

1 A bill to be entitled

2 An act relating to home and community-based services  
3 Medicaid waiver program; amending s. 393.065, F.S.;  
4 requiring the Agency for Persons with Disabilities to  
5 develop and implement an automated, electronic  
6 application process for specified services; providing  
7 requirements for the application process; requiring  
8 the agency to provide an application in a printed form  
9 or a portable document format under certain  
10 circumstances; requiring the agency to make an  
11 eligibility determination in a specified amount of  
12 time for certain persons; authorizing the agency to  
13 request additional documentation under certain  
14 circumstances; providing requirements for such  
15 request; requiring rulemaking; amending s. 393.0662,  
16 F.S.; providing requirements for the Agency for Health  
17 Care Administration when a client's iBudget is  
18 established; requiring the agency within a specified  
19 time period to ensure certain services that a client  
20 has applied for have begun; requiring rulemaking;  
21 amending ss. 393.0651, 409.9127, and s. 409.9855,  
22 F.S.; conforming provisions to changes made by the  
23 act; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
 27 Section 1. Subsections (1) through (12) of section  
 28 393.065, Florida Statutes, are renumbered as subsections (2)  
 29 through (13), respectively, present subsections (1), (5), (6),  
 30 and (7), paragraph (a) of present subsection (8), and present  
 31 subsections (11) and (12) are amended, and a new subsection (1)  
 32 is added to that section, to read:

33 393.065 Application and eligibility determination.—

34 (1) As part of the agency's website, the agency shall  
 35 develop and implement an automated, electronic application  
 36 process. The application process shall, at a minimum, support:

37 (a) Electronic submissions.

38 (b) Automatic processing of each application.

39 (c) Immediate automatic e-mail confirmation to each  
 40 applicant with proof of filing along with a date and time stamp.

41 (d) Upon request, if the applicant does not have access to  
 42 electronic resources, the agency providing the applicant with  
 43 the application in printed form or in a portable document  
 44 format.

45 ~~(2)(1) Application for services shall be made in writing to~~  
 46 ~~the agency, in the region in which the applicant resides. The~~  
 47 agency shall review each application and make an eligibility  
 48 determination within 60 days after receipt of the signed  
 49 application. If, at the time of the application, an applicant is  
 50 requesting enrollment in the home and community-based services

51 Medicaid waiver program for individuals with developmental  
 52 disabilities deemed to be in crisis, as described in paragraph  
 53 (6)(a) ~~(5)(a)~~, the agency shall complete an eligibility  
 54 determination within 45 days after receipt of the signed  
 55 application.

56 (a) If the agency determines additional documentation is  
 57 necessary to make an eligibility determination, the agency may  
 58 request the additional documentation from the applicant.

59 (b) When necessary to definitively identify individual  
 60 conditions or needs, the agency or its designee must provide a  
 61 comprehensive assessment.

62 (c) If the agency requests additional documentation from  
 63 the applicant or provides or arranges for a comprehensive  
 64 assessment, the agency's eligibility determination must be  
 65 completed within 90 days after receipt of the signed  
 66 application.

67 (d) If the applicant meets the criteria in paragraph  
 68 (7)(b), such applicant shall be deemed in crisis and the  
 69 following shall be required, regardless of age:

70 1. The agency shall review each application and make an  
 71 eligibility determination within 5 business days after receipt  
 72 of the signed application.

73 2. If, at the time of the application, the applicant is  
 74 requesting enrollment in the home and community-based services  
 75 Medicaid waiver program for individuals with developmental

76 disabilities deemed to be in crisis, as described in paragraph  
 77 (7)(a), the agency shall complete an eligibility determination  
 78 within 15 calendar days after receipt of the signed application.

79 3. If the agency determines additional documentation is  
 80 necessary to make an eligibility determination, the agency may  
 81 request additional documentation from the applicant, but such  
 82 agency request may not prevent or delay services to the  
 83 applicant. When necessary to definitively identify individual  
 84 conditions or needs, the agency or its designee must provide a  
 85 comprehensive assessment.

86 4. If the agency requests additional documentation from  
 87 the applicant or provides or arranges for a comprehensive  
 88 assessment, the agency's eligibility determination must be  
 89 completed within 60 calendar days after receipt of the signed  
 90 application.

