

By Senator Negrón

28-01022-12

20121516__

1 A bill to be entitled
2 An act relating to the Agency for Persons with
3 Disabilities; amending s. 393.062, F.S.; providing
4 additional legislative findings relating to the
5 provision of services for individuals who have
6 developmental disabilities; reordering and amending s.
7 393.063, F.S.; revising definitions and providing new
8 definitions for "adult day services," "nonwaiver
9 resources," and "waiver"; amending s. 393.065, F.S.;
10 clarifying provisions relating to eligibility
11 requirements based on citizenship and state residency;
12 amending s. 393.066, F.S.; revising provisions
13 relating to community services and treatment;
14 requiring the agency to promote partnerships and
15 collaborative efforts to enhance the availability of
16 nonwaiver services; deleting an express list of
17 services; deleting a requirement that the agency
18 promote day habilitation services for certain clients;
19 amending s. 393.0661, F.S.; revising provisions
20 relating to eligibility under the Medicaid waiver
21 redesign; providing that final tier eligibility be
22 determined at the time a waiver slot and funding are
23 available; providing criteria for moving a client
24 between tiers; deleting a cap on tier one expenditures
25 for certain clients; authorizing the agency and the
26 Agency for Health Care Administration to adopt rules;
27 deleting certain directions relating to the adjustment
28 of a client's cost plan; providing criteria for
29 reviewing Medicaid waiver provider agreements for

28-01022-12

20121516

30 support coordinator services; providing that a client
31 may not apply for additional funding if waiver
32 expenditures are expected to exceed the amount
33 appropriated unless the client is in crisis; deleting
34 obsolete provisions; amending s. 393.0662, F.S.;
35 providing criteria for calculating a client's initial
36 iBudget; deleting obsolete provisions; amending s.
37 393.067, F.S.; providing that facilities that are
38 accredited by certain organizations must be inspected
39 and reviewed by the agency every 2 years; providing
40 agency criteria for monitoring licensees; amending s.
41 393.068, F.S.; conforming a cross-reference; amending
42 s. 393.11, F.S.; clarifying eligibility for
43 involuntary admission to residential services;
44 amending s. 393.125, F.S.; requiring the Department of
45 Children and Family Services to submit its hearing
46 recommendations to the agency; amending s. 393.23,
47 F.S.; providing that receipts from the operation of
48 canteens, vending machines, and other activities may
49 be used to pay client wages at sheltered workshops;
50 amending s. 409.906, F.S.; providing limitations on
51 the amount of cost sharing which may be required of
52 parents for home and community-based services provided
53 to their minor children; authorizing the adoption of
54 rules relating to cost sharing; amending s. 514.072,
55 F.S.; conforming a cross-reference; deleting an
56 obsolete provision; providing an effective date.

57
58 Be It Enacted by the Legislature of the State of Florida:

28-01022-12

20121516__

59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87

Section 1. Section 393.062, Florida Statutes, is amended to read:

393.062 Legislative findings and declaration of intent.—

(1) The Legislature finds ~~and declares~~ that existing state programs for the treatment of individuals with developmental disabilities, which often unnecessarily place clients in institutions, are unreasonably costly, are ineffective in bringing the ~~individual~~ client to his or her maximum potential, and are in fact debilitating to many clients. A redirection in state treatment programs ~~for individuals with developmental disabilities~~ is therefore necessary if any significant amelioration of the problems faced by such individuals is ~~ever~~ to take place. Such redirection should place primary emphasis on programs that prevent or reduce the severity of developmental disabilities. Further, ~~the greatest~~ priority should ~~shall~~ be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, ~~enable them~~ to live in their own homes or in residences located in their own communities, and to permit them to be diverted or removed from unnecessary institutional placements. This goal cannot be met without ensuring the availability of community residential opportunities in the residential areas of this state. The Legislature, therefore, declares that individuals ~~all persons~~ with developmental disabilities who live in licensed community homes ~~shall~~ have a family living environment comparable to that of other state residents ~~Floridians~~ and that such homes must ~~residences shall~~

28-01022-12

20121516__

88 be considered and treated as a functional equivalent of a family
89 unit and not as an institution, business, or boarding home. The
90 Legislature further declares that, ~~in developing community-based~~
91 ~~programs and services for individuals with developmental~~
92 ~~disabilities,~~ private businesses, not-for-profit corporations,
93 units of local government, and other organizations capable of
94 providing needed services to clients in a cost-efficient manner
95 ~~shall~~ be given preference in lieu of operation of programs
96 directly by state agencies. Finally, it is the intent of the
97 Legislature that ~~all~~ caretakers who are unrelated to individuals
98 with developmental disabilities receiving care ~~shall~~ be of good
99 moral character.

100 (2) The Legislature finds that in order to maximize the
101 delivery of services to individuals in the community who have
102 developmental disabilities and remain within appropriated funds,
103 service delivery must blend natural supports, community
104 resources, and state funds. The Legislature also finds that,
105 given the traditional role of state government to ensure the
106 health, safety, and welfare of state residents, state funds,
107 including waiver funds, appropriated to the agency must be
108 reserved and prioritized for those services needed to ensure the
109 health and safety of individuals with disabilities, and that
110 supplemental programs and other services be supported through
111 natural supports and community resources. To achieve this goal,
112 the Legislature intends that the agency implement policies and
113 procedures that establish the Medicaid waiver as the payor of
114 last resort for home and community-based programs and services,
115 and promote partnerships with community resources, including,
116 but not limited to, families, volunteers, nonprofit agencies,

28-01022-12

20121516__

117 foundations, places of worship, schools, community organizations
118 and clubs, businesses, local governments, and federal and state
119 agencies to provide supplemental programs and services. Further,
120 it is the intent of the Legislature that the agency develop
121 sound fiscal strategies that allow the agency to predict,
122 control, manage, and operate within available funding as
123 provided in the General Appropriations Act in order to ensure
124 that state funds are available for health and safety needs and
125 to maximize the number of clients served. It is further the
126 intent of the Legislature that the agency provide services for
127 clients residing in developmental disability centers which
128 promote the individual's life, health, and safety and enhance
129 their quality of life. Finally, it is the intent of the
130 Legislature that the agency continue the tradition of involving
131 families, stakeholders, and other interested parties as it
132 recasts its role to become a collaborative partner in the larger
133 context of family and community-supported services while
134 developing new opportunities and supports for individuals with
135 developmental disabilities.

136 Section 2. Section 393.063, Florida Statutes, is reordered
137 and amended to read:

138 393.063 Definitions.—As used in ~~For the purposes of~~ this
139 chapter, the term:

140 (1) "Agency" means the Agency for Persons with
141 Disabilities.

142 (2) "Adult day services" means services that are provided
143 in a nonresidential setting, separate from the home or facility
144 in which the client resides; that are intended to support the
145 participation of clients in daily, meaningful, and valued

28-01022-12

20121516__

146 routines of the community; and that may provide social
147 activities.

148 (3)-(2) "Adult day training" means training services that
149 are provided ~~which take place~~ in a nonresidential setting,
150 separate from the home or facility in which the client resides,
151 ~~are intended to support the participation of clients in daily,~~
152 ~~meaningful, and valued routines of the community; and may~~
153 ~~include work-like settings that do not meet the definition of~~
154 ~~supported employment.~~

155 (4)-(3) "Autism" means a pervasive, neurologically based
156 developmental disability of extended duration which causes
157 severe learning, communication, and behavior disorders and which
158 has an ~~with~~ age of onset during infancy or childhood.
159 Individuals who have ~~with~~ autism exhibit impairment in
160 reciprocal social interaction, impairment in verbal and
161 nonverbal communication and imaginative ability, and a markedly
162 restricted repertoire of activities and interests.

163 (5)-(4) "Cerebral palsy" means a group of disabling symptoms
164 of extended duration which results from damage to the developing
165 brain which ~~that~~ may occur before, during, or after birth and
166 which ~~that~~ results in the loss or impairment of control over
167 voluntary muscles. The term ~~For the purposes of this definition,~~
168 ~~cerebral palsy~~ does not include those symptoms or impairments
169 resulting solely from a stroke.

170 (6)-(5) "Client" means an individual ~~any person~~ determined
171 eligible by the agency for services under this chapter.

172 (7)-(6) "Client advocate" means a friend or relative of the
173 client, or of the client's immediate family, who advocates for
174 the best interests of the client in any proceedings under this

28-01022-12

20121516__

175 chapter in which the client or his or her family has the right
176 or duty to participate.

177 ~~(8)-(7)~~ "Comprehensive assessment" means the process used to
178 determine eligibility for services under this chapter.

179 ~~(9)-(8)~~ "Comprehensive transitional education program" means
180 the program established under ~~in~~ s. 393.18.

181 ~~(11)-(9)~~ "Developmental disability" means a disorder or
182 syndrome that is attributable to retardation, cerebral palsy,
183 autism, spina bifida, Down syndrome, or Prader-Willi syndrome;
184 that manifests before the age of 18; and that constitutes a
185 substantial handicap that can reasonably be expected to continue
186 indefinitely.

187 (10) "Developmental disabilities center" means a state-
188 owned and state-operated facility, formerly known as a "Sunland
189 Center," providing for the care, habilitation, and
190 rehabilitation of clients who have ~~with~~ developmental
191 disabilities.

