

1 A bill to be entitled
2 An act relating to the Agency for Persons with
3 Disabilities; amending s. 393.0661, F.S.; specifying
4 assessment instruments to be used for the delivery of home
5 and community-based Medicaid waiver program services;
6 revising provisions relating to assignment of clients to
7 waiver tiers; providing for tier one, tier two, tier
8 three, and tier four annual expenditure caps; creating s.
9 393.0662, F.S.; establishing the iBudget program for the
10 delivery of home and community-based services; providing
11 for amendment of current contracts to implement the
12 iBudget system; providing for the phasing in of the
13 program; requiring clients to use certain resources before
14 using funds from their iBudget; requiring the agency to
15 provide training for clients and evaluate and adopt rules
16 with respect to the iBudget system; amending s. 393.125,
17 F.S.; providing for hearings on Medicaid programs
18 administered by the agency; creating the Services for
19 Children with Developmental Disabilities Task Force;
20 requiring the task force to develop recommendations and a
21 plan for the creation of, and enrollment in, the
22 Developmental Disabilities Savings Program; providing for
23 membership of the task force; requiring the Agency for
24 Persons with Disabilities to provide administrative
25 support to the task force; providing for per diem and
26 travel expenses for task force members; requiring the task
27 force to submit its plan and recommendations to the

28 | Legislature; providing for abolishment of the task force;
 29 | providing an effective date.

30 |

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

32 |

33 | Section 1. Subsections (1) and (3) of section 393.0661,
 34 | Florida Statutes, are amended to read:

35 | 393.0661 Home and community-based services delivery
 36 | system; comprehensive redesign.—The Legislature finds that the
 37 | home and community-based services delivery system for persons
 38 | with developmental disabilities and the availability of
 39 | appropriated funds are two of the critical elements in making
 40 | services available. Therefore, it is the intent of the
 41 | Legislature that the Agency for Persons with Disabilities shall
 42 | develop and implement a comprehensive redesign of the system.

43 | (1) The redesign of the home and community-based services
 44 | system shall include, at a minimum, all actions necessary to
 45 | achieve an appropriate rate structure, client choice within a
 46 | specified service package, appropriate assessment strategies, an
 47 | efficient billing process that contains reconciliation and
 48 | monitoring components, and a redefined role for support
 49 | coordinators that avoids potential conflicts of interest, and
 50 | ensures that family/client budgets are linked to levels of need.

51 | (a) The agency shall use an assessment instrument that the
 52 | agency deems to be ~~is~~ reliable and valid, including, but not
 53 | limited to, the Department of Children and Family Services'
 54 | Individual Cost Guidelines or the agency's Questionnaire for
 55 | Situational Information. The agency may contract with an

56 external vendor or may use support coordinators to complete
 57 client assessments if it develops sufficient safeguards and
 58 training to ensure ongoing inter-rater reliability.

59 (b) The agency, with the concurrence of the Agency for
 60 Health Care Administration, may contract for the determination
 61 of medical necessity and establishment of individual budgets.

62 (3) The Agency for Health Care Administration, in
 63 consultation with the agency, shall seek federal approval and
 64 implement a four-tiered waiver system to serve eligible clients
 65 through the developmental disabilities and family and supported
 66 living waivers. The agency shall assign all clients receiving
 67 services through the developmental disabilities waiver to a tier
 68 based on the Department of Children and Family Services'
 69 Individual Cost Guidelines, the agency's Questionnaire for
 70 Situational Information, or another such assessment instrument
 71 deemed to be valid and reliable by the agency; a valid
 72 assessment instrument, client characteristics, including, but
 73 not limited to, age; and other appropriate assessment methods.

