

1                                   A bill to be entitled  
2           An act relating to the Agency for Persons with  
3           Disabilities; amending s. 393.063, F.S.; revising the  
4           definition of the term "developmental disability";  
5           amending s. 393.065, F.S.; revising priority  
6           classifications for clients on a waiting list for  
7           Medicaid home and community-based waiver services;  
8           requiring the Agency for Persons with Disabilities to  
9           provide waiver services and community-based care lead  
10          agencies to provide certain funding and services for  
11          specified individuals who need waiver and extended  
12          foster care services; requiring an individual to be  
13          allowed to receive home and community-based services  
14          if his or her parent or guardian is an active-duty  
15          servicemember transferred to this state under certain  
16          circumstances; providing that individuals remaining on  
17          the waiting list are not entitled to a hearing in  
18          accordance with federal law or administrative  
19          proceeding under state law; amending s. 393.066, F.S.;  
20          requiring persons and entities under agency contract  
21          to provide community services and treatment to  
22          document service delivery using agency data management  
23          systems and meet certain technical and training  
24          requirements; amending s. 393.0662, F.S.; providing  
25          requirements for an increase in iBudget funding  
26          allocations for clients needing certain transportation

27 services; creating s. 393.0679, F.S.; requiring the  
 28 agency to conduct a utilization review of certain  
 29 intermediate care facilities for individuals with  
 30 developmental disabilities; providing an effective  
 31 date.

32  
 33 Be It Enacted by the Legislature of the State of Florida:

34  
 35 Section 1. Subsection (9) of section 393.063, Florida  
 36 Statutes, is amended to read:

37 393.063 Definitions.—For the purposes of this chapter, the  
 38 term:

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

45 Section 2. Subsection (5) of section 393.065, Florida  
 46 Statutes, is amended, subsections (6) and (7) are renumbered as  
 47 subsections (7) and (9), respectively, and amended, and new  
 48 subsections (6) and (8) are added to that section, to read:

49 393.065 Application and eligibility determination.—

50 (5) ~~Except as otherwise directed by law, beginning July 1,~~  
 51 ~~2010,~~ The agency shall assign and provide priority to clients  
 52 waiting for waiver services in the following order:

53 (a) Category 1, which includes clients deemed to be in  
 54 crisis as described in rule. Clients assigned to this category  
 55 shall be given first priority to receive waiver services.

56 (b) Category 2, which includes individuals on the waiting  
 57 ~~children on the wait~~ list who are:

58 1. From the child welfare system with an open case in the  
 59 Department of Children and Families' statewide automated child  
 60 welfare information system and who are either:

61 a. Transitioning out of the child welfare system at the  
 62 finalization of an adoption, a reunification with family  
 63 members, a permanent placement with a relative, or a  
 64 guardianship with a nonrelative; or

65 b. At least 18 years old but not yet 22 years old and who  
 66 need both waiver services and extended foster care services.

67 2. At least 18 years old but not yet 22 years old and who  
 68 withdrew consent pursuant to s. 39.6251(5)(c) to remain in the  
 69 extended foster care system.

70  
 71 For individuals who are at least 18 years old but not yet 22  
 72 years old and who are eligible under sub-subparagraph 1.b., the  
 73 agency shall provide waiver services, including residential  
 74 habilitation, and the community-based care lead agency shall  
 75 fund room and board at the rate established in s. 409.145(4) and  
 76 provide case management and related services as defined in s.  
 77 409.986(3)(e). Individuals may receive both waiver services and  
 78 services under s. 39.6251. Services may not duplicate services

79 available through the Medicaid state plan.

80 (c) Category 3, which includes, but is not required to be  
81 limited to, clients:

82 1. Whose caregiver has a documented condition that is  
83 expected to render the caregiver unable to provide care within  
84 the next 12 months and for whom a caregiver is required but no  
85 alternate caregiver is available;

86 2. At substantial risk of incarceration or court  
87 commitment without supports;

88 3. Whose documented behaviors or physical needs place them  
89 or their caregiver at risk of serious harm and other supports  
90 are not currently available to alleviate the situation; or

91 4. Who are identified as ready for discharge within the  
92 next year from a state mental health hospital or skilled nursing  
93 facility and who require a caregiver but for whom no caregiver  
94 is available.

