

## CHAPTER 2016-140

### Committee Substitute for Committee Substitute for House Bill No. 1083

An act relating to the Agency for Persons with Disabilities; amending s. 393.063, F.S.; revising and defining terms; repealing s. 393.0641, F.S., relating to a program for the prevention and treatment of severe self-injurious behavior; amending s. 393.065, F.S.; providing for the assignment of priority to clients waiting for waiver services; requiring an agency to allow a certain individual to receive such services if the individual's parent or legal guardian is an active-duty military servicemember; requiring the agency to send an annual letter to clients and their guardians or families; providing that certain agency action does not establish a right to a hearing or an administrative proceeding; amending s. 393.066, F.S.; providing for the use of an agency data management system; providing requirements for persons or entities under contract with the agency; amending s. 393.0662, F.S.; adding client needs that qualify as extraordinary needs, which may result in the approval of an increase in a client's allocated funds; revising duties of the Agency for Health Care Administration relating to the iBudget system; creating s. 393.0679, F.S.; requiring the Agency for Persons with Disabilities to conduct a certain utilization review; requiring certain intermediate care facilities to comply with certain requests and inspections by the agency; amending s. 393.11, F.S.; providing for annual reviews for persons involuntarily admitted to residential services provided by the agency; requiring the agency to contract with a qualified evaluator; providing requirements for annual reviews; requiring a hearing to be held to consider the results of an annual review; requiring the agency to provide a copy of the review to certain persons; providing a definition; repealing ss. 24 and 26 of chapter 2015-222, Laws of Florida; abrogating the scheduled expiration and reversion of amendments to ss. 393.067(15) and 393.18, F.S.; providing for contingent retroactive operation; reenacting s. 393.067(15), F.S., relating to a provision specifying that the agency is not required to contract with certain licensed facilities; reenacting and amending s. 393.18, F.S.; revising the purposes of comprehensive transitional education programs; providing qualification requirements for the supervisor of the clinical director of a specified licensee; revising the organization and operation of components of such a program; providing for the integration of educational components with the local school district; providing that failure of certain licensees to comply with the terms of a settlement agreement is grounds for discipline; authorizing the agency to approve the admission or readmission of an individual to such a program; amending ss. 383.141 and 1002.385, F.S.; conforming cross-references to changes made by the act; providing an appropriation; providing a contingent appropriation; providing effective dates.

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

Section 1. Section 393.063, Florida Statutes, is amended to read:

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

~~(1)~~<sup>(2)</sup> “Adult day training” means training services ~~that~~ which take place in a nonresidential setting, separate from the home or facility in which the client resides, ~~and~~; are intended to support the participation of clients in daily, meaningful, and valued routines of the community. Such training; ~~and~~ may be provided in ~~include~~ work-like settings that do not meet the definition of supported employment.

~~(2)~~<sup>(4)</sup> “Agency” means the Agency for Persons with Disabilities.

~~(3)~~ “Algorithm” means the mathematical formula used by the agency to calculate budget amounts for clients which uses variables that have statistically validated relationships to clients’ needs for services provided by the home and community-based services Medicaid waiver program.

~~(4)~~ “Allocation methodology” is the process used to determine a client’s iBudget by summing the amount generated by the algorithm, and, if applicable, any funding authorized by the agency for the client pursuant to s. 393.0662(1)(b).

~~(5)~~<sup>(3)</sup> “Autism” means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

~~(6)~~<sup>(4)</sup> “Cerebral palsy” means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

~~(7)~~<sup>(5)</sup> “Client” means any person determined eligible by the agency for services under this chapter.

~~(8)~~<sup>(6)</sup> “Client advocate” means a friend or relative of the client, or of the client’s immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.

~~(9)~~<sup>(7)</sup> “Comprehensive assessment” means the process used to determine eligibility for services under this chapter.

~~(10)~~<sup>(8)</sup> “Comprehensive transitional education program” means the program established in s. 393.18.

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

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

~~(13)~~(11) “Direct service provider” means a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client’s living areas or to a client’s funds or personal property.

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

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

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

~~(17)~~(15) “Family care program” means the program established in s. 393.068.

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

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

(20) “Guardian” has the same meaning as in s. 744.102.

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

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

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

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

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

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

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

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

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

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

For purposes of the application of the criminal laws and procedural rules of this state to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty, the terms “intellectual disability” or “intellectually disabled” are interchangeable with and have the same meaning as the terms “mental retardation” or “retardation” and “mentally retarded” as defined in this section before July 1, 2013.

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

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

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

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

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

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

~~(31)~~(28) “Residential facility” means a facility providing room and board and personal care for persons who have developmental disabilities.

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

~~(33)~~(30) “Residential habilitation center” means a community residential facility licensed under this chapter which provides habilitation services. The capacity of such a facility may not be fewer than nine residents. After October 1, 1989, new residential habilitation centers may not be licensed and the licensed capacity for any existing residential habilitation center may not be increased.

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

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

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

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

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; to provide support for the achievement of functional body position or proper balance; or to protect a person from falling out of bed.