74 (a) Tier one is limited to clients who have service needs
 75 that cannot be met in tier two, three, or four for intensive
 76 medical or adaptive needs and that are essential for avoiding
 77 institutionalization, or who possess behavioral problems that
 78 are exceptional in intensity, duration, or frequency and present
 79 a substantial risk of harm to themselves or others. Total annual
 80 expenditures under tier one may not exceed \$150,000 per client
 81 each year, provided that expenditures for clients in tier one
 82 with a documented medical necessity requiring intensive
 83 behavioral residential habilitation services, intensive

84 behavioral residential habilitation services with medical needs,
 85 or special medical home care, as provided in the Developmental
 86 Disabilities Waiver Services Coverage and Limitations Handbook,
 87 are not subject to the \$150,000 limit on annual expenditures.

88 (b) Tier two is limited to clients whose service needs
 89 include a licensed residential facility and who are authorized
 90 to receive a moderate level of support for standard residential
 91 habilitation services or a minimal level of support for behavior
 92 focus residential habilitation services, or clients in supported
 93 living who receive more than 6 hours a day of in-home support
 94 services. Total annual expenditures under tier two may not
 95 exceed \$53,625 ~~\$55,000~~ per client each year.

96 (c) Tier three includes, but is not limited to, clients
 97 requiring residential placements, clients in independent or
 98 supported living situations, and clients who live in their
 99 family home. Total annual expenditures under tier three may not
 100 exceed \$34,125 ~~\$35,000~~ per client each year.

101 (d) Tier four includes individuals who were enrolled in ~~is~~
 102 the family and supported living waiver on July 1, 2007, who
 103 shall be assigned to this tier without the assessments required
 104 by this section. Tier four also ~~and~~ includes, but is not limited
 105 to, clients in independent or supported living situations and
 106 clients who live in their family home. Total annual expenditures
 107 under tier four may not exceed \$14,422 ~~\$14,792~~ per client each
 108 year.

109 (e) The Agency for Health Care Administration shall also
 110 seek federal approval to provide a consumer-directed option for
 111 persons with developmental disabilities which corresponds to the

112 funding levels in each of the waiver tiers. The agency shall
113 implement the four-tiered waiver system beginning with tiers
114 one, three, and four and followed by tier two. The agency and
115 the Agency for Health Care Administration may adopt rules
116 necessary to administer this subsection.

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

120 1. Supported living coaching services may not exceed 20
121 hours per month for persons who also receive in-home support
122 services.

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

126 3. Personal care assistance services are limited to 180
127 hours per calendar month and may not include rate modifiers.
128 Additional hours may be authorized for persons who have
129 intensive physical, medical, or adaptive needs if such hours are
130 essential for avoiding institutionalization.

131 4. Residential habilitation services are limited to 8
132 hours per day. Additional hours may be authorized for persons
133 who have intensive medical or adaptive needs and if such hours
134 are essential for avoiding institutionalization, or for persons
135 who possess behavioral problems that are exceptional in
136 intensity, duration, or frequency and present a substantial risk
137 of harming themselves or others. This restriction shall be in
138 effect until the four-tiered waiver system is fully implemented.

139 5. Chore services, nonresidential support services, and

140 homemaker services are eliminated. The agency shall expand the
141 definition of in-home support services to allow the service
142 provider to include activities previously provided in these
143 eliminated services.

144 6. Massage therapy, medication review, and psychological
145 assessment services are eliminated.

146 7. The agency shall conduct supplemental cost plan reviews
147 to verify the medical necessity of authorized services for plans
148 that have increased by more than 8 percent during either of the
149 2 preceding fiscal years.

150 8. The agency shall implement a consolidated residential
151 habilitation rate structure to increase savings to the state
152 through a more cost-effective payment method and establish
153 uniform rates for intensive behavioral residential habilitation
154 services.

155 9. Pending federal approval, the agency may extend current
156 support plans for clients receiving services under Medicaid
157 waivers for 1 year beginning July 1, 2007, or from the date
158 approved, whichever is later. Clients who have a substantial
159 change in circumstances which threatens their health and safety
160 may be reassessed during this year in order to determine the
161 necessity for a change in their support plan.

