

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1083 Agency for Persons with Disabilities

**SPONSOR(S):** Renner

**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Brazzell	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Individuals with specified developmental disabilities who meet Medicaid eligibility requirements may choose to receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver for individuals with developmental disabilities (known as iBudget Florida), or in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive iBudget Florida HCBS services administered by the Agency for Persons with Disabilities (APD) are placed on a wait list for services in priority of need, unless they are in a crisis. As of November 1, 2015, 21,459 individuals were waiting for developmental disability waiver services.

The bill amends s. 393.065(5), F.S., to rename the "wait list" as the "waiting list". It also allows individuals with developmental disabilities needing both waiver and extended foster care child welfare services to be prioritized in Category 2 of the waiver waiting list and, when enrolled on the waiver, to be served by both APD and community-based care organizations. The bill delineates responsibilities of the different entities providing services. The bill also permits waiver enrollment without first being placed on the waiting list for individuals who were on an HCBS waiver in another state and whose parent or guardian is an active-duty military servicemember transferred into the state. The bill provides that individuals remaining on the waiting list after other individuals are added are not substantially affected by agency action and not entitled to a hearing under s. 393.125, F.S., or administrative proceeding under chapter 120, F.S.

The bill permits waiver enrollees to receive increases in their allotted funding for services if the individual has a significant need for transportation to waiver-funded adult day training or employment services and has no other reasonable transportation options.

The bill requires contracted waiver providers to:

- use any agency data management systems to document service provision to agency clients and to have required hardware and software for doing so.
- comply with agency-established requirements for provider staff training and professional development.
- cooperate with requests for information, documentation, and inspection involved in utilization reviews, if the provider is an ICF/DD.

The bill also adds Down syndrome to the definition of "developmental disability."

The bill does not appear to have a fiscal impact on state or local government. See fiscal comments.

The bill provides for an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, 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.<sup>1</sup>

Individuals who meet Medicaid eligibility requirements, including individuals who have Down syndrome<sup>2</sup>, may choose to receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver for individuals with developmental disabilities administered by APD or in an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

The HCBS waiver, known as iBudget Florida, offers 27 supports and services to assist individuals to live in their community. Examples of services provided include residential habilitation, behavioral services, companion, adult day training, employment services, and physical therapy.<sup>3</sup> Services provided through the HCBS waiver enable children and adults to live in the community in their own home, a family home, or in a licensed residential setting, thereby avoiding institutionalization.

While the majority of individuals served by APD live in the community, a small number live in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DD's are defined in s. 393.063(22), F.S., as a residential facility licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400. ICF/DD's are considered institutional placements.

##### Home- and Community-Based Services Waiver (iBudget Florida)

The iBudget Florida HCBS waiver program was developed in response to legislative proviso requiring a plan for an individual budgeting approach for improving the management of the waiver program.<sup>4</sup> iBudget Florida involves the use of an algorithm, or formula, to set individuals' funding allocations for waiver services. The statute provides for individuals to receive additional funding in addition to that allocated through the algorithm under certain conditions (such as if they have a temporary or permanent change in need, or an extraordinary need that the algorithm does not address).<sup>5</sup> The agency phased in the implementation of

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<sup>1</sup> s. 393.063(9), F.S.

<sup>2</sup> s. 393.0662(1), F.S., provides eligibility for individuals with a diagnosis of Down syndrome.

<sup>3</sup> Agency for Persons with Disabilities, Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2015-16, November 2015.

<sup>4</sup> Agency for Persons with Disabilities, Report to the Legislature on the Agency's Plan for Implementing Individual Budgeting "iBudget Florida" (February 1 2010), available at <http://apd.myflorida.com/ibudget/rules-regs.htm> (last accessed Dec. 15, 2015).

<sup>5</sup> s. 393.0662 F.S.

iBudget Florida, with the final areas transitioned from the previous tiered waiver system on July 1, 2013.<sup>6</sup>

However, the iBudget Florida program has been the subject of litigation. In September 2014, in response to a ruling by the 1<sup>st</sup> District Court of Appeal that the program's rules were invalid, APD reset approximately 14,000 individuals' budget allocations to higher amounts.<sup>7</sup> APD began rulemaking to adopt new rules to replace the invalid ones.<sup>8</sup> The agency, in conjunction with stakeholders, reviewed the algorithm used in the program and has filed for the adoption of rules providing a revised algorithm and related funding calculation methods.<sup>9</sup>

iBudget statutes were amended by the 2015-16 implementing bill to allow additional funding beyond that allocated by the algorithm for transportation to a waiver-funded adult day training program or to employment under certain conditions.<sup>10</sup>

### *Waiver Enrollment Prioritization*

As of December 14, 2015, 31,665 individuals were enrolled on the iBudget Florida waiver.<sup>11</sup> The majority of waiver enrollees live in a family home with a parent, relative, or guardian.

