

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 1990 (SPB 7096)

INTRODUCER: Budget Committee

SUBJECT: Developmental Disabilities

DATE: February 15, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------------------|
| 1. | Bradford | Rhodes | BC | SPB 7096 Favorable |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill makes changes to Florida law relating to the Agency for Persons with Disabilities (APD or agency). Specifically, the bill:

- Amends the definition of “support coordinator”;
- Establishes a framework to evaluate waiver support coordinators;
- Provides flexibility to a client in determining the type, amount, frequency, duration, and scope of services if the agency determines such services meet the individual’s health and safety needs;
- Provides a methodology for the determination of a client’s iBudget allocation;
- Provides that an increase to a client’s initial iBudget allocation may only be granted if a significant change in circumstances has occurred and if the criteria for extraordinary needs are met;
- Authorizes APD to adopt and enforce sanitation standards related to food service and environmental health protection and inspection in facilities serving the developmental disabled; and
- Makes technical and conforming changes.

The bill is expected to help contain costs in the Medicaid waiver for persons with developmental disabilities, known as the Home and Community-based Services Waiver. The waiver allows the state to receive a federal match under Medicaid to care for persons with developmental disabilities in the community. The waver is funded at \$810 million in the current year and is experiencing an expected deficit of \$100,317,748 million, \$44.2 million in General Revenue funds. There will be a workload impact to establish a food and environmental health inspection

program. The cost of initiating a program to perform this function is funded the proposed Senate budget.

The bill substantially amends the following sections of the Florida Statutes: 393.063, 393.0661, and 393.0662.

The bill creates section 393.28, Florida Statutes.

The bill has an effective date of July 1, 2012.

II. Present Situation:

Agency for Persons with Disabilities

In October 2004, the Developmental Disabilities Program separated from the Department of Children and Family Services (DCF or department) and became the Agency for Persons with Disabilities (APD or agency).¹ The agency was tasked with serving the needs of Floridians with developmental disabilities.² The primary purpose of APD is to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served by the agency, and provide assistance in identifying needs and funding to purchase supports and services.³

The agency provides services to individuals with developmental disabilities⁴ through home and community-based settings, private intermediate care facilities, or state-run developmental services institutions. If an individual needs minimal or limited support, he or she may live in their own home, a family home, or a group home, all of which are considered “home and community-based settings.” During fiscal year 2009-10, APD served over 53,000 individuals in the community.⁵

One of the primary goals of APD is to improve the quality of life of persons with disabilities by helping them live and work in the community, rather than being placed in an institution. Toward that end, APD administers the Home and Community-based Services waivers (HCBS waivers) system. This system offers 28 supports and services to assist individuals with developmental disabilities live in their community.⁶ The system has four tiers, described below:

- Tier one is limited to individuals with intensive medical or adaptive needs and for whom services are essential to avoid institutionalization, or who has exceptional behavioral problems. Tier one has a \$150,000 per-client annual expenditure cap, unless the individual

¹ Agency for Persons with Disabilities, *About Us*, <http://apdcares.org/about/> (last visited Jan. 23, 2012).

² *Id.*

³ Office of Program Policy Analysis & Gov’t Accountability, The Florida Legislature, *Agency for Persons with Disabilities*, <http://www.oppaga.state.fl.us/profiles/5060/> (last visited Jan. 23, 2012).

⁴ Section 393.063(9), F.S., defines the term “developmental disability” as a disorder or syndrome that is attributable to retardation, 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.

⁵ Office of Program Policy Analysis & Gov’t Accountability, *supra* note 3.

⁶ Agency for Persons with Disabilities, *HCBS Waiver Services*, <http://apd.myflorida.com/brochures/supports-and-services-brochure.pdf> (last visited Jan. 23, 2012).

can show a documented medical necessity requiring intensive behavioral residential habilitation services, intensive behavioral residential habilitation services with medical needs, or special medical home care. Tier one is limited to persons with service needs that can't be met in any of the other tiers.

