

FOR CONSIDERATION By the Committee on Budget

576-03251-12

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1 A bill to be entitled
2 An act relating to developmental disabilities;
3 amending s. 393.063, F.S.; redefining the term
4 "support coordinator"; amending s. 393.0661, F.S.;
5 requiring that the Agency for Persons with
6 Disabilities review a waiver support coordinator's
7 performance to ensure that the support coordinator
8 meets or exceeds criteria established by the agency;
9 providing responsibilities of the support coordinator;
10 providing that the waiver is the funding source of
11 last resort for client services; requiring that the
12 agency's area offices conduct and manage the provider
13 agreements with the waiver support coordinators and
14 the performance reviews; providing criteria for
15 evaluating a support coordinator's performance;
16 authorizing the agency to recognize superior
17 performance by exempting a waiver support coordinator
18 from annual quality assurance reviews or other
19 mechanisms established by the agency; authorizing the
20 agency to issue sanctions for poor performance;
21 authorizing the agency to adopt rules; conforming a
22 cross-reference; amending s. 393.0662, F.S.;
23 conforming provisions to changes made by the act;
24 providing that funds appropriated to the agency shall
25 be allocated through the iBudget system to eligible,
26 Medicaid-enrolled clients who have a developmental
27 disability and not only Down syndrome; providing that
28 a client has the flexibility to determine the type,
29 amount, frequency, duration, and scope of the services

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30 on his or her cost plan if certain criteria are met;
31 requiring that the agency determine the client's
32 initial iBudget amount; requiring that the area office
33 review the amount of funding needed to address the
34 each client's extraordinary needs in order to
35 determine the medical necessity for each service in
36 the amount, duration, frequency, intensity, and scope
37 that meets the client's needs; requiring that the
38 agency to consider certain factors of the individual
39 which may affect the level of services needed;
40 requiring that the client's medical necessity review
41 include a comparison of client's algorithm allocation,
42 cost plan, and extraordinary needs; providing certain
43 requirements for an client's initial annualized
44 iBudget amount; authorizing increases to an client's
45 initial iBudget amount under certain circumstances
46 during specified fiscal years; deleting a provision
47 regarding the phasing-in process of the iBudget
48 system; requiring a client to use all available
49 nonwaiver services before using funds from his or her
50 iBudget to pay for support and services; creating s.
51 393.28, F.S.; requiring that the agency adopt and
52 enforce certain sanitation standards to protect
53 individuals served in facilities licensed or regulated
54 by the agency; requiring that the agency inspect or
55 contract for the inspection of those facilities;
56 authorizing the agency to adopt rules; requiring that
57 the agency defer to certain preexisting standards if
58 rules are not adopted; authorizing the agency to

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59 consult with the Department of Health, the Agency for
60 Health Care Administration, the Department of Business
61 and Professional Regulation, and the Department of
62 Agriculture and Consumer Services concerning
63 procedures related to the storage, preparation,
64 serving, or display of food and procedures related to
65 the detection and prevention of diseases caused by
66 certain factors in the environment; authorizing the
67 agency to impose sanctions against certain
68 establishments or operators for violation of sanitary
69 standards; authorizing the agency to contract with
70 another entity for food service protection and
71 inspection services; providing an effective date.

72
73 Be It Enacted by the Legislature of the State of Florida:

74
75 Section 1. Subsection (37) of section 393.063, Florida
76 Statutes, is amended to read:

77 393.063 Definitions.—For the purposes of this chapter, the
78 term:

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

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

91 Section 2. Present subsections (8), (9), and (10) of
92 section 393.0661, Florida Statutes, are redesignated as
93 subsections (9), (10), and (11), respectively, present
94 subsection (9) is amended, and a new subsection (8) is added to
95 that section, to read:

96 393.0661 Home and community-based services delivery system;
97 comprehensive redesign.—The Legislature finds that the home and
98 community-based services delivery system for persons with
99 developmental disabilities and the availability of appropriated
100 funds are two of the critical elements in making services
101 available. Therefore, it is the intent of the Legislature that
102 the Agency for Persons with Disabilities shall develop and
103 implement a comprehensive redesign of the system.

