. The accounts of the
323 funds for the prepaid contract plan and the investment plan
324 shall be subject to annual audits by the Auditor General.

325 (12) Nothing in the savings program shall be construed as a
326 promise or guarantee that a qualified beneficiary or a
327 designated beneficiary will become Medicaid eligible, receive
328 permanent services, be enrolled in the Medicaid waiver program,
329 or receive any other state or federal assistance.

330 (13) Initial enrollment in the savings program shall begin
331 no later than July 1, 2011.

332 Section 2. (1) The Prepaid Services for Parents of Children
333 with Developmental Disabilities Study Group is created to make
334 recommendations to the Florida Prepaid College Board, pursuant
335 to s. 1009.971, Florida Statutes, regarding the implementation
336 of, and enrollment in, the Prepaid Developmental Disabilities
337 Savings Program created under s. 393.507, Florida Statutes.

338 (2) The study group shall consist of the following:

339 (a) A member of the House of Representatives appointed by
340 the Speaker of the House of Representatives.

341 (b) A member of the Senate appointed by the President of
342 the Senate.

343 (c) The director of the Agency for Persons with
344 Disabilities or his or her designee.

345 (d) The director of the Division of Vocational
346 Rehabilitation or his or her designee.

347 (e) The executive director of the State Board of
348 Administration or his or her designee.

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349 (f) The Commissioner of Education or his or her designee.

350 (g) The executive director of The Arc of Florida or his or
351 her designee.

352 (h) An Arc of Florida family board member appointed by the
353 executive director of The Arc of Florida.

354 (i) The chair of the Family Care Council Florida or his or
355 her designee.

356 (j) A parent representative from the Family Care Council
357 Florida appointed by the chair of the Family Care Council
358 Florida.

359 (3) (a) The Agency for Persons with Disabilities shall
360 provide administrative support to the study group.

361 (b) Members of the study group shall serve without
362 compensation but are entitled to reimbursement for per diem and
363 travel expenses as provided in s. 112.061, Florida Statutes.

364 (4) The study group shall continue until enrollment in the
365 Prepaid Developmental Disabilities Savings Program has
366 commenced, at which time the study group is abolished.

367 Section 3. If any provision of this act or the application
368 thereof to any person or circumstance is held invalid, the
369 invalidity shall not affect other provisions or applications of
370 the act which can be given effect without the invalid provision
371 or application, and to this end the provisions of this act are
372 declared severable.

373 Section 4. This act shall take effect July 1, 2010.