192 ~~(12)-(11)~~ "Direct service provider" means a person, 18 years
193 of age or older, who has direct face-to-face contact with a
194 client while providing services to that ~~the~~ client or who has
195 access to a client's living areas or to a client's funds or
196 personal property.

197 ~~(12) "Domicile" means the place where a client legally~~
198 ~~resides, which place is his or her permanent home. Domicile may~~
199 ~~be established as provided in s. 222.17. Domicile may not be~~
200 ~~established in Florida by a minor who has no parent domiciled in~~
201 ~~Florida, or by a minor who has no legal guardian domiciled in~~
202 ~~Florida, or by any alien not classified as a resident alien.~~

203 (13) "Down syndrome" means a disorder caused by the

28-01022-12

20121516

204 presence of an extra copy of chromosome 21.

205 (14) "Express and informed consent" means consent
206 voluntarily given in writing with sufficient knowledge and
207 comprehension of the subject matter to enable the person giving
208 consent to make a knowing decision without any element of force,
209 fraud, deceit, duress, or other form of constraint or coercion.

210 (15) "Family care program" means the program established
211 under ~~in~~ s. 393.068.

212 (16) "Foster care facility" means a residential facility
213 licensed under this chapter which provides a family living
214 environment and includes ~~including~~ supervision and care
215 necessary to meet the physical, emotional, and social needs of
216 its residents. The capacity of such a facility may not be more
217 than three residents.

218 (17) "Group home facility" means a residential facility
219 licensed under this chapter which provides a family living
220 environment and includes ~~including~~ supervision and care
221 necessary to meet the physical, emotional, and social needs of
222 its residents. The capacity of such a facility must ~~shall~~ be at
223 least four ~~4~~ but not more than 15 residents.

224 (18) "Guardian advocate" means a person appointed by a
225 written order of the court to represent an individual who has a
226 ~~person with~~ developmental disabilities under s. 393.12.

227 (19) "Habilitation" means the process by which a client is
228 assisted to acquire and maintain those life skills that ~~which~~
229 enable the client to cope more effectively with the demands of
230 his or her condition and environment and to raise the level of
231 his or her physical, mental, and social efficiency. It includes,
232 but is not limited to, programs of formal structured education

28-01022-12

20121516__

233 and treatment.

234 (20) "High-risk child" means, for the purposes of this
235 chapter, a child from 3 to 5 years of age who has ~~with~~ one or
236 more of the following characteristics:

237 (a) A developmental delay in cognition, language, or
238 physical development.

239 (b) A child surviving a catastrophic infectious or
240 traumatic illness known to be associated with developmental
241 delay, if ~~when~~ funds are specifically appropriated.

242 (c) A child who has ~~with~~ a parent or guardian who has ~~with~~
243 developmental disabilities and ~~who~~ requires assistance in
244 meeting the child's developmental needs.

245 (d) A child who has a physical or genetic anomaly
246 associated with developmental disability.

247 (21) "Intermediate care facility for the developmentally
248 disabled" or "ICF/DD" means a residential facility licensed and
249 certified under ~~pursuant to~~ part VIII of chapter 400.

250 (22) "Medical/dental services" means medically necessary
251 services that ~~which~~ are provided or ordered for a client by a
252 person licensed under chapter 458, chapter 459, or chapter 466.
253 Such services may include, but are not limited to, prescription
254 drugs, specialized therapies, nursing supervision,
255 hospitalization, dietary services, prosthetic devices, surgery,
256 specialized equipment and supplies, adaptive equipment, and
257 other services as required to prevent or alleviate a medical or
258 dental condition.

259 (23) "Nonwaiver resources" means supports or services
260 obtainable through private insurance, the Medicaid state plan,
261 nonprofit organizations, charitable donations from private

28-01022-12

20121516

262 businesses, other government programs, family, natural supports,
263 community resources, and any other source other than a waiver.

264 (24)~~(23)~~ "Personal care services" means individual
265 assistance with or supervision of essential activities of daily
266 living for self-care, including ambulation, bathing, dressing,
267 eating, grooming, and toileting, and other similar services that
268 are incidental to the care furnished and are essential, and that
269 are provided in the amount, duration, frequency, intensity, and
270 scope determined by the agency to be necessary for the client's
271 health and safety ~~to the health, safety, and welfare of the~~
272 ~~client~~ when there is no one else available or able to perform
273 those services.

274 (25)~~(24)~~ "Prader-Willi syndrome" means an inherited
275 condition typified by neonatal hypotonia with failure to thrive,
276 hyperphagia or an excessive drive to eat which leads to obesity
277 usually at 18 to 36 months of age, mild to moderate mental
278 retardation, hypogonadism, short stature, mild facial
279 dysmorphism, and ~~a~~ characteristic neurobehavior.

280 (26)~~(25)~~ "Relative" means an individual who is connected by
281 affinity or consanguinity to the client and who is 18 years of
282 age or older.

283 (27)~~(26)~~ "Resident" means an individual who has any person
284 ~~with~~ developmental disabilities and who resides ~~residing~~ at a
285 residential facility, whether or not such person is a client of
286 the agency.

287 (28)~~(27)~~ "Residential facility" means a facility providing
288 room and board and personal care for an individual who has
289 ~~persons with~~ developmental disabilities.

290 (29)~~(28)~~ "Residential habilitation" means supervision and

28-01022-12

20121516

291 training in ~~with~~ the acquisition, retention, or improvement in
292 skills related to activities of daily living, such as personal
293 hygiene skills, homemaking skills, and the social and adaptive
294 skills necessary to enable the individual to reside in the
295 community.

296 (30)~~(29)~~ "Residential habilitation center" means a
297 community residential facility licensed under this chapter which
298 provides habilitation services. The capacity of such a facility
299 may ~~shall~~ not be fewer than nine residents. After October 1,
300 1989, new residential habilitation centers may not be licensed
301 and the licensed capacity for any existing residential
302 habilitation center may not be increased.

303 (31)~~(30)~~ "Respite service" means appropriate, short-term,
304 temporary care that is provided to an individual who has a
305 ~~person with~~ developmental disabilities in order to meet the
306 planned or emergency needs of the individual ~~person~~ or the
307 family or other direct service provider.

308 (32)~~(31)~~ "Restraint" means a physical device, method, or
309 drug used to control dangerous behavior.

310 (a) A physical restraint is any manual method or physical
311 or mechanical device, material, or equipment attached or
312 adjacent to the individual's body so that he or she cannot
313 easily remove the restraint and which restricts freedom of
314 movement or normal access to one's body.

315 (b) A drug used as a restraint is a medication used to
316 control the person's behavior or to restrict his or her freedom
317 of movement and is not a standard treatment for the person's
318 medical or psychiatric condition. Physically holding a person
319 during a procedure to forcibly administer psychotropic

28-01022-12

20121516__

320 medication is a physical restraint.

321 (c) Restraint does not include physical devices, such as
322 orthopedically prescribed appliances, surgical dressings and
323 bandages, supportive body bands, or other physical holding when
324 necessary for routine physical examinations and tests; for
325 purposes of orthopedic, surgical, or other similar medical
326 treatment; when used to provide support for the achievement of
327 functional body position or proper balance; or when used to
328 protect a person from falling out of bed.

329 (33)~~(32)~~ "Retardation" means significantly subaverage
330 general intellectual functioning existing concurrently with
331 deficits in adaptive behavior which manifest ~~that manifests~~
332 before the age of 18 and can reasonably be expected to continue
333 indefinitely. For the purposes of this definition, the term:

334 (a) "Significantly subaverage general intellectual
335 functioning," ~~for the purpose of this definition,~~ means
336 performance that ~~which~~ is two or more standard deviations from
337 the mean score on a standardized intelligence test specified in
338 the rules of the agency.

339 (b) "Adaptive behavior," ~~for the purpose of this~~
340 ~~definition,~~ means the effectiveness or degree with which an
341 individual meets the standards of personal independence and
342 social responsibility expected of his or her age, cultural
343 group, and community.

344 (34)~~(33)~~ "Seclusion" means the involuntary isolation of a
345 person in a room or area from which the person is prevented from
346 leaving. The prevention may be by physical barrier or by a staff
347 member who is acting in a manner, or who is physically situated,
348 so as to prevent the person from leaving the room or area. For

28-01022-12

20121516__

349 the purposes of this chapter, the term does not mean isolation
350 due to the medical condition or symptoms of the person.

351 (35)~~(34)~~ "Self-determination" means an individual's freedom
352 to exercise the same rights as all other citizens, authority to
353 exercise control over funds needed for one's own support,
354 including prioritizing those ~~these~~ funds when necessary,
355 responsibility for the wise use of public funds, and self-
356 advocacy to speak and advocate for oneself in order to gain
357 independence and ensure that individuals who have ~~with~~ a
358 developmental disability are treated equally.

359 (36)~~(35)~~ "Specialized therapies" means those treatments or
360 activities prescribed by and provided by an appropriately
361 trained, licensed, or certified professional or staff person and
362 may include, but are not limited to, physical therapy, speech
363 therapy, respiratory therapy, occupational therapy, behavior
364 therapy, physical management services, and related specialized
365 equipment and supplies.

