

By Senator Altman

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1                   A bill to be entitled  
2           An act relating to developmental disabilities;  
3           establishing a Developmental Disabilities Savings  
4           Program to allow for the advance payment of services  
5           for individuals who have developmental disabilities  
6           and who will be ineligible for certain services due to  
7           age; providing legislative intent; defining terms;  
8           requiring the program to provide certain information;  
9           providing that the program may not be implemented  
10          until certain legal opinions are obtained;  
11          establishing the Developmental Disabilities Savings  
12          Program Board to administer the savings program;  
13          providing for board membership; specifying the powers,  
14          duties, and goals of the board; authorizing the board  
15          to adopt rules; providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

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19           Section 1. Developmental Disabilities Savings Program.—

20           (1) The Legislature recognizes that there is a need to  
21 provide families that have children with developmental  
22 disabilities who will become ineligible for services due to age  
23 with sufficient access to services for those children. The  
24 continued provision of educational, health, housing, employment,  
25 and other support services for students with developmental  
26 disabilities is critical. The Legislature finds that the  
27 creation of a savings and investment program for families with  
28 such children can offer continued accessibility to services,  
29 regardless of income, insurance, or Medicaid eligibility. It is,

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30 therefore, the intent of the Legislature that the Developmental  
31 Disabilities Savings Program be established through which many  
32 of the later costs associated with services for these children  
33 may be paid or saved for in advance. Such savings and investment  
34 program must be conducted in a manner that maximizes program  
35 efficiency and effectiveness.

36 (2) As used in this section, the term:

37 (a) "Advance payment contract" means the contract under the  
38 savings program which allows a purchaser or benefactor to make  
39 payments into an investment plan that will provide funds that  
40 may be used to pay for eligible services for a qualified  
41 beneficiary.

42 (b) "Benefactor" means any person making a deposit,  
43 payment, contribution, gift, or other expenditure into the  
44 investment plan for a qualified beneficiary, and may include a  
45 noncustodial parent who is obligated to make payments into the  
46 plan for his or her child.

47 (c) "Developmental disability" has the same meaning as in  
48 s. 393.063, Florida Statutes, or means any severe, chronic  
49 disability that:

50 1. Is attributable to a mental or physical impairment or a  
51 combination of those impairments;

52 2. Occurs before the individual reaches 18 years of age;

53 3. Is likely to continue indefinitely;

54 4. Results in substantial functional limitations in three  
55 or more of the following areas of major life activity: self-  
56 care, receptive and expressive language, learning, mobility,  
57 self-direction, capacity for independent living, or economic  
58 self-sufficiency;

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59       5. Reflects the individual's need for a combination and  
60 sequence of special, interdisciplinary, or generic services,  
61 individualized supports, or other forms of assistance that are  
62 of lifelong or extended duration and are individually planned  
63 and coordinated; and

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

66       (d) "Eligible services" means:

67       1. Specific services that may include respite care,  
68 provision of rehabilitation and habilitation services,  
69 transportation, assistive technology, personal assistance  
70 services, counseling, support for families headed by aging  
71 caregivers, vehicular and home modifications, and assistance to  
72 cover extraordinary expenses associated with the needs of  
73 individuals with developmental disabilities.

74       2. Health-related services that may include medical,  
75 dental, mental health, and other human and social services to  
76 enhance the well-being of the individual, as well as durable and  
77 consumable medical supplies.

78       3. Housing-related services that may result in individuals  
79 with developmental disabilities having access to and use of  
80 housing and housing supports and services in their communities,  
81 including assistance related to modifying an apartment or home.

82       4. Education-related services to facilitate attendance in a  
83 training or educational setting, such as technology and  
84 personnel-related services that assist in obtaining and  
85 maximizing the educational experience.

86       5. Employment-related services that are necessary to assist  
87 the individual in meeting essential job functions through

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88 technology, personnel-related expenses, and transportation  
89 expenses.

90 (e) "Purchaser" means a resident of this state who is the  
91 parent or grandparent of a qualified beneficiary and who enters  
92 into an advance payment contract.

93 (f) "Qualified beneficiary" means an individual with a  
94 developmental disability who is a resident of the state and who  
95 is under 22 years of age at the time a purchaser enters into an  
96 advance payment contract on his or her behalf.

97 (g) "Savings program" means the Developmental Disabilities  
98 Savings Program.

99 (3) There is created the Developmental Disabilities Savings  
100 Program.

