

By Senator Bradley

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1                   A bill to be entitled  
2       An act relating to the home and community-based  
3       services Medicaid waiver program; amending s. 393.065,  
4       F.S.; requiring the Agency for Persons with  
5       Disabilities to develop and implement an automated,  
6       electronic application process for specified services;  
7       providing requirements for the application process;  
8       requiring the agency to provide an application in a  
9       printed form or a portable document format under  
10      certain circumstances; deleting the requirement that  
11      application for services be made to the agency in the  
12      region in which the applicant resides; specifying that  
13      applicants meeting specified criteria are deemed to be  
14      in crisis regardless of the applicant's age; requiring  
15      the agency to make an eligibility determination for  
16      certain applicants within specified timeframes;  
17      authorizing the agency to request additional  
18      documentation needed to make an eligibility  
19      determination; prohibiting such request from  
20      preventing or delaying services to the applicant;  
21      providing for a comprehensive assessment of an  
22      applicant under certain circumstances; requiring the  
23      agency to complete its eligibility determination  
24      within a specified timeframe after requesting  
25      additional documentation from or arranging for a  
26      comprehensive assessment of the applicant; requiring  
27      the Agency for Persons with Disabilities and the  
28      Agency for Health Care Administration to adopt rules  
29      and implement certain policies by a specified date;

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30 amending s. 393.0662, F.S.; providing requirements for  
31 the Agency for Health Care Administration when a  
32 client's iBudget is established; requiring the Agency  
33 for Persons with Disabilities to ensure that certain  
34 client services commence within a specified timeframe;  
35 requiring the Agency for Persons with Disabilities and  
36 the Agency for Health Care Administration to adopt  
37 rules and implement certain policies by a specified  
38 date; amending ss. 393.0651, 409.9127, and 409.9855,  
39 F.S.; conforming cross-references; providing an  
40 effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Present subsections (1) through (12) of section  
45 393.065, Florida Statutes, are redesignated as subsections (2)  
46 through (13), respectively, a new subsection (1) is added to  
47 that section, and present subsections (1), (5), (6), and (7),  
48 paragraph (a) of present subsection (8), and present subsections  
49 (11) and (12) are amended, to read:

50 393.065 Application and eligibility determination.—

51 (1) As part of the agency's website, the agency shall  
52 develop and implement an automated, electronic application  
53 process. The application process shall, at a minimum, support:  
54 (a) Electronic submissions.  
55 (b) Automatic processing of each application.  
56 (c) Immediate automatic e-mail confirmation to each  
57 applicant with proof of filing along with a date and time stamp.  
58 (d) Upon request, if the applicant does not have access to

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59 electronic resources, providing the applicant with the  
60 application in printed form or in a portable document format.

61 ~~(2)(1) Application for services shall be made in writing to~~  
62 ~~the agency, in the region in which the applicant resides. The~~  
63 agency shall review each application and make an eligibility  
64 determination within 60 days after receipt of the signed  
65 application. If, at the time of the application, an applicant is  
66 requesting enrollment in the home and community-based services  
67 Medicaid waiver program for individuals with developmental  
68 disabilities deemed to be in crisis, as described in paragraph  
69 (6) (a) ~~(5) (a)~~, the agency shall complete an eligibility  
70 determination within 45 days after receipt of the signed  
71 application.

72 (a) If the agency determines additional documentation is  
73 necessary to make an eligibility determination, the agency may  
74 request the additional documentation from the applicant.

75 (b) When necessary to definitively identify individual  
76 conditions or needs, the agency or its designee must provide a  
77 comprehensive assessment.

78 (c) If the agency requests additional documentation from  
79 the applicant or provides or arranges for a comprehensive  
80 assessment, the agency's eligibility determination must be  
81 completed within 90 days after receipt of the signed  
82 application.

83 (d) If the applicant meets the criteria for preenrollment  
84 category 2 in paragraph (6) (b), such applicant is deemed to be  
85 in crisis and the following is required, regardless of the  
86 applicant's age:

87 1. The agency shall review each application and make an

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88 eligibility determination within 5 business days after receipt  
89 of the signed application.

90 2. If, at the time of the application, the applicant is  
91 requesting enrollment in the home and community-based services  
92 Medicaid waiver program for individuals with developmental  
93 disabilities deemed to be in crisis, as described in paragraph  
94 (6) (a), the agency must complete an eligibility determination  
95 within 15 calendar days after receipt of the signed application.

96 3. If the agency determines additional documentation is  
97 necessary to make an eligibility determination, the agency may  
98 request additional documentation from the applicant, but such  
99 agency request may not prevent or delay services to the  
100 applicant. When necessary to definitively identify individual  
101 conditions or needs, the agency or its designee must provide a  
102 comprehensive assessment.