91 (6)-(5) Except as provided in subsections (7) and (8) ~~(6)~~  
 92 ~~and (7)~~, if a client seeking enrollment in the developmental  
 93 disabilities home and community-based services Medicaid waiver  
 94 program meets the level of care requirement for an intermediate  
 95 care facility for individuals with intellectual disabilities  
 96 pursuant to 42 C.F.R. ss. 435.217(b)(1) and 440.150, the agency  
 97 must assign the client to an appropriate preenrollment category  
 98 pursuant to this subsection and must provide priority to clients  
 99 waiting for waiver services in the following order:

100 (a) Category 1, which includes clients deemed to be in

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101 crisis as described in rule, must be given first priority in  
102 moving from the preenrollment categories to the waiver.

103 (b) Category 2, which includes clients in the  
104 preenrollment categories who are:

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

108 a. Transitioning out of the child welfare system into  
109 permanency; or

110 b. At least 18 years but not yet 22 years of age and who  
111 need both waiver services and extended foster care services; or

112 2. At least 18 years but not yet 22 years of age and who  
113 withdrew consent pursuant to s. 39.6251(5)(c) to remain in the  
114 extended foster care system.

115 For individuals who are at least 18 years but not yet 22 years  
116 of age and who are eligible under sub-subparagraph 1.b., the  
117 agency must provide waiver services, including residential  
118 habilitation, and the community-based care lead agency must fund  
119 room and board at the rate established in s. 409.145(3) and  
120 provide case management and related services as defined in s.  
121 409.986(3)(e). Individuals may receive both waiver services and  
122 services under s. 39.6251. Services may not duplicate services  
123 available through the Medicaid state plan.

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

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126 1. Whose caregiver has a documented condition that is  
127 expected to render the caregiver unable to provide care within  
128 the next 12 months and for whom a caregiver is required but no  
129 alternate caregiver is available;

130 2. At substantial risk of incarceration or court  
131 commitment without supports;

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

135 4. Who are identified as ready for discharge within the  
136 next year from a state mental health hospital or skilled nursing  
137 facility and who require a caregiver but for whom no caregiver  
138 is available or whose caregiver is unable to provide the care  
139 needed.

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

144 (e) Category 5, which includes, but is not required to be  
145 limited to, clients who are expected to graduate within the next  
146 12 months from secondary school and need support to obtain a  
147 meaningful day activity, maintain competitive employment, or  
148 pursue an accredited program of postsecondary education to which  
149 they have been accepted.

150 (f) Category 6, which includes clients 21 years of age or

151 older who do not meet the criteria for category 1, category 2,  
152 category 3, category 4, or category 5.

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

156 Within preenrollment categories 3, 4, 5, 6, and 7, the agency  
157 shall prioritize clients in the order of the date that the  
158 client is determined eligible for waiver services.

159 (7)~~(6)~~ The agency must allow an individual who meets the  
160 eligibility requirements of subsection (3) ~~(2)~~ to receive home  
161 and community-based services in this state if the individual's  
162 parent or legal guardian is an active-duty military  
163 servicemember and if, at the time of the servicemember's  
164 transfer to this state, the individual was receiving home and  
165 community-based services in another state.

166 (8)~~(7)~~ The agency must allow an individual with a  
167 diagnosis of Phelan-McDermid syndrome who meets the eligibility  
168 requirements of subsection (3) ~~(2)~~ to receive home and  
169 community-based services.

170 (9)~~(8)~~ Only a client may be eligible for services under  
171 the developmental disabilities home and community-based services  
172 Medicaid waiver program. For a client to receive services under  
173 the developmental disabilities home and community-based services  
174 Medicaid waiver program, there must be available funding  
175 pursuant to s. 393.0662 or through a legislative appropriation

176 | and the client must meet all of the following:

177 |       (a) The eligibility requirements of subsection (3) ~~(2)~~,  
178 | which must be confirmed by the agency.

