

## ENROLLED

HB 5303, Engrossed 1

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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- 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