

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1517 Agency for Persons with Disabilities

SPONSOR(S): Health & Human Services Committee and Children, Families & Seniors Subcommittee, Plakon and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1594

FINAL HOUSE FLOOR ACTION: 109 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1517 passed the House on April 28, 2023, as amended, and subsequently passed the Senate on May 1, 2023.

The Agency for Persons with Disabilities (APD) administers Florida's Medicaid Home and Community Based Services (HCBS) Waiver, iBudget Florida (iBudget), for individuals with specified developmental disabilities. These individuals may choose to receive services in the community through iBudget, or in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD) through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).

Current law requires APD to review applications for iBudget enrollment within 45 days for children under 6 years of age and within 60 days for all other applicants. Individuals who are determined to be eligible are then admitted in the program or placed on the wait list for services and prioritized based on their level of need.

The bill modifies the process to apply for waiver services or ICF/DD placement by requiring APD to process all applications within 60 days of receipt, regardless of the age of the applicant. Further, the bill requires APD to complete eligibility determinations for waiver applicants in crisis within 45 days of receipt, or within 90 days if APD has to request additional documentation. The bill revises terminology for the waiting list for iBudget services, changing the term "waiting list categories" to "pre-enrollment categories". The bill requires APD to authorize all institutional admissions, removing authority for APD to delegate this function.

Adult day training (ADT) services support iBudget enrollees in valued routines of the community, such as volunteering, job exploration, and self-advocacy. ADT providers are not licensed under current law. APD enrolls ADT providers who meet minimum education and background screening requirements, but there are no initial or continued compliance standards for client care, and APD cannot take disciplinary action. A recent analysis identified a significant number of performance problems affecting the health and safety of APD clients.

The bill creates a licensure program for ADT providers, administered by APD, and directs APD to adopt licensure requirements in rule. The bill authorizes APD to take disciplinary action relating to verified findings of abuse, neglect, or abandonment of a child or vulnerable adult and prohibits a licensee from delegating the ultimate responsibility for the safety and care of clients in its care to others.

A comprehensive transitional education program (CTEP) is a type of residential facility that serves individuals who have large-scale severe maladaptive behaviors or a dual diagnosis of a developmental disability and a mental illness. After a history of problems with Florida's single CTEP, APD closed the facility in 2018. Current federal requirements prohibit the provision of iBudget Waiver services in such environments.

The bill repeals s. 393.18, F.S., removing the authority for APD to license CTEPs.

The bill requires APD to establish an interagency workgroup to identify gaps in information and communication across the lifespan of individuals with developmental disabilities.

The bill has a significant negative fiscal impact on APD, which is addressed in the General Appropriations Act for Fiscal Year 2023-2024, and no fiscal impact on local government. See Fiscal Analysis.

The bill was approved by the Governor on June 20, 2023, ch. 2023-273, L.O.F., and will become effective on July 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Department of Health (DOH), the Agency for Persons with Disabilities (APD), and the Department of Elderly Affairs (DOEA).

The structure of each state's Medicaid program varies, and what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.¹ Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The entitlement means that two parts of the Medicaid cost equation – people and utilization – are largely predetermined for the states. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. States can add benefits, with federal approval.

Developmental Disability Individual Budgeting Waiver

States have some flexibility in the provision of Medicaid services. A federal 1915(c) waiver allows states to develop Medicaid home and community-based services to meet the needs of people who prefer to receive long-term care services and supports in their home or community instead of in an institutional setting.

AHCA, as the designated single state agency for Medicaid, administers the Developmental Disability Individual Budgeting Waiver (Waiver) under a 1915(c) waiver. Through an interagency agreement, APD is the state agency responsible for the operation of the Waiver.

Waiver services are available to people with a disorder or syndrome attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid 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.²

Community and Institutional Services

The Waiver provides services in the community; alternatively, these individuals may choose to live in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD). ICF/DDs provide care and residence for individuals with developmental disabilities. ICF/DDs are licensed by AHCA.³ Some APD clients do request services from an ICF/DD instead of through the Waiver.⁴ APD is responsible for making eligibility and level of reimbursement determinations and verifying that clients meet the required level of care for institutional services. APD contracts with a vendor to make level of reimbursement determinations.⁵

¹ Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).

² S. 393.063(12), F.S.