- Tier two is for individuals who have high-cost residential facility and residential habilitation service needs or supported living needs that are greater than six hours per day. Tier two has a \$53,625 per-client annual expenditure cap.
- Tier three has a \$34,125 per-client annual expenditure cap and is for individuals who require lower residential placements, independent or supported living situations, and persons who live in their family home.
- Tier four has a \$14,422 per-client annual expenditure cap and is for individuals who were formerly enrolled in the Family and Supported Living Waiver. This tier funds 12 services.⁷

For Fiscal Year 2011-2012, APD was appropriated \$1,009,499,581 by the Florida Legislature to operate the agency.⁸ Out of that, \$810 million – or approximately 80 percent – is budgeted for clients on the Medicaid HCBS waivers.⁹ In October 2011, 29,641 individuals were served by the HCBS waivers.¹⁰

Historically, the agency has had problems keeping waiver spending within the original appropriation. In Fiscal Year 2005-2006, APD was required to provide quarterly reports to the Executive Office of the Governor, the chair of the Senate Ways and Means Committee, and the chair of the House Fiscal Council regarding the financial status of the HCBS waivers.¹¹ In a presentation on its 2009-2010 Legislative Budget Request, the agency reported “significant progress” in managing the waivers.¹² However, in March 2009, the agency requested \$26 million to cover the remaining HCBS waivers deficit, and by February 2010, APD’s budget recommendation included a request for \$100 million to eliminate the projected deficit in the HCBS waivers.¹³ The deficit reached nearly \$169 million during the 2011 Regular Session.¹⁴ The waiver is again expected to have a deficit in the current year deficit of \$44.2 million.

In 2010, the Legislature directed APD to pursue the development and implement a comprehensive redesign of the HCBS waivers delivery system to combat deficit spending. Individual Budgeting, known as iBudget Florida, involves giving each waiver service recipient an annual budget that is based on legislative appropriation and factors that include an individual’s abilities, disability, needs, and living situation.¹⁵ The iBudget system will replace the

⁷ Office of Program Policy Analysis & Gov’t Accountability, *supra* note 3.

⁸ *Id.*

⁹ Agency for Persons with Disabilities, *2012 Bill Analysis, SB 1516* (Jan. 20, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁰ *Id.*

¹¹ Chapter 2005-70 and Chapter 2005-71, Laws of Fla. The next year, the Legislature codified the requirement in s. 393.0611(8), F.S.

¹² Budget Committee, The Florida Senate, *Bill Analysis and Fiscal Impact Statement SB 2148*, at 2 (April 1, 2011), available at <http://www.flsenate.gov/Session/Bill/2011/2148/Analyses/YX4Y4hiD5jfSjG5bH97TjYAiHoA=%7C7/Public/Bills/2100-2199/2148/Analysis/2011s2148.bc.PDF> (last visited Jan. 23, 2012).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

tier structure. The state received federal approval to implement the iBudget system in March 2011, and implementation has begun in North Florida.¹⁶

Food Service and Environmental Health Inspections

Section 20.43, F.S., creates the Department of Health (DOH or department) and requires it to plan and administer its public health programs through its county health departments. The department is to focus attention on identifying, assessing, and controlling the presence and spread of communicable diseases; monitoring and regulating factors in the environment which may impair the public's health; and ensuring availability of and access to preventive and primary health care.¹⁷

Food Service and Environmental Health Inspections

Section 20.43, F.S., creates the Department of Health (DOH or department) and requires it to plan and administer its public health programs through its county health departments. The department is to focus attention on identifying, assessing, and controlling the presence and spread of communicable diseases; monitoring and regulating factors in the environment which may impair the public's health; and ensuring availability of and access to preventive and primary health care.¹⁸

Prior to the 2010 Regular Session, s. 381.006, F.S., provided that DOH was responsible for conducting an environmental health program that included group-care-facilities. The statute defined a group care facility as “any public or private school, housing, building or buildings, section of a building, or distinct part of a building or other place, whether operated for profit or not, which undertakes, through its ownership or management, to provide one or more personal services, care, protection, and supervision to persons who require such services and who are not related to the owner or administrator.”¹⁹ Also, prior to 2010, the definition of a “food service establishment” included any facility where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided.²⁰

Based on these provisions, DOH was performing food-service and environmental health inspections of APD's licensed facilities for persons who have disabilities.

During the 2010 Regular Session, the Legislature passed HB 5311, which revised DOH's inspection authority.²¹ Specifically, the bill removed catch-all provisions that previously allowed DOH to inspect APD's licensed facilities. Currently, ss. 381.006 and 381.072, F.S., provide a list of facilities that are subject to health inspections by DOH. Specifically, the law states that a

¹⁶ *Id.*

¹⁷ Comm. on Health Regulation, The Florida Senate, *Bill Analysis and Fiscal Impact Statement, CS/SB 532* (Jan. 19, 2010), available at <http://archive.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s0532.hr.pdf> (last visited Feb. 10, 2012).