104 (8) In determining whether to continue a Medicaid waiver
105 provider agreement for support coordinator services, the agency
106 shall review the performance of the waiver support coordinator
107 to ensure that the support coordinator meets or exceeds the
108 criteria established by the agency. The support coordinator is
109 responsible for assisting the client in meeting his or her
110 service needs through nonwaiver resources, as well as through
111 the client's budget allocation or cost plan under the waiver.
112 The waiver is the funding source of last resort for client
113 services. The agency's area offices shall conduct and manage the
114 provider agreements with the waiver support coordinators and the
115 performance reviews.

116 (a) Criteria for evaluating a support coordinator's

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117 performance must include, but are not limited to:

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

119 2. The assistance provided to clients in obtaining
120 employment and pursuing other meaningful activities.

121 3. The assistance provided to clients in accessing services
122 that allow them to live in their community.

123 4. The use of family resources.

124 5. The use of private resources.

125 6. The use of community resources.

126 7. The use of charitable resources.

127 8. The use of volunteer resources.

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

129 10. The overall outcome in securing nonwaiver resources.

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

131 12. The coordination of all available resources to ensure
132 that clients' outcomes are met.

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

142 (10)-(9) The Agency for Persons with Disabilities shall
143 submit quarterly status reports to the Executive Office of the
144 Governor, the chair of the Senate Ways and Means Committee or
145 its successor, and the chair of the House Fiscal Council or its

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146 successor regarding the financial status of home and community-
147 based services, including the number of enrolled individuals who
148 are receiving services through one or more programs; the number
149 of individuals who have requested services who are not enrolled
150 but who are receiving services through one or more programs,
151 with a description indicating the programs from which the
152 individual is receiving services; the number of individuals who
153 have refused an offer of services but who choose to remain on
154 the list of individuals waiting for services; the number of
155 individuals who have requested services but who are receiving no
156 services; a frequency distribution indicating the length of time
157 individuals have been waiting for services; and information
158 concerning the actual and projected costs compared to the amount
159 of the appropriation available to the program and any projected
160 surpluses or deficits. If at any time an analysis by the agency,
161 in consultation with the Agency for Health Care Administration,
162 indicates that the cost of services is expected to exceed the
163 amount appropriated, the agency shall submit a plan in
164 accordance with subsection (9) ~~(8)~~ to the Executive Office of
165 the Governor, the chair of the Senate Ways and Means Committee
166 or its successor, and the chair of the House Fiscal Council or
167 its successor to remain within the amount appropriated. The
168 agency shall work with the Agency for Health Care Administration
169 to implement the plan so as to remain within the appropriation.

170 Section 3. Section 393.0662, Florida Statutes, is amended
171 to read:

172 393.0662 Individual budgets for delivery of home and
173 community-based services; iBudget system established.—The
174 Legislature finds that improved financial management of the

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175 existing home and community-based ~~Medicaid~~ waiver program is
176 necessary to avoid deficits that impede the provision of
177 services to individuals who are on the waiting list for
178 enrollment in the program. The Legislature further finds that
179 clients and their families should have greater flexibility to
180 choose the services that best allow them to live in their
181 community within the limits of an established budget. Therefore,
182 the Legislature intends that the agency, in consultation with
183 the Agency for Health Care Administration, develop and implement
184 a comprehensive redesign of the service delivery system using
185 individual budgets as the basis for allocating the funds
186 appropriated for the ~~home and community-based services Medicaid~~
187 waiver program among eligible enrolled clients. The service
188 delivery system that uses individual budgets shall be called the
189 iBudget system.

190 (1) The agency shall establish an individual budget, to be
191 referred to as an iBudget, for each client ~~individual~~ served by
192 the home and community-based services ~~Medicaid~~ waiver program.
193 The funds appropriated to the agency shall be allocated through
194 the iBudget system to eligible, Medicaid-enrolled clients who
195 have. ~~For the iBudget system, eligible clients shall include~~
196 ~~individuals with a diagnosis of Down syndrome or a developmental~~
197 ~~disability as defined in s. 393.063.~~ The iBudget system shall be
198 designed to provide for: enhanced client choice within a
199 specified service package; appropriate assessment strategies; an
200 efficient consumer budgeting and billing process that includes
201 reconciliation and monitoring components; a redefined role for
202 support coordinators which ~~that~~ avoids potential conflicts of
203 interest; a flexible and streamlined service review process; and

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204 a methodology and process that ensures the equitable allocation
205 of available funds to each client based on the client's level of
206 need, as determined by the variables in the allocation
207 algorithm.