103 4. If the agency requests additional documentation from the  
104 applicant or provides or arranges for a comprehensive  
105 assessment, the agency's eligibility determination must be  
106 completed within 60 calendar days after receipt of the signed  
107 application.

108 (6) ~~(5)~~ Except as provided in subsections (7) and (8) ~~(6)~~  
109 and ~~(7)~~, if a client seeking enrollment in the developmental  
110 disabilities home and community-based services Medicaid waiver  
111 program meets the level of care requirement for an intermediate  
112 care facility for individuals with intellectual disabilities  
113 pursuant to 42 C.F.R. ss. 435.217(b) (1) and 440.150, the agency  
114 must assign the client to an appropriate preenrollment category  
115 pursuant to this subsection and must provide priority to clients  
116 waiting for waiver services in the following order:

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117 (a) Category 1, which includes clients deemed to be in  
118 crisis as described in rule, must be given first priority in  
119 moving from the preenrollment categories to the waiver.

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

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

125 a. Transitioning out of the child welfare system into  
126 permanency; or

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

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

132 For individuals who are at least 18 years but not yet 22 years  
133 of age and who are eligible under sub-subparagraph 1.b., the  
134 agency must provide waiver services, including residential  
135 habilitation, and the community-based care lead agency must fund  
136 room and board at the rate established in s. 409.145(3) and  
137 provide case management and related services as defined in s.  
138 409.986(3)(e). Individuals may receive both waiver services and  
139 services under s. 39.6251. Services may not duplicate services  
140 available through the Medicaid state plan.

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

143 1. Whose caregiver has a documented condition that is  
144 expected to render the caregiver unable to provide care within  
145 the next 12 months and for whom a caregiver is required but no

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146 alternate caregiver is available;

147 2. At substantial risk of incarceration or court commitment  
148 without supports;

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

152 4. Who are identified as ready for discharge within the  
153 next year from a state mental health hospital or skilled nursing  
154 facility and who require a caregiver but for whom no caregiver  
155 is available or whose caregiver is unable to provide the care  
156 needed.

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

161 (e) Category 5, which includes, but is not required to be  
162 limited to, clients who are expected to graduate within the next  
163 12 months from secondary school and need support to obtain a  
164 meaningful day activity, maintain competitive employment, or  
165 pursue an accredited program of postsecondary education to which  
166 they have been accepted.

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

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

173 Within preenrollment categories 3, 4, 5, 6, and 7, the agency  
174 shall prioritize clients in the order of the date that the

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175 client is determined eligible for waiver services.

176 (7)~~(6)~~ The agency must allow an individual who meets the  
177 eligibility requirements of subsection (3) ~~(2)~~ to receive home  
178 and community-based services in this state if the individual's  
179 parent or legal guardian is an active-duty military  
180 servicemember and if, at the time of the servicemember's  
181 transfer to this state, the individual was receiving home and  
182 community-based services in another state.

183 (8)~~(7)~~ The agency must allow an individual with a diagnosis  
184 of Phelan-McDermid syndrome who meets the eligibility  
185 requirements of subsection (3) ~~(2)~~ to receive home and  
186 community-based services.

187 (9)~~(8)~~ Only a client may be eligible for services under the  
188 developmental disabilities home and community-based services  
189 Medicaid waiver program. For a client to receive services under  
190 the developmental disabilities home and community-based services  
191 Medicaid waiver program, there must be available funding  
192 pursuant to s. 393.0662 or through a legislative appropriation  
193 and the client must meet all of the following:

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

196 (12) ~~(a)~~~~(11)~~~~(a)~~ The agency must provide the following  
197 information to all applicants or their parents, legal guardians,  
198 or family members:

199 1. A brief overview of the vocational rehabilitation  
200 services offered through the Division of Vocational  
201 Rehabilitation of the Department of Education, including a  
202 hyperlink or website address that provides access to the  
203 application for such services;

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

208           3. A brief overview of the supplemental security income  
209 benefits and social security disability income benefits  
210 available under Title XVI of the Social Security Act, as  
211 amended, including a hyperlink or website address that provides  
212 access to the application for such benefits;

213           4. A statement indicating that the applicant's local public  
214 school district may provide specialized instructional services,  
215 including transition programs, for students with special  
216 education needs;

217           5. A brief overview of programs and services funded through  
218 the Florida Center for Students with Unique Abilities, including  
219 contact information for each state-approved Florida  
220 Postsecondary Comprehensive Transition Program;

221           6. A brief overview of decisionmaking options for  
222 individuals with disabilities, guardianship under chapter 744,  
223 and alternatives to guardianship as defined in s. 744.334(1),  
224 which may include contact information for organizations that the  
225 agency believes would be helpful in assisting with such  
226 decisions;

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

230           8. A statement indicating that some waiver providers may  
231 serve private-pay individuals.