366 (37)~~(36)~~ "Spina bifida" means, ~~for purposes of this~~
367 ~~chapter,~~ a person with a medical diagnosis of spina bifida
368 cystica or myelomeningocele.

369 (38)~~(37)~~ "Support coordinator" means a person who is
370 contracting with ~~designated by~~ the agency to assist clients
371 ~~individuals~~ and families in identifying their capacities, needs,
372 and resources, as well as finding and gaining access to
373 necessary supports and services; locating or developing
374 employment opportunities; coordinating the delivery of supports
375 and services; advocating on behalf of the client ~~individual~~ and
376 family; maintaining relevant records; and monitoring and
377 evaluating the delivery of supports and services to determine

28-01022-12

20121516__

378 the extent to which they meet the needs ~~and expectations~~
379 identified by the client individual, family, and others who
380 participated in the development of the support plan.

381 ~~(39)-(38)~~ "Supported employment" means employment located or
382 provided in an integrated work setting, with earnings paid on a
383 commensurate wage basis, and for which continued support is
384 needed for job maintenance.

385 ~~(40)-(39)~~ "Supported living" means a category of
386 individually determined services designed and coordinated in
387 ~~such~~ a manner that provides ~~as to provide~~ assistance to adult
388 clients who require ongoing supports to live as independently as
389 possible in their own homes, to be integrated into the
390 community, and to participate in community life to the fullest
391 extent possible.

392 ~~(41)-(40)~~ "Training" means a planned approach to assisting a
393 client to attain or maintain his or her maximum potential and
394 includes services ranging from sensory stimulation to
395 instruction in skills for independent living and employment.

396 ~~(42)-(41)~~ "Treatment" means the prevention, amelioration, or
397 cure of a client's physical and mental disabilities or
398 illnesses.

399 (43) "Waiver" means a federally approved Medicaid waiver
400 program, including, but not limited to, the Developmental
401 Disabilities Home and Community-Based Services Waivers Tiers 1-
402 4, the Developmental Disabilities Individual Budget Waiver, and
403 the Consumer-Directed Care Plus Program, authorized pursuant to
404 s. 409.906 and administered by the agency to provide home and
405 community-based services to clients.

406 Section 3. Subsections (1) and (6) of section 393.065,

28-01022-12

20121516__

407 Florida Statutes, are amended to read:

408 393.065 Application and eligibility determination.—

409 (1) Application for services shall be made, in writing, to
410 the agency, ~~in~~ in the service area in which the applicant resides.
411 The agency shall review each applicant for eligibility within 45
412 days after the date the application is signed for children under
413 6 years of age and within 60 days after the date the application
414 is signed for all other applicants. ~~If when~~ When necessary to
415 definitively identify individual conditions or needs, the agency
416 shall provide a comprehensive assessment. Eligibility is limited
417 to United States citizens and to qualified noncitizens who meet
418 the criteria provided in s. 414.095(3), and who have established
419 domicile in Florida pursuant to s. 222.17 or are otherwise
420 determined to be legal residents of this state. ~~Only applicants~~
421 ~~whose domicile is in Florida are eligible for services.~~
422 Information accumulated by other agencies, including
423 professional reports and collateral data, shall be considered if
424 ~~in this process when~~ available.

425 (6) The client, the client's guardian, or the client's
426 family must ensure that accurate, up-to-date contact information
427 is provided to the agency at all times. The agency shall remove
428 from the wait list an any individual who cannot be located using
429 the contact information provided to the agency, fails to meet
430 eligibility requirements, or no longer qualifies as a legal
431 resident of this state ~~becomes domiciled outside the state.~~

432 Section 4. Section 393.066, Florida Statutes, is amended to
433 read:

434 393.066 Community services and treatment.—

435 (1) The agency shall plan, develop, organize, and implement

28-01022-12

20121516

436 its programs of services and treatment for individuals who have
437 ~~persons with~~ developmental disabilities in order to assist them
438 in living allow clients to live as independently as possible in
439 their own homes or communities and avoid institutionalization
440 ~~and to achieve productive lives as close to normal as possible.~~
441 ~~All elements of community-based services shall be made~~
442 ~~available, and eligibility for these services shall be~~
443 ~~consistent across the state.~~

444 (2) ~~All~~ Services that are not available through nonwaiver
445 resources or not donated needed shall be purchased instead of
446 provided directly by the agency ~~if, when~~ such arrangement is
447 more cost-efficient than having those services provided
448 directly. All purchased services must be approved by the agency.
449 Authorization for such services is dependent on the availability
450 of agency funding.

451 (3) Community-based services ~~that are medically~~ necessary
452 to prevent client institutionalization must be provided in the
453 most cost-effective manner to the extent of the availability of
454 agency resources as specified in the General Appropriations Act
455 ~~shall, to the extent of available resources, include:~~

- 456 ~~(a) Adult day training services.~~
457 ~~(b) Family care services.~~
458 ~~(c) Guardian advocate referral services.~~
459 ~~(d) Medical/dental services, except that medical services~~
460 ~~shall not be provided to clients with spina bifida except as~~
461 ~~specifically appropriated by the Legislature.~~
462 ~~(e) Parent training.~~
463 ~~(f) Personal care services.~~
464 ~~(g) Recreation.~~

28-01022-12

20121516__

465 ~~(h) Residential facility services.~~
466 ~~(i) Respite services.~~
467 ~~(j) Social services.~~
468 ~~(k) Specialized therapies.~~
469 ~~(l) Supported employment.~~
470 ~~(m) Supported living.~~
471 ~~(n) Training, including behavioral analysis services.~~
472 ~~(o) Transportation.~~
473 ~~(p) Other habilitative and rehabilitative services as~~
474 needed.

475 (4) The agency or the agency's agents shall identify and
476 engage in efforts to develop, increase, or enhance the
477 availability of nonwaiver resources to individuals who have
478 developmental disabilities. The agency shall promote
479 partnerships and collaborative efforts with families and
480 organizations, such as nonprofit agencies, foundations, places
481 of worship, schools, community organizations and clubs,
482 businesses, local governments, and state and federal agencies.
483 The agency shall implement policies and procedures that
484 establish waivers as the payor of last resort for home and
485 community-based services and supports ~~shall utilize the services~~
486 ~~of private businesses, not-for-profit organizations, and units~~
487 ~~of local government whenever such services are more cost-~~
488 ~~efficient than such services provided directly by the~~
489 ~~department, including arrangements for provision of residential~~
490 ~~facilities.~~

491 ~~(5) In order to improve the potential for utilization of~~
492 ~~more cost-effective, community-based residential facilities, the~~
493 ~~agency shall promote the statewide development of day~~

28-01022-12

20121516__

494 ~~habilitation services for clients who live with a direct service~~
495 ~~provider in a community-based residential facility and who do~~
496 ~~not require 24-hour-a-day care in a hospital or other health~~
497 ~~care institution, but who may, in the absence of day~~
498 ~~habilitation services, require admission to a developmental~~
499 ~~disabilities center. Each day service facility shall provide a~~
500 ~~protective physical environment for clients, ensure that direct~~
501 ~~service providers meet minimum screening standards as required~~
502 ~~in s. 393.0655, make available to all day habilitation service~~
503 ~~participants at least one meal on each day of operation, provide~~
504 ~~facilities to enable participants to obtain needed rest while~~
505 ~~attending the program, as appropriate, and provide social and~~
506 ~~educational activities designed to stimulate interest and~~
507 ~~provide socialization skills.~~

508 (5)~~(6)~~ To promote independence and productivity, the agency
509 shall provide supports and services, within available resources,
510 to assist clients enrolled in Medicaid waivers who choose to
511 pursue gainful employment.

512 (6)~~(7)~~ For the purpose of making needed community-based
513 residential facilities available at the least possible cost to
514 the state, the agency may ~~is authorized to~~ lease privately owned
515 residential facilities under long-term rental agreements, if
516 such ~~rental~~ agreements are projected to be less costly to the
517 state over the useful life of the facility than state purchase
518 or state construction of ~~such~~ a facility.

519 (7)~~(8)~~ The agency may adopt rules providing definitions,
520 eligibility criteria, and procedures for the purchase of
521 services provided pursuant to this section.

522 Section 5. Section 393.0661, Florida Statutes, is amended

28-01022-12

20121516__

523 to read:

524 393.0661 Home and community-based services delivery system;
525 comprehensive redesign.—The Legislature finds that the home and
526 community-based services delivery system for individuals who
527 have ~~persons with~~ developmental disabilities and the
528 availability of appropriated funds are two of the critical
529 elements in making services available. ~~Therefore, it is the~~
530 ~~intent of the Legislature that the Agency for Persons with~~
531 ~~Disabilities shall develop and implement a comprehensive~~
532 ~~redesign of the system.~~

533 (1) The ~~redesign of the~~ home and community-based services
534 system must ~~shall~~ include, at a minimum, ~~all actions necessary~~
535 ~~to achieve~~ an appropriate rate structure, client choice within a
536 specified service package, appropriate assessment strategies, an
537 efficient billing process that contains reconciliation and
538 monitoring components, and a ~~redefined~~ role for support
539 coordinators which that avoids conflicts of interest and ensures
540 that the client's needs for critical services are addressed
541 ~~potential conflicts of interest and ensures that family/client~~
542 ~~budgets are linked to levels of need.~~

543 (a) The agency shall use the Questionnaire for Situational
544 Information, or other ~~an~~ assessment instruments ~~deemed by~~
545 ~~instrument that~~ the agency ~~deems~~ to be reliable and valid,
546 ~~including, but not limited to, the Department of Children and~~
547 ~~Family Services' Individual Cost Guidelines or the agency's~~
548 ~~Questionnaire for Situational Information.~~ The agency may
549 contract with an external vendor ~~or may use support coordinators~~
550 to complete client assessments if it develops sufficient
551 safeguards and training to ensure ongoing inter-rater

28-01022-12

20121516__

552 reliability.