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

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

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

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

231 a. A documented history of significant, potentially life-
232 threatening behaviors, such as recent attempts at suicide,

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233 arson, nonconsensual sexual behavior, or self-injurious behavior
234 requiring medical attention;

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

238 c. A chronic comorbid condition. As used in this
239 subparagraph, the term "comorbid condition" means a medical
240 condition existing simultaneously but independently with another
241 medical condition in a patient; or

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

245

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

249 2. A significant need for one-time or temporary support or
250 services that, if not provided, would place the health and
251 safety of the client, the client's caregiver, or the public in
252 serious jeopardy, unless the increase is approved. A significant
253 need may include, but is not limited to, the provision of
254 environmental modifications, durable medical equipment, services
255 to address the temporary loss of support from a caregiver, or
256 special services or treatment for a serious temporary condition
257 when the service or treatment is expected to ameliorate the
258 underlying condition. As used in this subparagraph, the term
259 "temporary" means less ~~a period of fewer~~ than 12 continuous
260 months. However, the presence of such significant need for one-
261 time or temporary supports or services alone does not warrant an

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262 increase in the amount of funds allocated to a client's iBudget
263 as determined by the algorithm.

264 3. A significant increase in the need for services after
265 the beginning of the service plan year which ~~that~~ would place
266 the health and safety of the client, the client's caregiver, or
267 the public in serious jeopardy because of substantial changes in
268 the client's circumstances, including, but not limited to,
269 permanent or long-term loss or incapacity of a caregiver, loss
270 of services authorized under the state Medicaid plan due to a
271 change in age, or a significant change in medical or functional
272 status which requires the provision of additional services on a
273 permanent or long-term basis which ~~that~~ cannot be accommodated
274 within the client's current iBudget. As used in this
275 subparagraph, the term "long-term" means ~~a period of~~ 12 or more
276 continuous months. However, such significant increase in need
277 for services of a permanent or long-term nature alone does not
278 warrant an increase in the amount of funds allocated to a
279 client's iBudget as determined by the algorithm.

280
281 The agency shall reserve portions of the appropriation for the
282 ~~home and community-based services Medicaid~~ waiver program for
283 adjustments required pursuant to this paragraph and may use the
284 services of an independent actuary in determining the amount of
285 the portions to be reserved.

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

289 (d) A client shall have the flexibility to determine the
290 type, amount, frequency, duration, and scope of the services on

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291 his or her cost plan if the agency determines that such services
292 meet his or her health and safety needs, meet the requirements
293 contained in the Coverage and Limitations Handbook for each
294 service included on the cost plan, and comply with the other
295 requirements of this section.

296 (e) A client's annual expenditures for ~~home and community-~~
297 ~~based services~~ Medicaid waiver services may not exceed the
298 limits of his or her iBudget. The total of all clients'
299 projected annual iBudget expenditures may not exceed the
300 agency's appropriation for waiver services.

301 (3)~~(2)~~ The Agency for Health Care Administration, in
302 consultation with the agency, shall seek federal approval to
303 amend current waivers, request a new waiver, and amend contracts
304 as necessary to implement the iBudget system to serve eligible,
305 enrolled clients through the home and community-based services
306 Medicaid waiver program and the Consumer-Directed Care Plus
307 Program.

308 (4)~~(3)~~ The agency shall transition all eligible, enrolled
309 clients to the iBudget system. The agency may gradually phase in
310 the iBudget system.

311 (a) During the transition, the agency shall determine an
312 client's initial iBudget amount by comparing the client's
313 algorithm allocation to the client's current annual cost plan
314 and the client's extraordinary needs. The client's algorithm
315 allocation is the amount determined by the algorithm, adjusted
316 to the agency's appropriation and any set-asides determined
317 necessary by the agency, including, but not limited to, funding
318 for individuals who have extraordinary needs as delineated in
319 paragraph (2) (b). The area office shall review the amount of

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320 funding needed to address the each client's extraordinary needs
321 in order to determine the medical necessity for each service in
322 the amount, duration, frequency, intensity, and scope that meets
323 the client's needs. The agency shall consider the client's
324 characteristics based on a needs assessment as well as the
325 client's living setting, availability of natural supports,
326 family circumstances, and other factors that may affect the
327 level of service needed.

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

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

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

337 3. If the client's algorithm allocation is less than the
338 amount for the client's extraordinary needs, the client's
339 initial iBudget shall be equal to the amount for the client's
340 extraordinary needs.

