By the Committees on Health Regulation; and Children, Families, and Elder Affairs; and Senators Negron and Garcia

588-03233-12 20121516c2

A bill to be entitled

An act relating to the Agency for Persons with Disabilities; amending s. 393.062, F.S.; providing additional legislative findings relating to the provision of services for individuals who have developmental disabilities; reordering and amending s. 393.063, F.S.; revising definitions and providing new definitions for "adult day services," "nonwaiver resources," and "waiver"; amending s. 393.065, F.S.; clarifying provisions relating to eligibility requirements based on citizenship and state residency; amending s. 393.066, F.S.; revising provisions relating to community services and treatment; requiring the agency to promote partnerships and collaborative efforts to enhance the availability of nonwaiver services; revising an express list of services; deleting a requirement that the agency promote day habilitation services for certain clients; amending s. 393.0661, F.S.; revising provisions relating to eligibility under the Medicaid waiver redesign; providing that final tier eligibility be determined at the time a waiver slot and funding are available; providing criteria for moving a client between tiers; deleting a cap on tier one expenditures for certain clients; authorizing the agency and the Agency for Health Care Administration to adopt rules; deleting certain directions relating to the adjustment of a client's cost plan; providing criteria for reviewing Medicaid waiver provider agreements for

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support coordinator services; deleting obsolete provisions; amending s. 393.0662, F.S.; providing criteria for calculating a client's initial iBudget; deleting obsolete provisions; amending s. 393.067, F.S.; providing that facilities that are accredited by certain organizations must be inspected and reviewed by the agency every 2 years; providing agency criteria for monitoring licensees; amending s. 393.068, F.S.; conforming a cross-reference; amending s. 393.11, F.S.; clarifying eligibility for involuntary admission to residential services; amending s. 393.125, F.S.; requiring the Department of Children and Family Services to submit its hearing recommendations to the agency; amending s. 393.23, F.S.; providing that receipts from the operation of canteens, vending machines, and other activities may be used to pay client wages at sheltered workshops; amending s. 393.502, F.S.; revising the membership of family care councils; amending s. 409.906, F.S.; providing limitations on the amount of cost sharing which may be required of parents for home and community-based services provided to their minor children; authorizing the adoption of rules relating to cost sharing; amending s. 514.072, F.S.; conforming a cross-reference; deleting an obsolete provision; providing an effective date.

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

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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~~ be considered and treated as a functional equivalent of a family

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

(2) The Legislature finds that in order to maximize the delivery of services to individuals in the community who have developmental disabilities and remain within appropriated funds, service delivery must blend natural supports, community resources, and state funds. The Legislature also finds that, given the traditional role of state government to ensure the health, safety, and welfare of state residents, state funds, including waiver funds, appropriated to the agency must be reserved and prioritized for those services needed to ensure the health and safety of individuals with disabilities, and that supplemental programs and other services be supported through natural supports and community resources. To achieve this goal, the Legislature intends that the agency implement policies and procedures that establish the Medicaid waiver as the payor of last resort for home and community-based programs and services, and promote partnerships with community resources, including, but not limited to, families, volunteers, nonprofit agencies, foundations, places of worship, schools, community organizations

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

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

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

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

(2) "Adult day services" means services that are provided in a nonresidential setting, separate from the home or facility in which the client resides, unless the client resides in a planned residential community as defined in s. 419.001(1); that are intended to support the participation of clients in daily,

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meaningful, and valued routines of the community; and that may provide social activities.

(3) ~~(2)~~ "Adult day training" means training services that ~~which~~ take place in a nonresidential setting, separate from the home or facility in which the client resides, unless the client resides in a planned residential community as defined in s. 419.001(1)(d); are intended to support the participation of clients in daily, meaningful, and valued routines of the community; and may include work-like settings that do not meet the definition of supported employment.

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

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

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

(7) ~~(6)~~ "Client advocate" means a friend or relative of the client, or of the client's immediate family, who advocates for

the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.

