

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 Committee on Fiscal Policy

BILL: CS/SB 1758

INTRODUCER: Children, Families, and Elder Affairs and Senator Brodeur

SUBJECT: Individuals with Disabilities

DATE: January 29, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rao</u>	<u>Tuszynski</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Rao</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The Agency for Persons with Disabilities (APD) administers services to individuals with developmental disabilities through federally funded Medicaid waiver programs. APD’s iBudget program permits individuals to receive home and community-based waiver services and select the services that are best suited for them while living in their home, rather than an institutional setting.

CS/SB 1758 amends multiple sections of law related to the APD to:

- Require the APD to offer care navigation services to clients and their caregivers, including, but not limited to, creating care plans that address immediate, intermediate, and long term needs and goals of the client.
- Modify the application process for APD services, requiring the creation of an online application process and streamlines the timeframes the APD has to determine eligibility.
- Reduce the age requirement of a client’s caregiver in pre-enrollment category 4 from 70 years of age to 60 years of age or older. This will allow a higher number of individuals to be included in category 4 of the pre-enrollment prioritization list.
- Require iBudget waiver support coordinators to inform iBudget clients of the option to apply for the CDC+ program when creating family or individual support plans.

The bill requires the Agency for Health Care Administration, the APD, and other stakeholders to develop a plan for a new home and community-based services Medicaid waiver program for clients transitioning to adulthood and requires a report to the Governor, President of the Senate, and Speaker of the House by December 1, 2024 on the progress of this plan.

The bill also appropriates funding to the Agency for Persons with Disabilities for the 2024-2025 fiscal year and has a significant negative fiscal impact on state government. *See* Section V. Fiscal Impact Statement.

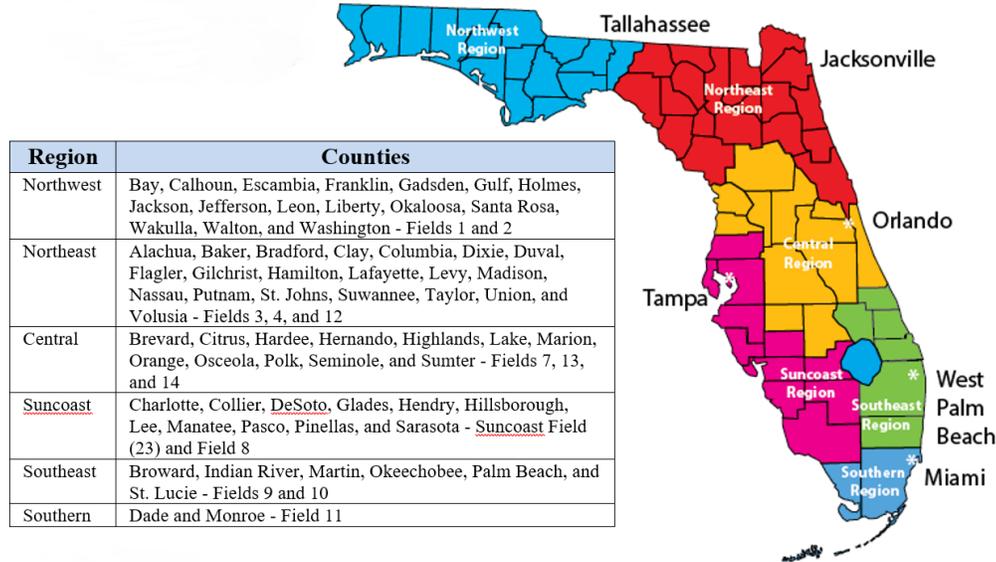
The bill has an effective date of July 1, 2024.

II. Present Situation:

Agency for Persons with Disabilities – Generally

Chapter 393, F.S., identifies the need to provide community-based services and programs for individuals with developmental disabilities that enable individuals to achieve their greatest potential for independent living while reducing the number of individuals in unnecessary institutional placements.¹

The Agency for Persons with Disabilities (APD) provides services to individuals with developmental disabilities and manages Medicaid waivers that provide federally approved services for individuals with developmental disabilities.² Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based (HCBS) services to individuals at risk of institutionalization.³ The HCBS waiver provides services to individuals with developmental disabilities that allow recipients to live in their home or a home-like setting and avoid an institutional setting.⁴ Eligible recipients must meet institutional level of care requirements.⁵ In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:⁶



¹ Section 393.062, F.S.

² Section 20.197, F.S.

³ Rule 59G-13.080(1), F.A.C.

⁴ The Centers for Medicare and Medicaid Services, *Home and Community-Based Services 1915(c)*, available at: <https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited 1/18/24).

⁵ *Id.*; Rule 59G-13.080(1), F.A.C.

