

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 and  
4           defining terms; repealing s. 393.0641, F.S., relating  
5           to a program for the prevention and treatment of  
6           severe self-injurious behavior; amending s. 393.065,  
7           F.S.; providing for the assignment of priority to  
8           clients waiting for waiver services; requiring an  
9           agency to allow a certain individual to receive such  
10          services if the individual's parent or legal guardian  
11          is an active-duty military servicemember; requiring  
12          the agency to send an annual letter to clients and  
13          their guardians or families; providing that certain  
14          agency action does not establish a right to a hearing  
15          or an administrative proceeding; amending s. 393.066,  
16          F.S.; providing for the use of an agency data  
17          management system; providing requirements for persons  
18          or entities under contract with the agency; amending  
19          s. 393.0662, F.S.; adding client needs that qualify as  
20          extraordinary needs, which may result in the approval  
21          of an increase in a client's allocated funds; revising  
22          duties of the Agency for Health Care Administration  
23          relating to the iBudget system; creating s. 393.0679,  
24          F.S.; requiring the Agency for Persons with  
25          Disabilities to conduct a certain utilization review;  
26          requiring certain intermediate care facilities to

27 |       comply with certain requests and inspections by the  
28 |       agency; amending s. 393.11, F.S.; providing for annual  
29 |       reviews for persons involuntarily admitted to  
30 |       residential services provided by the agency; requiring  
31 |       the agency to contract with a qualified evaluator;  
32 |       providing requirements for annual reviews; requiring a  
33 |       hearing to be held to consider the results of an  
34 |       annual review; requiring the agency to provide a copy  
35 |       of the review to certain persons; providing a  
36 |       definition; repealing ss. 24 and 26 of chapter 2015-  
37 |       222, Laws of Florida, and reenacting ss. 393.067(15)  
38 |       and 393.18, F.S.; abrogating the scheduled expiration  
39 |       and reversion of amendments to ss. 393.067(15) and  
40 |       393.18, F.S., relating to a provision specifying that  
41 |       the agency is not required to contract with certain  
42 |       licensed facilities and the capacity of comprehensive  
43 |       transitional education programs and the residential  
44 |       units of their component centers; providing for  
45 |       contingent retroactive operation; amending ss. 383.141  
46 |       and 1002.385, F.S.; conforming cross-references to  
47 |       changes made by the act; providing an appropriation;  
48 |       providing effective dates.

49 |  
50 |       Be It Enacted by the Legislature of the State of Florida:

51 |  
52 |       Section 1.   Section 393.063, Florida Statutes, is amended

53 to read:

54 393.063 Definitions.—For the purposes of this chapter, the  
55 term:

56 (1)~~(2)~~ "Adult day training" means training services that  
57 ~~which~~ take place in a nonresidential setting, separate from the  
58 home or facility in which the client resides, and~~+~~ are intended  
59 to support the participation of clients in daily, meaningful,  
60 and valued routines of the community. Such training~~;~~ and may be  
61 provided in ~~include~~ work-like settings that do not meet the  
62 definition of supported employment.

63 (2)~~(1)~~ "Agency" means the Agency for Persons with  
64 Disabilities.

65 (3) "Algorithm" means the mathematical formula used by the  
66 agency to calculate budget amounts for clients which uses  
67 variables that have statistically validated relationships to  
68 clients' needs for services provided by the home and community-  
69 based services Medicaid waiver program.

70 (4) "Allocation methodology" is the process used to  
71 determine a client's iBudget by summing the amount generated by  
72 the algorithm, and, if applicable, any funding authorized by the  
73 agency for the client pursuant to s. 393.0662(1)(b).

74 (5)~~(3)~~ "Autism" means a pervasive, neurologically based  
75 developmental disability of extended duration which causes  
76 severe learning, communication, and behavior disorders with age  
77 of onset during infancy or childhood. Individuals with autism  
78 exhibit impairment in reciprocal social interaction, impairment

79 | in verbal and nonverbal communication and imaginative ability,  
80 | and a markedly restricted repertoire of activities and  
81 | interests.

82 |     (6)~~(4)~~ "Cerebral palsy" means a group of disabling  
83 | symptoms of extended duration which results from damage to the  
84 | developing brain that may occur before, during, or after birth  
85 | and that results in the loss or impairment of control over  
86 | voluntary muscles. For the purposes of this definition, cerebral  
87 | palsy does not include those symptoms or impairments resulting  
88 | solely from a stroke.

89 |     (7)~~(5)~~ "Client" means any person determined eligible by  
90 | the agency for services under this chapter.

91 |     (8)~~(6)~~ "Client advocate" means a friend or relative of the  
92 | client, or of the client's immediate family, who advocates for  
93 | the best interests of the client in any proceedings under this  
94 | chapter in which the client or his or her family has the right  
95 | or duty to participate.

96 |     (9)~~(7)~~ "Comprehensive assessment" means the process used  
97 | to determine eligibility for services under this chapter.

98 |     (10)~~(8)~~ "Comprehensive transitional education program"  
99 | means the program established in s. 393.18.

100 |     (11)~~(10)~~ "Developmental disabilities center" means a  
101 | state-owned and state-operated facility, formerly known as a  
102 | "Sunland Center," providing for the care, habilitation, and  
103 | rehabilitation of clients with developmental disabilities.