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

556 (2) A provider of services rendered to clients ~~persons with~~
557 ~~developmental disabilities~~ pursuant to a ~~federally approved~~
558 waiver shall be reimbursed in accordance with rates adopted
559 ~~according to a rate methodology based upon an analysis of the~~
560 ~~expenditure history and prospective costs of providers~~
561 ~~participating in the waiver program, or under any other~~
562 ~~methodology developed by the Agency for Health Care~~
563 ~~Administration, in consultation with the agency for Persons with~~
564 ~~Disabilities, and approved by the Federal Government in~~
565 accordance with the waiver.

566 (3) The Agency for Health Care Administration, in
567 consultation with the agency, shall seek federal approval and
568 implement a four-tiered waiver system to serve eligible clients
569 ~~through the developmental disabilities and family and supported~~
570 ~~living waivers~~. For the purpose of the ~~this~~ waiver program,
571 eligible clients ~~shall~~ include individuals who have ~~with a~~
572 ~~diagnosis of Down syndrome or~~ a developmental disability ~~as~~
573 ~~defined in s. 393.063~~. The agency shall assign all clients
574 receiving services through the ~~developmental disabilities~~ waiver
575 to a tier based on the ~~Department of Children and Family~~
576 ~~Services' Individual Cost Guidelines, the agency's Questionnaire~~
577 ~~for Situational Information, or another such assessment~~
578 ~~instrument deemed to be~~ valid and reliable by the agency; client
579 characteristics, including, but not limited to, age; and other
580 appropriate assessment methods. Final determination of tier

28-01022-12

20121516__

581 eligibility may not be made until a waiver slot and funding
582 become available and only then may the client be enrolled in the
583 appropriate tier. If a client is later determined eligible for a
584 higher tier, assignment to the higher tier must be based on
585 crisis criteria as adopted by rule. The agency may also later
586 move a client to a lower tier if the client's service needs
587 change and can be met by services provided in a lower tier. The
588 agency may not authorize the provision of services that are
589 duplicated by, or above the coverage limits of, the Medicaid
590 state plan.

591 (a) Tier one is limited to clients who have intensive
592 medical or adaptive service needs that cannot be met in tier
593 ~~two, three, or four for intensive medical or adaptive needs and~~
594 ~~that are essential for avoiding institutionalization, or who~~
595 possess behavioral problems that are exceptional in intensity,
596 duration, or frequency and present a substantial risk of harm to
597 themselves or others. ~~Total annual expenditures under tier one~~
598 ~~may not exceed \$150,000 per client each year, provided that~~
599 ~~expenditures for clients in tier one with a documented medical~~
600 ~~necessity requiring intensive behavioral residential~~
601 ~~habilitation services, intensive behavioral residential~~
602 ~~habilitation services with medical needs, or special medical~~
603 ~~home care, as provided in the Developmental Disabilities Waiver~~
604 ~~Services Coverage and Limitations Handbook, are not subject to~~
605 ~~the \$150,000 limit on annual expenditures.~~

606 (b) Tier two is limited to clients whose service needs
607 include a licensed residential facility and who are authorized
608 to receive a moderate level of support for standard residential
609 habilitation services or a minimal level of support for behavior

28-01022-12

20121516__

610 focus residential habilitation services, or clients in supported
611 living who receive more than 6 hours a day of in-home support
612 services. Tier two also includes clients whose need for
613 authorized services meets the criteria for tier one but which
614 can be met within the expenditure limit of tier two. Total
615 annual expenditures under tier two may not exceed \$53,625 per
616 client each year.

617 (c) Tier three includes, but is not limited to, clients
618 requiring residential placements, clients in independent or
619 supported living situations, and clients who live in their
620 family home. Tier three also includes clients whose need for
621 authorized services meet the criteria for tiers one or two but
622 which can be met within the expenditure limit of tier three.
623 Total annual expenditures under tier three may not exceed
624 \$34,125 per client each year.

625 (d) Tier four includes clients ~~individuals~~ who were
626 enrolled in the family and supported living waiver on July 1,
627 2007, who were ~~shall be~~ assigned to this tier without the
628 assessments required by this section. Tier four also includes,
629 but is not limited to, clients in independent or supported
630 living situations and clients who live in their family home.
631 Total annual expenditures under tier four may not exceed \$14,422
632 per client each year.

633 (e) The Agency for Health Care Administration shall also
634 seek federal approval to provide a consumer-directed option for
635 clients ~~persons with developmental disabilities which~~
636 ~~corresponds to the funding levels in each of the waiver tiers.~~
637 ~~The agency shall implement the four-tiered waiver system~~
638 ~~beginning with tiers one, three, and four and followed by tier~~

28-01022-12

20121516__

639 ~~two. The agency and the Agency for Health Care Administration~~
640 ~~may adopt rules necessary to administer this subsection.~~

641 (f) The agency shall seek federal waivers and amend
642 contracts as necessary to make changes to services defined in
643 ~~federal~~ waiver programs administered by the agency as follows:

644 1. Supported living coaching services may not exceed 20
645 hours per month for clients ~~persons~~ who also receive in-home
646 support services.

647 2. Limited support coordination services is the only type
648 of support coordination service that may be provided to clients
649 ~~persons~~ under the age of 18 who live in the family home.

650 3. Personal care assistance services are limited to 180
651 hours per calendar month and may not include rate modifiers.
652 Additional hours may be authorized for clients ~~persons~~ who have
653 intensive physical, medical, or adaptive needs if such hours are
654 essential for avoiding institutionalization.

655 4. Residential habilitation services are limited to 8 hours
656 per day. Additional hours may be authorized for clients ~~persons~~
657 who have intensive medical or adaptive needs and if such hours
658 are essential for avoiding institutionalization, or for clients
659 ~~persons~~ who possess behavioral problems that are exceptional in
660 intensity, duration, or frequency and present a substantial risk
661 of harming themselves or others. This restriction shall be in
662 effect until the four-tiered waiver system is fully implemented.

663 ~~5. Chore services, nonresidential support services, and~~
664 ~~homemaker services are eliminated. The agency shall expand the~~
665 ~~definition of in-home support services to allow the service~~
666 ~~provider to include activities previously provided in these~~
667 ~~eliminated services.~~

28-01022-12

20121516__

668 ~~6. Massage therapy, medication review, and psychological~~
669 ~~assessment services are eliminated.~~

670 5.7. The agency shall conduct supplemental cost plan
671 reviews to verify the medical necessity of authorized services
672 for plans that have increased by more than 8 percent during
673 either of the 2 preceding fiscal years.

674 ~~6.8.~~ The agency shall implement a consolidated residential
675 habilitation rate structure to increase savings to the state
676 through a more cost-effective payment method and establish
677 uniform rates for intensive behavioral residential habilitation
678 services.

679 ~~9. Pending federal approval, the agency may extend current~~
680 ~~support plans for clients receiving services under Medicaid~~
681 ~~waivers for 1 year beginning July 1, 2007, or from the date~~
682 ~~approved, whichever is later. Clients who have a substantial~~
683 ~~change in circumstances which threatens their health and safety~~
684 ~~may be reassessed during this year in order to determine the~~
685 ~~necessity for a change in their support plan.~~

686 7.10. The agency shall develop a plan to eliminate
687 redundancies and duplications between in-home support services,
688 companion services, personal care services, and supported living
689 coaching by limiting or consolidating such services.

690 ~~8.11.~~ The agency shall develop a plan to reduce the
691 intensity and frequency of supported employment services to
692 clients in stable employment situations who have a documented
693 history of at least 3 years' employment with the same company or
694 in the same industry.

695 (g) The agency and the Agency for Health Care
696 Administration may adopt rules as necessary to administer this

28-01022-12

20121516__

697 subsection.

698 (4) The geographic differential for Miami-Dade, Broward,
699 and Palm Beach Counties for residential habilitation services is
700 ~~shall be~~ 7.5 percent.

701 (5) The geographic differential for Monroe County for
702 residential habilitation services is ~~shall be~~ 20 percent.