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

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

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

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

~~(40)~~(37) "Support coordinator" means a person who is designated by the agency to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations

identified by the individual, family, and others who participated in the development of the support plan.

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

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

(43)(40) “Training” means a planned approach to assisting a client to attain or maintain his or her maximum potential and includes services ranging from sensory stimulation to instruction in skills for independent living and employment.

(44)(41) “Treatment” means the prevention, amelioration, or cure of a client’s physical and mental disabilities or illnesses.

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

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

393.065 Application and eligibility determination.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

(8) Agency action that selects individuals to receive waiver services pursuant to this section does not establish a right to a hearing or an administrative proceeding under chapter 120 for individuals remaining on the waiting list.

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

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

393.066 Community services and treatment.—

(2) Necessary AH services needed shall be purchased, rather than instead of provided directly by the agency, when the purchase of services such arrangement is more cost-efficient than providing them having those services provided directly. All purchased services must be approved by the agency. Persons or entities under contract with the agency to provide services shall use agency data management systems to document service provision to clients. Contracted persons and entities shall meet the minimum hardware and software technical requirements established by

the agency for the use of such systems. Such persons or entities shall also meet any requirements established by the agency for training and professional development of staff providing direct services to clients.

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

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

(1) The agency shall administer ~~establish~~ an individual budget, referred to as an iBudget, for each individual served by the home and community-based services Medicaid waiver program. The funds appropriated to the agency shall be allocated through the iBudget system to eligible, Medicaid-enrolled clients. For the iBudget system, eligible clients shall include individuals with ~~a diagnosis of Down syndrome or a developmental disability as defined in s. 393.063.~~ The iBudget system shall ~~be designed to provide for:~~ enhanced client choice within a specified service package; appropriate assessment strategies; an efficient consumer budgeting and billing process that includes reconciliation and monitoring components; a redefined role for support coordinators that avoids potential conflicts of interest; a flexible and streamlined service review process; and ~~a methodology and process that ensures the equitable allocation of available funds to each client based on the client's level of need, as determined by the variables in the allocation methodology algorithm.~~

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

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

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

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

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

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

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

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

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

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

3. A significant increase in the need for services after the beginning of the service plan year that would place the health and safety of the client, the client's caregiver, or the public in serious jeopardy because of substantial

changes in the client's circumstances, including, but not limited to, permanent or long-term loss or incapacity of a caregiver, loss of services authorized under the state Medicaid plan due to a change in age, or a significant change in medical or functional status which requires the provision of additional services on a permanent or long-term basis that cannot be accommodated within the client's current iBudget. As used in this subparagraph, the term "long-term" means a period of 12 or more continuous months. However, such significant increase in need for services of a permanent or long-term nature in and of itself alone does not warrant authorized funding by the agency ~~an increase in the amount of funds allocated to a client's iBudget as determined by the algorithm.~~

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

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

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

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

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

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

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

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

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

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

~~(5)~~(7) The agency shall ensure that clients and caregivers have access to training and education ~~that to~~ inform them about the iBudget system and enhance their ability for self-direction. Such training and education ~~must~~ shall be offered in a variety of formats and, at a minimum, ~~must~~ shall address the policies and processes of the iBudget system ~~and~~; the roles and responsibilities of consumers, caregivers, waiver support coordinators, providers, and the agency, and must provide; information available to help the client make decisions regarding the iBudget system; and examples of support and resources available in the community.

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

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

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

393.0679 Utilization review.—The agency shall conduct utilization review activities in intermediate care facilities for individuals with developmental disabilities, both public and private, as necessary to meet the requirements of the approved Medicaid state plan and federal law, and such facilities shall comply with any requests for information and documentation

made by the agency and permit any agency inspections in connection with such activities.

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

393.11 Involuntary admission to residential services.—

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

(4) AGENCY PARTICIPATION.—

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

(b) Following examination, the agency shall file a written report with the court at least 10 working days before the date of the hearing. The report must be served on the petitioner, the person who has the intellectual disability or autism, and the person's attorney at the time the report is filed with the court.

(5) EXAMINING COMMITTEE.—

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

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

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

2. Whether, because of the person’s degree of intellectual disability or autism, the person:

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

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

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

3. The purpose to be served by residential care;

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

5. The appropriate care, habilitation, and treatment.

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

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

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

(6) COUNSEL; GUARDIAN AD LITEM.—

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

(b) If the attorney, during the course of his or her representation, reasonably believes that the person who has the intellectual disability or

autism cannot adequately act in his or her own interest, the attorney may seek the appointment of a guardian ad litem. A prior finding of incompetency is not required before a guardian ad litem is appointed pursuant to this section.

(7) HEARING.—

(d) The person who has the intellectual disability or autism must be physically present throughout the entire proceeding. If the person's attorney believes that the person's presence at the hearing is not in his or her best interest, the person's presence may be waived once the court has seen the person and the hearing has commenced.

(10) COMPETENCY.—

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

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

(12) APPEAL.—

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

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

(a) If a person is involuntarily admitted to residential services provided by the agency, the agency shall employ or, if necessary, contract with a qualified evaluator to conduct a review annually, unless otherwise ordered, to determine the propriety of the person's continued involuntary admission to residential services based on the criteria in paragraph (8)(b). The review shall include an assessment of the most appropriate and least restrictive type of residential placement for the person.