104        (12)~~(9)~~ "Developmental disability" means a disorder or  
 105        syndrome that is attributable to intellectual disability,  
 106        cerebral palsy, autism, spina bifida, Down syndrome, or Prader-  
 107        Willi syndrome; that manifests before the age of 18; and that  
 108        constitutes a substantial handicap that can reasonably be  
 109        expected to continue indefinitely.

110        (13)~~(11)~~ "Direct service provider" means a person 18 years  
 111        of age or older who has direct face-to-face contact with a  
 112        client while providing services to the client or has access to a  
 113        client's living areas or to a client's funds or personal  
 114        property.

115        (14)~~(12)~~ "Domicile" means the place where a client legally  
 116        resides and~~7~~ which ~~place~~ is his or her permanent home. Domicile  
 117        may be established as provided in s. 222.17. Domicile may not be  
 118        established in Florida by a minor who has no parent domiciled in  
 119        Florida, or by a minor who has no legal guardian domiciled in  
 120        Florida, or by any alien not classified as a resident alien.

121        (15)~~(13)~~ "Down syndrome" means a disorder caused by the  
 122        presence of an extra chromosome 21.

123        (16)~~(14)~~ "Express and informed consent" means consent  
 124        voluntarily given in writing with sufficient knowledge and  
 125        comprehension of the subject matter to enable the person giving  
 126        consent to make a knowing decision without any element of force,  
 127        fraud, deceit, duress, or other form of constraint or coercion.

128        (17)~~(15)~~ "Family care program" means the program  
 129        established in s. 393.068.

130        (18)~~(16)~~ "Foster care facility" means a residential  
 131 facility licensed under this chapter which provides a family  
 132 living environment including supervision and care necessary to  
 133 meet the physical, emotional, and social needs of its residents.  
 134 The capacity of such a facility may not be more than three  
 135 residents.

136        (19)~~(17)~~ "Group home facility" means a residential  
 137 facility licensed under this chapter which provides a family  
 138 living environment including supervision and care necessary to  
 139 meet the physical, emotional, and social needs of its residents.  
 140 The capacity of such a facility shall be at least 4 but not more  
 141 than 15 residents.

142        (20) "Guardian" has the same meaning as in s. 744.102.

143        (21)~~(18)~~ "Guardian advocate" means a person appointed by a  
 144 written order of the court to represent a person with  
 145 developmental disabilities under s. 393.12.

146        (22)~~(19)~~ "Habilitation" means the process by which a  
 147 client is assisted in acquiring and maintaining ~~to acquire and~~  
 148 ~~maintain~~ those life skills that ~~which~~ enable the client to cope  
 149 more effectively with the demands of his or her condition and  
 150 environment and to raise the level of his or her physical,  
 151 mental, and social efficiency. It includes, but is not limited  
 152 to, programs of formal structured education and treatment.

153        (23)~~(20)~~ "High-risk child" means, for the purposes of this  
 154 chapter, a child from 3 to 5 years of age with one or more of  
 155 the following characteristics:

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

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

161 (c) A child with a parent or guardian with developmental  
 162 disabilities who requires assistance in meeting the child's  
 163 developmental needs.

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

166 (24)~~(21)~~ "Intellectual disability" means significantly  
 167 subaverage general intellectual functioning existing  
 168 concurrently with deficits in adaptive behavior which manifests  
 169 before the age of 18 and can reasonably be expected to continue  
 170 indefinitely. For the purposes of this definition, the term:

171 (a) "Adaptive behavior" means the effectiveness or degree  
 172 with which an individual meets the standards of personal  
 173 independence and social responsibility expected of his or her  
 174 age, cultural group, and community.

175 (b) "Significantly subaverage general intellectual  
 176 functioning" means performance that is two or more standard  
 177 deviations from the mean score on a standardized intelligence  
 178 test specified in the rules of the agency.

179  
 180 For purposes of the application of the criminal laws and  
 181 procedural rules of this state to matters relating to pretrial,

182 trial, sentencing, and any matters relating to the imposition  
183 and execution of the death penalty, the terms "intellectual  
184 disability" or "intellectually disabled" are interchangeable  
185 with and have the same meaning as the terms "mental retardation"  
186 or "retardation" and "mentally retarded" as defined in this  
187 section before July 1, 2013.

188 (25)~~(22)~~ "Intermediate care facility for the  
189 developmentally disabled" ~~or "ICF/DD"~~ means a residential  
190 facility licensed and certified under part VIII of chapter 400.

191 (26)~~(23)~~ "Medical/dental services" means medically  
192 necessary services that are provided or ordered for a client by  
193 a person licensed under chapter 458, chapter 459, or chapter  
194 466. Such services may include, but are not limited to,  
195 prescription drugs, specialized therapies, nursing supervision,  
196 hospitalization, dietary services, prosthetic devices, surgery,  
197 specialized equipment and supplies, adaptive equipment, and  
198 other services as required to prevent or alleviate a medical or  
199 dental condition.

200 (27)~~(24)~~ "Personal care services" means individual  
201 assistance with or supervision of essential activities of daily  
202 living for self-care, including ambulation, bathing, dressing,  
203 eating, grooming, and toileting, and other similar services that  
204 are incidental to the care furnished and essential to the  
205 health, safety, and welfare of the client if no one else is  
206 available to perform those services.



207        (28)~~(25)~~ "Prader-Willi syndrome" means an inherited  
208 condition typified by neonatal hypotonia with failure to thrive,  
209 hyperphagia or an excessive drive to eat which leads to obesity  
210 usually at 18 to 36 months of age, mild to moderate intellectual  
211 disability, hypogonadism, short stature, mild facial  
212 dysmorphism, and a characteristic neurobehavior.