703 ~~(6) Effective January 1, 2010, and except as otherwise~~
704 ~~provided in this section, a client served by the home and~~
705 ~~community-based services waiver or the family and supported~~
706 ~~living waiver funded through the agency shall have his or her~~
707 ~~cost plan adjusted to reflect the amount of expenditures for the~~
708 ~~previous state fiscal year plus 5 percent if such amount is less~~
709 ~~than the client's existing cost plan. The agency shall use~~
710 ~~actual paid claims for services provided during the previous~~
711 ~~fiscal year that are submitted by October 31 to calculate the~~
712 ~~revised cost plan amount. If the client was not served for the~~
713 ~~entire previous state fiscal year or there was any single change~~
714 ~~in the cost plan amount of more than 5 percent during the~~
715 ~~previous state fiscal year, the agency shall set the cost plan~~
716 ~~amount at an estimated annualized expenditure amount plus 5~~
717 ~~percent. The agency shall estimate the annualized expenditure~~
718 ~~amount by calculating the average of monthly expenditures,~~
719 ~~beginning in the fourth month after the client enrolled,~~
720 ~~interrupted services are resumed, or the cost plan was changed~~
721 ~~by more than 5 percent and ending on August 31, 2009, and~~
722 ~~multiplying the average by 12. In order to determine whether a~~
723 ~~client was not served for the entire year, the agency shall~~
724 ~~include any interruption of a waiver-funded service or services~~
725 ~~lasting at least 18 days. If at least 3 months of actual~~

28-01022-12

20121516__

726 ~~expenditure data are not available to estimate annualized~~
727 ~~expenditures, the agency may not rebase a cost plan pursuant to~~
728 ~~this subsection. The agency may not rebase the cost plan of any~~
729 ~~client who experiences a significant change in recipient~~
730 ~~condition or circumstance which results in a change of more than~~
731 ~~5 percent to his or her cost plan between July 1 and the date~~
732 ~~that a rebased cost plan would take effect pursuant to this~~
733 ~~subsection.~~

734 (6) ~~(7)~~ The agency shall collect premiums, fees, or other
735 cost sharing from the parents of children being served by the
736 agency through a waiver pursuant to s. 409.906(13) (d).

737 (7) In determining whether to continue a Medicaid waiver
738 provider agreement for support coordinator services, the agency
739 shall review waiver support coordination performance to ensure
740 that the support coordinator meets or exceeds the criteria
741 established by the agency. The support coordinator is
742 responsible for assisting the client in meeting his or her
743 service needs through nonwaiver resources, as well as through
744 the client's budget allocation or cost plan under the waiver.
745 The waiver is the funding source of last resort for client
746 services. The waiver support coordinator provider agreements and
747 performance reviews shall be conducted and managed by the
748 agency's area offices.

749 (a) Criteria for evaluating support coordinator performance
750 must include, but is not limited to:

- 751 1. The protection of the health and safety of clients.
- 752 2. Assisting clients to obtain employment and pursue other
753 meaningful activities.
- 754 3. Assisting clients to access services that allow them to

28-01022-12

20121516__

755 live in their community.

756 4. The use of family resources.

757 5. The use of private resources.

758 6. The use of community resources.

759 7. The use of charitable resources.

760 8. The use of volunteer resources.

761 9. The use of services from other governmental entities.

762 10. The overall outcome in securing nonwaiver resources.

763 11. The cost-effective use of waiver resources.

764 12. Coordinating all available resources to ensure that
765 clients' outcomes are met.

766 (b) The agency may recognize consistently superior
767 performance by exempting a waiver support coordinator from
768 annual quality assurance reviews or other mechanisms established
769 by the agency. The agency may issue sanctions for poor
770 performance, including, but not limited to, a reduction in
771 caseload size, recoupment or other financial penalties, and
772 termination of the waiver support coordinator's provider
773 agreement. The agency may adopt rules to administer this
774 subsection.

775 (8) This section or related rule does not prevent or limit
776 the Agency for Health Care Administration, in consultation with
777 the agency ~~for Persons with Disabilities~~, from adjusting fees,
778 reimbursement rates, lengths of stay, number of visits, or
779 number of services, or from limiting enrollment, or making any
780 other adjustment necessary to comply with the availability of
781 moneys and any limitations or directions provided in the General
782 Appropriations Act.

783 (9) The agency ~~for Persons with Disabilities~~ shall submit

28-01022-12

20121516__

784 quarterly status reports to the Executive Office of the Governor
785 and, the chairs of the legislative appropriations committees
786 ~~chair of the Senate Ways and Means Committee or its successor,~~
787 ~~and the chair of the House Fiscal Council or its successor~~
788 regarding the financial status of waiver ~~home and community-~~
789 ~~based~~ services, including the number of enrolled individuals who
790 are receiving services through one or more programs; the number
791 of individuals who have requested services who are not enrolled
792 but ~~who~~ are receiving services through one or more programs,
793 including with a description indicating the programs from which
794 the individual is receiving services; the number of individuals
795 who have refused an offer of services but who choose to remain
796 on the list of individuals waiting for services; the number of
797 individuals who have requested services but are not ~~who are~~
798 receiving ~~no~~ services; a frequency distribution indicating the
799 length of time individuals have been waiting for services; and
800 information concerning the actual and projected costs compared
801 to the amount of the appropriation available to the program and
802 any projected surpluses or deficits. If at any time an analysis
803 by the agency, in consultation with the Agency for Health Care
804 Administration, indicates that the cost of services is expected
805 to exceed the amount appropriated, the agency shall submit a
806 plan in accordance with subsection (8) to the Executive Office
807 of the Governor and the chairs of the legislative appropriations
808 committees, ~~the chair of the Senate Ways and Means Committee or~~
809 ~~its successor, and the chair of the House Fiscal Council or its~~
810 ~~successor~~ to remain within the amount appropriated. The agency
811 shall work with the Agency for Health Care Administration to
812 implement the plan so as to remain within the appropriation.

28-01022-12

20121516

813 (10) Implementation of ~~Medicaid~~ waiver programs and
814 services authorized under this chapter is limited by the funds
815 appropriated for the individual budgets pursuant to s. 393.0662
816 and the four-tiered waiver system pursuant to subsection (3).
817 Contracts with independent support coordinators and service
818 providers must include provisions requiring compliance with
819 agency cost containment initiatives. Unless a client is
820 determined to be in crisis based on criteria adopted by rule,
821 neither the client nor the support coordinator may apply for
822 additional waiver funding if the agency has determined pursuant
823 to s. 393.0661(9) that the total cost of waiver services for
824 agency clients is expected to exceed the amount appropriated.
825 The agency shall implement monitoring and accounting procedures
826 necessary to track actual expenditures and project future
827 spending compared to available appropriations for Medicaid
828 waiver programs. If ~~When~~ necessary, based on projected deficits,
829 the agency shall ~~must~~ establish specific corrective action plans
830 that incorporate corrective actions for ~~of~~ contracted providers
831 which ~~that~~ are sufficient to align program expenditures with
832 annual appropriations. If deficits continue during the 2012-2013
833 fiscal year, the agency in conjunction with the Agency for
834 Health Care Administration shall develop a plan to redesign the
835 waiver program and submit the plan to the President of the
836 Senate and the Speaker of the House of Representatives by
837 September 30, 2013. At a minimum, the plan must include the
838 following elements:

839 (a) *Budget predictability.*—Agency budget recommendations
840 must include specific steps to restrict spending to budgeted
841 amounts based on alternatives to the iBudget and four-tiered

28-01022-12

20121516__

842 ~~Medicaid~~ waiver models.

843 (b) *Services.*—The agency shall identify core services that
844 are essential to provide for client health and safety and
845 recommend the elimination of coverage for other services that
846 are not affordable based on available resources.

847 (c) *Flexibility.*—The redesign must ~~shall~~ be responsive to
848 individual needs and to the extent possible encourage client
849 control over allocated resources for their needs.

850 (d) *Support coordination services.*—The plan must ~~shall~~
851 modify the manner of providing support coordination services to
852 improve management of service utilization and increase
853 accountability and responsiveness to agency priorities.

854 (e) *Reporting.*—The agency shall provide monthly reports to
855 the President of the Senate and the Speaker of the House of
856 Representatives on plan progress and development on July 31,
857 2013, and August 31, 2013.

858 (f) *Implementation.*—The implementation of a redesigned
859 program is subject to legislative approval and must ~~shall~~ occur
860 by no later than July 1, 2014. The Agency for Health Care
861 Administration shall seek federal waivers as needed to implement
862 the redesigned plan approved by the Legislature.

863 Section 6. Section 393.0662, Florida Statutes, is amended
864 to read:

865 393.0662 Individual budgets for delivery of home and
866 community-based services; iBudget system established.—The
867 Legislature finds that improved financial management of the
868 existing home and community-based ~~Medicaid~~ waiver program is
869 necessary to avoid deficits that impede the provision of
870 services to individuals who are on the waiting list for

28-01022-12

20121516__

871 enrollment in the program. The Legislature further finds that
872 clients and their families should have greater flexibility to
873 choose the services that best allow them to live in their
874 community within the limits of an established budget. Therefore,
875 the Legislature intends that the agency, in consultation with
876 the Agency for Health Care Administration, develop and implement
877 a comprehensive redesign of the service delivery system using
878 individual budgets as the basis for allocating the funds
879 appropriated for the ~~home and community-based services Medicaid~~
880 waiver program among eligible enrolled clients. The service
881 delivery system that uses individual budgets shall be called the
882 iBudget system.