The Legislature appropriated \$994,793,906 for Fiscal Year 2015-2016 to provide services through the HCBS waiver program, including federal match of \$601,153,957.<sup>12</sup> However, this funding is insufficient to serve all persons desiring waiver services. To enable the agency to remain within legislative appropriations, waiver enrollment is limited. Accordingly, APD maintains a wait list for waiver services. Prioritization for the wait list is provided in s. 393.065(5), F.S., and also in the FY 15-16 implementing bill.<sup>13</sup>

As part of the wait list prioritization process, clients are assigned to one of seven categories. The underlying statute prioritizes need as follows:

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Children from the child welfare system at the time of:
  - Finalization of an adoption with placement in a family home;
  - Reunification with family members with placement in a family home; or
  - Permanent placement with a relative in a family home.
- Category 3 – Includes, but not limited to, clients:
  - 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;
  - Who are at substantial risk of incarceration or court commitment without supports;
  - 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

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<sup>6</sup> *Supra*, note 3.

<sup>7</sup> Agency for Persons with Disabilities, iBudget Florida, <http://apd.myflorida.com/ibudget/> (last visited December 15, 2015).

<sup>8</sup> Department of State, Florida Administrative Register, Vol. 40, No. 207, Oct. 23, 2014, pg. 4703-4706.

<sup>9</sup> These rules have been challenged as well. DOAH Case No. 15-005803RP.

<sup>10</sup> s. 21, Ch. 2015-222, Laws of Florida.

<sup>11</sup> E-mail from Caleb Hawkes, Deputy Legislative Affairs Director, Agency for Persons with Disabilities. RE: Requested information for bill analysis for APD agency bill (Dec. 14, 2015). On file with Children, Families and Seniors Subcommittee.

<sup>12</sup> Line 251, Ch. 2015-221, Laws of Florida.

<sup>13</sup> s. 20, Ch. 2015-222, Laws of Florida

- 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.
- Category 4 – Includes, but not 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;
- Category 5 – Includes, but not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.<sup>14</sup>

As of November 1, 2015, there were 21,459 people on the wait list for HCBS waiver program services. A majority of people on the wait list have been on the list for 5+ years, though some are children receiving services through the school system and others who have been offered waiver services previously but refused them and chose to remain on the wait list.<sup>15</sup>

APD HCBS Length of Wait		
Length of Wait	#	%
1 year or less	1,886	8.8
1+ to 2 years	1,534	7.1
2+ to 3 years	1,229	5.7
3+ to 4 years	1,460	6.8
4+ to 5 years	1,522	7.1
5+ to 6 years	1,617	7.5
6+ to 7 years	1,709	8.0
7+ to 8 years	1,634	7.6
8+ to 9 years	1,774	8.3
9+ to 10 years	1,797	8.4
10+ years	5,297	24.7

For several years, while the agency experienced significant deficits, APD was limited to newly enrolling on the waiver only individuals determined to be in crisis. Only since FY 2013-14, when the agency has remained within budget, has the Legislature provided funding to APD to serve individuals from the wait list who were not in crisis but had a high priority for service needs. Since July 1, 2013, APD has enrolled 2,392 such individuals<sup>16</sup>.

Wait list prioritization statutory language has been changed in the past two legislative sessions via the implementing bill. For example, Chapter 2015-222, Laws of Florida, allows:

- Youth with developmental disabilities who are in extended foster care to be served by both the waiver and the child welfare system. The implementing bill also specified the services that APD and the community-based care lead agencies shall provide such enrollees. Since July 1, 2015, 30 individuals in extended foster care have enrolled on the waiver.

<sup>14</sup> s. 393.065(5), F.S.

<sup>15</sup> Supra, note 3.

<sup>16</sup> *Id.*

- Individuals who are receiving home and community-based waiver services in other states to be enrolled on the waiver if their parent/guardian is on active duty and transfers to Florida. This bill language was also in the FY 14-15 implementing bill. Since July 1, 2014, 10 individuals have enrolled on the waiver pursuant to this section.<sup>17</sup>

#### *Client Data Management System*

The Legislature appropriated funding in FY 2015-16 for the development of a client data management system to provide electronic verification of service delivery to recipients by providers, electronic billings for waiver services, and electronic processing of claims.<sup>18</sup> APD must also meet federal requirements for administering the iBudget HCBS waiver, such as tracking, measuring, reporting, and providing quality improvement processes for 32 specific program performance measures in order to ensure the program funding can continue. CMS further requires the state maintain a quality improvement system that requires data collection, data analysis, and reporting. However, APD currently relies heavily on manual processes and disparate systems to collect, analyze, and report data consistently, which is inefficient and error-prone.

The agency is under contract with a vendor to configure a commercial off the shelf product to APD business processes. APD anticipates providers will need to begin using the system during FY 2016-2017. Providers will need standard software and technology in order to log into the system.<sup>19</sup>

#### *Direct Service Provider Staff Training and Professional Development*

Pursuant to the waiver agreement with the federal government, APD must coordinate, develop, and provide specialized training for providers and their employees to promote health and well-being of individuals served.<sup>20</sup> These requirements are currently included in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook. For example, the handbook outlines required basic training and required in-service training and continuing education for direct service providers on topics such as person-centered planning, maintaining health and safety, reporting to the abuse hotline, and first aid. Providers of certain services such as supported employment or supported living are required to take additional pre-service certification training. Training is typically offered through several modalities, such as through the internet, DVD, and live classroom training.<sup>21</sup>

#### Utilization Review of Intermediate Care Facilities for the Developmentally Disabled

While the majority of individuals served by APD live in the community, a small number live in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DD's are defined in s. 393.063(22), F.S., as a residential facility licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400.<sup>22</sup> There are approximately 2,866 Private and Public ICF beds in Florida.<sup>23</sup>

<sup>17</sup> *Supra*, note 11.