95 (d) Category 4, which includes, but is not required to be  
96 limited to, clients whose caregivers are 70 years of age or  
97 older and for whom a caregiver is required but no alternate  
98 caregiver is available.

99 (e) Category 5, which includes, but is not required to be  
100 limited to, clients who are expected to graduate within the next  
101 12 months from secondary school and need support to obtain or  
102 maintain competitive employment, or to pursue an accredited  
103 program of postsecondary education to which they have been  
104 accepted.

105 (f) Category 6, which includes clients 21 years of age or  
 106 older who do not meet the criteria for category 1, category 2,  
 107 category 3, category 4, or category 5.

108 (g) Category 7, which includes clients younger than 21  
 109 years of age who do not meet the criteria for category 1,  
 110 category 2, category 3, or category 4.

111  
 112 Within categories 3, 4, 5, 6, and 7, the agency shall maintain a  
 113 waiting ~~wait~~ list of clients placed in the order of the date  
 114 that the client is determined eligible for waiver services.

115 (6) The agency shall allow an individual who meets the  
 116 eligibility requirements under s. 393.065(1) to receive home and  
 117 community-based services in this state if the individual's  
 118 parent or legal guardian is an active-duty military  
 119 servicemember and if at the time of the servicemember's transfer  
 120 to this state, the individual was receiving home and community-  
 121 based services in another state.

122 (7)~~(6)~~ The client, the client's guardian, or the client's  
 123 family must ensure that accurate, up-to-date contact information  
 124 is provided to the agency at all times. Notwithstanding s.  
 125 393.0651, in lieu of an annual report, the agency shall send an  
 126 annual letter requesting updated information from the client,  
 127 the client's guardian, or the client's family. The agency shall  
 128 remove from the waiting ~~wait~~ list any individual who cannot be  
 129 located using the contact information provided to the agency,  
 130 fails to meet eligibility requirements, or becomes domiciled

131 outside the state.

132 (8) Once individuals on the waiting list are selected to  
 133 receive waiver services pursuant to this section, an individual  
 134 remaining on the waiting list is deemed not to have been  
 135 substantially affected by agency action and therefore is not  
 136 entitled to a hearing under s. 393.125 or an administrative  
 137 proceeding under chapter 120.

138 (9)~~(7)~~ The agency and the Agency for Health Care  
 139 Administration may adopt rules specifying application  
 140 procedures;7 criteria associated with waiting-list ~~wait-list~~  
 141 categories;7 procedures for administering the waiting ~~wait~~ list,  
 142 including, but not limited to, tools for prioritizing waiver  
 143 enrollment within categories; and eligibility criteria as needed  
 144 to administer this section.

145 Section 3. Subsection (2) of section 393.066, Florida  
 146 Statutes, is amended to read:

147 393.066 Community services and treatment.—

148 (2) All services needed shall be purchased instead of  
 149 provided directly by the agency, when such arrangement is more  
 150 cost-efficient than having those services provided directly. All  
 151 purchased services must be approved by the agency. All persons  
 152 or entities under contract with the agency to provide services  
 153 shall use agency data management systems to document service  
 154 provision to clients. Contracted persons and entities shall meet  
 155 the minimum hardware and software technical requirements for use  
 156 of such systems established by the agency. Such persons or

157 entities shall also meet requirements for training and  
158 professional development of staff providing direct services to  
159 clients as established by the agency.

160 Section 4. Paragraph (b) of subsection (1) of section  
161 393.0662, Florida Statutes, is amended to read:

162 393.0662 Individual budgets for delivery of home and  
163 community-based services; iBudget system established.—The  
164 Legislature finds that improved financial management of the  
165 existing home and community-based Medicaid waiver program is  
166 necessary to avoid deficits that impede the provision of  
167 services to individuals who are on the waiting list for  
168 enrollment in the program. The Legislature further finds that  
169 clients and their families should have greater flexibility to  
170 choose the services that best allow them to live in their  
171 community within the limits of an established budget. Therefore,  
172 the Legislature intends that the agency, in consultation with  
173 the Agency for Health Care Administration, develop and implement  
174 a comprehensive redesign of the service delivery system using  
175 individual budgets as the basis for allocating the funds  
176 appropriated for the home and community-based services Medicaid  
177 waiver program among eligible enrolled clients. The service  
178 delivery system that uses individual budgets shall be called the  
179 iBudget system.