¹⁸ Comm. on Health Regulation, The Florida Senate, *Bill Analysis and Fiscal Impact Statement, CS/SB 532* (Jan. 19, 2010), available at <http://archive.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s0532.hr.pdf> (last visited Feb. 10, 2012).

¹⁹ Section 381.006(16), F.S. (2009).

²⁰ Section 381.0072, F.S. (2009).

²¹ Chapter 2010-161, Laws of Fla.

“food service establishment” does not include any entity not expressly named in the definition.²² Because APD’s licensed facilities are not explicitly included on these lists, DOH has stated that it no longer possesses the authority to inspect APD’s facilities.²³

III. Effect of Proposed Changes:

Agency for Persons with Disabilities

This bill makes changes to Florida law relating to the Agency for Persons with Disabilities (APD or agency).

Specifically, the bill requires APD to review waiver support coordination performance to ensure that the support coordinator meets or exceeds the criteria established by the agency. Criteria for evaluating support coordinator performance include:

- The protection of the health and safety of clients.
- The assistance provided to clients in obtaining employment and pursuing other meaningful activities.
- The assistance provide to clients in accessing services that allow them to live in their community.
- The use of family resources.
- The use of private resources.
- The use of community resources.
- The use of charitable resources.
- The use of volunteer resources.
- The use of services from other governmental entities.
- The overall outcome in securing nonwaiver resources.
- The cost-effective use of waiver resources.
- The coordination of all available resources to ensure that clients’ outcomes are met.

The agency is authorized to exempt a waiver support coordinator from annual quality assurance reviews if the coordinator consistently has superior performance, and the agency may sanction poor performance. The agency’s area offices must conduct and manage the provider agreements with the waiver support coordinators and the performance reviews.

The bill also specifies that the support coordinator is responsible for assisting the client to meet his or her needs through nonwaiver services, as well as through the client’s budget allocation or cost plan. Essentially, the waiver is the funding source of last resort for client services.

With respect to the iBudget, the bill provides that a client shall have the flexibility to determine the type, amount, frequency, duration, and scope of the services on his or her cost plan if the agency determines that such services meet his or her health and safety needs, meet the

²² Section 381.0072, F.S.

²³ E-mail from Jonathan Grabb, General Counsel’s Office, Agency for Persons with Disabilities, to Senate professional staff (Feb. 10, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

requirements contained in the Coverage and Limitations Handbook, and comply with the other requirements of s. 393.0662, F.S.

Further, the bill provides that during the transition to the iBudget, APD shall determine a client's initial iBudget amount by comparing the client's algorithm allocation to the client's current annual cost plan and the client's extraordinary needs. A client's allocation is the amount determined by the algorithm, adjusted to APD's appropriation, and any necessary set-asides, such as funding for individuals who have extraordinary needs. The area office is responsible for reviewing the amount of funding needed to address each client's extraordinary needs in order to determine the medical necessity for each service in the amount, duration, frequency, intensity, and scope that meets the client's needs. The agency must consider the client's characteristics based on a needs assessment as well as the client's living setting, availability of natural supports, family circumstances, and other factors that may affect the level of service needed.

The bill does not reference a client's "significant needs" when determining a client's iBudget allocation, although current law provides that APD may approve an increase in the amount of money allocated based on a client having significant needs (see lines 249-263 of the bill). However, according to APD, both a client's significant needs and extraordinary needs will be considered when calculating a client's iBudget allocation.²⁴

The client's medical-necessity review must include a comparison of the following:

- If the client's algorithm allocation is greater than the individual cost plan, the client's iBudget is equal to the cost plan.
- If the client's algorithm allocation is less than the client's cost plan but greater than the amount for the client's extraordinary needs, the client's iBudget is equal to the algorithm allocation.
- If the client's algorithm allocation is less than the amount for the client's extraordinary needs, the client's iBudget is equal to the amount for the client's extraordinary needs.