162 10. The agency shall develop a plan to eliminate
163 redundancies and duplications between in-home support services,
164 companion services, personal care services, and supported living
165 coaching by limiting or consolidating such services.

166 11. The agency shall develop a plan to reduce the
167 intensity and frequency of supported employment services to

168 clients in stable employment situations who have a documented
169 history of at least 3 years' employment with the same company or
170 in the same industry.

171 Section 2. Section 393.0662, Florida Statutes, is created
172 to read:

173 393.0662 Individual budgets for delivery of home and
174 community-based services; iBudget system established.—The
175 Legislature finds that improved financial management of the
176 existing home and community-based Medicaid waiver program is
177 necessary to avoid deficits that impede the provision of
178 services to individuals who are on the waiting list for
179 enrollment in the program. The Legislature further finds that
180 clients and their families should have greater flexibility to
181 choose the services that best allow them to live in their
182 community within the limits of an established budget. Therefore,
183 the Legislature intends that the agency, in consultation with
184 the Agency for Health Care Administration, develop and implement
185 a comprehensive redesign of the service delivery system using
186 individual budgets as the basis for allocating the funds
187 appropriated for the home and community-based services Medicaid
188 waiver program among eligible enrolled clients. The service
189 delivery system that uses individual budgets shall be called the
190 iBudget system.

191 (1) The agency shall establish an individual budget,
192 referred to as an iBudget, for each individual served by the
193 home and community-based services Medicaid waiver program. The
194 funds appropriated to the agency shall be allocated through the
195 iBudget system to eligible, Medicaid-enrolled clients. The

196 iBudget system shall be designed to provide for: enhanced client
197 choice within a specified service package; appropriate
198 assessment strategies; an efficient consumer budgeting and
199 billing process that includes reconciliation and monitoring
200 components; a redefined role for support coordinators that
201 avoids potential conflicts of interest; a flexible and
202 streamlined service review process; and a methodology and
203 process that ensures the equitable allocation of available funds
204 to each client based on the client's level of need, as
205 determined by the variables in the allocation algorithm.

206 (a) In developing each client's iBudget, the agency shall
207 use an allocation algorithm and methodology. The algorithm shall
208 use variables that have been determined by the agency to have a
209 statistically validated relationship to the client's level of
210 need for services provided through the home and community-based
211 services Medicaid waiver program. The algorithm and methodology
212 may consider individual characteristics, including, but not
213 limited to, a client's age and living situation, information
214 from a formal assessment instrument that the agency determines
215 is valid and reliable, and information from other assessment
216 processes.

217 (b) The allocation methodology shall provide the algorithm
218 that determines the amount of funds allocated to a client's
219 iBudget. The agency may approve an increase in the amount of
220 funds allocated, as determined by the algorithm, based on the
221 client having one or more of the following needs that cannot be
222 accommodated within the funding as determined by the algorithm
223 and having no other resources, supports, or services available

224 to meet the need:

225 1. An extraordinary need that would place the health and
 226 safety of the client, the client's caregiver, or the public in
 227 immediate, serious jeopardy unless the increase is approved. An
 228 extraordinary need may include, but is not limited to:

229 a. A documented history of significant, potentially life-
 230 threatening behaviors, such as recent attempts at suicide,
 231 arson, nonconsensual sexual behavior, or self-injurious behavior
 232 requiring medical attention;

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

236 c. A chronic co-morbid condition. As used in this
 237 subparagraph, the term "co-morbid condition" means a medical
 238 condition existing simultaneously but independently with another
 239 medical condition in a patient; or

240 d. A need for total physical assistance with activities
 241 such as eating, bathing, toileting, grooming, and personal
 242 hygiene.

243
 244 However, the presence of an extraordinary need alone does not
 245 warrant an increase in the amount of funds allocated to a
 246 client's iBudget as determined by the algorithm.