213        (29)~~(26)~~ "Relative" means an individual who is connected  
214 by affinity or consanguinity to the client and who is 18 years  
215 of age or older.

216        (30)~~(27)~~ "Resident" means a person who has a developmental  
217 disability and resides at a residential facility, whether or not  
218 such person is a client of the agency.

219        (31)~~(28)~~ "Residential facility" means a facility providing  
220 room and board and personal care for persons who have  
221 developmental disabilities.

222        (32)~~(29)~~ "Residential habilitation" means supervision and  
223 training with the acquisition, retention, or improvement in  
224 skills related to activities of daily living, such as personal  
225 hygiene skills, homemaking skills, and the social and adaptive  
226 skills necessary to enable the individual to reside in the  
227 community.

228        (33)~~(30)~~ "Residential habilitation center" means a  
229 community residential facility licensed under this chapter which  
230 provides habilitation services. The capacity of such a facility  
231 may not be fewer than nine residents. After October 1, 1989, new  
232 residential habilitation centers may not be licensed and the

233 licensed capacity for any existing residential habilitation  
234 center may not be increased.

235 (34)~~(31)~~ "Respite service" means appropriate, short-term,  
236 temporary care that is provided to a person who has a  
237 developmental disability in order to meet the planned or  
238 emergency needs of the person or the family or other direct  
239 service provider.

240 (35)~~(32)~~ "Restraint" means a physical device, method, or  
241 drug used to control dangerous behavior.

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

247 (b) A drug used as a restraint is a medication used to  
248 control the person's behavior or to restrict his or her freedom  
249 of movement and is not a standard treatment for the person's  
250 medical or psychiatric condition. Physically holding a person  
251 during a procedure to forcibly administer psychotropic  
252 medication is a physical restraint.

253 (c) Restraint does not include physical devices, such as  
254 orthopedically prescribed appliances, surgical dressings and  
255 bandages, supportive body bands, or other physical holding  
256 necessary for routine physical examinations and tests; for  
257 purposes of orthopedic, surgical, or other similar medical  
258 treatment; to provide support for the achievement of functional

259 body position or proper balance; or to protect a person from  
260 falling out of bed.

261 (36)~~(33)~~ "Seclusion" means the involuntary isolation of a  
262 person in a room or area from which the person is prevented from  
263 leaving. The prevention may be by physical barrier or by a staff  
264 member who is acting in a manner, or who is physically situated,  
265 so as to prevent the person from leaving the room or area. For  
266 the purposes of this chapter, the term does not mean isolation  
267 due to the medical condition or symptoms of the person.

268 (37)~~(34)~~ "Self-determination" means an individual's  
269 freedom to exercise the same rights as all other citizens,  
270 authority to exercise control over funds needed for one's own  
271 support, including prioritizing these funds when necessary,  
272 responsibility for the wise use of public funds, and self-  
273 advocacy to speak and advocate for oneself in order to gain  
274 independence and ensure that individuals with a developmental  
275 disability are treated equally.

276 (38)~~(35)~~ "Specialized therapies" means those treatments or  
277 activities prescribed by and provided by an appropriately  
278 trained, licensed, or certified professional or staff person and  
279 may include, but are not limited to, physical therapy, speech  
280 therapy, respiratory therapy, occupational therapy, behavior  
281 therapy, physical management services, and related specialized  
282 equipment and supplies.

283        (39)~~(36)~~ "Spina bifida" means, ~~for purposes of this~~  
284 ~~chapter,~~ a person with a medical diagnosis of spina bifida  
285 cystica or myelomeningocele.

286        (40)~~(37)~~ "Support coordinator" means a person who is  
287 designated by the agency to assist individuals and families in  
288 identifying their capacities, needs, and resources, as well as  
289 finding and gaining access to necessary supports and services;  
290 coordinating the delivery of supports and services; advocating  
291 on behalf of the individual and family; maintaining relevant  
292 records; and monitoring and evaluating the delivery of supports  
293 and services to determine the extent to which they meet the  
294 needs and expectations identified by the individual, family, and  
295 others who participated in the development of the support plan.

296        (41)~~(38)~~ "Supported employment" means employment located  
297 or provided in an integrated work setting, with earnings paid on  
298 a commensurate wage basis, and for which continued support is  
299 needed for job maintenance.

300        (42)~~(39)~~ "Supported living" means a category of  
301 individually determined services designed and coordinated in  
302 such a manner as to provide assistance to adult clients who  
303 require ongoing supports to live as independently as possible in  
304 their own homes, to be integrated into the community, and to  
305 participate in community life to the fullest extent possible.

306        (43)~~(40)~~ "Training" means a planned approach to assisting  
307 a client to attain or maintain his or her maximum potential and

308 includes services ranging from sensory stimulation to  
309 instruction in skills for independent living and employment.

310 ~~(44)-(41)~~ "Treatment" means the prevention, amelioration,  
311 or cure of a client's physical and mental disabilities or  
312 illnesses.

313 Section 2. Section 393.0641, Florida Statutes, is  
314 repealed.

315 Section 3. Subsections (3) and (5) of section 393.065,  
316 Florida Statutes, are amended, present subsections (6) and (7)  
317 are renumbered as subsections (7) and (9), respectively, and  
318 amended, and new subsections (6) and (8) are added to that  
319 section, to read:

320 393.065 Application and eligibility determination.—

321 (3) The agency shall notify each applicant, in writing, of  
322 its eligibility decision. Any applicant determined by the agency  
323 to be ineligible for ~~developmental~~ services has the right to  
324 appeal this decision pursuant to ss. 120.569 and 120.57.