³ Ch. 400, part VIII, F.S.

⁴ Agency for Persons with Disabilities, Agency Analysis of 2023 HB 1517 (March 13, 2023).

⁵ *Id.*

Application for APD Services

The application process for individuals wishing to receive services through the Waiver is detailed in s. 393.065, F.S. APD must review applications for eligibility within 45 days for children under 6 years of age and within 60 days for all other applicants.⁶ Individuals who are determined to be eligible for the Waiver program are then admitted in the program or placed on a wait list. Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive Waiver services from APD are placed on a wait list for services in priority categories of need, unless they are in crisis.⁷

Section 393.065, F.S., requires APD to plan, develop, organize, and implement its programs of services and treatment for persons with developmental disabilities to allow *clients* to live as independently as possible. A “client” means any person already determined by APD to be eligible for services under the Waiver. Section 393.065(2), F.S., requires APD to provide immediate services or crisis intervention to *applicants*. This provision conflicts with the language in s. 393.065, F.S., which relates to individuals who are already APD clients, not applicants. Crisis intervention services to address immediate emergencies are available through other programs outside of APD, including child and adult protective services.⁸

Adult Day Training Providers

Adult day training (ADT) services are training services intended to support the participation of Waiver clients in valued routines of the community, including volunteering, job exploration, accessing community resources, and self-advocacy, in settings that are age and culturally appropriate. ADT services can include meaningful day activities and training in the activities of daily living, adaptive skills, and employment. The training, activities, and routine established by the trainer must be meaningful to the recipient and provide an appropriate level of variation and interest. ADT services generally are offered for individuals age 22 and above, when a recipient is out of the public-school system.

APD currently licenses over 2,100 residential facilities statewide but does not license ADT programs. There are over 13,700 Waiver clients with ADT services on their cost plans.

Currently, APD has authority to enroll ADT providers who meet minimum education requirements and background screening requirements, but they do not have licensure authority, so there are no initial or continued compliance standards for client care. As a result, APD does not have the authority to leverage administrative fines, sanctions, or moratoriums on ADT providers. Additionally, some ADT programs are not enrolled Waiver providers. These settings are reimbursed via private pay arrangements with clients and their families which precludes APD from initiating any type of disciplinary action against such programs in response to health and safety issues (since those providers do not hold either a license or contract with APD).

A recent analysis by APD of incident data relating to abuse, neglect, and exploitation of ADT recipients identified a significant number of issues adversely impacting the health and safety of APD clients.⁹ During the last 4 years, there have been 125 instances where DCF conducted protective services investigations for abuse, neglect, or exploitation related to ADT services with 34 instances of verified findings. Additionally, APD received 2,807 incident reports related to ADT services.¹⁰

APD reviewed past incident reports occurring in ADT facilities to identify ways that such incidents could be avoided or mitigated. Although APD cannot completely prevent incidents, APD found that that some incidents that occurred were a result of environmental hazards not addressed through current waiver

⁶ S. 393.065(1), F.S.

⁷ S. 393.065, F.S.; See rule 65G-1.047, F.A.C., for crisis status criteria.

⁸ *Id.*

⁹ *Supra* note 4.

¹⁰ *Id.*

standards for ADT services. Additionally, increased enforcement of appropriate staffing ratios could reduce some incidents, such as elopements and client injuries. Further, required training could assist ADTs in proper use of medical equipment and the implementation of behavioral interventions.

Comprehensive Transitional Education Programs

A comprehensive transitional education program (CTEP) is a type of residential facility that serves individuals who have large-scale severe maladaptive behaviors or a dual diagnosis of a developmental disability and a mental illness.¹¹ Services provided by a CTEP must be temporary in nature and delivered in a manner designed to achieve the primary goal of incorporating the principles of self-determination and person-centered planning to transition individuals to the most appropriate, least restrictive community living option of their choice. Current federal requirements prohibit the provision of Waiver services in such environments.

APD closed Carlton Palms, the state's only CTEP, in October 2018 as a result of multiple instances of egregious abuse and neglect committed against APD clients. All 200 residents were subsequently transferred to smaller community settings. However, current statutory language still authorizes APD to license CTEPs. These programs render treatment in large-scale residential settings. Since most APD clients are receiving services through the Waiver program, APD focuses on offering community-based services in smaller and more family-like settings and does not anticipate licensing new CTEPs in the future.