247 2. A significant need for one-time or temporary support or
 248 services that, if not provided, would place the health and
 249 safety of the client, the client's caregiver, or the public in
 250 serious jeopardy, unless the increase is approved. A significant
 251 need may include, but is not limited to, the provision of

252 environmental modifications, durable medical equipment, services
253 to address the temporary loss of support from a caregiver, or
254 special services or treatment for a serious temporary condition
255 when the service or treatment is expected to ameliorate the
256 underlying condition. As used in this subparagraph, the term
257 "temporary" means a period of fewer than 12 continuous months.
258 However, the presence of such significant need for one-time or
259 temporary supports or services alone does not warrant an
260 increase in the amount of funds allocated to a client's iBudget
261 as determined by the algorithm.

262 3. A significant increase in the need for services after
263 the beginning of the service plan year that would place the
264 health and safety of the client, the client's caregiver, or the
265 public in serious jeopardy because of substantial changes in the
266 client's circumstances, including, but not limited to, permanent
267 or long-term loss or incapacity of a caregiver, loss of services
268 authorized under the state Medicaid plan due to a change in age,
269 or a significant change in medical or functional status which
270 requires the provision of additional services on a permanent or
271 long-term basis that cannot be accommodated within the client's
272 current iBudget. As used in this subparagraph, the term "long-
273 term" means a period of 12 or more continuous months. However,
274 such significant increase in need for services of a permanent or
275 long-term nature alone does not warrant an increase in the
276 amount of funds allocated to a client's iBudget as determined by
277 the algorithm.

278
279 The agency shall reserve portions of the appropriation for the

280 home and community-based services Medicaid waiver program for
281 adjustments required pursuant to this paragraph and may use the
282 services of an independent actuary in determining the amount of
283 the portions to be reserved.

284 (c) A client's iBudget shall be the total of the amount
285 determined by the algorithm and any additional funding provided
286 pursuant to paragraph (b). A client's annual expenditures for
287 home and community-based services Medicaid waiver services may
288 not exceed the limits of his or her iBudget. The total of all
289 clients' projected annual iBudget expenditures may not exceed
290 the agency's appropriation for waiver services.

291 (2) The Agency for Health Care Administration, in
292 consultation with the agency, shall seek federal approval to
293 amend current waivers, request a new waiver, and amend contracts
294 as necessary to implement the iBudget system to serve eligible,
295 enrolled clients through the home and community-based services
296 Medicaid waiver program and the Consumer-Directed Care Plus
297 Program.

298 (3) The agency shall transition all eligible, enrolled
299 clients to the iBudget system. The agency may gradually phase in
300 the iBudget system.

301 (a) While the agency phases in the iBudget system, the
302 agency may continue to serve eligible, enrolled clients under
303 the four-tiered waiver system established under s. 393.065 while
304 those clients await transitioning to the iBudget system.

305 (b) The agency shall design the phase-in process to ensure
306 that a client does not experience more than one-half of any
307 expected overall increase or decrease to his or her existing

308 annualized cost plan during the first year that the client is
309 provided an iBudget due solely to the transition to the iBudget
310 system.

311 (4) A client must use all available services authorized
312 under the state Medicaid plan, school-based services, private
313 insurance and other benefits, and any other resources that may
314 be available to the client before using funds from his or her
315 iBudget to pay for support and services.

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

318 (6) Rates for any or all services established under rules
319 of the Agency for Health Care Administration shall be designated
320 as the maximum rather than a fixed amount for individuals who
321 receive an iBudget, except for services specifically identified
322 in those rules that the agency determines are not appropriate
323 for negotiation, which may include, but are not limited to,
324 residential habilitation services.

325 (7) The agency shall ensure that clients and caregivers
326 have access to training and education to inform them about the
327 iBudget system and enhance their ability for self-direction.
328 Such training shall be offered in a variety of formats and at a
329 minimum shall address the policies and processes of the iBudget
330 system; the roles and responsibilities of consumers, caregivers,
331 waiver support coordinators, providers, and the agency;
332 information available to help the client make decisions
333 regarding the iBudget system; and examples of support and
334 resources available in the community.