⁶ Agency for Persons with Disabilities, *Regional Offices*, available at: <https://apd.myflorida.com/region/> (last visited 1/18/24).

iBudget Florida Program

The APD administers Florida's individual budget-based HCBS Waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements.⁷ The iBudget program allocates available funding to eligible, Medicaid-enrolled clients and provides the client an established budget with the flexibility to choose services within a specified service package that best allows them to live in their community.⁸

The APD began implementation of iBudget Florida on May 1, 2011; the final areas of the state transitioned from the previous tiered waiver system on July 1, 2013.⁹ The iBudget program uses an algorithm, or formula, to set individuals' funding allocations for waiver services.¹⁰ The APD administers the iBudget pursuant to s. 393.0662, F.S.

The APD serves approximately 35,000 individuals through iBudget Florida, contracting with service providers to offer various supports and services to assist individuals to live in their community.¹¹ Examples of waiver services include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.¹²

Section 393.066, F.S., requires the 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 in their own homes or communities.¹³ All elements of community-based services must be made available, and eligibility for these services must be consistent across the state.¹⁴ Services for clients must be purchased rather than provided directly by the APD when more cost-efficient. However, the APD must approve all purchased services.¹⁵

Eligibility for iBudget Services

Current Florida law requires the APD to review applications for eligibility of iBudget program services within 60 days after receipt of the signed application. If the applicant is deemed to be in crisis,¹⁶ Florida law requires the APD to review eligibility determination within 45 days.¹⁷ Individuals who are determined to be eligible for the Waiver program are either given a slot in

⁷ Section 393.0662, F.S.

⁸ *Id.*

⁹ The Agency for Persons with Disabilities, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and their Costs: First Quarter Fiscal Year 2022-23*, p. 2, November 15, 2022 available at: <https://apd.myflorida.com/publications/reports/> (last visited 1/18/24).

¹⁰ *Id.*

¹¹ E-mail from Kendall Kelley, APD Legislative Affairs Director, January 19, 2024 (on file with the Senate Committee on Children, Families, and Elder Affairs)

¹² *Supra.* note 9.

¹³ Section 393.066(1), F.S.

¹⁴ *Id.*

¹⁵ Section 393.066, F.S.

¹⁶ Rule 65G-1.047, F.A.C. provides that the severity of crisis is determined by risk to the health, safety, and welfare of each applicant relative to other applicants. Rule 65G-11.004 provides a procedure for determining if a client is considered to be in crisis.

¹⁷ Section 393.065, F.S.

the program or placed on a wait list if the demand exceeds available funding. As of December 2023, there were 21,587 individuals on the waiting list.¹⁸

The APD assigns each waitlisted client to a preenrollment category based on their needs and prioritized in the following decreasing order of priority:¹⁹

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Includes clients in the preenrollment categories who are:
 - 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:
 - Transitioning out of the child welfare system into permanency; or
 - At least 18 years but not yet 22 years of age and who need both waiver services and extended foster care services; or
 - At least 18 years but not yet 22 years of age and who withdrew consent to remain in the extended foster care 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;
 - 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 or whose caregiver is unable to provide the care needed.
- 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 a meaningful day activity, maintain competitive employment, or 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.

Eligible individuals that meet the criteria for Categories 1 or 2 are directly enrolled onto the iBudget waiver.²⁰ Currently, there is a higher demand for iBudget services than the amount of funding that is available, which means individuals that require services are put on the waitlist for services based on the categorization of their needs. The following table displays the number of individuals in the preenrollment categories as of December 2023.²¹

¹⁸ *Supra* note 11.

¹⁹ Section 393.065, F.S.

²⁰ Agency for Persons with Disabilities, *SB 1768 Analysis*, p. 2 (on file with the Senate Committee on Children, Families, and Elder Affairs)

²¹ *Supra* note 11.

Category	Description	Total Clients
Category 1	Crisis	-
Category 2	Children in Welfare System at the time of permanency or turning 18	-
Category 3	Intensive Needs	210
Category 4	Caregiver Over Age 70	83
Category 5	Transition from School	20
Category 6	Age 21 and Over	12,809
Category 7	Age Under 21	8,464
Grand Total		21,587

The average time a client spends in a preenrollment category is 8.6 years.²² The following chart identifies the length of time clients have been in a preenrollment category.²³

Length of Time in a Preenrollment Category	Percentage of Individuals
Under 5 years	42%
5 –10 years	20%
10+ years	37%

iBudget Waiver Support Coordinators and Family Support Plans

After an individual is deemed eligible for services, the APD is required to consult with the client, if competent, the client’s parent or guardian, or, when appropriate, the client advocate to create a family or individual support plan.²⁴ A support plan must be designed to include the most appropriate, least restrictive, and most cost-beneficial environment for the accomplishment of the objectives for client progress, including an appropriate placement in the client’s home or community.²⁵

Waiver support coordinators are permitted to review the progress of and annually revise the family or individual support plan upon consultation with the client, the client’s parent or guardian, or the client advocate.²⁶ Additionally, waiver support coordinators collaborate with the recipient of services and service providers to accommodate the needs of the recipient within the recipient’s iBudget services allocation.²⁷

²² *Supra* note 11.

