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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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04/06/2010 10:18 AM

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Senator Peaden moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (a), (b), (c), (d), and (f) of  
subsection (3) of section 393.0661, Florida Statutes, are  
amended to read:

393.0661 Home and community-based services delivery system;  
comprehensive redesign.—The Legislature finds that the home and  
community-based services delivery system for persons with  
developmental disabilities and the availability of appropriated  
funds are two of the critical elements in making services  
available. Therefore, it is the intent of the Legislature that



649486

14 the Agency for Persons with Disabilities shall develop and  
15 implement a comprehensive redesign of the system.

16 (3) The Agency for Health Care Administration, in  
17 consultation with the agency, shall seek federal approval and  
18 implement a four-tiered waiver system to serve eligible clients  
19 through the developmental disabilities and family and supported  
20 living waivers. The agency shall assign all clients receiving  
21 services through the developmental disabilities waiver to a tier  
22 based on a valid assessment instrument, client characteristics,  
23 and other appropriate assessment methods.

24 (a) Tier one is limited to clients who have service needs  
25 that cannot be met in tier two, three, or four for intensive  
26 medical or adaptive needs and that are essential for avoiding  
27 institutionalization, or who possess behavioral problems that  
28 are exceptional in intensity, duration, or frequency and present  
29 a substantial risk of harm to themselves or others. Total annual  
30 expenditures under tier one may not exceed \$120,000 per client  
31 each year.

32 (b) Tier two is limited to clients whose service needs  
33 include a licensed residential facility and who are authorized  
34 to receive a moderate level of support for standard residential  
35 habilitation services or a minimal level of support for behavior  
36 focus residential habilitation services, or clients in supported  
37 living who receive more than 6 hours a day of in-home support  
38 services. Total annual expenditures under tier two may not  
39 exceed \$49,500 ~~\$55,000~~ per client each year.

40 (c) Tier three includes, but is not limited to, clients  
41 requiring residential placements, clients in independent or  
42 supported living situations, and clients who live in their



649486

43 family home. Total annual expenditures under tier three may not  
44 exceed \$31,500 ~~\$35,000~~ per client each year.

45 (d) Tier four is the family and supported living waiver and  
46 includes, but is not limited to, clients in independent or  
47 supported living situations and clients who live in their family  
48 home. Total annual expenditures under tier four may not exceed  
49 \$13,313 ~~\$14,792~~ per client each year.

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

53 1. Supported living coaching services may not exceed 20  
54 hours per month for persons who also receive in-home support  
55 services.

56 2. Limited support coordination services is the only type  
57 of support coordination service that may be provided to persons  
58 under the age of 18 who live in the family home.

59 3. Personal care assistance services are limited to 180  
60 hours per calendar month and may not include rate modifiers.  
61 Additional hours may be authorized for persons who have  
62 intensive physical, medical, or adaptive needs if such hours are  
63 essential for avoiding institutionalization.

64 4. Residential habilitation services are limited to 8 hours  
65 per day. Additional hours may be authorized for persons who have  
66 intensive medical or adaptive needs and if such hours are  
67 essential for avoiding institutionalization, or for persons who  
68 possess behavioral problems that are exceptional in intensity,  
69 duration, or frequency and present a substantial risk of harming  
70 themselves or others. This restriction shall be in effect until  
71 the four-tiered waiver system is fully implemented.



649486

72           5. Chore services, nonresidential support services, and  
73 homemaker services are eliminated. The agency shall expand the  
74 definition of in-home support services to allow the service  
75 provider to include activities previously provided in these  
76 eliminated services.

77           6. Massage therapy, medication review, behavior assistant  
78 services provided in a standard or behavior-focus group home,  
79 and psychological assessment services are eliminated.

80           7. The agency shall conduct supplemental cost plan reviews  
81 to verify the medical necessity of authorized services for plans  
82 that have increased by more than 8 percent during either of the  
83 2 preceding fiscal years.

84           8. The agency shall implement a consolidated residential  
85 habilitation rate structure to increase savings to the state  
86 through a more cost-effective payment method and establish  
87 uniform rates for intensive behavioral residential habilitation  
88 services.

89           9. Pending federal approval, the agency may extend current  
90 support plans for clients receiving services under Medicaid  
91 waivers for 1 year beginning July 1, 2007, or from the date  
92 approved, whichever is later. Clients who have a substantial  
93 change in circumstances which threatens their health and safety  
94 may be reassessed during this year in order to determine the  
95 necessity for a change in their support plan.

96           10. The agency shall develop a plan to eliminate  
97 redundancies and duplications between in-home support services,  
98 companion services, personal care services, and supported living  
99 coaching by limiting or consolidating such services.