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

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

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

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

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

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

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(13) "Down syndrome" means a disorder caused by the presence of an extra copy of chromosome 21.

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

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

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

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

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

(19) "Habilitation" means the process by which a client is assisted to acquire and maintain those life skills that ~~which~~ enable the client to cope more effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. It includes,

but is not limited to, programs of formal structured education and treatment.

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

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

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

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

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

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

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

(23) "Nonwaiver resources" means supports or services obtainable through private insurance, the Medicaid state plan,

nonprofit organizations, charitable donations from private businesses, other government programs, family, natural supports, community resources, and any other source other than a waiver.

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

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

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

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

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

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(29)~~(28)~~ "Residential habilitation" means supervision and training in ~~with~~ the acquisition, retention, or improvement in skills related to activities of daily living, such as personal hygiene skills, homemaking skills, and the social and adaptive skills necessary to enable the individual to reside in the community.

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

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

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

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

(b) A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement and is not a standard treatment for the person's medical or psychiatric condition. Physically holding a person

during a procedure to forcibly administer psychotropic medication is a physical restraint.

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

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

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

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

(34) ~~(33)~~ "Seclusion" means the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated,

so as to prevent the person from leaving the room or area. For the purposes of this chapter, the term does not mean isolation due to the medical condition or symptoms of the person.

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

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

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

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

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evaluating the delivery of supports and services to determine the extent to which they meet the needs ~~and expectations~~ identified by the client ~~individual~~, family, and others who participated in the development of the support plan.

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

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

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

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

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

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Section 3. Subsections (1) and (6) of section 393.065, Florida Statutes, are amended to read:

393.065 Application and eligibility determination.—

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

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

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

393.066 Community services and treatment.—

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(1) The agency shall plan, develop, organize, and implement its programs of services and treatment for individuals who have ~~persons with~~ developmental disabilities in order to assist them in living ~~allow clients to live~~ as independently as possible in their own homes or communities, to support them in maximizing their independence using innovative, effective, efficient, and sustainable solutions, and to avoid institutionalization ~~and to achieve productive lives as close to normal as possible~~. ~~All elements of community-based services shall be made available, and eligibility for these services shall be consistent across the state.~~

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

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

(a) Adult day training and adult day services.

(b) Family care services.

(c) Guardian advocate referral services.

(d) Medical/dental services, except that medical services shall not be provided to clients with spina bifida except as

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specifically appropriated by the Legislature.

~~(e) Parent training.~~

(e)~~(f)~~ Personal care services.

~~(g) Recreation.~~

(f)~~(h)~~ Residential habilitation ~~facility~~ services.

(g)~~(i)~~ Respite services.

(h)~~(j)~~ Support coordination ~~Social services~~.

(i)~~(k)~~ Specialized therapies.

(j)~~(l)~~ Supported employment.

(k)~~(m)~~ Supported living.

(l)~~(n)~~ Training, including behavioral analysis services.

(m)~~(o)~~ Transportation.

(n)~~(p)~~ Other ~~habilitative and rehabilitative~~ services as needed.

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

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~~facilities~~.

~~(5) In order to improve the potential for utilization of more cost-effective, community-based residential facilities, the agency shall promote the statewide development of day habilitation services for clients who live with a direct service provider in a community-based residential facility and who do not require 24-hour-a-day care in a hospital or other health care institution, but who may, in the absence of day habilitation services, require admission to a developmental disabilities center. Each day service facility shall provide a protective physical environment for clients, ensure that direct service providers meet minimum screening standards as required in s. 393.0655, make available to all day habilitation service participants at least one meal on each day of operation, provide facilities to enable participants to obtain needed rest while attending the program, as appropriate, and provide social and educational activities designed to stimulate interest and provide socialization skills.~~

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

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

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

Section 5. Section 393.0661, Florida Statutes, is amended to read:

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

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

(a) The agency shall use the Questionnaire for Situational Information, or other ~~an~~ assessment instruments deemed by ~~instrument that~~ the agency ~~deems~~ to be reliable and valid~~,~~ ~~including, but not limited to, the Department of Children and Family Services' Individual Cost Guidelines or the agency's~~

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~~Questionnaire for Situational Information~~. The agency may contract with an external vendor ~~or may use support coordinators~~ to complete client assessments if it develops sufficient safeguards and training to ensure ongoing inter-rater reliability.

