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

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

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18 Section 1. Developmental Disabilities Savings Program.—

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

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

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

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

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

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

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

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

52 3. Is likely to continue indefinitely;

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

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57 self-sufficiency;

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

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

65 (d) "Eligible services" means:

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

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

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

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

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85 5. Employment-related services that are necessary to
86 assist the individual in meeting essential job functions through
87 technology, personnel-related expenses, and transportation
88 expenses.

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

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

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

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

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

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

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

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

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

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

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

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

134 (a) The board shall consist of seven members including:

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

137 2. The director of Vocational Rehabilitation.

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

139 4. The president of The Family Care Council of Florida, or
140 his or her designee.

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141 5. Three members, appointed by the Governor for 3-year
142 terms, who possess knowledge, skill, and experience in the areas
143 of accounting, actuary, risk management, or investment
144 management. Any person appointed to fill a vacancy for such
145 members shall serve only for the unexpired term and until a
146 successor qualifies, but is eligible for reappointment.

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

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

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

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

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

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

168 2. Delegating responsibility for administration of the

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169 savings program to persons the board determines are qualified.

170 3. Adopting an official seal and rules.

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

173 5. Establishing agreements or other transactions with
174 federal, state, and local agencies.

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

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

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

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

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

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

195 12. Holding, buying, and selling any instruments,
196 obligations, securities, and property determined appropriate by

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197 the board.

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

202 14. Soliciting and accepting gifts, grants, loans, and
203 other aids from any source or participating in any other way in
204 any government program to carry out the purposes of the savings
205 program.

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

211 16. Suing and being sued.

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

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

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

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

223 21. Delineating the terms and conditions under which
224 payments may be withdrawn from the investment plan and impose

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225 reasonable fees and charges for such withdrawal. Such terms and
226 conditions must be specified within the advance payment
227 contract.

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

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

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

251 2. Investment consultants to review the performance of the
252 board's investment managers and advise the board on investment

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253 management and performance and investment policy, including the
254 contents of investment plans.

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

261 4. The services of records administrators.

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

278 (f) The board may adopt rules necessary for the savings
279 program to qualify for or retain its status as a qualified tax-
280 deferred program or other similar status of the program,

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281 purchasers, and qualified beneficiaries under the Internal
282 Revenue Code. The board shall inform participants in the savings
283 program of changes to the tax or securities status of the
284 investment plan.

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