180 (1) The agency shall establish an individual budget,  
181 referred to as an iBudget, for each individual served by the  
182 home and community-based services Medicaid waiver program. The

183 funds appropriated to the agency shall be allocated through the  
184 iBudget system to eligible, Medicaid-enrolled clients. For the  
185 iBudget system, eligible clients shall include individuals with  
186 ~~a diagnosis of Down syndrome or~~ a developmental disability as  
187 defined in s. 393.063. The iBudget system shall be designed to  
188 provide for: enhanced client choice within a specified service  
189 package; appropriate assessment strategies; an efficient  
190 consumer budgeting and billing process that includes  
191 reconciliation and monitoring components; a redefined role for  
192 support coordinators that avoids potential conflicts of  
193 interest; a flexible and streamlined service review process; and  
194 a methodology and process that ensures the equitable allocation  
195 of available funds to each client based on the client's level of  
196 need, as determined by the variables in the allocation  
197 algorithm.

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

206 1. An extraordinary need that would place the health and  
207 safety of the client, the client's caregiver, or the public in  
208 immediate, serious jeopardy unless the increase is approved. An



209 extraordinary need may include, but is not limited to:

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

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

217 c. A chronic comorbid condition. As used in this  
218 subparagraph, the term "comorbid condition" means a medical  
219 condition existing simultaneously but independently with another  
220 medical condition in a patient; or

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

224

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

228 2. A significant need for one-time or temporary support or  
229 services that, if not provided, would place the health and  
230 safety of the client, the client's caregiver, or the public in  
231 serious jeopardy, unless the increase is approved. A significant  
232 need may include, but is not limited to, the provision of  
233 environmental modifications, durable medical equipment, services  
234 to address the temporary loss of support from a caregiver, or

235 special services or treatment for a serious temporary condition  
236 when the service or treatment is expected to ameliorate the  
237 underlying condition. As used in this subparagraph, the term  
238 "temporary" means a period of fewer than 12 continuous months.  
239 However, the presence of such significant need for one-time or  
240 temporary supports or services alone does not warrant an  
241 increase in the amount of funds allocated to a client's iBudget  
242 as determined by the algorithm.

243 3. A significant increase in the need for services after  
244 the beginning of the service plan year that would place the  
245 health and safety of the client, the client's caregiver, or the  
246 public in serious jeopardy because of substantial changes in the  
247 client's circumstances, including, but not limited to, permanent  
248 or long-term loss or incapacity of a caregiver, loss of services  
249 authorized under the state Medicaid plan due to a change in age,  
250 or a significant change in medical or functional status which  
251 requires the provision of additional services on a permanent or  
252 long-term basis that cannot be accommodated within the client's  
253 current iBudget. As used in this subparagraph, the term "long-  
254 term" means a period of 12 or more continuous months. However,  
255 such significant increase in need for services of a permanent or  
256 long-term nature alone does not warrant an increase in the  
257 amount of funds allocated to a client's iBudget as determined by  
258 the algorithm.

259 4. A significant need for transportation services to a  
260 waiver-funded adult day training program or to waiver-funded

261 employment services when such need cannot be accommodated within  
262 the funding authorized by the client's iBudget amount without  
263 affecting the health and safety of the client, when public  
264 transportation is not an option due to the unique needs of the  
265 client, and when no other transportation resources are  
266 reasonably available.

267

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

273 Section 5. Section 393.0679, Florida Statutes, is created  
274 to read:

275 393.0679 Utilization review.—The agency shall conduct  
276 utilization review activities in public and private intermediate  
277 care facilities for individuals with developmental disabilities  
278 as necessary to meet the requirements of the approved Medicaid  
279 state plan and federal law. All private intermediate care  
280 facilities for individuals with developmental disabilities shall  
281 comply with any requests for information and documentation and  
282 permit any inspections necessary for the agency to conduct such  
283 activities.

284 Section 6. This act shall take effect July 1, 2016.