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

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

(3) The Agency for Health Care Administration, in consultation with the agency, shall seek federal approval and implement a four-tiered waiver system to serve eligible clients ~~through the developmental disabilities and family and supported living waivers~~. For the purpose of the ~~this~~ waiver program, eligible clients ~~shall~~ include individuals who have ~~with a diagnosis of Down syndrome or~~ a developmental disability ~~as defined in s. 393.063~~. The agency shall assign all clients receiving services through the ~~developmental disabilities~~ waiver to a tier based on the ~~Department of Children and Family Services' Individual Cost Guidelines, the~~ agency's Questionnaire for Situational Information, or another such assessment

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instrument deemed ~~to be~~ valid and reliable by the agency; client characteristics, including, but not limited to, age; and other appropriate assessment methods. Final determination of tier eligibility may not be made until a waiver slot and funding become available and only then may the client be enrolled in the appropriate tier. If a client is later determined eligible for a higher tier, assignment to the higher tier must be based on crisis criteria as adopted by rule. The agency may also later move a client to a lower tier if the client's service needs change and can be met by services provided in a lower tier. The agency may not authorize the provision of services that are duplicated by, or above the coverage limits of, the Medicaid state plan.

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

(b) Tier two is limited to clients whose service needs

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include a licensed residential facility and who are authorized to receive a moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitation services, or clients in supported living who receive more than 6 hours a day of in-home support services. Tier two also includes clients whose need for authorized services meets the criteria for tier one but which can be met within the expenditure limit of tier two. Total annual expenditures under tier two may not exceed $53,625 per client each year.

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

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

(e) The Agency for Health Care Administration shall also seek federal approval to provide a consumer-directed option for clients ~~persons with developmental disabilities which~~

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

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

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

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

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

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

~~5. Chore services, nonresidential support services, and homemaker services are eliminated. The agency shall expand the~~

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~~definition of in-home support services to allow the service provider to include activities previously provided in these eliminated services.~~

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

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

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

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

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

8.~~11.~~ The agency shall develop a plan to reduce the intensity and frequency of supported employment services to clients in stable employment situations who have a documented history of at least 3 years' employment with the same company or

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in the same industry.

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

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

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

~~(6) Effective January 1, 2010, and except as otherwise provided in this section, a client served by the home and community-based services waiver or the family and supported living waiver funded through the agency shall have his or her cost plan adjusted to reflect the amount of expenditures for the previous state fiscal year plus 5 percent if such amount is less than the client's existing cost plan. The agency shall use actual paid claims for services provided during the previous fiscal year that are submitted by October 31 to calculate the revised cost plan amount. If the client was not served for the entire previous state fiscal year or there was any single change in the cost plan amount of more than 5 percent during the previous state fiscal year, the agency shall set the cost plan amount at an estimated annualized expenditure amount plus 5 percent. The agency shall estimate the annualized expenditure amount by calculating the average of monthly expenditures, beginning in the fourth month after the client enrolled, interrupted services are resumed, or the cost plan was changed by more than 5 percent and ending on August 31, 2009, and multiplying the average by 12. In order to determine whether a~~

~~client was not served for the entire year, the agency shall include any interruption of a waiver-funded service or services lasting at least 18 days. If at least 3 months of actual expenditure data are not available to estimate annualized expenditures, the agency may not rebase a cost plan pursuant to this subsection. The agency may not rebase the cost plan of any client who experiences a significant change in recipient condition or circumstance which results in a change of more than 5 percent to his or her cost plan between July 1 and the date that a rebased cost plan would take effect pursuant to this subsection.~~

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

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

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

1. The protection of the health and safety of clients.

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2. Assisting clients to obtain employment and pursue other meaningful activities.