101 (a) The savings program shall offer an investment plan  
102 through which eligible services for a qualified beneficiary may  
103 be paid for in advance.

104 (b) The savings program shall provide information and  
105 training concerning the program and its benefits for a qualified  
106 beneficiary to advance his or her goals and become a  
107 contributing member of society.

108 (c) The savings program must inform the purchaser of the  
109 potential impact of plan participation on eligibility for  
110 Medicaid or other state or federally funded programs.

111 (4) The savings program may not be implemented until the  
112 board created under subsection (6) which is administering the  
113 savings program has obtained the following:

114 (a) A written opinion of qualified counsel specializing in  
115 federal securities law that the savings program and the offering  
116 of participation in the investment plan does not violate federal

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117 securities law; and

118 (b) A private letter ruling from the federal Internal  
119 Revenue Service indicating that under the savings program taxes  
120 on any payments made, moneys deposited, investments made, and  
121 resulting earnings may be deferred under the Internal Revenue  
122 Code. If the Internal Revenue Service declines to rule on the  
123 request for a private letter ruling, the program may rely on  
124 legal opinion rendered by a qualified attorney specializing in  
125 tax law.

126 (5) The savings program is not a promise or guarantee that  
127 a qualified beneficiary or a designated beneficiary will become  
128 eligible for Medicaid, receive permanent services, be enrolled  
129 in the Medicaid waiver program, or receive any other state or  
130 federal assistance.

131 (6) The savings program shall be administered by the  
132 Developmental Disabilities Savings Program Board as a body  
133 corporate with all the powers of a body corporate for the  
134 purposes delineated in this section.

135 (a) The board shall consist of seven members composed of:

136 1. The director of the Agency for Persons with  
137 Disabilities.

138 2. The director of Vocational Rehabilitation.

139 3. The executive director of The Arc of Florida.

140 4. The president of The Family Care Council of Florida, or  
141 designee.

142 5. Three members, appointed by the Governor for 3-year  
143 terms, who possess knowledge, skill, and experience in the areas  
144 of accounting, actuary, risk management, or investment  
145 management. Any person appointed to fill a vacancy for such

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146 members shall serve only for the unexpired term and until a  
147 successor qualifies, but is eligible for reappointment.

148 (b) The board shall annually elect a chair and vice chair  
149 from the board members, and shall designate a secretary-  
150 treasurer who need not be a member of the board. The secretary-  
151 treasurer shall keep a record of the proceedings of the board  
152 and shall be the custodian of all printed material filed with or  
153 by the board and its official seal.

154 1. The board shall, at a minimum, meet on a quarterly basis  
155 at the call of the chair.

156 2. Notwithstanding the existence of vacancies on the board,  
157 a majority of the members constitutes a quorum. The board shall  
158 take no official action in the absence of a quorum.

159 3. Members of the board shall serve without compensation,  
160 and each member shall file a full and public disclosure of his  
161 or her financial interests pursuant to s. 8, Art. II of the  
162 State Constitution and corresponding statute.

163 (c) The board shall have the powers and duties necessary or  
164 proper to carry out the following provisions, including, but not  
165 limited to:

166 1. Appointing an executive director to serve as the chief  
167 administrative and operational officer of the program and to  
168 perform other duties assigned to him or her by the board.

169 2. Delegating responsibility for administration of the  
170 savings program to persons the board determines are qualified.

171 3. Adopting an official seal and rules.

172 4. Making and executing contracts and other necessary  
173 instruments.

174 5. Establishing agreements or other transactions with

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175 federal, state, and local agencies.

176 6. Forming strategic alliances with public and private  
177 entities to provide benefits to the savings program.

178 7. Appearing in its own behalf before boards, commissions,  
179 or other governmental agencies.

180 8. Procuring and contracting for goods and services,  
181 employing personnel, and engaging the services of private  
182 consultants, actuaries, managers, legal counsel, and auditors in  
183 a manner determined to be necessary and appropriate by the  
184 board.

185 9. Adopting procedures to govern contract dispute  
186 proceedings between the board and its vendors.

187 10. Soliciting proposals and contracting for the marketing  
188 of the savings program. Any materials produced for the purpose  
189 of marketing must be submitted to the board for review.  
190 Materials may not be made available to the public before the  
191 materials are approved by the board. Neither the state nor the  
192 board is liable for misrepresentation of the savings program by  
193 a marketing agent.