179 |       (12) (a) ~~(11) (a)~~ The agency must provide the following  
180 | information to all applicants or their parents, legal guardians,  
181 | or family members:

182 |           1. A brief overview of the vocational rehabilitation  
183 | services offered through the Division of Vocational  
184 | Rehabilitation of the Department of Education, including a  
185 | hyperlink or website address that provides access to the  
186 | application for such services;

187 |           2. A brief overview of the Florida ABLE program as  
188 | established under s. 1009.986, including a hyperlink or website  
189 | address that provides access to the application for establishing  
190 | an ABLE account as defined in s. 1009.986(2);

191 |           3. A brief overview of the supplemental security income  
192 | benefits and social security disability income benefits  
193 | available under Title XVI of the Social Security Act, as  
194 | amended, including a hyperlink or website address that provides  
195 | access to the application for such benefits;

196 |           4. A statement indicating that the applicant's local  
197 | public school district may provide specialized instructional  
198 | services, including transition programs, for students with  
199 | special education needs;

200 |           5. A brief overview of programs and services funded



201 through the Florida Center for Students with Unique Abilities,  
 202 including contact information for each state-approved Florida  
 203 Postsecondary Comprehensive Transition Program;

204 6. A brief overview of decisionmaking options for  
 205 individuals with disabilities, guardianship under chapter 744,  
 206 and alternatives to guardianship as defined in s. 744.334(1),  
 207 which may include contact information for organizations that the  
 208 agency believes would be helpful in assisting with such  
 209 decisions;

210 7. A brief overview of the referral tools made available  
 211 through the agency, including a hyperlink or website address  
 212 that provides access to such tools; and

213 8. A statement indicating that some waiver providers may  
 214 serve private-pay individuals.

215 (b) The agency must provide the information required in  
 216 paragraph (a) in writing to an applicant or his or her parent,  
 217 legal guardian, or family member along with a written disclosure  
 218 statement in substantially the following form:

219  
 220 DISCLOSURE STATEMENT

221 Each program and service has its own eligibility  
 222 requirements. By providing the information specified in  
 223 section 393.065(12)(a) ~~393.065(11)(a)~~, Florida Statutes,  
 224 the agency does not guarantee an applicant's eligibility  
 225 for or enrollment in any program or service.

226  
 227 (c) The agency must also publish the information required  
 228 in paragraph (a) and the disclosure statement in paragraph (b)  
 229 on its website, and must provide that information and statement  
 230 annually to each client placed in the preenrollment categories  
 231 or to the parent, legal guardian, or family member of such  
 232 client.

233 (13)~~(12)~~ The agency and the Agency for Health Care  
 234 Administration:

235 (a) May adopt rules specifying application procedures,  
 236 criteria associated with the preenrollment categories,  
 237 procedures for administering the preenrollment, including tools  
 238 for prioritizing waiver enrollment within preenrollment  
 239 categories, and eligibility requirements as needed to administer  
 240 this section.

241 (b) By September 29, 2024, adopt rules and implement  
 242 policies to maintain compliance with paragraph (2) (d).

243 Section 2. Subsections (2) and (15) of section 393.0662,  
 244 Florida Statutes, are amended to read:

245 393.0662 Individual budgets for delivery of home and  
 246 community-based services; iBudget system established.—The  
 247 Legislature finds that improved financial management of the  
 248 existing home and community-based Medicaid waiver program is  
 249 necessary to avoid deficits that impede the provision of  
 250 services to individuals who are on the waiting list for

251 enrollment in the program. The Legislature further finds that  
252 clients and their families should have greater flexibility to  
253 choose the services that best allow them to live in their  
254 community within the limits of an established budget. Therefore,  
255 the Legislature intends that the agency, in consultation with  
256 the Agency for Health Care Administration, shall manage the  
257 service delivery system using individual budgets as the basis  
258 for allocating the funds appropriated for the home and  
259 community-based services Medicaid waiver program among eligible  
260 enrolled clients. The service delivery system that uses  
261 individual budgets shall be called the iBudget system.

262 (2) The Agency for Health Care Administration, in  
263 consultation with the agency, shall:

264 (a) Seek federal approval to amend current waivers,  
265 request a new waiver, and amend contracts as necessary to manage  
266 the iBudget system, improve services for eligible and enrolled  
267 clients, and improve the delivery of services through the home  
268 and community-based services Medicaid waiver program and the  
269 Consumer-Directed Care Plus Program, including, but not limited  
270 to, enrollees with a dual diagnosis of a developmental  
271 disability and a mental health disorder.