3. Assisting clients to access services that allow them to live in their community.

4. The use of family resources.

5. The use of private resources.

6. The use of community resources.

7. The use of charitable resources.

8. The use of volunteer resources.

9. The use of services from other governmental entities.

10. The overall outcome in securing nonwaiver resources.

11. The cost-effective use of waiver resources.

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

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

(8) This section or related rule does not prevent or limit the Agency for Health Care Administration, in consultation with the agency ~~for Persons with Disabilities~~, from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or from limiting enrollment, or making any other adjustment necessary to comply with the availability of

moneys and any limitations or directions provided in the General Appropriations Act.

(9) The agency ~~for Persons with Disabilities~~ shall submit quarterly status reports to the Executive Office of the Governor and~~,~~ the chairs of the legislative appropriations committees ~~chair of the Senate Ways and Means Committee or its successor, and the chair of the House Fiscal Council or its successor~~ regarding the financial status of waiver ~~home and community-based~~ services, including the number of enrolled individuals who are receiving services through one or more programs; the number of individuals who have requested services who are not enrolled but ~~who~~ are receiving services through one or more programs, including ~~with~~ a description indicating the programs from which the individual is receiving services; the number of individuals who have refused an offer of services but who choose to remain on the list of individuals waiting for services; the number of individuals who have requested services but are not ~~who are~~ receiving ~~no~~ services; a frequency distribution indicating the length of time individuals have been waiting for services; and information concerning the actual and projected costs compared to the amount of the appropriation available to the program and any projected surpluses or deficits. If at any time an analysis by the agency, in consultation with the Agency for Health Care Administration, indicates that the cost of services is expected to exceed the amount appropriated, the agency shall submit a plan in accordance with subsection (8) to the Executive Office of the Governor and the chairs of the legislative appropriations committees~~, the chair of the Senate Ways and Means Committee or its successor, and the chair of the House Fiscal Council or its~~

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~~successor~~ to remain within the amount appropriated. The agency shall work with the Agency for Health Care Administration to implement the plan so as to remain within the appropriation.

(10) Implementation of ~~Medicaid~~ waiver programs and services authorized under this chapter is limited by the funds appropriated for the individual budgets pursuant to s. 393.0662 and the four-tiered waiver system pursuant to subsection (3). Contracts with independent support coordinators and service providers must include provisions requiring compliance with agency cost containment initiatives. The agency shall implement monitoring and accounting procedures necessary to track actual expenditures and project future spending compared to available appropriations for Medicaid waiver programs. If ~~When~~ necessary, based on projected deficits, the agency shall ~~must~~ establish specific corrective action plans that incorporate corrective actions for ~~of~~ contracted providers which ~~that~~ are sufficient to align program expenditures with annual appropriations. If deficits continue during the 2012-2013 fiscal year, the agency in conjunction with the Agency for Health Care Administration shall develop a plan to redesign the waiver program and submit the plan to the President of the Senate and the Speaker of the House of Representatives by September 30, 2013. At a minimum, the plan must include the following elements:

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

(b) *Services.*—The agency shall identify core services that are essential to provide for client health and safety and

recommend the elimination of coverage for other services that are not affordable based on available resources.