883 (1) The agency shall establish an individual budget, to be
884 referred to as an iBudget, for each client ~~individual~~ served by
885 the home and community-based services ~~Medicaid~~ waiver program.
886 The funds appropriated to the agency shall be allocated through
887 the iBudget system to eligible, Medicaid-enrolled clients who
888 have. ~~For the iBudget system, Eligible clients shall include~~
889 ~~individuals with a diagnosis of Down syndrome or a developmental~~
890 ~~disability as defined in s. 393.063.~~ The iBudget system shall be
891 designed to provide ~~for:~~ enhanced client choice within a
892 specified service package; appropriate assessment strategies; an
893 efficient consumer budgeting and billing process that includes
894 reconciliation and monitoring components; a redefined role for
895 support coordinators which ~~that~~ avoids potential conflicts of
896 interest; a flexible and streamlined service review process; and
897 a methodology and process that ensures the equitable allocation
898 of available funds to each client based on the client's level of
899 need, as determined by the variables in the allocation

28-01022-12

20121516__

900 algorithm.

901 ~~(2)(a)~~ In developing each client's iBudget, the agency
902 shall use an allocation algorithm and methodology.

903 (a) The algorithm shall use variables that have been
904 determined by the agency to have a statistically validated
905 relationship to the client's level of need for services provided
906 through the ~~home and community-based services Medicaid~~ waiver
907 program. The algorithm ~~and methodology~~ may consider individual
908 characteristics, including, but not limited to, a client's age
909 and living situation, information from a formal assessment
910 instrument that the agency determines is valid and reliable, and
911 information from other assessment processes.

912 (b) The allocation methodology shall provide the algorithm
913 that determines the amount of funds allocated to a client's
914 iBudget. The agency may approve an increase in the amount ~~of~~
915 ~~funds allocated, as determined~~ by the algorithm, based on the
916 client having one or more of the following needs that cannot be
917 accommodated within the ~~funding as determined by the algorithm~~
918 allocation and having no other resources, supports, or services
919 available to meet such needs ~~the need~~:

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

924 a. A documented history of significant, potentially life-
925 threatening behaviors, such as recent attempts at suicide,
926 arson, nonconsensual sexual behavior, or self-injurious behavior
927 requiring medical attention;

928 b. A complex medical condition that requires active

28-01022-12

20121516__

929 intervention by a licensed nurse on an ongoing basis that cannot
930 be taught or delegated to a nonlicensed person;

931 c. A chronic comorbid condition. As used in this
932 subparagraph, the term "comorbid condition" means a medical
933 condition existing simultaneously but independently with another
934 medical condition in a patient; or

935 d. A need for total physical assistance with activities
936 such as eating, bathing, toileting, grooming, and personal
937 hygiene.

938

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

942 2. A significant need for one-time or temporary support or
943 services that, if not provided, would place the health and
944 safety of the client, the client's caregiver, or the public in
945 serious jeopardy, unless the increase is approved. A significant
946 need may include, but is not limited to, the provision of
947 environmental modifications, durable medical equipment, services
948 to address the temporary loss of support from a caregiver, or
949 special services or treatment for a serious temporary condition
950 when the service or treatment is expected to ameliorate the
951 underlying condition. As used in this subparagraph, the term
952 "temporary" means less ~~a period of fewer~~ than 12 continuous
953 months. However, the presence of such significant need for one-
954 time or temporary supports or services alone does not warrant an
955 increase in the amount of funds allocated to a client's iBudget
956 as determined by the algorithm.

957 3. A significant increase in the need for services after

28-01022-12

20121516__

958 the beginning of the service plan year which ~~that~~ would place
959 the health and safety of the client, the client's caregiver, or
960 the public in serious jeopardy because of substantial changes in
961 the client's circumstances, including, but not limited to,
962 permanent or long-term loss or incapacity of a caregiver, loss
963 of services authorized under the state Medicaid plan due to a
964 change in age, or a significant change in medical or functional
965 status which requires the provision of additional services on a
966 permanent or long-term basis which ~~that~~ cannot be accommodated
967 within the client's current iBudget. As used in this
968 subparagraph, the term "long-term" means ~~a period of~~ 12 or more
969 continuous months. However, such significant increase in need
970 for services of a permanent or long-term nature alone does not
971 warrant an increase in the amount of funds allocated to a
972 client's iBudget as determined by the algorithm.

973
974 The agency shall reserve portions of the appropriation for the
975 ~~home and community-based services Medicaid~~ waiver program for
976 adjustments required pursuant to this paragraph and may use the
977 services of an independent actuary in determining the amount of
978 the portions to be reserved.

979 (c) A client's iBudget shall be the total of the amount
980 determined by the algorithm and any additional funding provided
981 pursuant to paragraph (b).

982 (d) A client shall have the flexibility to determine the
983 type, amount, frequency, duration, and scope of the services on
984 his or her cost plan if the agency determines that such services
985 meet his or her health and safety needs, meet the requirements
986 contained in the Coverage and Limitations Handbook for each

28-01022-12

20121516

987 service included on the cost plan, and comply with the other
988 requirements of this section.

989 (e) A client's annual expenditures for ~~home and community-~~
990 ~~based services~~ Medicaid waiver services may not exceed the
991 limits of his or her iBudget. The total of all clients'
992 projected annual iBudget expenditures may not exceed the
993 agency's appropriation for waiver services.

994 (3)-(2) The Agency for Health Care Administration, in
995 consultation with the agency, shall seek federal approval to
996 amend current waivers, request a new waiver, and amend contracts
997 as necessary to implement the iBudget system to serve eligible,
998 enrolled clients through the home and community-based services
999 Medicaid waiver program and the Consumer-Directed Care Plus
1000 Program.

1001 (4)-(3) The agency shall transition all eligible, enrolled
1002 clients to the iBudget system. The agency may gradually phase in
1003 the iBudget system.

1004 (a) During the 2011-2012 and 2012-2013 fiscal years, the
1005 agency shall determine a client's initial iBudget by comparing
1006 the client's algorithm allocation to the client's existing
1007 annual cost plan and the amount for the client's extraordinary
1008 needs. The client's algorithm allocation shall be the amount
1009 determined by the algorithm, adjusted to the agency's
1010 appropriation and any set-asides determined necessary by the
1011 agency, including, but not limited to, funding for extraordinary
1012 needs. The amount for the client's extraordinary needs shall be
1013 the annualized sum of any of the following services authorized
1014 on the client's cost plan in the amount, duration, frequency,
1015 intensity, and scope determined by the agency to be necessary

28-01022-12

20121516__

1016 for the client's health and safety:

1017 1. Behavior assessment, behavior analysis services, and
 1018 behavior assistant services.

1019 2. Consumable medical supplies.

1020 3. Durable medical equipment.

1021 4. In-home support services.

1022 5. Nursing services.

1023 6. Occupational therapy assessment and occupational
 1024 therapy.

1025 7. Personal care assistance.

1026 8. Physical therapy assessment and physical therapy.

1027 9. Residential habilitation.

1028 10. Respiratory therapy assessment and respiratory therapy.

1029 11. Special medical home care.

1030 12. Support coordination.

1031 13. Supported employment.

1032 14. Supported living coaching.

1033 (b) If the client's algorithm allocation is:

1034 1. Greater than the client's cost plan, the client's
 1035 initial iBudget is equal to the cost plan.

1036 2. Less than the client's cost plan but greater than the
 1037 amount for the client's extraordinary needs, the client's
 1038 initial iBudget is equal to the algorithm allocation.

1039 3. Less than the amount for the client's extraordinary
 1040 needs, the client's initial iBudget is equal to the amount for
 1041 the client's extraordinary needs.

1042
 1043 However, the client's initial annualized iBudget amount may not
 1044 be less than 50 percent of that client's existing annualized

28-01022-12

20121516__

1045 cost plan.

1046 (c) During the 2011-2012 and 2012-2013 fiscal years,
1047 increases to a client's initial iBudget amount may be granted
1048 only if his or her situation meets the crisis criteria provided
1049 under agency rule.

1050 (d) ~~(a)~~ While the agency phases in the iBudget system, the
1051 agency may continue to serve eligible, enrolled clients under
1052 the four-tiered waiver system established under s. 393.065 while
1053 those clients await transitioning to the iBudget system.

1054 ~~(b) The agency shall design the phase-in process to ensure~~
1055 ~~that a client does not experience more than one-half of any~~
1056 ~~expected overall increase or decrease to his or her existing~~
1057 ~~annualized cost plan during the first year that the client is~~
1058 ~~provided an iBudget due solely to the transition to the iBudget~~
1059 ~~system.~~

1060 (5) ~~(4)~~ A client must use all available nonwaiver services
1061 ~~authorized under the state Medicaid plan, school-based services,~~
1062 ~~private insurance and other benefits, and any other resources~~
1063 that may be available to the client before using funds from his
1064 or her iBudget to pay for support and services.

1065 (6) ~~(5)~~ The service limitations in s. 393.0661(3)(f)1., 2.,
1066 and 3. do not apply to the iBudget system.

1067 (7) ~~(6)~~ Rates for any or all services established under
1068 rules of the Agency for Health Care Administration must ~~shall~~ be
1069 designated as the maximum rather than a fixed amount for clients
1070 ~~individuals~~ who receive an iBudget, except for services
1071 specifically identified in those rules that the agency
1072 determines are not appropriate for negotiation, which may
1073 include, but are not limited to, residential habilitation

28-01022-12

20121516__

1074 services.