Effect of the Bill

Waiver Application Process

The bill requires APD to process all applications for Waiver services within 60 days of receipt, regardless of the age of the applicant. The bill eliminates the requirement for APD to make eligibility determinations within 45 days for applicants under 6 years of age.

The bill eliminates a conflict in current law that requires APD to provide immediate services or crisis intervention to an *applicant*. If an applicant seeks enrollment due to a crisis, the bill requires APD to complete an eligibility determination within 45 days after receipt of the signed application. In instances where APD needs additional documentation to make a proper determination of an applicant's eligibility, the bill requires APD to request such documentation from the applicant. If APD requests additional documentation or provides a comprehensive assessment, the agency must then complete the eligibility determination within 90 days after receipt of the signed application.

The bill removes the ability of APD to enter into an agreement with DOEA to conduct assessments of the level of need and medical necessity for long-term care services. As a result, APD will have sole responsibility for determining ICF/DD placement eligibility.

The bill also specifies that for a client to receive services under the Waiver there must be sufficient funding available within the client's iBudget or other legislative appropriation, and the client must:

- Meet the eligibility criteria as provided under the bill, which must be confirmed by the agency;
- Be eligible for the state Medicaid program under Title XIX of the Social Security Act or the Supplemental Security Income program;
- Meet the level of care requirements for an intermediate care facility for individuals with intellectual disabilities pursuant to 42 C.F.R. s. 435.217(b)(1) and 42 C.F.R. s. 440.150; and
- Meet the requirements set forth in the approved federal waiver authorized under s. 1915(c) of the Social Security Act and 42 C.F.R. s. 441.302.

¹¹ S. 393.18, F.S.

Adult Day Training Licensure

The bill establishes a licensure program for ADT providers, within APD. It requires APD to adopt rules to create initial and continued licensure requirements relating to:

- Training to detect, prevent, and report sexual abuse, abuse, neglect, exploitation, and abandonment;
- Proof of financial ability to operate;
- Quality and adequacy of client care;
- Incident reporting;
- Uniform fire safety standards; and
- The preparation and annual update of a comprehensive emergency management plan.

The bill authorizes ADT programs to continue to provide Waiver services and receive reimbursement from APD without being penalized for being unlicensed until APD develops rules on licensure standards.

The bill authorizes APD to take disciplinary action relating to verified findings of abuse, neglect, or abandonment of a child or vulnerable adult and prohibits a licensee from delegating the ultimate responsibility for the safety and care of clients in its care to others. Further, the bill clarifies that APD's ability to impose disciplinary actions is not necessarily negated by a licensee's remedial action.

When considering an application for the licensure of an ADT or residential facility, APD may deny an application if it is determined that there is evidence that the applicant is unqualified due to lack of good moral character. "Good moral character" includes a personal history of honest, fairness, and respect for the rights of others and the laws of the state and nation.

Comprehensive Transitional Education Programs

The bill repeals the licensure statute for Comprehensive Transitional Education Programs (CTEPs), thus prohibiting APD from licensing any CTEP providers in the future. This has no immediate impact, as there are currently no licensed CTEPs.

Interagency Workgroup

The bill requires APD to convene an interagency workgroup to identify gaps in information and communication across the lifespan of individuals with developmental disabilities and their families, determine why these gaps occur, and recommend ways to ensure that information on the availability of resources and supports is more accessible. The bill requires the workgroup to submit an interim report by November 1, 2023, and a final report by September 1, 2024, of its findings and recommendations to the Governor and the Legislature.

The workgroup must consist of at least one participant each from DCF, the Early Steps Program within DOH, the Division of Vocational Rehabilitation within the Department of Education, and at least three representatives of school district transition programs, Project 10, AHCA, the Unique Employer Program within the Department of Economic Opportunity, or the Florida Center for Students with Unique Abilities.

The bill provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The agency indicates a need of seven full-time equivalence (FTE) positions to license ADT providers.¹² The General Appropriations Act (GAA) for FY 2023-2024 authorizes seven new FTE positions and provides \$537,693 to fund the staffing resources necessary for the licensure of ADT programs.¹³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹² *Supra* note 4.

¹³ 2023 Florida Legislature, SB 2500 Enrolled, line 233, May 5, 2023.