²³ *Supra* note 11.

²⁴ Section 393.0651, F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Agency for Health Care Administration, *Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook*, available at: <https://apd.myflorida.com/ibudget/rules-regs.htm> (last visited 1/18/24).

Florida Consumer-Directed Care Plus Program

The Legislature created the Florida Consumer-Directed Care Act in 2002 aimed to increase the choice and control over long-term care services individuals with disabilities receive.²⁸

Authorized by the federal Medicaid State Plan Amendment, the Consumer-Directed Care Plus (CDC+) program permits individuals to choose their providers and to direct the delivery of services as they see fit, within the funds appropriated by the Legislature.²⁹

Consumers are able to use the monthly budget allowance to purchase long-term care services which include, but are not limited to, the following:³⁰

- Personal care.
- Homemaking and chores, including housework, meals, shopping, and transportation.
- Home modifications and assistive devices which may increase the consumer's independence or make it possible to avoid institutional placement.
- Assistance in taking self-administered medication.
- Day care and respite care services, including those provided by nursing home facilities or adult day care facilities.
- Personal care and support services provided in an assisted living facility.

To be eligible for the CDC+ Program, a recipient must:³¹

- Be enrolled in the Individual Budgeting Waiver (also known as the iBudget Waiver);
- Reside in their own family home or the home of a relative; and
- Not disenrolled from the CDC+ Program due to their mismanagement or inappropriate use of Medicaid funds.

Hope Florida

Hope Florida is a program dedicated to guiding Floridians on an individualized path to prosperity, economic self-sufficiency, and hope. Hope Navigators offer services that identify barriers that individuals face and work with the individual to discover resources and develop a plan to achieve economic self-sufficiency. Through a community approach that utilizes resources from the private sector, faith-based community, nonprofits, and government entities, Hope Navigators can identify the services and resources that are the best fit for the individual.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 393.064, F.S. to require the APD to offer care navigation services to clients and their caregivers. The participation in this program must be voluntary and part of eligibility or renewal review. The bill provides that the goals of care navigation are to create a

²⁸ Chapter 2002-223, Laws of Florida.

²⁹ Section 409.221(4), F.S.; Florida Agency for Health Care Administration, *Federal Waivers*, available at: <https://ahca.myflorida.com/medicaid/medicaid-policy-quality-and-operations/medicaid-policy-and-quality/medicaid-policy/federal-authorities/federal-waivers> (last visited 1/19/24).

³⁰ Section 409.221, F.S.

³¹ Agency for Health Care Administration, *Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement Handbook*, available at: <https://apd.myflorida.com/cdcplus/participants/> (last visited 1/19/24)/

seamless network of community resources and supports for the client and the client's family to support the client in daily living, community integration, and achievement of individual goals.

The bill provides requirements for care plans, that include, but are not limited to, addressing the immediate, intermediate, and long-term needs of the client to increase well-being and opportunities for education, employment, social engagement, community integration, and caregiver support.

The bill requires the care plan to be integrated with a student's individual education plan (IEP) if the client is a public school student. The bill requires both the care plan and IEP to maximize the attainment of educational and habilitation goals.

The bill removes part of current statute that provides for the APD's role in the development of programs that have the potential to prevent, correct, cure, or reduce the severity of developmental disabilities. This reflects an increased focus on identifying resources individuals with disabilities need, rather than attempting to prevent developmental disabilities.

Section 2 of the bill amends s. 393.065, F.S., to require the APD to develop and implement an online application process for individuals applying for services from the agency. This online application process must, at a minimum:

- Support paperless, electronic submissions with immediate e-mail confirmation to each applicant upon submission.
- Permit an applicant to view the status of his or her application in the online application system, and provide additional information.

The bill requires the APD to maintain a printable paper application on its website and provide applicants with a printed paper application upon request. The bill allows applicants to apply for services through writing to the agency in the region where he or she resides. This change expands the options that applicants have for how they wish to submit their application for services from the APD.

The bill requires the APD to review submitted applications in accordance with federal time standards and changes eligibility determination timelines for individuals in a pre-enrollment category. The bill defines "complete application" as an application submitted to the APD that is signed and dated by the applicant or an individual with legal authority to apply for public benefits on behalf of the applicant. The application must also have all parts filled out and contains documentation of the applicant's diagnosis to be considered a complete application.