1075 (8)~~(7)~~ The agency must ~~shall~~ ensure that clients and
1076 caregivers have access to training and education that informs ~~to~~
1077 ~~inform~~ them about the iBudget system and enhances ~~enhance~~ their
1078 ability for self-direction. Such training must be provided ~~shall~~
1079 ~~be offered~~ in a variety of formats and, at a minimum, must ~~shall~~
1080 address the policies and processes of the iBudget system; the
1081 roles and responsibilities of consumers, caregivers, waiver
1082 support coordinators, providers, and the agency; information
1083 that is available to help the client make decisions regarding
1084 the iBudget system; and examples of nonwaiver ~~support and~~
1085 resources that may be available in the community.

1086 (9)~~(8)~~ The agency shall collect data to evaluate the
1087 implementation and outcomes of the iBudget system.

1088 (10)~~(9)~~ The agency and the Agency for Health Care
1089 Administration may adopt rules specifying the allocation
1090 algorithm and methodology; criteria and processes that allow ~~for~~
1091 clients to access reserved funds for extraordinary needs,
1092 temporarily or permanently changed needs, and one-time needs;
1093 and processes and requirements for the selection and review of
1094 services, development of support and cost plans, and management
1095 of the iBudget system as needed to administer this section.

1096 Section 7. Subsection (2) of section 393.067, Florida
1097 Statutes, is amended to read:

1098 393.067 Facility licensure.—

1099 (2) The agency shall conduct annual inspections and reviews
1100 of facilities and programs licensed under this section unless
1101 the facility or program is currently accredited by the Joint
1102 Commission, the Commission on Accreditation of Rehabilitation

28-01022-12

20121516

1103 Facilities, or the Council on Accreditation. Facilities or
1104 programs that are operating under such accreditation must be
1105 inspected and reviewed by the agency once every 2 years. If,
1106 upon inspection and review, the services and service delivery
1107 sites are not those for which the facility or program is
1108 accredited, the facilities and programs must be inspected and
1109 reviewed in accordance with this section and related rules
1110 adopted by the agency. Notwithstanding current accreditation,
1111 the agency may continue to monitor the facility or program as
1112 necessary with respect to:

1113 (a) Ensuring that services for which the agency is paying
1114 are being provided.

1115 (b) Investigating complaints, identifying problems that
1116 would affect the safety or viability of the facility or program,
1117 and monitoring the facility or program's compliance with any
1118 resulting negotiated terms and conditions, including provisions
1119 relating to consent decrees which are unique to a specific
1120 service and are not statements of general applicability.

1121 (c) Ensuring compliance with federal and state laws,
1122 federal regulations, or state rules if such monitoring does not
1123 duplicate the accrediting organization's review pursuant to
1124 accreditation standards.

1125 (d) Ensuring Medicaid compliance with federal certification
1126 and precertification review requirements.

1127 Section 8. Subsections (2) and (4) of section 393.068,
1128 Florida Statutes, are amended to read:

1129 393.068 Family care program.—

1130 (2) Services and support authorized under the family care
1131 program shall, to the extent of available resources, include the

28-01022-12

20121516__

1132 services listed under s. 393.0662(4) ~~393.066~~ and, in addition,
1133 shall include, but not be limited to:

- 1134 (a) Attendant care.
1135 (b) Barrier-free modifications to the home.
1136 (c) Home visitation by agency workers.
1137 (d) In-home subsidies.
1138 (e) Low-interest loans.
1139 (f) Modifications for vehicles used to transport the
1140 individual with a developmental disability.
1141 (g) Facilitated communication.
1142 (h) Family counseling.
1143 (i) Equipment and supplies.
1144 (j) Self-advocacy training.
1145 (k) Roommate services.
1146 (l) Integrated community activities.
1147 (m) Emergency services.
1148 (n) Support coordination.
1149 (o) Other support services as identified by the family or
1150 client individual.

1151 (4) All existing nonwaiver ~~community~~ resources available to
1152 the client must be used ~~shall be utilized~~ to support program
1153 objectives. Additional services may be incorporated into the
1154 program as appropriate and to the extent that resources are
1155 available. The agency may ~~is authorized to~~ accept gifts and
1156 grants in order to carry out the program.

1157 Section 9. Subsections (1) through (3), paragraph (b) of
1158 subsection (4), paragraphs (f) and (g) of subsection (5),
1159 subsection (6), paragraphs (d) and (e) of subsection (7), and
1160 paragraph (b) of subsection (12) of section 393.11, Florida

28-01022-12

20121516__

1161 Statutes, are amended to read:

1162 393.11 Involuntary admission to residential services.-

1163 (1) JURISDICTION.-If ~~When~~ a person is determined to be
1164 eligible to receive services from the agency ~~mentally retarded~~
1165 and requires involuntary admission to residential services
1166 provided by the agency, the circuit court of the county in which
1167 the person resides shall have jurisdiction to conduct a hearing
1168 and enter an order involuntarily admitting the person in order
1169 for ~~that~~ the person to ~~may~~ receive the care, treatment,
1170 habilitation, and rehabilitation that he or she ~~which the person~~
1171 needs. For the purpose of identifying mental retardation or
1172 autism, diagnostic capability shall be established by the
1173 agency. Except as otherwise specified, the proceedings under
1174 this section are ~~shall be~~ governed by the Florida Rules of Civil
1175 Procedure.

1176 (2) PETITION.-

1177 (a) A petition for involuntary admission to residential
1178 services may be executed by a petitioning commission or the
1179 agency.

1180 (b) The petitioning commission shall consist of three
1181 persons. One of whom ~~these persons~~ shall be a physician licensed
1182 and practicing under chapter 458 or chapter 459.

1183 (c) The petition shall be verified and shall:

1184 1. State the name, age, and present address of the
1185 commissioners and their relationship to the person who is the
1186 subject of the petition ~~with mental retardation or autism~~;

1187 2. State the name, age, county of residence, and present
1188 address of the person who is the subject of the petition ~~with~~
1189 ~~mental retardation or autism~~;

28-01022-12

20121516__

1190 3. Allege that ~~the commission believes that~~ the person
1191 needs involuntary residential services and specify the factual
1192 information on which the belief is based;

1193 4. Allege that the person lacks sufficient capacity to give
1194 express and informed consent to a voluntary application for
1195 services and lacks the basic survival and self-care skills to
1196 provide for the person's well-being or is likely to physically
1197 injure others if allowed to remain at liberty; and

1198 5. State which residential setting is the least restrictive
1199 and most appropriate alternative and specify the factual
1200 information on which the belief is based.

1201 (d) The petition shall be filed in the circuit court of the
1202 county in which the person who is the subject of the petition
1203 ~~with mental retardation or autism~~ resides.

1204 (3) NOTICE.—

1205 (a) Notice of the filing of the petition shall be given to
1206 the defendant individual and his or her legal guardian. The
1207 notice shall be given both verbally and in writing in the
1208 language of the defendant client, or in other modes of
1209 communication of the defendant client, and in English. Notice
1210 shall also be given to such other persons as the court may
1211 direct. The petition for involuntary admission to residential
1212 services shall be served with the notice.

1213 (b) ~~If Whenever~~ a motion or petition has been filed
1214 pursuant to s. 916.303 to dismiss criminal charges against a
1215 defendant ~~with retardation or autism~~, and a petition is filed to
1216 involuntarily admit the defendant to residential services under
1217 this section, the notice of the filing of the petition shall
1218 also be given to the defendant's attorney, the state attorney of

28-01022-12

20121516__

1219 the circuit from which the defendant was committed, and the
1220 agency.

1221 (c) The notice shall state that a hearing shall be set to
1222 inquire into the need of the defendant ~~person with mental~~
1223 ~~retardation or autism~~ for involuntary residential services. The
1224 notice shall also state the date of the hearing on the petition.

1225 (d) The notice shall state that the defendant ~~individual~~
1226 ~~with mental retardation or autism~~ has the right to be
1227 represented by counsel of his or her own choice and that, if the
1228 defendant ~~person~~ cannot afford an attorney, the court shall
1229 appoint one.

1230 (4) AGENCY PARTICIPATION.—

1231 (b) Following examination, the agency shall file a written
1232 report with the court not less than 10 working days before the
1233 date of the hearing. The report must be served on the
1234 petitioner, the defendant ~~person with mental retardation~~, and
1235 the defendant's ~~person's~~ attorney at the time the report is
1236 filed with the court.

1237 (5) EXAMINING COMMITTEE.—

1238 (f) The committee shall file the report with the court not
1239 less than 10 working days before the date of the hearing. The
1240 report shall be served on the petitioner, the defendant ~~person~~
1241 ~~with mental retardation~~, the defendant's ~~person's~~ attorney at
1242 the time the report is filed with the court, and the agency.

1243 (g) Members of the examining committee shall receive a
1244 reasonable fee to be determined by the court. The fees are to be
1245 paid from the general revenue fund of the county in which the
1246 defendant ~~person with mental retardation~~ resided when the
1247 petition was filed.