272 (b) At the time a client's iBudget is established:

273 1. Educate the client or the caregiver of the client  
274 regarding the Consumer-Directed Care Plus Program.

275 2. Provide each client the opportunity to apply for the

276 Consumer-Directed Care Plus Program.

277 (c) The agency shall, within 14 calendar days after the  
278 time of a client's submission for Consumer-Directed Care Plus  
279 Program, ensure that the client's Consumer-Directed Care Plus  
280 Program services begin and the client is no longer required to  
281 go through iBudget.

282 (15) The agency and the Agency for Health Care  
283 Administration:

284 (a) May adopt rules specifying the allocation algorithm  
285 and methodology; criteria and processes for clients to access  
286 funds for services to meet significant additional needs; and  
287 processes and requirements for selection and review of services,  
288 development of support and cost plans, and management of the  
289 iBudget system as needed to administer this section.

290 (b) By September 29, 2024, adopt rules and implement  
291 policies to maintain compliance with paragraph (2) (b).

292 Section 3. Section 393.0651, Florida Statutes, is amended  
293 to read:

294 393.0651 Family or individual support plan.—The agency  
295 shall provide directly or contract for the development of a  
296 family support plan for children ages 3 to 18 years of age and  
297 an individual support plan for each client. The client, if  
298 competent, the client's parent or guardian, or, when  
299 appropriate, the client advocate, shall be consulted in the  
300 development of the plan and shall receive a copy of the plan.

301 Each plan must include the most appropriate, least restrictive,  
302 and most cost-beneficial environment for accomplishment of the  
303 objectives for client progress and a specification of all  
304 services authorized. The plan must include provisions for the  
305 most appropriate level of care for the client. Within the  
306 specification of needs and services for each client, when  
307 residential care is necessary, the agency shall move toward  
308 placement of clients in residential facilities based within the  
309 client's community. The ultimate goal of each plan, whenever  
310 possible, shall be to enable the client to live a dignified life  
311 in the least restrictive setting, be that in the home or in the  
312 community. The family or individual support plan must be  
313 developed within 60 days after the agency determines the client  
314 eligible pursuant to s. 393.065(4) ~~s. 393.065(3)~~.

315 (1) The agency shall develop and specify by rule the core  
316 components of support plans.

317 (2) The family or individual support plan shall be  
318 integrated with the individual education plan (IEP) for all  
319 clients who are public school students entitled to a free  
320 appropriate public education under the Individuals with  
321 Disabilities Education Act, I.D.E.A., as amended. The family or  
322 individual support plan and IEP must be implemented to maximize  
323 the attainment of educational and habilitation goals.

324 (a) If the IEP for a student enrolled in a public school  
325 program indicates placement in a public or private residential

326 program is necessary to provide special education and related  
327 services to a client, the local education agency must provide  
328 for the costs of that service in accordance with the  
329 requirements of the Individuals with Disabilities Education Act,  
330 I.D.E.A., as amended. This does not preclude local education  
331 agencies and the agency from sharing the residential service  
332 costs of students who are clients and require residential  
333 placement.

334 (b) For clients who are entering or exiting the school  
335 system, an interdepartmental staffing team composed of  
336 representatives of the agency and the local school system shall  
337 develop a written transitional living and training plan with the  
338 participation of the client or with the parent or guardian of  
339 the client, or the client advocate, as appropriate.

340 (3) Each family or individual support plan shall be  
341 facilitated through case management designed solely to advance  
342 the individual needs of the client.

343 (4) In the development of the family or individual support  
344 plan, a client advocate may be appointed by the support planning  
345 team for a client who is a minor or for a client who is not  
346 capable of express and informed consent when:

347 (a) The parent or guardian cannot be identified;

348 (b) The whereabouts of the parent or guardian cannot be  
349 discovered; or

350 (c) The state is the only legal representative of the

351 client.

352

353 Such appointment may not be construed to extend the powers of  
354 the client advocate to include any of those powers delegated by  
355 law to a legal guardian.