325 ~~(5) Except as otherwise directed by law, beginning July 1,~~  
326 ~~2010,~~ The agency shall assign and provide priority to clients  
327 waiting for waiver services in the following order:

328 (a) Category 1, which includes clients deemed to be in  
329 crisis as described in rule, shall be given first priority in  
330 moving from the waiting list to the waiver.

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

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

336 a. Transitioning out of the child welfare system at the  
337 finalization of an adoption, a reunification with family  
338 members, a permanent placement with a relative, or a  
339 guardianship with a nonrelative; or

340 b. At least 18 years old but not yet 22 years old and who  
341 need both waiver services and extended foster care services; or

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

345  
346 For individuals who are at least 18 years old but not yet 22  
347 years old and who are eligible under sub-subparagraph 1.b., the  
348 agency shall provide waiver services, including residential  
349 habilitation, and the community-based care lead agency shall  
350 fund room and board at the rate established in s. 409.145(4) and  
351 provide case management and related services as defined in s.  
352 409.986(3)(e). Individuals may receive both waiver services and  
353 services under s. 39.6251. Services may not duplicate services  
354 available through the Medicaid state plan.

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

357 1. Whose caregiver has a documented condition that is  
358 expected to render the caregiver unable to provide care within

359 the next 12 months and for whom a caregiver is required but no  
360 alternate caregiver is available;

361 2. At substantial risk of incarceration or court  
362 commitment without supports;

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

366 4. Who are identified as ready for discharge within the  
367 next year from a state mental health hospital or skilled nursing  
368 facility and who require a caregiver but for whom no caregiver  
369 is available or whose caregiver is unable to provide the care  
370 needed.

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

375 (e) Category 5, which includes, but is not required to be  
376 limited to, clients who are expected to graduate within the next  
377 12 months from secondary school and need support to obtain a  
378 meaningful day activity, ~~or~~ maintain competitive employment, or  
379 ~~to~~ pursue an accredited program of postsecondary education to  
380 which they have been accepted.

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

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

387

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

391 (6) The agency shall allow an individual who meets the  
392 eligibility requirements under subsection (1) to receive home  
393 and community-based services in this state if the individual's  
394 parent or legal guardian is an active-duty military  
395 servicemember and if at the time of the servicemember's transfer  
396 to this state, the individual was receiving home and community-  
397 based services in another state.

398 (7) ~~(6)~~ The client, the client's guardian, or the client's  
399 family must ensure that accurate, up-to-date contact information  
400 is provided to the agency at all times. Notwithstanding s.  
401 393.0651, the agency shall send an annual letter requesting  
402 updated information from the client, the client's guardian, or  
403 the client's family. The agency shall remove from the waiting  
404 ~~wait~~ list any individual who cannot be located using the  
405 contact information provided to the agency, fails to meet  
406 eligibility requirements, or becomes domiciled outside the  
407 state.

408 (8) Agency action that selects individuals to receive  
409 waiver services pursuant to this section does not establish a



410 right to a hearing or an administrative proceeding under chapter  
 411 120 for individuals remaining on the waiting list.

412 (9)~~(7)~~ The agency and the Agency for Health Care  
 413 Administration may adopt rules specifying application  
 414 procedures, criteria associated with the waiting list ~~wait-list~~  
 415 categories, procedures for administering the waiting ~~wait~~ list,  
 416 including tools for prioritizing waiver enrollment within  
 417 categories, and eligibility criteria as needed to administer  
 418 this section.

419 Section 4. Subsection (2) of section 393.066, Florida  
 420 Statutes, is amended to read:

421 393.066 Community services and treatment.-

422 (2) Necessary ~~All~~ services ~~needed~~ shall be purchased,  
 423 rather than ~~instead of~~ provided directly by the agency, when the  
 424 purchase of services ~~such arrangement~~ is more cost-efficient  
 425 than providing them ~~having those services provided~~ directly. All  
 426 purchased services must be approved by the agency. Persons or  
 427 entities under contract with the agency to provide services  
 428 shall use agency data management systems to document service  
 429 provision to clients. Contracted persons and entities shall meet  
 430 the minimum hardware and software technical requirements  
 431 established by the agency for the use of such systems. Such  
 432 persons or entities shall also meet any requirements established  
 433 by the agency for training and professional development of staff  
 434 providing direct services to clients.

435 Section 5. Section 393.0662, Florida Statutes, is amended  
436 to read:

437 393.0662 Individual budgets for delivery of home and  
438 community-based services; iBudget system established.—The  
439 Legislature finds that improved financial management of the  
440 existing home and community-based Medicaid waiver program is  
441 necessary to avoid deficits that impede the provision of  
442 services to individuals who are on the waiting list for  
443 enrollment in the program. The Legislature further finds that  
444 clients and their families should have greater flexibility to  
445 choose the services that best allow them to live in their  
446 community within the limits of an established budget. Therefore,  
447 the Legislature intends that the agency, in consultation with  
448 the Agency for Health Care Administration, shall manage ~~develop~~  
449 ~~and implement a comprehensive redesign of the service delivery~~  
450 system using individual budgets as the basis for allocating the  
451 funds appropriated for the home and community-based services  
452 Medicaid waiver program among eligible enrolled clients. The  
453 service delivery system that uses individual budgets shall be  
454 called the iBudget system.