341
342 The client's initial annualized iBudget amount may not be less
343 than 50 percent of that client's existing annualized cost plan.
344 If the client's initial iBudget is less than the client's
345 current cost plan, and is within \$1,000 of the current cost
346 plan, the agency may adjust the iBudget to equal the cost plan
347 amount.

348 (c) During the 2011-2012 and 2012-2013 fiscal years,

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349 increases to an client's initial iBudget amount may be granted
350 only if a significant change in circumstances has occurred and
351 if the criteria for extraordinary needs as described in
352 paragraph (2) (b) are met.

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

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

363 (5)~~(4)~~ A client must use all available nonwaiver services
364 ~~authorized under the state Medicaid plan, school-based services,~~
365 ~~private insurance and other benefits, and any other resources~~
366 that may be available to the client before using funds from his
367 or her iBudget to pay for support and services.

368 (6)~~(5)~~ The service limitations in s. 393.0661(3)(f)1., 2.,
369 and 3. do not apply to the iBudget system.

370 (7)~~(6)~~ Rates for any or all services established under
371 rules of the Agency for Health Care Administration must ~~shall~~ be
372 designated as the maximum rather than a fixed amount for clients
373 ~~individuals~~ who receive an iBudget, except for services
374 specifically identified in those rules that the agency
375 determines are not appropriate for negotiation, which may
376 include, but are not limited to, residential habilitation
377 services.

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378 (8)~~(7)~~ The agency shall ensure that clients and caregivers
379 have access to training and education that informs ~~to inform~~
380 them about the iBudget system and enhances ~~enhance~~ their ability
381 for self-direction. Such training must be provided ~~shall be~~
382 ~~offered~~ in a variety of formats and, at a minimum, must ~~shall~~
383 address the policies and processes of the iBudget system; the
384 roles and responsibilities of consumers, caregivers, waiver
385 support coordinators, providers, and the agency; information
386 that is available to help the client make decisions regarding
387 the iBudget system; and examples of nonwaiver support ~~and~~
388 resources that may be available in the community.

389 (9)~~(8)~~ The agency shall collect data to evaluate the
390 implementation and outcomes of the iBudget system.

391 (10)~~(9)~~ The agency and the Agency for Health Care
392 Administration may adopt rules specifying the allocation
393 algorithm and methodology; criteria and processes that allow for
394 clients to access reserved funds for extraordinary needs,
395 temporarily or permanently changed needs, and one-time needs;
396 and processes and requirements for the selection and review of
397 services, development of support and cost plans, and management
398 of the iBudget system as needed to administer this section.

399 Section 4. Section 393.28, Florida Statutes, is created to
400 read:

401 393.28 Food service and environmental health protection and
402 inspection.—

403 (1) AUTHORITY.—

404 (a) The Agency for Persons with Disabilities shall adopt
405 and enforce sanitation standards related to food-borne illnesses
406 and environmental sanitation hazards to ensure the protection of

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407 individuals served in facilities licensed or regulated by the
408 agency under s. 393.067 by inspecting or contracting for the
409 inspection of those facilities.

410 (b) The agency may develop rules to administer this
411 section. In the absence of rules, the agency shall defer to
412 preexisting standards related to environmental health
413 inspections of group care facilities as described in s. 381.006,
414 preexisting standards related to food service establishments as
415 described in s. 381.0072, and the rules relevant to these
416 provisions.

417 (c) Rules under this section may provide additional or
418 alternative standards to those referenced in paragraph (b), and
419 may include sanitation requirements for the storage,
420 preparation, and serving of food, as well as sanitation
421 requirements to detect and prevent disease caused by natural and
422 manmade factors in the environment.

423 (2) CONSULTATION.—The agency may consult with the
424 Department of Health, the Agency for Health Care Administration,
425 the Department of Business and Professional Regulation, and the
426 Department of Agriculture and Consumer Services concerning
427 procedures related to the storage, preparation, serving, or
428 display of food and procedures related to the detection and
429 prevention of diseases caused by natural and manmade factors in
430 the environment.

431 (3) LICENSING SANCTIONS; PROCEDURES.—The agency may impose
432 sanctions pursuant to s. 393.0673 against any establishment or
433 operator licensed under s. 393.067 for violations of sanitary
434 standards.

435 (4) CONTRACTING.—The agency may contract with another

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436 entity for the provision of food service protection and
437 inspection services.

438 Section 5. This act shall take effect July 1, 2012.