100           11. The agency shall develop a plan to reduce the intensity



649486

101 and frequency of supported employment services to clients in  
102 stable employment situations who have a documented history of at  
103 least 3 years' employment with the same company or in the same  
104 industry.

105 Section 2. Section 393.0662, Florida Statutes, is created  
106 to read:

107 393.0662 Individual budgets for delivery of home and  
108 community-based services; iBudget system established.—The  
109 Legislature finds that improved financial management of the  
110 existing home and community-based Medicaid waiver program is  
111 necessary to avoid deficits that impede the provision of  
112 services to individuals who are on the waiting list for  
113 enrollment in the program. The Legislature further finds that  
114 clients and their families should have greater flexibility to  
115 choose the services that best allow them to live in their  
116 community within the limits of an established budget. Therefore,  
117 the Legislature intends that the agency, in consultation with  
118 the Agency for Health Care Administration, develop and implement  
119 a comprehensive redesign of the service delivery system using  
120 individual budgets as the basis for allocating the funds  
121 appropriated for the home and community-based services Medicaid  
122 waiver program among eligible enrolled clients. The service  
123 delivery system that uses individual budgets shall be called the  
124 iBudget system.

125 (1) The agency shall establish an individual budget,  
126 referred to as an iBudget, for each individual served by the  
127 home and community-based services Medicaid waiver program. The  
128 funds appropriated to the agency shall be allocated through the  
129 iBudget system to eligible, Medicaid-enrolled clients. The



649486

130 iBudget system shall be designed to provide for: enhanced client  
131 choice within a specified service package; appropriate  
132 assessment strategies; an efficient consumer budgeting and  
133 billing process that includes reconciliation and monitoring  
134 components; a redefined role for support coordinators which  
135 avoids potential conflicts of interest; a flexible and  
136 streamlined service review process; and a methodology and  
137 process that ensures the equitable allocation of available funds  
138 to each client based on the client's level of need, as  
139 determined by the variables in the allocation algorithm.

140 (a) In developing each client's iBudget, the agency shall  
141 use an allocation algorithm and methodology. The algorithm shall  
142 use variables that have been determined by the agency to have a  
143 statistically validated relationship to the client's level of  
144 need for services provided through the home and community-based  
145 services Medicaid waiver program. The algorithm and methodology  
146 may consider individual characteristics, including, but not  
147 limited to, a client's age and living situation, information  
148 from a formal assessment instrument that the agency determines  
149 is valid and reliable, and information from other assessment  
150 processes.

151 (b) The allocation methodology shall provide the algorithm  
152 that determines the amount of funds allocated to a client's  
153 iBudget. The agency may approve an increase in the amount of  
154 funds allocated, as determined by the algorithm, based on the  
155 client having:

156 1. An extraordinary need that would place the health and  
157 safety of the client, the client's caregiver, or the public in  
158 immediate, serious jeopardy unless the increase is approved. An



649486

159 extraordinary need may include, but is not limited to:

160 a. A documented history of significant, potentially life-  
161 threatening behaviors, such as recent attempts at suicide,  
162 arson, nonconsensual sexual behavior, or self-injurious behavior  
163 requiring medical attention;

164 b. A complex medical condition that requires active  
165 intervention by a licensed nurse on an ongoing basis which  
166 cannot be taught or delegated to a nonlicensed person;

167 c. A chronic co-morbid condition. As used in this  
168 subparagraph, the term "co-morbid condition" means a medical  
169 condition existing simultaneously but independently along with  
170 another medical condition in a patient; or

171 d. A need for total physical assistance with activities  
172 such as eating, bathing, toileting, grooming, and personal  
173 hygiene.

174  
175 However, the presence of an extraordinary need alone does not  
176 warrant an increase in the amount of funds allocated to a  
177 client's iBudget as determined by the algorithm.

178 2. A significant need for one-time or temporary support or  
179 services that, if not provided, would place the health and  
180 safety of the client, the client's caregiver, or the public in  
181 serious jeopardy, unless the increase, as determined by the  
182 total of the algorithm and any adjustments based on  
183 subparagraphs 1. and 3., is approved. A significant need may  
184 include, but is not limited to, the provision of environmental  
185 modifications, durable medical equipment, services to address  
186 the temporary loss of support from a caregiver, or special  
187 services or treatment for a serious temporary condition when the



649486

188 service or treatment is expected to ameliorate the underlying  
189 condition. As used in this subparagraph, the term "temporary"  
190 means a period of less than 12 continuous months.