356 (5) The agency shall place a client in the most  
357 appropriate and least restrictive, and cost-beneficial,  
358 residential facility according to his or her individual support  
359 plan. The client, if competent, the client's parent or guardian,  
360 or, when appropriate, the client advocate, and the administrator  
361 of the facility to which placement is proposed shall be  
362 consulted in determining the appropriate placement for the  
363 client. Considerations for placement shall be made in the  
364 following order:

365 (a) Client's own home or the home of a family member or  
366 direct service provider.

367 (b) Foster care facility.

368 (c) Group home facility.

369 (d) Intermediate care facility for the developmentally  
370 disabled.

371 (e) Other facilities licensed by the agency which offer  
372 special programs for people with developmental disabilities.

373 (f) Developmental disabilities center.

374 (6) In developing a client's annual family or individual  
375 support plan, the individual or family with the assistance of

376 the support planning team shall identify measurable objectives  
 377 for client progress and shall specify a time period expected for  
 378 achievement of each objective.

379 (7) The individual, family, and support coordinator shall  
 380 review progress in achieving the objectives specified in each  
 381 client's family or individual support plan, and shall revise the  
 382 plan annually, following consultation with the client, if  
 383 competent, or with the parent or guardian of the client, or,  
 384 when appropriate, the client advocate. The agency or designated  
 385 contractor shall annually report in writing to the client, if  
 386 competent, or to the parent or guardian of the client, or to the  
 387 client advocate, when appropriate, with respect to the client's  
 388 habilitative and medical progress.

389 (8) Any client, or any parent of a minor client, or  
 390 guardian, authorized guardian advocate, or client advocate for a  
 391 client, who is substantially affected by the client's initial  
 392 family or individual support plan, or the annual review thereof,  
 393 shall have the right to file a notice to challenge the decision  
 394 pursuant to ss. 120.569 and 120.57. Notice of such right to  
 395 appeal shall be included in all support plans provided by the  
 396 agency.

397 Section 4. Subsection (3) of section 409.9127, Florida  
 398 Statutes, is amended to read:

399 409.9127 Preauthorization and concurrent utilization  
 400 review; conflict-of-interest standards.—



401 (3) The agency shall help the Agency for Persons with  
 402 Disabilities meet the requirements of s. 393.065(5) ~~s.~~  
 403 ~~393.065(4)~~. Only admissions approved pursuant to such  
 404 assessments are eligible for reimbursement under this chapter.

405 Section 5. Paragraphs (b) and (d) of subsection (2) of  
 406 section 409.9855, Florida Statutes, are amended to read:

407 409.9855 Pilot program for individuals with developmental  
 408 disabilities.—

409 (2) ELIGIBILITY; VOLUNTARY ENROLLMENT; DISENROLLMENT.—

410 (b) The Agency for Persons with Disabilities shall approve  
 411 a needs assessment methodology to determine functional,  
 412 behavioral, and physical needs of prospective enrollees. The  
 413 assessment methodology may be administered by persons who have  
 414 completed such training as may be offered by the agency.  
 415 Eligibility to participate in the pilot program is determined  
 416 based on all of the following criteria:

- 417 1. Whether the individual is eligible for Medicaid.
- 418 2. Whether the individual is 18 years of age or older and  
 419 is on the waiting list for individual budget waiver services  
 420 under chapter 393 and assigned to one of categories 1 through 6  
 421 as specified in s. 393.065(6) ~~s. 393.065(5)~~.
- 422 3. Whether the individual resides in a pilot program  
 423 region.

424 (d) Notwithstanding any provisions of s. 393.065 to the  
 425 contrary, an enrollee must be afforded an opportunity to enroll

426 | in any appropriate existing Medicaid waiver program if any of  
 427 | the following conditions occur:

428 |       1. At any point during the operation of the pilot program,  
 429 | an enrollee declares an intent to voluntarily disenroll,  
 430 | provided that he or she has been covered for the entire previous  
 431 | plan year by the pilot program.

432 |       2. The agency determines the enrollee has a good cause  
 433 | reason to disenroll.

434 |       3. The pilot program ceases to operate.

435 |

436 | Such enrollees must receive an individualized transition plan to  
 437 | assist him or her in accessing sufficient services and supports  
 438 | for the enrollee's safety, well-being, and continuity of care.

439 |       Section 6. This act shall take effect July 1, 2024.