232           (b) The agency must provide the information required in



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233 paragraph (a) in writing to an applicant or his or her parent,  
234 legal guardian, or family member along with a written disclosure  
235 statement in substantially the following form:

236  
237 DISCLOSURE STATEMENT

238 Each program and service has its own eligibility  
239 requirements. By providing the information specified in  
240 section 393.065(12)(a) ~~393.065(11)(a)~~, Florida Statutes,  
241 the agency does not guarantee an applicant's eligibility  
242 for or enrollment in any program or service.

243  
244 (c) The agency must also publish the information required  
245 in paragraph (a) and the disclosure statement in paragraph (b)  
246 on its website, and must provide that information and statement  
247 annually to each client placed in the preenrollment categories  
248 or to the parent, legal guardian, or family member of such  
249 client.

250 ~~(13)(12)~~ The agency and the Agency for Health Care  
251 Administration:

252 (a) May adopt rules specifying application procedures,  
253 criteria associated with the preenrollment categories,  
254 procedures for administering the preenrollment, including tools  
255 for prioritizing waiver enrollment within preenrollment  
256 categories, and eligibility requirements as needed to administer  
257 this section.

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

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

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262           393.0662 Individual budgets for delivery of home and  
263 community-based services; iBudget system established.—The  
264 Legislature finds that improved financial management of the  
265 existing home and community-based Medicaid waiver program is  
266 necessary to avoid deficits that impede the provision of  
267 services to individuals who are on the waiting list for  
268 enrollment in the program. The Legislature further finds that  
269 clients and their families should have greater flexibility to  
270 choose the services that best allow them to live in their  
271 community within the limits of an established budget. Therefore,  
272 the Legislature intends that the agency, in consultation with  
273 the Agency for Health Care Administration, shall manage the  
274 service delivery system using individual budgets as the basis  
275 for allocating the funds appropriated for the home and  
276 community-based services Medicaid waiver program among eligible  
277 enrolled clients. The service delivery system that uses  
278 individual budgets shall be called the iBudget system.

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

281           (a) Seek federal approval to amend current waivers, request  
282 a new waiver, and amend contracts as necessary to manage the  
283 iBudget system, improve services for eligible and enrolled  
284 clients, and improve the delivery of services through the home  
285 and community-based services Medicaid waiver program and the  
286 Consumer-Directed Care Plus Program, including, but not limited  
287 to, enrollees with a dual diagnosis of a developmental  
288 disability and a mental health disorder.

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

290           1. Educate the client or the caregiver of the client

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291 regarding the Consumer-Directed Care Plus Program.

292 2. Provide each client the opportunity to apply for the  
293 Consumer-Directed Care Plus Program.

294 (c) The agency shall, within 14 calendar days after the  
295 time of a client's submission of an application for the  
296 Consumer-Directed Care Plus Program, ensure that the client's  
297 Consumer-Directed Care Plus Program services commence and the  
298 client is no longer required to access services through the  
299 iBudget system.

300 (15) The agency and the Agency for Health Care  
301 Administration:

302 (a) May adopt rules specifying the allocation algorithm and  
303 methodology; criteria and processes for clients to access funds  
304 for services to meet significant additional needs; and processes  
305 and requirements for selection and review of services,  
306 development of support and cost plans, and management of the  
307 iBudget system as needed to administer this section.

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

310 Section 3. Section 393.0651, Florida Statutes, is amended  
311 to read:

312 393.0651 Family or individual support plan.—The agency  
313 shall provide directly or contract for the development of a  
314 family support plan for children ages 3 to 18 years of age and  
315 an individual support plan for each client. The client, if  
316 competent, the client's parent or guardian, or, when  
317 appropriate, the client advocate, shall be consulted in the  
318 development of the plan and shall receive a copy of the plan.  
319 Each plan must include the most appropriate, least restrictive,

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320 and most cost-beneficial environment for accomplishment of the  
321 objectives for client progress and a specification of all  
322 services authorized. The plan must include provisions for the  
323 most appropriate level of care for the client. Within the  
324 specification of needs and services for each client, when  
325 residential care is necessary, the agency shall move toward  
326 placement of clients in residential facilities based within the  
327 client's community. The ultimate goal of each plan, whenever  
328 possible, shall be to enable the client to live a dignified life  
329 in the least restrictive setting, be that in the home or in the  
330 community. The family or individual support plan must be  
331 developed within 60 days after the agency determines the client  
332 eligible pursuant to s. 393.065(4) ~~s. 393.065(3)~~.