194 11. Investing funds not required for immediate  
195 disbursement.

196 12. Holding, buying, and selling any instruments,  
197 obligations, securities, and property determined appropriate by  
198 the board.

199 13. Administering the savings program in a manner that is  
200 sufficiently actuarially sound to defray the obligations of the  
201 savings program. The board shall annually evaluate the actuarial  
202 soundness of the investment plan.

203 14. Soliciting and accepting gifts, grants, loans, and

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204 other aids from any source or participating in any other way in  
205 any government program to carry out the purposes of the savings  
206 program.

207 15. Requiring and collecting administrative fees and  
208 charges in connection with any transaction and imposing  
209 reasonable penalties, including default, for delinquent payments  
210 or for entering into an advance payment contract on a fraudulent  
211 basis.

212 16. Suing and being sued.

213 17. Endorsing insurance coverage written exclusively for  
214 the purpose of protecting the investment plan, and the  
215 purchasers, benefactors, and beneficiaries thereof.

216 18. Procuring insurance against any loss in connection with  
217 the property, assets, and activities of the savings program or  
218 the board.

219 19. Providing for the receipt of contributions in lump sums  
220 or installment payments.

221 20. Imposing reasonable time limits on use of the benefits  
222 provided by the savings program. However, such limitations must  
223 be specified in the contract.

224 21. Delineating the terms and conditions under which  
225 payments may be withdrawn from the investment plan and impose  
226 reasonable fees and charges for such withdrawal. Such terms and  
227 conditions must be specified within the advance payment  
228 contract.

229 22. Establishing other policies, procedures, and criteria  
230 to implement and administer the savings program.

231 (d) The board shall solicit proposals and contract for:

232 1. Investment managers to provide investment portfolios for

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233 the savings program. Investment managers are limited to  
234 authorized insurers as defined in s. 624.09, Florida Statutes,  
235 banks as defined in s. 658.12, Florida Statutes, associations as  
236 defined in s. 665.012, Florida Statutes, authorized Securities  
237 and Exchange Commission investment advisers, and investment  
238 companies as defined in the Investment Company Act of 1940. All  
239 investment managers shall have their principal place of business  
240 and corporate charter located and registered in the United  
241 States. In addition, each investment manager must agree to meet  
242 the obligations of the board to qualified beneficiaries if  
243 moneys in the fund fail to offset the obligations of the board  
244 as a result of imprudent investing by such manager. Each  
245 authorized insurer shall evidence superior performance overall  
246 on an acceptable level of surety in meeting its obligations to  
247 its policyholders and other contractual obligations. Only  
248 qualified public depositories approved by the Chief Financial  
249 Officer are eligible for board consideration. Each investment  
250 company shall provide investment plans as specified within the  
251 request for proposals.

252 2. Investment consultants to review the performance of the  
253 board's investment managers and advise the board on investment  
254 management and performance and investment policy, including the  
255 contents of investment plans.

256 3. Trustee services firms to provide trustee and related  
257 services to the board. The trustee services firm must agree to  
258 meet the obligations of the board to qualified beneficiaries if  
259 moneys in the plan fail to offset the obligations of the board  
260 as a result of imprudent selection or supervision of investment  
261 plans by such firm.

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262 4. The services of records administrators.

263 (e) The goals of the board in procuring investment services  
264 shall be to provide all purchasers and benefactors with the most  
265 secure, well-diversified, and beneficially administered savings  
266 program possible, to allow all qualified firms interested in  
267 providing such services equal consideration, and to provide such  
268 services to the state at no cost and to the purchasers and  
269 benefactors at the lowest cost possible. Evaluations of  
270 proposals submitted pursuant to paragraph (d) must consider,  
271 without limitation, fees and other costs that are charged to  
272 purchasers or benefactors that affect account values, or that  
273 impact the operational costs of the savings program; past  
274 experience and past performance in providing the required  
275 services; financial history and current financial strength and  
276 capital adequacy to provide the required services; and  
277 capabilities and experience of proposed personnel who will  
278 provide the required services.

279 (f) The board may adopt rules necessary for the savings  
280 program to qualify for or retain its status as a qualified tax-  
281 deferred program or other similar status of the program,  
282 purchasers, and qualified beneficiaries under the Internal  
283 Revenue Code. The board shall inform participants in the savings  
284 program of changes to the tax or securities status of the  
285 investment plan.

286 Section 2. This act shall take effect July 1, 2011.