The bill provides that a client's initial iBudget amount may not be less than 50 percent of that client's existing annualized cost plan. Also, if the client's iBudget is less than the client's current cost plan, but it is within \$1,000 of the current cost plan, APD may adjust the iBudget to equal the cost plan amount. During the 2011-2012 and 2012-2013 fiscal years, increases to the client's initial iBudget amount may only be granted if a significant change in circumstances has occurred and if the criteria for extraordinary needs are met.

Food Service and Environmental Health Inspections

The bill creates s. 393.28, F.S., related to food service and environmental health protection and inspection. The bill gives APD the authority to adopt and enforce sanitation standards to ensure the protection of individuals served in facilities licensed or regulated by the agency. The agency may adopt rules or, in the absence of rules, the agency must defer to preexisting standards related

²⁴ E-mail from Chris Coker, Legislative Affairs Director, Agency for Persons with Disabilities, to Senate professional staff of the Committee on Children, Families, and Elder Affairs (Jan. 24, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

to environmental health inspections of group care facilities, preexisting standards related to food service establishments, and the rules relevant to those provisions. Rules adopted by APD under this section may provide additional or alternative standards to the preexisting standards for environmental health inspections and food service establishments. Additionally, the rules may include sanitation requirements for the storage, preparation, and serving of food, as well as sanitation requirements to detect and prevent disease caused by natural and manmade factors in the environment.

The bill authorizes APD to consult with the Department of Health (DOH), the Agency for Health Care Administration (AHCA), the Department of Business and Professional Regulation (DBPR), and the Department of Agriculture and Consumer Services (DACS) concerning procedures for the storage, preparation, serving, or display of food, and procedures for detecting and preventing disease.

The bill provides licensing sanction authority to APD against any establishment or operator for violations of sanitary standards. Finally, the bill authorizes APD to contract with another entity for the provision of food service protection and inspection services.

Effective Date

The bill provides an effective date of July 1, 2012.

Other Potential Implications:

During the 2010 Regular Session, HB 5311 passed the Legislature, making changes to DOH's inspection authority in ss. 381.006 and 381.0072, F.S. These revisions removed catch-all provisions that previously allowed DOH to inspect APD's licensed facilities. In s. 381.0072, F.S., the bill provided that DOH could advise and consult with DBPR, AHCA, DACS, and the Department of Children and Family Services concerning procedures related to the storage, preparation, serving, or display of food at any building, structure, or facility not expressly included in the definition of "food service establishment" in s. 381.0072, F.S.²⁵ The agency was not included in the list of entities that DOH could advise and consult with. According to DOH, these changes meant that DOH no longer had the authority to perform inspections of any of APD's licensed facilities.²⁶ In November 2010, APD found that a number of county health departments were still not performing health inspections in the agency's facilities.²⁷

The bill grants APD the authority to adopt and enforce sanitation standards to ensure the protection of individuals served in facilities licensed or regulated by the agency, which may be critical in order to ensure these facilities are being inspected.

²⁵ H.B.5311, Engrossed 1 (2010), available at <http://archive.flsenate.gov/data/session/2010/House/bills/billtext/pdf/h531102er.pdf> (last visited Feb. 10, 2012).

²⁶ Dep't of Health (DOH) *Inspection of APD Facilities Summary* (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁷ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill spells out the Agency for Persons with Disabilities' (APD or agency) methodology for determining a client's iBudget allocation. The way APD determines a client's initial iBudget allocation is if the client's algorithm allocation is:

- Greater than the client's cost plan, the client's iBudget is equal to the cost plan.
- Less than the client's cost plan but greater than the amount for the client's extraordinary needs, the client's iBudget is equal to the algorithm allocation.
- Less than the amount for the client's extraordinary needs, the client's iBudget is equal to the amount for the client's extraordinary needs.

It appears that in certain situations, a client's iBudget allocation may be less than what they are receiving with their current cost plan.

C. Government Sector Impact:

The bill authorizes APD to adopt and enforce sanitation standards to ensure the protection of individuals served in facilities licensed or regulated by the agency. The cost of initiating a program to perform this function is funded the proposed Senate budget. There are potential savings from the increased responsibilities of the support coordinators to work with local entities to possibly gain access to services provided by the community. The changes made in this bill to the iBudget will also help the agency manage the costs of the waiver program.

VI. Technical Deficiencies:

There are two potential technical deficiencies:

1. The definition of “nonwaiver resources” needs to be added to the bill,
2. The term “client” is used interchangeably with the term “individual” and should conform to the statute.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