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

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

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

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

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

393.0662 Individual budgets for delivery of home and community-based services; iBudget system established.—The Legislature finds that improved financial management of the existing home and community-based ~~Medicaid~~ waiver program is necessary to avoid deficits that impede the provision of services to individuals who are on the waiting list for enrollment in the program. The Legislature further finds that clients and their families should have greater flexibility to choose the services that best allow them to live in their

community within the limits of an established budget. Therefore, the Legislature intends that the agency, in consultation with the Agency for Health Care Administration, develop and implement a comprehensive redesign of the service delivery system using individual budgets as the basis for allocating the funds appropriated for the ~~home and community-based services Medicaid~~ waiver program among eligible enrolled clients. The service delivery system that uses individual budgets shall be called the iBudget system.

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

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

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

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

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

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

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

c. A chronic comorbid condition. As used in this

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subparagraph, the term "comorbid condition" means a medical condition existing simultaneously but independently with another medical condition in a patient; or

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

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

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

3. A significant increase in the need for services after the beginning of the service plan year which ~~that~~ would place the health and safety of the client, the client's caregiver, or the public in serious jeopardy because of substantial changes in

the client's circumstances, including, but not limited to, permanent or long-term loss or incapacity of a caregiver, loss of services authorized under the state Medicaid plan due to a change in age, or a significant change in medical or functional status which requires the provision of additional services on a permanent or long-term basis which ~~that~~ cannot be accommodated within the client's current iBudget. As used in this subparagraph, the term "long-term" means ~~a period of~~ 12 or more continuous months. However, such significant increase in need for services of a permanent or long-term nature alone does not warrant an increase in the amount of funds allocated to a client's iBudget as determined by the algorithm.

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

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

(d) A client shall have the flexibility to determine the type, amount, frequency, duration, and scope of the services on his or her cost plan if the agency determines that such services meet his or her health and safety needs, meet the requirements contained in the Coverage and Limitations Handbook for each service included on the cost plan, and comply with the other requirements of this section.

(e) A client's annual expenditures for ~~home and community-~~

~~based services Medicaid~~ waiver services may not exceed the limits of his or her iBudget. The total of all clients' projected annual iBudget expenditures may not exceed the agency's appropriation for waiver services.

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

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

(a) During the transition, the agency shall determine an individual's initial iBudget by comparing the individual's algorithm allocation to the individual's current annual cost plan and the individual's extraordinary needs. The individual's algorithm allocation shall be the amount determined by the algorithm, adjusted to the agency's appropriation and any set-asides determined necessary by the agency, including, but not limited to, funding for individuals who have extraordinary needs as delineated in paragraph (2)(b). The amount of funding needed to address the individual's extraordinary needs shall be reviewed for each individual by the area office in order to determine medical necessity for each service in the amount, duration, frequency, intensity, and scope that meets the individual's needs. The agency shall consider the individual's characteristics based on a needs assessment as well as the

individual's living setting, availability of natural supports, family circumstances, and other factors that may affect the level of service needed.

(b) The individual's medical-necessity review must include a comparison of the following:

1. If the individual's algorithm allocation is greater than the individual cost plan, the individual's initial iBudget shall be equal to the total cost plan amount.

2. If the individual's algorithm allocation is less than the individual's cost plan but is greater than the amount for the individual's extraordinary needs, the individual's initial iBudget shall be equal to the algorithm allocation.

3. If the individual's algorithm allocation is less than the amount for the individual's extraordinary needs, the individual's initial iBudget shall be equal to the amount for the individual's extraordinary needs.

The individual's initial annualized iBudget amount may not be less than 50 percent of that individual's existing annualized cost plan. If the individual's initial iBudget is less than the individual's current cost plan, and is within $1,000 of the current cost plan, the agency may adjust the iBudget to equal the cost plan amount.

(c) During the 2011-2012 and 2012-2013 fiscal years, increases to an individual's initial iBudget amount may be granted only if a significant change in circumstances has occurred and if the criteria for extraordinary needs as described above are met.

(d) ~~(a)~~ While the agency phases in the iBudget system, the

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agency may continue to serve eligible, enrolled clients under the four-tiered waiver system established under s. 393.065 while those clients await transitioning to the iBudget system.