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

335 (2) The family or individual support plan shall be  
336 integrated with the individual education plan (IEP) for all  
337 clients who are public school students entitled to a free  
338 appropriate public education under the Individuals with  
339 Disabilities Education Act, I.D.E.A., as amended. The family or  
340 individual support plan and IEP must be implemented to maximize  
341 the attainment of educational and habilitation goals.

342 (a) If the IEP for a student enrolled in a public school  
343 program indicates placement in a public or private residential  
344 program is necessary to provide special education and related  
345 services to a client, the local education agency must provide  
346 for the costs of that service in accordance with the  
347 requirements of the Individuals with Disabilities Education Act,  
348 I.D.E.A., as amended. This does not preclude local education

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349 agencies and the agency from sharing the residential service  
350 costs of students who are clients and require residential  
351 placement.

352 (b) For clients who are entering or exiting the school  
353 system, an interdepartmental staffing team composed of  
354 representatives of the agency and the local school system shall  
355 develop a written transitional living and training plan with the  
356 participation of the client or with the parent or guardian of  
357 the client, or the client advocate, as appropriate.

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

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

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

366 (b) The whereabouts of the parent or guardian cannot be  
367 discovered; or

368 (c) The state is the only legal representative of the  
369 client.

370

371 Such appointment may not be construed to extend the powers of  
372 the client advocate to include any of those powers delegated by  
373 law to a legal guardian.

374 (5) The agency shall place a client in the most appropriate  
375 and least restrictive, and cost-beneficial, residential facility  
376 according to his or her individual support plan. The client, if  
377 competent, the client's parent or guardian, or, when

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378 appropriate, the client advocate, and the administrator of the  
379 facility to which placement is proposed shall be consulted in  
380 determining the appropriate placement for the client.

381 Considerations for placement shall be made in the following  
382 order:

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

385 (b) Foster care facility.

386 (c) Group home facility.

387 (d) Intermediate care facility for the developmentally  
388 disabled.

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

391 (f) Developmental disabilities center.

392 (6) In developing a client's annual family or individual  
393 support plan, the individual or family with the assistance of  
394 the support planning team shall identify measurable objectives  
395 for client progress and shall specify a time period expected for  
396 achievement of each objective.

397 (7) The individual, family, and support coordinator shall  
398 review progress in achieving the objectives specified in each  
399 client's family or individual support plan, and shall revise the  
400 plan annually, following consultation with the client, if  
401 competent, or with the parent or guardian of the client, or,  
402 when appropriate, the client advocate. The agency or designated  
403 contractor shall annually report in writing to the client, if  
404 competent, or to the parent or guardian of the client, or to the  
405 client advocate, when appropriate, with respect to the client's  
406 habilitative and medical progress.

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407 (8) Any client, or any parent of a minor client, or  
408 guardian, authorized guardian advocate, or client advocate for a  
409 client, who is substantially affected by the client's initial  
410 family or individual support plan, or the annual review thereof,  
411 shall have the right to file a notice to challenge the decision  
412 pursuant to ss. 120.569 and 120.57. Notice of such right to  
413 appeal shall be included in all support plans provided by the  
414 agency.

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

417 409.9127 Preauthorization and concurrent utilization  
418 review; conflict-of-interest standards.—

419 (3) The agency shall help the Agency for Persons with  
420 Disabilities meet the requirements of s. 393.065(5) ~~s.~~  
421 ~~393.065(4)~~. Only admissions approved pursuant to such  
422 assessments are eligible for reimbursement under this chapter.

423 Section 5. Paragraph (b) of subsection (2) of section  
424 409.9855, Florida Statutes, is amended to read:

425 409.9855 Pilot program for individuals with developmental  
426 disabilities.—

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

428 (b) The Agency for Persons with Disabilities shall approve  
429 a needs assessment methodology to determine functional,  
430 behavioral, and physical needs of prospective enrollees. The  
431 assessment methodology may be administered by persons who have  
432 completed such training as may be offered by the agency.  
433 Eligibility to participate in the pilot program is determined  
434 based on all of the following criteria:

435 1. Whether the individual is eligible for Medicaid.

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436           2. Whether the individual is 18 years of age or older and  
437 is on the waiting list for individual budget waiver services  
438 under chapter 393 and assigned to one of categories 1 through 6  
439 as specified in s. 393.065(6) ~~s. 393.065(5)~~.

440           3. Whether the individual resides in a pilot program  
441 region.

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