28-01022-12

20121516

1248 (6) COUNSEL; GUARDIAN AD LITEM.—

1249 (a) The defendant must ~~person with mental retardation shall~~
1250 be represented by counsel at all stages of the judicial
1251 proceeding. ~~If In the event~~ the defendant ~~person~~ is indigent and
1252 cannot afford counsel, the court shall appoint a public defender
1253 not less than 20 working days before the scheduled hearing. The
1254 defendant's ~~person's~~ counsel shall have full access to the
1255 records of the service provider and the agency. In all cases,
1256 the attorney shall represent the rights and legal interests of
1257 the defendant ~~person with mental retardation~~, regardless of who
1258 may initiate the proceedings or pay the attorney's fee.

1259 (b) If the attorney, during the course of his or her
1260 representation, reasonably believes that the defendant ~~person~~
1261 ~~with mental retardation~~ cannot adequately act in his or her own
1262 interest, the attorney may seek the appointment of a guardian ad
1263 litem. A prior finding of incompetency is not required before a
1264 guardian ad litem is appointed pursuant to this section.

1265 (7) HEARING.—

1266 (d) The defendant may ~~person with mental retardation shall~~
1267 be ~~physically~~ present throughout all or part of the entire
1268 proceeding. If the defendant's ~~person's~~ attorney or any other
1269 interested party believes that the person's presence at the
1270 hearing is not in the person's best interest, or good cause is
1271 otherwise shown, ~~the person's presence may be waived once the~~
1272 court may order that the defendant be excluded from the hearing
1273 ~~has seen the person and the hearing has commenced.~~

1274 (e) The defendant ~~person~~ has the right to present evidence
1275 and to cross-examine all witnesses and other evidence alleging
1276 the appropriateness of the person's admission to residential

28-01022-12

20121516__

1277 care. Other relevant and material evidence regarding the
1278 appropriateness of the person's admission to residential
1279 services; the most appropriate, least restrictive residential
1280 placement; and the appropriate care, treatment, and habilitation
1281 of the person, including written or oral reports, may be
1282 introduced at the hearing by any interested person.

1283 (12) APPEAL.—

1284 (b) The filing of an appeal by the person ordered to be
1285 involuntarily admitted under this section ~~with mental~~
1286 ~~retardation~~ shall stay admission of the person into residential
1287 care. The stay shall remain in effect during the pendency of all
1288 review proceedings in Florida courts until a mandate issues.

1289 Section 10. Paragraph (a) of subsection (1) of section
1290 393.125, Florida Statutes, is amended to read:

1291 393.125 Hearing rights.—

1292 (1) REVIEW OF AGENCY DECISIONS.—

1293 (a) For Medicaid programs administered by the agency, any
1294 developmental services applicant or client, or his or her
1295 parent, guardian advocate, or authorized representative, may
1296 request a hearing in accordance with federal law and rules
1297 applicable to Medicaid cases and has the right to request an
1298 administrative hearing pursuant to ss. 120.569 and 120.57. The
1299 hearing ~~These hearings~~ shall be provided by the Department of
1300 Children and Family Services pursuant to s. 409.285 and shall
1301 follow procedures consistent with federal law and rules
1302 applicable to Medicaid cases. At the conclusion of the hearing,
1303 the department shall submit its recommended order to the agency
1304 as provided in s. 120.57(1)(k) and the agency shall issue final
1305 orders as provided in s. 120.57(1)(i).

28-01022-12

20121516

1306 Section 11. Subsection (1) of section 393.23, Florida
1307 Statutes, is amended to read:

1308 393.23 Developmental disabilities centers; trust accounts.—
1309 All receipts from the operation of canteens, vending machines,
1310 hobby shops, sheltered workshops, activity centers, farming
1311 projects, and other like activities operated in a developmental
1312 disabilities center, and moneys donated to the center, must be
1313 deposited in a trust account in any bank, credit union, or
1314 savings and loan association authorized by the State Treasury as
1315 a qualified depository to do business in this state, if the
1316 moneys are available on demand.

1317 (1) Moneys in the trust account must be expended for the
1318 benefit, education, or welfare of clients. However, if
1319 specified, moneys that are donated to the center must be
1320 expended in accordance with the intentions of the donor. Trust
1321 account money may not be used for the benefit of agency
1322 employees or to pay the wages of such employees. The welfare of
1323 clients includes the expenditure of funds for the purchase of
1324 items for resale at canteens or vending machines, and for the
1325 establishment of, maintenance of, and operation of canteens,
1326 hobby shops, recreational or entertainment facilities, sheltered
1327 workshops that include client wages, activity centers, farming
1328 projects, or other like facilities or programs established at
1329 the center for the benefit of clients.

1330 Section 12. Paragraph (d) of subsection (13) of section
1331 409.906, Florida Statutes, is amended to read:

1332 409.906 Optional Medicaid services.—Subject to specific
1333 appropriations, the agency may make payments for services which
1334 are optional to the state under Title XIX of the Social Security

28-01022-12

20121516__

1335 Act and are furnished by Medicaid providers to recipients who
1336 are determined to be eligible on the dates on which the services
1337 were provided. Any optional service that is provided shall be
1338 provided only when medically necessary and in accordance with
1339 state and federal law. Optional services rendered by providers
1340 in mobile units to Medicaid recipients may be restricted or
1341 prohibited by the agency. Nothing in this section shall be
1342 construed to prevent or limit the agency from adjusting fees,
1343 reimbursement rates, lengths of stay, number of visits, or
1344 number of services, or making any other adjustments necessary to
1345 comply with the availability of moneys and any limitations or
1346 directions provided for in the General Appropriations Act or
1347 chapter 216. If necessary to safeguard the state's systems of
1348 providing services to elderly and disabled persons and subject
1349 to the notice and review provisions of s. 216.177, the Governor
1350 may direct the Agency for Health Care Administration to amend
1351 the Medicaid state plan to delete the optional Medicaid service
1352 known as "Intermediate Care Facilities for the Developmentally
1353 Disabled." Optional services may include:

1354 (13) HOME AND COMMUNITY-BASED SERVICES.—

1355 (d) The agency shall ~~request federal approval to~~ develop a
1356 system to require payment of premiums, fees, or other cost
1357 sharing by the parents of a child younger than 18 years of age
1358 who is being served by a waiver under this subsection if the
1359 adjusted household income is greater than 100 percent of the
1360 federal poverty level. The amount of the premium, fee, or cost
1361 sharing shall be calculated using a sliding scale based on the
1362 size of the family, the amount of the parent's adjusted gross
1363 income, and the federal poverty guidelines. The premium, fee, or

28-01022-12

20121516

1364 other cost sharing paid by a parent may not exceed the cost of
1365 waiver services to the client. Parents who have more than one
1366 child receiving services may not be required to pay more than
1367 the amount required for the child who has the highest
1368 expenditures. Parents who do not live with each other remain
1369 responsible for paying the required contribution. The client may
1370 not be denied waiver services due to nonpayment by a parent.
1371 Adoptive and foster parents are exempt from payment of any
1372 premiums, fees, or other cost-sharing for waiver services. The
1373 agency shall request federal approval as necessary to implement
1374 the program. ~~The premium and cost-sharing system developed by~~
1375 ~~the agency shall not adversely affect federal funding to the~~
1376 ~~state. Upon receiving~~ After the agency receives federal
1377 approval, ~~if required,~~ the agency, the Agency for Persons with
1378 Disabilities, and the Department of Children and Family Services
1379 may ~~implement the system and~~ collect income information from
1380 parents of children who will be affected by this paragraph. ~~The~~
1381 ~~parents must provide information upon request.~~ The agency shall
1382 prepare a report to include the estimated operational cost of
1383 implementing the premium, ~~fee,~~ and cost-sharing system and the
1384 estimated revenues to be collected from parents of children in
1385 the waiver program. The report shall be delivered to the
1386 President of the Senate and the Speaker of the House of
1387 Representatives by June 30, 2012. ~~The agency, the Department of~~
1388 ~~Children and Family Services, and the Agency for Persons with~~
1389 ~~Disabilities may adopt rules to administer this paragraph.~~

1390 Section 13. Section 514.072, Florida Statutes, is amended
1391 to read:

1392 514.072 Certification of swimming instructors for people

28-01022-12

20121516__

1393 who have developmental disabilities ~~required~~.—Any person working
1394 at a swimming pool who holds himself or herself out as a
1395 swimming instructor specializing in training people who have a
1396 developmental disability ~~developmental disabilities~~, as defined
1397 in s. 393.063(11) ~~393.063(10)~~, may be certified by the Dan
1398 Marino Foundation, Inc., in addition to being certified under s.
1399 514.071. The Dan Marino Foundation, Inc., must develop
1400 certification requirements and a training curriculum for
1401 swimming instructors for people who have developmental
1402 disabilities and must submit the certification requirements to
1403 the Department of Health for review ~~by January 1, 2007~~. A person
1404 ~~certified under s. 514.071 before July 1, 2007, must meet the~~
1405 ~~additional certification requirements of this section before~~
1406 ~~January 1, 2008. A person certified under s. 514.071 on or after~~
1407 ~~July 1, 2007, must meet the additional certification~~
1408 ~~requirements of this section within 6 months after receiving~~
1409 ~~certification under s. 514.071.~~

1410 Section 14. This act shall take effect July 1, 2012.