The bill requires the following eligibility determination timelines for applicants requesting enrollment in the home and community-based services Medicaid waiver program:

- If the applicant meets the criteria for Category 1,³² the APD is required to make an eligibility determination within 15 calendar days after receipt of a complete application.

³² Section 393.065, F.S. includes clients deemed to be in crisis.

- If the applicant meets the criteria for Category 2,³³ the APD is required to review the application and make an eligibility determination as soon as practicable after receipt of a complete application.
- If the applicant meets the criteria for Categories 3-7,³⁴ the APD is required to make an eligibility determination within 60 days after receipt of a complete application.

The bill requires the client to be informed through verbal contact (with the client or the client's designated caregiver) of any delays in the eligibility determination process or any tolling of the time standards. This verbal contact must be confirmed with a written notice of the delay, the anticipated length of delay, and a contact person for the client.

The bill reduces the age requirement of a client's caregiver in category 4 from 70 years of age to 60 years of age or older. This change expands the number of clients who are eligible for category 4, allowing more individuals to be placed in a higher priority pre-enrollment category.

Section 3 of the bill amends s. 393.0651, F.S., to specify that the APD must provide directly or contract for the development of a family support plan for clients *served by the home and community-based services Medicaid waiver program under s. 393.0662, F.S.* Current law simply states that each 'client.' This change recognizes that the APD provides services and supports to many individuals that could be considered clients, but only those receiving services under the HCBS waiver program require a support plan. The bill also specifies that the support plan must be developed within 60 *calendar* days, not just 60 days as currently in statute.

The bill requires the waiver support coordinator to inform the client, the client's parent or guardian, or the client advocate about the CDC+ program established under s. 409.221, F.S., which allows enrolled persons to choose the providers of services and to direct the delivery of services to best meet their long-term care needs.³⁵

Section 4 of the bill appropriates the following funds for the 2024-2025 fiscal year:

\$16,562,703 in recurring funds from the General Revenue fund and \$22,289,520 in recurring funds from the Operations and Maintenance Trust Fund are appropriated to the APD in the Home and Community Based Services Waiver category. These funds are appropriated to offer waiver services to the greatest number of individuals eligible.

Section 5 of the bill requires the AHCA and APD to consult with other stakeholders to develop a comprehensive plan for the administration, finance, and delivery of a new home and community-based services Medicaid waiver program for clients as they transition into adulthood, to avoid future crisis enrollment into the waiver program.

³³ Section 393.065, F.S. provides that Category 2 includes clients in preenrollment categories who are 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 into permanency; or (b) at least 18 years but not yet 22 years of age and who need both waiver services and extended foster care services. Clients who are at least 18 years but not yet 22 years of age and who withdrew consent to remain in extended foster care are also included in Category 2.

³⁴ See Section 393.065 for specific eligibility requirements.

³⁵ Section 409.221, F.S.

The bill requires the AHCA to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by December 1, 2024 addressing, at a minimum, all of the following:

- The purpose, rationale, and expected benefits of the new waiver program.
- The proposed eligibility criteria for clients and service packages to be offered through the new waiver program.
- A proposed implementation plan and timeline, including recommendations for the number of clients to be served by the new waiver program at initial implementation, changes over time, and any per-client benefit caps.
- Proposals for how clients will transition onto and off of the new waiver, including, but not limited to, transitions between this new waiver and the home and community-based services waiver.
- The fiscal impact for the implementation year and projections for the subsequent 5 years, determined on an actuarially sound basis.
- An analysis of the availability of services that would be offered under the new waiver program and recommendations to increase availability of such services, if necessary.
- A list of all stakeholders, public and private, who were consulted or contacted as part of developing the plan for the new waiver program.

Section 6 of the bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has an indeterminate negative fiscal impact on the APD to develop and implement an online application process. This will likely require nonrecurring funds to develop and implement and recurring funds to maintain and operate.

The bill appropriates funding to the Agency for Persons with Disabilities for services and the Agency for Health Care Administration (AHCA) to establish budget authority for Medicaid services: \$16,562,703 in recurring funds from the General Revenue fund and \$22,289,520 in recurring funds from the Operations and Maintenance Trust Fund are appropriated to the APD to the Home and Community Based Services Waiver category.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 393.065 and 393.0651 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on January 23, 2024:

The CS aligns SB 1758 with HB 1271 by making the following changes:

- Requires APD to offer care navigation services to clients and their caregivers, including, but not limited to, creating care plans that address immediate, intermediate, and long term needs and goals of the client.
- Requires AHCA, APD, and other stakeholders to develop a plan for a new home and community-based services Medicaid waiver program for clients transitioning to adulthood and requires a report to the Governor, President of the Senate, and Speaker of the House by December 1, 2024 on the progress of this plan.

B. Amendments:

None.