(b) A placement resulting from an involuntary admission to residential services must be reviewed by the court at a hearing annually, unless a shorter review period is ordered at a previous hearing. The agency shall provide to the court the completed reviews by the qualified evaluator. The review and hearing must determine whether the person continues to meet the criteria in paragraph (8)(b) and, if so, whether the person still requires



involuntary placement in a residential setting and whether the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting.

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

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

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

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

393.067 Facility licensure.—

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

Section 10. Section 393.18, Florida Statutes, is reenacted and amended to read:

393.18 Comprehensive transitional education program.—A comprehensive transitional education program serves individuals is a group of jointly operating centers or units, the collective purpose of which is to provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities, and who have severe or moderate maladaptive behaviors, severe maladaptive behaviors and co-occurring complex medical conditions, or a dual diagnosis of developmental disability and mental illness. However, this section does not require such programs to provide services only to persons with developmental disabilities. All such Services provided by the program must shall be temporary in nature and delivered in a manner designed to achieve structured residential setting, having the primary goal of incorporating the principles principle of self-determination and person-centered planning to transition individuals to the most appropriate, least restrictive community living option of their choice which is not operated as a in establishing permanent residence for persons with maladaptive behaviors in facilities that are not associated with the comprehensive transitional education program. The supervisor of the clinical director of the program licensee must hold a doctorate degree with a primary focus in behavior analysis from an accredited university, be a certified behavior analyst pursuant to s. 393.17, and have at least 1 year of experience in providing

behavior analysis services for individuals in developmental disabilities. The staff must shall include behavior analysts and teachers, as appropriate, who must shall be available to provide services in each component center or unit of the program. A behavior analyst must be certified pursuant to s. 393.17.

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

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

(b) ~~Intensive Transitional training and education educational center.—This component provides is a residential unit for persons with moderate maladaptive behaviors providing concentrated psychological and educational programming that emphasizes a transition toward a less restrictive environment. Continuous-shift staff are shall be required for this component.~~

(c) ~~Community Transition residence.—This component provides is a residential center providing educational programs and any support services, training, and care that are needed to assist persons with maladaptive behaviors to avoid regression to more restrictive environments while preparing them for more independent living. Continuous-shift staff are shall be required for this component.~~

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

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

(2) Components of a comprehensive transitional education program are subject to the license issued under s. 393.067 to a comprehensive transitional education program and may be located on a single site or multiple sites as long as such components are located within the same agency region.

(3) Comprehensive transitional education programs shall develop individual education plans for each school-aged person with maladaptive behaviors, severe maladaptive behaviors and co-occurring complex medical conditions, or a dual diagnosis of developmental disability and mental illness who receives services from the program. Each individual education plan shall be developed in accordance with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300. Educational components of the program, including individual education plans, to the extent possible, must be integrated with the programs of the referring school district of each school-aged resident.

~~(4) For comprehensive transitional education programs, The total number of persons in a comprehensive transitional education program residents who are being provided with services may not in any instance exceed the licensed capacity of 120 residents, and each residential unit within the component centers of a the program authorized under this section may not in any instance exceed 15 residents. However, a program that was authorized to operate residential units with more than 15 residents before July 1, 2015, may continue to operate such units.~~

(5) Any licensee that has executed a settlement agreement with the agency that is enforceable by the court must comply with the terms of the settlement agreement or be subject to discipline as provided by law or rule.

(6) The agency may approve the proposed admission or readmission of individuals into a comprehensive transitional education program for up to 2 years subject to a specific review process. The agency may allow an individual to reside in this setting for a longer period of time if, after a clinical review is conducted by the agency, it is determined that remaining in the program for a longer period of time is in the best interest of the individual.

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

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

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

(b) “Developmental disability” includes Down syndrome and other developmental disabilities defined by s. 393.063(12) ~~s. 393.063(9)~~.

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

1002.385 Florida personal learning scholarship accounts.—

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

(d) “Disability” means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy, as defined in s. 393.063(6) ~~s. 393.063(4)~~; Down syndrome, as defined in s. 393.063(15) ~~s. 393.063(13)~~; an intellectual disability, as defined in s. 393.063(24) ~~s. 393.063(21)~~; Prader-Willi syndrome, as defined in s. 393.063(28) ~~s. 393.063(25)~~; or spina bifida, as defined in s. 393.063(39) ~~s. 393.063(36)~~; for a student in kindergarten, being a high-risk child, as defined in s. 393.063(23)(a) ~~s. 393.063(20)(a)~~; muscular dystrophy; and Williams syndrome.

Section 13. Contingent upon CS/CS/CS/HB 919 or similar legislation adopted at the 2016 Regular Session of the Legislature failing to become law, for the 2016-2017 fiscal year, the sum of \$623,200 of nonrecurring funds from the General Revenue Fund is appropriated to the Agency for Persons with Disabilities to implement s. 393.11, Florida Statutes, as amended by this act.

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

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.