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

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

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

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

(8)~~(7)~~ The agency must ~~shall~~ ensure that clients and caregivers have access to training and education that informs ~~to inform~~ them about the iBudget system and enhances ~~enhance~~ their ability for self-direction. Such training must be provided ~~shall be offered~~ in a variety of formats and, at a minimum, must ~~shall~~

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address the policies and processes of the iBudget system; the roles and responsibilities of consumers, caregivers, waiver support coordinators, providers, and the agency; information that is available to help the client make decisions regarding the iBudget system; and examples of nonwaiver ~~support and~~ resources that may be available in the community.

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

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

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

393.067 Facility licensure.—

(2) The agency shall conduct annual inspections and reviews of facilities and programs licensed under this section unless the facility or program is currently accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation. Facilities or programs that are operating under such accreditation must be inspected and reviewed by the agency once every 2 years. If, upon inspection and review, the services and service delivery sites are not those for which the facility or program is accredited, the facilities and programs must be inspected and

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reviewed in accordance with this section and related rules adopted by the agency. Notwithstanding current accreditation, the agency may continue to monitor the facility or program as necessary with respect to:

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

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

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

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

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

393.068 Family care program.—

(2) Services and support authorized under the family care program shall, to the extent of available resources, include the services listed under s. 393.0662(4) ~~393.066~~ and, in addition, shall include, but not be limited to:

(a) Attendant care.

(b) Barrier-free modifications to the home.

(c) Home visitation by agency workers.

(d) In-home subsidies.

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(e) Low-interest loans.

(f) Modifications for vehicles used to transport the individual with a developmental disability.

(g) Facilitated communication.

(h) Family counseling.

(i) Equipment and supplies.

(j) Self-advocacy training.

(k) Roommate services.

(l) Integrated community activities.

(m) Emergency services.

(n) Support coordination.

(o) Other support services as identified by the family or client ~~individual~~.

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

Section 9. Subsections (1) through (3), paragraph (b) of subsection (4), paragraphs (f) and (g) of subsection (5), subsection (6), paragraphs (d) and (e) of subsection (7), and paragraph (b) of subsection (12) of section 393.11, Florida Statutes, are amended to read:

393.11 Involuntary admission to residential services.—

(1) JURISDICTION.—If ~~When~~ a person is determined to be eligible to receive services from the agency ~~mentally retarded~~ and requires involuntary admission to residential services provided by the agency, the circuit court of the county in which

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the person resides shall have jurisdiction to conduct a hearing and enter an order involuntarily admitting the person in order for ~~that~~ the person to ~~may~~ receive the care, treatment, habilitation, and rehabilitation that he or she ~~which the person~~ needs. For the purpose of identifying mental retardation or autism, diagnostic capability shall be established by the agency. Except as otherwise specified, the proceedings under this section are ~~shall be~~ governed by the Florida Rules of Civil Procedure.

(2) PETITION.—

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

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

(c) The petition shall be verified and shall:

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

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

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

4. Allege that the person lacks sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to

provide for the person's well-being or is likely to physically injure others if allowed to remain at liberty; and

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

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

(3) NOTICE.—

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

(b) If ~~Whenever~~ a motion or petition has been filed pursuant to s. 916.303 to dismiss criminal charges against a defendant ~~with retardation or autism~~, and a petition is filed to involuntarily admit the defendant to residential services under this section, the notice of the filing of the petition shall also be given to the defendant's attorney, the state attorney of the circuit from which the defendant was committed, and the agency.

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

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

(4) AGENCY PARTICIPATION.—

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

(5) EXAMINING COMMITTEE.—

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

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

(6) COUNSEL; GUARDIAN AD LITEM.—

(a) The defendant must ~~person with mental retardation shall~~ be represented by counsel at all stages of the judicial proceeding. If ~~In the event~~ the defendant ~~person~~ is indigent and cannot afford counsel, the court shall appoint a public defender not less than 20 working days before the scheduled hearing. The

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defendant's ~~person's~~ counsel shall have full access to the records of the service provider and the agency. In all cases, the attorney shall represent the rights and legal interests of the defendant ~~person with mental retardation~~, regardless of who may initiate the proceedings or pay the attorney's fee.