455 (1) The agency shall administer ~~establish~~ an individual  
456 budget, referred to as an iBudget, for each individual served by  
457 the home and community-based services Medicaid waiver program.  
458 The funds appropriated to the agency shall be allocated through  
459 the iBudget system to eligible, Medicaid-enrolled clients. For  
460 the iBudget system, eligible clients shall include individuals

461 with a ~~diagnosis of Down syndrome or~~ a developmental disability  
462 as defined in s. 393.063. The iBudget system shall ~~be designed~~  
463 ~~to~~ provide for: enhanced client choice within a specified  
464 service package; appropriate assessment strategies; an efficient  
465 consumer budgeting and billing process that includes  
466 reconciliation and monitoring components; a ~~redefined~~ role for  
467 support coordinators that avoids potential conflicts of  
468 interest; a flexible and streamlined service review process; and  
469 ~~a methodology and process that ensures~~ the equitable allocation  
470 of available funds ~~to each client~~ based on the client's level of  
471 need, as determined by the ~~variables in the~~ allocation  
472 methodology algorithm.

473 (a) In developing each client's iBudget, the agency shall  
474 use the allocation ~~an allocation algorithm and methodology as~~  
475 defined in s. 393.063(4). ~~The algorithm shall use variables that~~  
476 ~~have been determined by the agency to have a statistically~~  
477 ~~validated relationship to the client's level of need for~~  
478 ~~services provided through the home and community-based services~~  
479 ~~Medicaid waiver program. The algorithm and methodology may~~  
480 ~~consider individual characteristics, including, but not limited~~  
481 ~~to, a client's age and living situation, information from a~~  
482 ~~formal assessment instrument that the agency determines is valid~~  
483 ~~and reliable, and information from other assessment processes.~~

484 (b) The allocation methodology shall determine ~~provide the~~  
485 ~~algorithm that determines~~ the amount of funds allocated to a  
486 client's iBudget.

487        (b) The agency may authorize funding ~~approve an increase~~  
488 ~~in the amount of funds allocated, as determined by the~~  
489 ~~algorithm,~~ based on a ~~the~~ client having one or more of the  
490 following needs that cannot be accommodated within the funding  
491 ~~as~~ determined by the algorithm and having no other resources,  
492 supports, or services available to meet the need:

493            1. An extraordinary need that would place the health and  
494 safety of the client, the client's caregiver, or the public in  
495 immediate, serious jeopardy unless the increase is approved.  
496 However, the presence of an extraordinary need in and of itself  
497 does not warrant authorized funding by the agency. An  
498 extraordinary need may include, but is not limited to:

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

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

506            c. A chronic comorbid condition. As used in this  
507 subparagraph, the term "comorbid condition" means a medical  
508 condition existing simultaneously but independently with another  
509 medical condition in a patient; or

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

513  
514 ~~However, the presence of an extraordinary need alone does not~~  
515 ~~warrant an increase in the amount of funds allocated to a~~  
516 ~~client's iBudget as determined by the algorithm.~~

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

533       3. A significant increase in the need for services after  
534 the beginning of the service plan year that would place the  
535 health and safety of the client, the client's caregiver, or the  
536 public in serious jeopardy because of substantial changes in the  
537 client's circumstances, including, but not limited to, permanent  
538 or long-term loss or incapacity of a caregiver, loss of services

539 authorized under the state Medicaid plan due to a change in age,  
540 or a significant change in medical or functional status which  
541 requires the provision of additional services on a permanent or  
542 long-term basis that cannot be accommodated within the client's  
543 current iBudget. As used in this subparagraph, the term "long-  
544 term" means a period of 12 or more continuous months. However,  
545 such significant increase in need for services of a permanent or  
546 long-term nature in and of itself ~~alone~~ does not warrant  
547 authorized funding by the agency ~~an increase in the amount of~~  
548 ~~funds allocated to a client's iBudget as determined by the~~  
549 ~~algorithm.~~

550 4. A significant need for transportation services to a  
551 waiver-funded adult day training program or to waiver-funded  
552 employment services when such need cannot be accommodated within  
553 a client's iBudget as determined by the algorithm without  
554 affecting the health and safety of the client, if public  
555 transportation is not an option due to the unique needs of the  
556 client or other transportation resources are not reasonably  
557 available.

558  
559 The agency shall reserve portions of the appropriation for the  
560 home and community-based services Medicaid waiver program for  
561 adjustments required pursuant to this paragraph and may use the  
562 services of an independent actuary in determining the amount ~~of~~  
563 ~~the portions~~ to be reserved.

564           (c) ~~A client's iBudget shall be the total of the amount~~  
565 ~~determined by the algorithm and any additional funding provided~~  
566 ~~pursuant to paragraph (b).~~ A client's annual expenditures for  
567 home and community-based ~~services~~ Medicaid waiver services may  
568 not exceed the limits of his or her iBudget. The total of all  
569 clients' projected annual iBudget expenditures may not exceed  
570 the agency's appropriation for waiver services.

571           (2) The Agency for Health Care Administration, in  
572 consultation with the agency, shall seek federal approval to  
573 amend current waivers, request a new waiver, and amend contracts  
574 as necessary to manage the iBudget system, improve services for  
575 eligible and enrolled clients, and improve the delivery of  
576 services ~~implement the iBudget system to serve eligible,~~  
577 ~~enrolled clients~~ through the home and community-based services  
578 Medicaid waiver program and the Consumer-Directed Care Plus  
579 Program, including, but not limited to, enrollees with a dual  
580 diagnosis of a developmental disability and a mental health  
581 disorder.

