

## 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	10 Y, 0 N	Brazzell	Brazzell
2) Health Care Appropriations Subcommittee	11 Y, 0 N	Fontaine	Pridgeon
3) Health & Human Services Committee		Brazzell	Calamas

### SUMMARY ANALYSIS

Individuals with specified developmental disabilities who meet Medicaid eligibility requirements may receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver (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 categories of need, unless they are in a crisis. As of November 1, 2015, 21,459 individuals were waiting for developmental disability waiver services.

HB 1083 amends s. 393.065(5), F.S., to make permanent the FY 2015-16 implementing bill's temporary changes related to the waiver waiting list prioritization categories. The bill allows individuals with developmental disabilities needing both waiver and extended foster care child welfare services to be prioritized in Category 2 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. Second, the bill 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. Third, 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.

HB 1083 permits waiver enrollees to receive increases in their allotted funding for services if they have a significant need for transportation to waiver-funded adult day training or employment services and have no other reasonable transportation options.

The bill requires contracted providers of waiver services to:

- Use any APD data management systems to document service provision to APD clients and to have required hardware and software for doing so.
- Comply with requirements established by APD 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.

HB 1083 also adds Down syndrome to the definition of "developmental disability." Such individuals already are eligible for HCBS waiver services under that diagnosis and also may qualify for services due to intellectual 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) provides 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>

While Down syndrome is not among the disabilities included in the definition of “developmental disability”, it is specifically included as a qualifying disability for eligibility for Home and Community-Based (HCBS) waiver services provided by APD.<sup>2</sup> Down syndrome is a chromosomal condition that is associated with intellectual disability, a characteristic facial appearance, and weak muscle tone (hypotonia) in infancy. All affected individuals experience cognitive delays and so may qualify for APD services due to their intellectual disability (though the intellectual disability is usually mild to moderate).<sup>3</sup> Individuals with a primary diagnosis of Down syndrome comprise about 1% of APD’s clients.<sup>4</sup>

The HCBS waiver, known as iBudget Florida, offers 27 supports and services delivered by contracted service providers to assist individuals to live in their community. Examples of waiver services enabling children and adults to live in their own home, a family home, or in a licensed residential setting are residential habilitation, behavioral services, companion, adult day training, employment services, and physical therapy.<sup>5</sup>

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

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

APD administers iBudget Florida pursuant to s. 393.0662, F.S. iBudget Florida uses an algorithm, or formula, to set individuals’ funding allocations for waiver services. The statute authorizes APD to give individuals additional funding under certain conditions (such as a temporary or permanent change in need, or an extraordinary need that the algorithm does not address).<sup>6</sup> APD phased in the implementation of iBudget Florida, with the final areas transitioned from the previous tiered waiver system on July 1, 2013.<sup>7</sup>

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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> Rule 65G-4.014, F.A.C. requires that qualifying under an intellectual disability diagnosis requires “significantly subaverage general intellectual functioning evidenced by an Intelligence Quotient (IQ) two or more standard deviations below the mean on an individually administered standardized intelligence test, and significant deficits in adaptive functioning in one or more” domains such as communication skills, self-care and home living.

<sup>4</sup> *Overview of the Agency for Persons with Disabilities*, presentation at the House Children, Families, and Seniors Subcommittee, Jan. 7, 2015.

<sup>5</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>6</sup> S. 393.0662(1)(b), F.S.

<sup>7</sup> *Supra*, note 5.

However, the iBudget Florida program has been the subject of litigation. In September 2014, after a 1<sup>st</sup> District Court of Appeal ruling regarding the program's rules, APD reset approximately 14,000 individuals' budget allocations to higher amounts.<sup>8</sup> APD began rulemaking to adopt new rules to replace the previous ones.<sup>9</sup> APD, in collaboration with stakeholders, developed a revised algorithm. APD has filed to adopt rules including this revised algorithm and related funding calculation methods.<sup>10</sup>

iBudget statutes were amended by the FY 2015-16 General Appropriations Act implementing bill to permit 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>11</sup>

### *Waiver Enrollment Prioritization*

As of December 14, 2015, 31,665 individuals were enrolled on the iBudget Florida waiver.<sup>12</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>13</sup> However, this funding is insufficient to serve all persons desiring waiver services. To enable APD 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>14</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 with an open case in the Department of Children and Families' statewide child welfare information system.
- Category 3 – Includes, but is 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
  - 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 is 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 is 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>15</sup>

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<sup>8</sup> Agency for Persons with Disabilities, iBudget Florida, <http://apd.myflorida.com/ibudget/> (last visited December 15, 2015).

<sup>9</sup> Department of State, Florida Administrative Register, Vol. 40, No. 207, Oct. 23, 2014, pg. 4703-4706.

<sup>10</sup> These rules have been challenged as well. *G. B.; Z. L., through his guardian K. L.; J. H.; and M. R. v. the Agency for Persons with Disabilities*, Case No. 15-005803RP (Fla. DOAH).

<sup>11</sup> S. 21, Ch. 2015-222, Laws of Florida.