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

(7) HEARING.—

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

(e) The defendant ~~person~~ has the right to present evidence and to cross-examine all witnesses and other evidence alleging the appropriateness of the person's admission to residential care. Other relevant and material evidence regarding the appropriateness of the person's admission to residential services; the most appropriate, least restrictive residential placement; and the appropriate care, treatment, and habilitation of the person, including written or oral reports, may be introduced at the hearing by any interested person.

(12) APPEAL.—

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

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

393.125 Hearing rights.—

(1) REVIEW OF AGENCY DECISIONS.—

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

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

393.23 Developmental disabilities centers; trust accounts.—All receipts from the operation of canteens, vending machines, hobby shops, sheltered workshops, activity centers, farming projects, and other like activities operated in a developmental

disabilities center, and moneys donated to the center, must be deposited in a trust account in any bank, credit union, or savings and loan association authorized by the State Treasury as a qualified depository to do business in this state, if the moneys are available on demand.

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

Section 12. Paragraph (b) of subsection (2) of section 393.502, Florida Statutes, is amended to read:

393.502 Family care councils.—

(2) MEMBERSHIP.—

(b) At least three of the members of the council must be individuals receiving or waiting to receive services from the agency ~~consumers~~. One such member shall be an individual ~~a consumer~~ who has been receiving ~~received~~ services within the 4 years before ~~prior to~~ the date of recommendation~~, or the legal guardian of such a consumer~~. The remainder of the council members shall be parents, grandparents, nonpaid full-time

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caregivers, nonpaid legal guardians, or siblings of individual's who have ~~persons with~~ developmental disabilities and who qualify for services pursuant to this chapter. A nonpaid full-time caregiver or nonpaid legal guardian may not serve at the same time as the individual who is receiving care from the caregiver or who is the ward of the guardian.

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

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally

Disabled." Optional services may include:

(13) HOME AND COMMUNITY-BASED SERVICES.—

(d) The agency shall ~~request federal approval to~~ develop a system to require payment of premiums, fees, or other cost sharing by the parents of a child younger than 18 years of age who is being served by a waiver under this subsection if the adjusted household income is greater than 100 percent of the federal poverty level. The amount of the premium, fee, or cost sharing shall be calculated using a sliding scale based on the size of the family, the amount of the parent's adjusted gross income, and the federal poverty guidelines. The premium, fee, or other cost sharing paid by a parent may not exceed the cost of waiver services to the client. Parents who have more than one child receiving services may not be required to pay more than the amount required for the child who has the highest expenditures. Parents who do not live with each other remain responsible for paying the required contribution. The client may not be denied waiver services due to nonpayment by a parent. Adoptive and foster parents are exempt from payment of any premiums, fees, or other cost-sharing for waiver services. The agency shall request federal approval as necessary to implement the program. Upon receiving ~~The premium and cost-sharing system developed by the agency shall not adversely affect federal funding to the state. After the agency receives~~ federal approval, if required, the agency, the Agency for Persons with Disabilities, and the Department of Children and Family Services may implement the system and collect income information from parents of children who will be affected by this paragraph. The parents must provide information upon request. The agency shall

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prepare a report to include the estimated operational cost of implementing the premium, fee, and cost-sharing system and the estimated revenues to be collected from parents of children in the waiver program. The report shall be delivered to the President of the Senate and the Speaker of the House of Representatives by June 30, 2012. The agency, the Department of Children and Family Services, and the Agency for Persons with Disabilities may adopt rules to administer this paragraph.

Section 14. Section 514.072, Florida Statutes, is amended to read:

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

Section 15. This act shall take effect July 1, 2012.

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