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

585           ~~(a) While the agency phases in the iBudget system, the~~  
586 ~~agency may continue to serve eligible, enrolled clients under~~  
587 ~~the four-tiered waiver system established under s. 393.065 while~~  
588 ~~those clients await transitioning to the iBudget system.~~

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

595 (3)~~(4)~~ A client must use all available services authorized  
596 under the state Medicaid plan, school-based services, private  
597 insurance and other benefits, and any other resources that may  
598 be available to the client before using funds from his or her  
599 iBudget to pay for support and services.

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

602 (4)~~(6)~~ Rates for any or all services established under  
603 rules of the Agency for Health Care Administration must ~~shall~~ be  
604 designated as the maximum rather than a fixed amount for  
605 individuals who receive an iBudget, except for services  
606 specifically identified in those rules that the agency  
607 determines are not appropriate for negotiation, which may  
608 include, but are not limited to, residential habilitation  
609 services.

610 (5)~~(7)~~ The agency shall ensure that clients and caregivers  
611 have access to training and education that ~~to~~ inform them about  
612 the iBudget system and enhance their ability for self-direction.  
613 Such training and education must ~~shall~~ be offered in a variety  
614 of formats and, at a minimum, must ~~shall~~ address the policies



615 and processes of the iBudget system ~~and~~ the roles and  
616 responsibilities of consumers, caregivers, waiver support  
617 coordinators, providers, and the agency, and must provide  
618 information ~~available~~ to help the client make decisions  
619 regarding the iBudget system ~~and~~ examples of support and  
620 resources available in the community.

621 ~~(6)-(8)~~ The agency shall collect data to evaluate the  
622 implementation and outcomes of the iBudget system.

623 ~~(7)-(9)~~ The agency and the Agency for Health Care  
624 Administration may adopt rules specifying the allocation  
625 algorithm and methodology; criteria and processes for clients to  
626 access reserved funds for extraordinary needs, temporarily or  
627 permanently changed needs, and one-time needs; and processes and  
628 requirements for selection and review of services, development  
629 of support and cost plans, and management of the iBudget system  
630 as needed to administer this section.

631 Section 6. Section 393.0679, Florida Statutes, is created  
632 to read:

633 393.0679 Utilization review.—The agency shall conduct  
634 utilization review activities in intermediate care facilities  
635 for individuals with developmental disabilities, both public and  
636 private, as necessary to meet the requirements of the approved  
637 Medicaid state plan and federal law, and such facilities shall  
638 comply with any requests for information and documentation made  
639 by the agency and permit any agency inspections in connection  
640 with such activities.

641 Section 7. Effective upon this act becoming a law,  
642 subsection (1), paragraphs (a) and (b) of subsection (4),  
643 paragraphs (b), (e), (f), (g), and (h) of subsection (5),  
644 subsection (6), paragraph (d) of subsection (7), subsection  
645 (10), and paragraph (b) of subsection (12) of section 393.11,  
646 Florida Statutes, are amended, and subsection (14) is added to  
647 that section, to read:

648 393.11 Involuntary admission to residential services.—

649 (1) JURISDICTION.—If a person has an intellectual  
650 disability or autism and requires involuntary admission to  
651 residential services provided by the agency, the circuit court  
652 of the county in which the person resides has jurisdiction to  
653 conduct a hearing and enter an order involuntarily admitting the  
654 person in order for the person to receive the care, treatment,  
655 habilitation, and rehabilitation that the person needs. For the  
656 purpose of identifying intellectual disability or autism,  
657 diagnostic capability shall be established by the agency. Except  
658 as otherwise specified, the proceedings under this section are  
659 governed by the Florida Rules of Civil Procedure.

660 (4) AGENCY PARTICIPATION.—

661 (a) Upon receiving the petition, the court shall  
662 immediately order the ~~developmental services program of the~~  
663 agency to examine the person being considered for involuntary  
664 admission to residential services.

665 (b) Following examination, the agency shall file a written  
666 report with the court at least 10 working days before the date

667 of the hearing. The report must be served on the petitioner, the  
668 person who has the intellectual disability or autism, and the  
669 person's attorney at the time the report is filed with the  
670 court.

671 (5) EXAMINING COMMITTEE.—

672 (b) The court shall appoint at least three disinterested  
673 experts who have demonstrated to the court an expertise in the  
674 diagnosis, evaluation, and treatment of persons who have  
675 intellectual disabilities or autism. The committee must include  
676 at least one licensed and qualified physician, one licensed and  
677 qualified psychologist, and one qualified professional who, at a  
678 minimum, has a master's degree in social work, special  
679 education, or vocational rehabilitation counseling, to examine  
680 the person and to testify at the hearing on the involuntary  
681 admission to residential services.

682 (e) The committee shall prepare a written report for the  
683 court. The report must explicitly document the extent that the  
684 person meets the criteria for involuntary admission. The report,  
685 and expert testimony, must include, but not be limited to:

686 1. The degree of the person's intellectual disability or  
687 autism and whether, using diagnostic capabilities established by  
688 the agency, the person is eligible for agency services;

689 2. Whether, because of the person's degree of intellectual  
690 disability or autism, the person:

691 a. Lacks sufficient capacity to give express and informed  
 692 consent to a voluntary application for services pursuant to s.  
 693 393.065 and;

694 ~~b.~~ lacks basic survival and self-care skills to such a  
 695 degree that close supervision and habilitation in a residential  
 696 setting is necessary and, if not provided, would result in a  
 697 ~~real and present~~ threat of substantial harm to the person's  
 698 well-being; or

699 ~~b.e.~~ Is likely to physically injure others if allowed to  
 700 remain at liberty.