<sup>12</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>13</sup> Line 251, Ch. 2015-221, Laws of Florida.

<sup>14</sup> S. 20, Ch. 2015-222, Laws of Florida

<sup>15</sup> S. 393.065(5), F.S.

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 more than 5 years, though some are children receiving services through the school system and others are individuals who have been offered waiver services previously but refused them and chose to remain on the wait list.<sup>16</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 APD 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 APD 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>17</sup>.

The statutory wait list prioritization has been changed in the past two legislative sessions via the implementing bill. The FY 2014-15 implementing bill allowed individuals who are receiving home and community-based waiver services in other states to be enrolled immediately on the waiver if their parent or guardian is on active military duty and transfers to Florida.<sup>18</sup> The FY 2015-16 implementing bill also allowed immediate waiver enrollment for servicemembers' dependents previously on a waiver. Since July 1, 2014, 10 such individuals have enrolled on the waiver.<sup>19</sup>

The FY 2014-15 implementing bill limited the individuals in Category 2 to children with an open case in the child welfare system who were 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. The FY 2015-16 implementing bill maintained the 2014-15 changes but added to Category 2 those youth with developmental disabilities who are in extended foster care to be served by both the waiver and the child welfare system. The FY 2015-16 implementing bill also specified the services that APD and the community-based care lead agencies providing foster care services must provide these enrollees. Since July 1, 2015, 30 individuals in extended foster care have enrolled on the waiver.

Both the FY 2014-15 and 2015-16 implementing bills also specified that:

- After individuals formerly on the waiting list are enrolled on the waiver, those 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.
- APD must use a prioritization tool for prioritizing individuals for waiver enrollment within categories certain categories.

<sup>16</sup> Supra, note 5.

<sup>17</sup> Id.

<sup>18</sup> S. 9, Ch. 2014-58, L.O.F.

<sup>19</sup> Supra, note 12.

## *Client Data Management System*

APD must manage data to 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. However, APD relies heavily on manual processes and disparate systems to collect, analyze, and report data, which is inefficient and error-prone.

The Legislature appropriated funding in FY 2015-16 for APD to develop a client data management system for verifying service delivery by providers, billing waiver services, and processing claims.<sup>20</sup> This system will also be used for program quality improvement purposes. APD contracted with a vendor to configure a commercial off-the-shelf product to APD business processes, and 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>21</sup>

## *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>22</sup> These requirements are currently in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook. For example, the handbook outlines required basic and 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 must have additional pre-service certification training. Training is typically offered through several modalities, such as the internet, DVD, and live classroom training.<sup>23</sup>

## Utilization Review of ICF/DD's

While most individuals served by APD live in the community, a small number live in ICF/DD's. ICF/DD's are defined in s. 393.063(22), F.S., as residential facilities licensed and certified by AHCA pursuant to part VIII of ch. 400. There are approximately 2,866 private and public ICF/DD beds in Florida.<sup>24</sup>

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 they 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 states that APD will conduct utilization reviews. APD performs this function through an interagency agreement with AHCA.<sup>25</sup> There is no express statutory requirement or authorization for APD to conduct utilization reviews.

## **Effect of Proposed Changes**

### Home and Community-Based Services Waiver

#### *Waiver Enrollment Prioritization*

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<sup>20</sup> SB 2500A, line 265.

<sup>21</sup> Agency for Persons with Disabilities, Agency Analysis of 2016 Act Relating to the Agency for Persons with Disabilities.

<sup>22</sup> *Id.*

<sup>23</sup> Rule 59G-13.070, F.A.C. The handbook may be accessed at <http://apd.myflorida.com/ibudget/>.

<sup>24</sup> *Supra*, note 21.

<sup>25</sup> *Id.*

HB 1083 makes permanent the FY 2015-16 implementing bill's temporary changes related to the waiver waiting list prioritization categories. The bill requires APD to prioritize, in Category 2, children in the child welfare system being reunified with their families or being placed permanently with an adoptive family or relatives and youth with developmental disabilities in extended foster care who must 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 youth; specifically, APD must provide waiver services, including residential habilitation that supports individuals living in congregate settings, and the CBC lead agency must fund room and board at the prevailing foster care rate as well as provide case management and related services.

The bill 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. This means active-duty servicemembers' dependents previously on a waiver are not placed in a waiting list category but are immediately enrolled on the waiver.

The bill also specifies that after individuals formerly on the waiting list are enrolled on the waiver, those 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 that may qualify individuals to receive additional funding beyond that calculated through the algorithm. Specifically, APD 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*

The bill requires APD service providers to use APD 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.

#### Down Syndrome

The bill also adds Down syndrome to the definition of "developmental disability." APD already serves individuals with a diagnosis of Down syndrome due to their statutory eligibility under that diagnosis for HCBS waiver services. Individuals with Down syndrome currently may also qualify for APD services due to the presence of an intellectual disability.<sup>26</sup>

## 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:**

The fiscal impact on the private sector is 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 APD 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 FY 2015-16 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**