335 (8) The agency shall collect data to evaluate the

336 implementation and outcomes of the iBudget system.

337 (9) The agency and the Agency for Health Care
338 Administration may adopt rules specifying the allocation
339 algorithm and methodology; criteria and processes for clients to
340 access reserved funds for extraordinary needs, temporarily or
341 permanently changed needs, and one-time needs; and processes and
342 requirements for selection and review of services, development
343 of support and cost plans, and management of the iBudget system
344 as needed to administer this section.

345 Section 3. Subsection (1) of section 393.125, Florida
346 Statutes, is amended to read:

347 393.125 Hearing rights.—

348 (1) REVIEW OF AGENCY DECISIONS.—

349 (a) For Medicaid programs administered by the agency, any
350 developmental services applicant or client, or his or her
351 parent, guardian advocate, or authorized representative, may
352 request a hearing in accordance with federal law and rules
353 applicable to Medicaid cases and has the right to request an
354 administrative hearing pursuant to ss. 120.569 and 120.57. These
355 hearings shall be provided by the Department of Children and
356 Family Services pursuant to s. 409.285 and shall follow
357 procedures consistent with federal law and rules applicable to
358 Medicaid cases.

359 (b) ~~(a)~~ Any other developmental services applicant or
360 client, or his or her parent, guardian, guardian advocate, or
361 authorized representative, who has any substantial interest
362 determined by the agency, has the right to request an
363 administrative hearing pursuant to ss. 120.569 and 120.57, which

364 shall be conducted pursuant to s. 120.57(1), (2), or (3).

365 (c) ~~(b)~~ Notice of the right to an administrative hearing
 366 shall be given, both verbally and in writing, to the applicant
 367 or client, and his or her parent, guardian, guardian advocate,
 368 or authorized representative, at the same time that the agency
 369 gives the applicant or client notice of the agency's action. The
 370 notice shall be given, both verbally and in writing, in the
 371 language of the client or applicant and in English.

372 (d) ~~(e)~~ A request for a hearing under this section shall be
 373 made to the agency, in writing, within 30 days after ~~of~~ the
 374 applicant's or client's receipt of the notice.

375 Section 4. Services for Children with Developmental
 376 Disabilities Task Force.—The Services for Children with
 377 Developmental Disabilities Task Force is created to make
 378 recommendations and develop a plan for the creation of, and
 379 enrollment in, the Developmental Disabilities Savings Program.

380 (1) The task force shall consist of the following members:

381 (a) A member of the House of Representatives appointed by
 382 the Speaker of the House of Representatives.

383 (b) A member of the Senate appointed by the President of
 384 the Senate.

385 (c) The director of the Agency for Persons with
 386 Disabilities.

387 (d) The director of the Division of Vocational
 388 Rehabilitation.

389 (e) The executive director of the State Board of
 390 Administration.

391 (f) The Commissioner of Education.

- 392 (g) The executive director of The Arc of Florida.
- 393 (h) An Arc of Florida family board member appointed by the
 394 executive director of The Arc of Florida.
- 395 (i) The chair of the Family Care Council Florida.
- 396 (j) A parent representative from the Family Care Council
 397 Florida appointed by the chair of the Family Care Council
 398 Florida.
- 399 (2) The Agency for Persons with Disabilities shall provide
 400 administrative support to the task force.
- 401 (3) Members of the task force shall serve without
 402 compensation but are entitled to reimbursement for per diem and
 403 travel expenses as provided in s. 112.061, Florida Statutes.
- 404 (4) The task force shall submit its recommendations and
 405 plan to the President of the Senate and the Speaker of the House
 406 of Representatives when it has completed its task or April 2,
 407 2012, whichever occurs first.
- 408 (5) The task force shall continue until enrollment in the
 409 Developmental Disabilities Savings Program has commenced, at
 410 which time the task force is abolished or June 31, 2013,
 411 whichever occurs first.
- 412 Section 5. This act shall take effect July 1, 2010.
- 413