701 3. The purpose to be served by residential care;

702 4. A recommendation on the type of residential placement  
 703 which would be the most appropriate and least restrictive for  
 704 the person; and

705 5. The appropriate care, habilitation, and treatment.

706 (f) The committee shall file the report with the court at  
 707 least 10 working days before the date of the hearing. The report  
 708 must be served on the petitioner, the person who has the  
 709 intellectual disability or autism, the person's attorney at the  
 710 time the report is filed with the court, and the agency.

711 (g) Members of the examining committee shall receive a  
 712 reasonable fee to be determined by the court. The fees shall be  
 713 paid from the general revenue fund of the county in which the  
 714 person who has the intellectual disability or autism resided  
 715 when the petition was filed.

716 ~~(h) The agency shall develop and prescribe by rule one or~~  
717 ~~more standard forms to be used as a guide for members of the~~  
718 ~~examining committee.~~

719 (6) COUNSEL; GUARDIAN AD LITEM.—

720 (a) The person who has the intellectual disability or  
721 autism must be represented by counsel at all stages of the  
722 judicial proceeding. If the person is indigent and cannot afford  
723 counsel, the court shall appoint a public defender at least 20  
724 working days before the scheduled hearing. The person's counsel  
725 shall have full access to the records of the service provider  
726 and the agency. In all cases, the attorney shall represent the  
727 rights and legal interests of the person, regardless of who  
728 initiates the proceedings or pays the attorney ~~attorney's~~ fee.

729 (b) If the attorney, during the course of his or her  
730 representation, reasonably believes that the person who has the  
731 intellectual disability or autism cannot adequately act in his  
732 or her own interest, the attorney may seek the appointment of a  
733 guardian ad litem. A prior finding of incompetency is not  
734 required before a guardian ad litem is appointed pursuant to  
735 this section.

736 (7) HEARING.—

737 (d) The person who has the intellectual disability or  
738 autism must be physically present throughout the entire  
739 proceeding. If the person's attorney believes that the person's  
740 presence at the hearing is not in his or her best interest, the

741 person's presence may be waived once the court has seen the  
742 person and the hearing has commenced.

743 (10) COMPETENCY.—

744 (a) The issue of competency is separate and distinct from  
745 a determination of the appropriateness of involuntary admission  
746 to residential services due to intellectual disability or  
747 autism.

748 (b) The issue of the competency of a person who has an  
749 intellectual disability or autism for purposes of assigning  
750 guardianship shall be determined in a separate proceeding  
751 according to the procedures and requirements of chapter 744. The  
752 issue of the competency of a person who has an intellectual  
753 disability or autism for purposes of determining whether the  
754 person is competent to proceed in a criminal trial shall be  
755 determined in accordance with chapter 916.

756 (12) APPEAL.—

757 (b) The filing of an appeal by the person who has an  
758 intellectual disability or autism stays admission of the person  
759 into residential care. The stay remains in effect during the  
760 pendency of all review proceedings in Florida courts until a  
761 mandate issues.

762 (14) REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO  
763 RESIDENTIAL SERVICES.—

764 (a) If a person is involuntarily admitted to residential  
765 services provided by the agency, the agency shall employ or, if  
766 necessary, contract with a qualified evaluator to conduct a

767 review annually, unless otherwise ordered, to determine the  
768 propriety of the person's continued involuntary admission to  
769 residential services based on the criteria in paragraph (8) (b).  
770 The review shall include an assessment of the most appropriate  
771 and least restrictive type of residential placement for the  
772 person.

773 (b) A placement resulting from an involuntary admission to  
774 residential services must be reviewed by the court at a hearing  
775 annually, unless a shorter review period is ordered at a  
776 previous hearing. The agency shall provide to the court the  
777 completed reviews by the qualified evaluator. The review and  
778 hearing must determine whether the person continues to meet the  
779 criteria in paragraph (8) (b) and, if so, whether the person  
780 still requires involuntary placement in a residential setting  
781 and whether the person is receiving adequate care, treatment,  
782 habilitation, and rehabilitation in the residential setting.

783 (c) The agency shall provide a copy of the review and  
784 reasonable notice of the hearing to the appropriate state  
785 attorney, if applicable, the person's attorney, and the person's  
786 guardian or guardian advocate, if appointed.

787 (d) For purposes of this section, the term "qualified  
788 evaluator" means a psychiatrist licensed under chapter 458 or  
789 chapter 459, or a psychologist licensed under chapter 490, who  
790 has demonstrated to the court an expertise in the diagnosis,  
791 evaluation, and treatment of persons who have intellectual  
792 disabilities.

793           Section 8. Effective June 30, 2016, or if this act fails  
794 to become law until after that date, operating retroactively to  
795 June 30, 2016, sections 24 and 26 of chapter 2015-222, Laws of  
796 Florida, are repealed.

797           Section 9. Subsection (15) of section 393.067, Florida  
798 Statutes, is reenacted to read:

799           393.067 Facility licensure.—

800           (15) The agency is not required to contract with  
801 facilities licensed pursuant to this chapter.