<sup>18</sup> SB 2500A, line 265.

<sup>19</sup> Agency for Persons with Disabilities, Agency Analysis of 2016 Act Relating to the Agency for Persons with Disabilities.

<sup>20</sup> *Id.*

<sup>21</sup> Rule 59G-13.070, F.A.C. Handbook may be accessed at <http://apd.myflorida.com/ibudget/>

<sup>23</sup> *Supra*, note 19.

ICF/DD's are considered institutional placements rather than community placements. Accordingly, the federal government requires routine utilization reviews for individuals in ICF/DD's to ensure that individuals are not inappropriately institutionalized. Utilization reviews must be conducted by a group of professionals referred to as the Utilization Review Committee, which must include at least one physician and one individual knowledgeable in the treatment of intellectual disabilities.

The Medicaid state plan approved by the federal government provides that APD conduct utilization reviews. APD performs this function through an interagency agreement with AHCA.<sup>24</sup>

## **Effect of the Bill:**

### Home and Community-Based Services Waiver

#### *Waiver Enrollment Prioritization*

The bill changes the terms used in the section from "wait list" to "waiting list". The bill makes permanent the implementing bill's temporary changes related to the waiver waiting list prioritization categories. The language provides for:

- Prioritization in Category 2 of individuals with developmental disabilities in extended foster care to be served by both APD and the community-based care (CBC) organizations. The bill also delineates the responsibilities of the different entities providing services to these individuals; specifically, APD is to provide waiver services, including residential habilitation that supports individuals living in congregate settings, and the community-based care lead agency is to fund room and board at the prevailing foster care rate as well as provide case management and related services.
- Waiver enrollment without placement on the waiting list for individuals whose parent or guardian is an active-duty military servicemember.

The bill also specifies that after individuals formerly on the waiting list are enrolled on the waiver, the individuals remaining on the waiting list are not substantially affected by agency action and not entitled to a hearing under s. 393.125, F.S., or administrative proceeding under chapter 120, F.S.

The bill permits rulemaking to specify tools for prioritizing waiver enrollment within categories.

#### *iBudget Florida Funding*

The bill also makes permanent the Fiscal Year 2015-16 appropriations implementing bill language that adds transportation needs to the list of the circumstances which may qualify individuals to receive additional funding beyond that calculated through the algorithm. Specifically, the agency may grant a funding increase to individuals whose iBudget allocations are insufficient to pay for transportation services to a waiver-funded adult day training program or employment services and who have no other reasonable transportation options. This would allow such individuals to purchase transportation services to attend adult day programs or access employment services.

#### *Client Data Management System*

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<sup>24</sup> *Id.*

The bill requires APD contractors providing services to use agency data management systems to document service provision to agency clients. Providers would need to have the hardware and software necessary to use these systems, as established by APD. The bill also requires providers to ensure any staff directly serving clients meet APD requirements for training and professional development.

#### Utilization Review of Intermediate Care Facilities for the Developmentally Disabled

The bill requires APD to conduct utilization reviews for ICF/DD's and requires ICF/DD's to cooperate with these reviews, including requests for information, documentation, and inspection. This will ensure that Florida continues to meet federal requirements for conducting utilization reviews pursuant to the approved Medicaid state plan.

The bill also adds Down syndrome to the definition of "developmental disability."

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 393.063, F.S., relating to definitions.

**Section 2:** Amends s. 393.065, F.S., relating to application and eligibility determination.

**Section 3:** Amends s. 393.066, F.S., relating to community services and treatment.

**Section 4:** Amends s. 393.0662, F.S., relating to individual budgets for delivery of home and community-based services; iBudget system established.

**Section 5:** Creates s. 393.0679, F.S., relating to utilization review.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

See fiscal comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. APD will have to establish requirements for training and career development of direct care provider staff and for hardware and software required for providers to use the new agency client data management system. If APD chooses to maintain the training and career development provisions that are presently required by the waiver program and requires hardware and software currently possessed by providers, the bill will have no direct economic impact on providers. It is unknown what training and career development requirements or hardware and software requirements APD will establish, or the extent to which providers will have to acquire hardware and software to meet those requirements.

**D. FISCAL COMMENTS:**

The Legislature determines the funding available for HCBS waiver services for individuals with developmental disabilities through the appropriations process. APD then serves individuals previously enrolled on the waiver and newly enrolls additional individuals to the extent that funding permits.

APD is currently administering the waiver program in accordance with the waiver enrollment and iBudget allocation requirements of HB 1083, since those provisions are current law through the implementing bill. HB 1083 will make these requirements permanent rather than reverting to the underlying statutory language.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to affect county or municipal governments.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**