191 3. A significant increase in the need for services after  
192 the beginning of the service plan year which would place the  
193 health and safety of the client, the client's caregiver, or the  
194 public in serious jeopardy because of substantial changes in the  
195 client's circumstances, including, but not limited to, permanent  
196 or long-term loss or incapacity of a caregiver, loss of services  
197 authorized under the state Medicaid plan due to a change in age,  
198 or a significant change in medical or functional status which  
199 requires the provision of additional services on a permanent or  
200 long-term basis and which cannot be accommodated within the  
201 client's current iBudget. As used in this subparagraph, the term  
202 "long-term" means a period of 12 or more continuous months.

203  
204 The agency shall reserve portions of the appropriation for the  
205 home and community-based services Medicaid waiver program for  
206 adjustments required pursuant to this paragraph and may use the  
207 services of an independent actuary in determining the amount of  
208 the portions to be reserved.

209 (c) A client's iBudget shall be the total of the amount  
210 determined by the algorithm and any additional funding provided  
211 pursuant to paragraph (b). A client's annual expenditures for  
212 home and community-based services Medicaid waiver services may  
213 not exceed the limits of his or her iBudget. The total of a  
214 client's projected annual iBudget expenditures may not exceed  
215 the agency's appropriation for waiver services.

216 (2) The Agency for Health Care Administration, in





649486

217 consultation with the agency, shall seek federal approval to  
218 amend current waivers, request a new waiver, and amend contracts  
219 as necessary to implement the iBudget system to serve eligible,  
220 enrolled clients through the home and community-based services  
221 Medicaid waiver program and the Consumer-Directed Care Plus  
222 Program.

223 (3) The agency shall provide for the transition of all  
224 eligible, enrolled clients to the iBudget system. The agency may  
225 gradually phase in the iBudget system.

226 (a) While the agency phases in the iBudget system, the  
227 agency may continue to serve eligible, enrolled clients under  
228 the four-tiered waiver system established under s. 393.065 while  
229 those clients await the transition to the iBudget system.

230 (b) The agency shall design the phase-in process to ensure  
231 that a client does not experience more than one-half of any  
232 expected overall increase or decrease to his or her existing  
233 annualized cost plan during the first year that the client is  
234 provided an iBudget due solely to the transition to the iBudget  
235 system.

236 (4) A client must use all available services authorized  
237 under the state Medicaid plan, school-based services, private  
238 insurance, and other benefits and use any other resources that  
239 are available to the client before using funds from his or her  
240 iBudget to pay for support and services.

241 (5) Rates for any or all services established under rules  
242 of the Agency for Health Care Administration shall be designated  
243 as the maximum rather than a fixed amount for individuals who  
244 receive an iBudget, except for services specifically identified  
245 in those rules which the agency determines are not appropriate



649486

246 for negotiation, including, but not limited to, residential  
247 habilitation services.

248 (6) The agency shall ensure that clients and caregivers  
249 have access to training and education to inform them about the  
250 iBudget system and enhance their ability for self-direction.  
251 Such training shall be offered in a variety of formats and, at a  
252 minimum, shall address the policies and processes of the iBudget  
253 system; the roles and responsibilities of consumers, caregivers,  
254 waiver support coordinators, providers, and the agency;  
255 information available to help the client make decisions  
256 regarding the iBudget system; and examples of support and  
257 resources available in the community.

258 (7) The agency shall collect data to evaluate the  
259 implementation and outcomes of the iBudget system.

260 (8) The agency and the Agency for Health Care  
261 Administration may adopt rules specifying the allocation  
262 algorithm and methodology; criteria and processes for clients to  
263 access reserved funds for extraordinary needs, temporarily or  
264 permanently changed needs, and one-time needs; and processes and  
265 requirements for selection and review of services, development  
266 of support and cost plans, and management of the iBudget system  
267 as needed to administer this section.

268 Section 3. This act shall take effect July 1, 2010;  
269 however, the amendments to s. 393.0661(3)(b), (c), (d), and  
270 (f)6., Florida Statutes, made by this act do not take effect if  
271 federal law extends the enhanced Federal Medicaid Assistance  
272 Percentage rate, as provided under the American Reinvestment and  
273 Recovery Act (Pub. L. No. 111-5), from December 31, 2010,  
274 through June 30, 2011.



649486

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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to home and community-based services;  
amending s. 393.0661, F.S.; reducing the annual  
maximum expenditure to each client assigned by the  
Agency for Persons With Disabilities to tier one, tier  
two, tier three, and tier four level services;  
eliminating behavior assistant services in certain  
group homes as a deliverable service to eligible  
clients; creating s. 393.0662, F.S.; establishing the  
iBudget program for the delivery of home and  
community-based services; providing for amendment of  
current contracts to implement the iBudget system;  
providing for the phasing in of the program; requiring  
clients to use certain resources before using funds  
from their iBudget; requiring the agency to provide  
training for clients and evaluate and adopt rules with  
respect to the iBudget system; providing a contingent  
effective date.