802           Section 10. Section 393.18, Florida Statutes, is reenacted  
803 to read:

804           393.18 Comprehensive transitional education program.—A  
805 comprehensive transitional education program is a group of  
806 jointly operating centers or units, the collective purpose of  
807 which is to provide a sequential series of educational care,  
808 training, treatment, habilitation, and rehabilitation services  
809 to persons who have developmental disabilities and who have  
810 severe or moderate maladaptive behaviors. However, this section  
811 does not require such programs to provide services only to  
812 persons with developmental disabilities. All such services shall  
813 be temporary in nature and delivered in a structured residential  
814 setting, having the primary goal of incorporating the principle  
815 of self-determination in establishing permanent residence for  
816 persons with maladaptive behaviors in facilities that are not  
817 associated with the comprehensive transitional education  
818 program. The staff shall include behavior analysts and teachers,



819 as appropriate, who shall be available to provide services in  
820 each component center or unit of the program. A behavior analyst  
821 must be certified pursuant to s. 393.17.

822 (1) Comprehensive transitional education programs shall  
823 include a minimum of two component centers or units, one of  
824 which shall be an intensive treatment and educational center or  
825 a transitional training and educational center, which provides  
826 services to persons with maladaptive behaviors in the following  
827 sequential order:

828 (a) Intensive treatment and educational center.—This  
829 component is a self-contained residential unit providing  
830 intensive behavioral and educational programming for persons  
831 with severe maladaptive behaviors whose behaviors preclude  
832 placement in a less restrictive environment due to the threat of  
833 danger or injury to themselves or others. Continuous-shift staff  
834 shall be required for this component.

835 (b) Transitional training and educational center.—This  
836 component is a residential unit for persons with moderate  
837 maladaptive behaviors providing concentrated psychological and  
838 educational programming that emphasizes a transition toward a  
839 less restrictive environment. Continuous-shift staff shall be  
840 required for this component.

841 (c) Community transition residence.—This component is a  
842 residential center providing educational programs and any  
843 support services, training, and care that are needed to assist  
844 persons with maladaptive behaviors to avoid regression to more

845 restrictive environments while preparing them for more  
846 independent living. Continuous-shift staff shall be required for  
847 this component.

848 (d) Alternative living center.—This component is a  
849 residential unit providing an educational and family living  
850 environment for persons with maladaptive behaviors in a  
851 moderately unrestricted setting. Residential staff shall be  
852 required for this component.

853 (e) Independent living education center.—This component is  
854 a facility providing a family living environment for persons  
855 with maladaptive behaviors in a largely unrestricted setting and  
856 includes education and monitoring that is appropriate to support  
857 the development of independent living skills.

858 (2) Components of a comprehensive transitional education  
859 program are subject to the license issued under s. 393.067 to a  
860 comprehensive transitional education program and may be located  
861 on a single site or multiple sites.

862 (3) Comprehensive transitional education programs shall  
863 develop individual education plans for each person with  
864 maladaptive behaviors who receives services from the program.  
865 Each individual education plan shall be developed in accordance  
866 with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34  
867 C.F.R. part 300.

868 (4) For comprehensive transitional education programs, the  
869 total number of residents who are being provided with services  
870 may not in any instance exceed the licensed capacity of 120

871 residents and each residential unit within the component centers  
872 of the program authorized under this section may not in any  
873 instance exceed 15 residents. However, a program that was  
874 authorized to operate residential units with more than 15  
875 residents before July 1, 2015, may continue to operate such  
876 units.

877 Section 11. Paragraph (b) of subsection (1) of section  
878 383.141, Florida Statutes, is amended to read:

879 383.141 Prenatally diagnosed conditions; patient to be  
880 provided information; definitions; information clearinghouse;  
881 advisory council.—

882 (1) As used in this section, the term:

883 (b) "Developmental disability" includes Down syndrome and  
884 other developmental disabilities defined by s. 393.063(12) ~~s.~~  
885 ~~393.063(9)~~.

886 Section 12. Paragraph (d) of subsection (2) of section  
887 1002.385, Florida Statutes, is amended to read:

888 1002.385 Florida personal learning scholarship accounts.—

889 (2) DEFINITIONS.—As used in this section, the term:

890 (d) "Disability" means, for a 3- or 4-year-old child or  
891 for a student in kindergarten to grade 12, autism spectrum  
892 disorder, as defined in the Diagnostic and Statistical Manual of  
893 Mental Disorders, Fifth Edition, published by the American  
894 Psychiatric Association; cerebral palsy, as defined in s.  
895 393.063(6) ~~s. 393.063(4)~~; Down syndrome, as defined in s.  
896 393.063(15) ~~s. 393.063(13)~~; an intellectual disability, as

897 defined in s. 393.063(24) ~~s. 393.063(21)~~; Prader-Willi syndrome,  
898 as defined in s. 393.063(28) ~~s. 393.063(25)~~; or spina bifida, as  
899 defined in s. 393.063(39) ~~s. 393.063(36)~~; for a student in  
900 kindergarten, being a high-risk child, as defined in s.  
901 393.063(23) (a) ~~s. 393.063(20) (a)~~; muscular dystrophy; and  
902 Williams syndrome.

903 Section 13. For the 2016-2017 fiscal year, the sum of  
904 \$623,200 in nonrecurring funds from the General Revenue Fund is  
905 appropriated to the Agency for Persons with Disabilities for the  
906 purpose of implementing this act.

907 Section 14. Except as otherwise expressly provided in this  
908 act and except for this section, which shall take effect upon  
909 this act becoming a law, this act shall take effect July 1,  
910 2016.