

STORAGE NAME: h2275.hhs

DATE: April 21, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: HB 2275 (PCB HHS 99-08)

RELATING TO: Persons with Developmental Services

SPONSOR(S): Representative Sanderson

COMPANION BILL(S): PCS/SB 2214

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 7 NAYS 0

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I. SUMMARY:

Proposed Committee Bill HHS 99-08 addresses improvements in the developmental services program in the following areas:

- Client assessments to determine the need and medical necessity for long-term care services.
- Licensure of intermediate care facilities for the developmentally disabled.
- Transfer of funds from institutions to community-based care if residential units are voluntarily closed.
- Development of a consumer-directed, choice-based system of care.

This bill substantially amends sections 393.062, 393.065, 393.0673, 393.22, 409.906, 409.9127, 409.908 and creates sections 400.961, 400.962, 400.963, 400.964, 400.965, 400.966, 400.967, and 400.968, Florida Statutes.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The General Appropriations Act for FY 1998-1999 required a comprehensive plan for developmental services to be developed under the coordination of the Executive Office of the Governor. The Appropriations Act specified that the plan must include, at a minimum, actions necessary to resolve current litigation issues, reimbursement plan inequities, Boren amendment repeal impacts, the principle of consumer directed care, inappropriate client placements, and quality of care issues.

The plan, which suggested possible improvements to the system of providing services and contemplated future increases in service funding, was completed after substantial public input and participation and submitted to the Legislature during September, 1998.

In an effort to improve services to persons with developmental disabilities, the Governor included an increase of almost \$214 million for the developmental services program in his legislative budget recommendations for FY 1999-2000. Additionally, the Governor focused on several quality of care issues that address deficiencies in the developmental services program including: client assessments to determine the need and medical necessity for long-term care services; licensure of intermediate care facilities for the developmentally disabled; transfer of funds from institutions to community-based care; and developing a consumer-directed, choice-based system of care.

Chapter 393, F.S., is Florida's law on developmental disabilities. It covers, among other things, eligibility, services, rights of persons with developmental disabilities, and licensure of programs. The law related to licensure of certain residential programs is unclear since certain provisions amended in 1996 have been struck by a federal court.

B. EFFECT OF PROPOSED CHANGES:

The major provisions of PCB HHS 99-08 include the following:

- Amends s. 393.062, F.S., specifying that it is a finding of the Legislature that the eligibility criteria for Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) contained in Florida's Medicaid state plan that are in effect when this act becomes law are essential to the system of residential services for persons with developmental disabilities.
- Amends s. 393.065, F.S., by stating that the Department of Children and Family Services must assess the level of need and evaluate the medical necessity for prospective residents of intermediate care facilities for the developmentally disabled after October 1, 1999. The bill states that the department may enter into an agreement with the Department of Elderly Affairs for the Department of Elder Affairs' Comprehensive Assessment and Review for Long-Term Care Services (CARES) program to conduct these assessments that will be funded under Title XIX of the Social Security Act to the extent permissible under federal law.

Amends s. 393.0673, F.S. by increasing administrative fines imposed on facilities from \$500 to \$1,000 for each violation and from \$5,000 to \$10,000 for total aggregate fines.

- Amends s. 393.22, F.S., by stating the Department of Children and Family Services and the Agency for Health Care Administration must ensure that whenever a sufficient number of persons move from an institution serving persons with developmental disabilities thereby allowing an entire residential unit to close, no less than 80 percent of the direct costs of providing services to those persons who had resided on that unit will be transferred to community services.
- Amends s. 409.906, F.S., 1998 Supp., by specifying that the Governor may direct the Agency for Health Care Administration to amend the Medicaid State Plan by deleting the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled" if it is necessary to safeguard the state's systems of providing services to elderly and disabled persons. This action must be done under the notice and review provisions of s. 216.177, F.S. The bill modifies the definition of "Intermediate Care Facility for the Developmentally Disabled Services" by deleting the provision that these facilities are owned and operated by the state. The bill

specifies that these facilities are licensed and certified as a Medicaid Intermediate Care Facility for the Developmentally Disabled.

- Amends s. 409.9127, F.S., by including services to disabled persons in the preauthorization and concurrent utilization review process and the conflict of interest standards developed and enforced by the Agency for Health Care Administration. The bill states that the Agency for Health Care Administration must assist the Department of Children and Family Services in assessing the level of need and medical necessity for prospective residents of intermediate care facilities for developmental disabilities after October 1, 1999. Only those persons who are assessed pursuant to ch. 393.065(4), F.S., and are then placed in an ICF/DD are eligible for reimbursement by the Medicaid program under ch. 409, F.S.
- Creates new sections of ch. 400, F.S., to transfer statutory authority for the licensure of Intermediate Care Facilities for the Developmentally Disabled in the chapter pertaining to "health related facilities" and under the auspices of the Agency. Provisions are included in the bill for elements such as background screening, a provisional license, proof of financial ability to operate a facility or program under ch. 400, F.S., specifications of the application, grounds for action against a licensee, receivership proceedings, rules and classification of deficiencies, right of entry into the premises for inspecting facilities, injunctive proceedings, imposing a moratorium, and penalty fines.
- The bill directs the Department of Children and Family Services to use appropriations for developmental services to design a system of providing services for persons with developmental disabilities that is consumer-directed and choice-based. The department is directed to institute not more than three pilot programs to test this payment model. Each of these models must be different. A progress report to the appropriate legislative committees must be submitted by the department by December 1, 2000, and by December 1, 2001. The bill specifies that these pilot programs will be reviewed by the Legislature prior to July 1, 2001, and on that date, the section of the bill containing the pilot programs is repealed.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Changes sections 393.062, 393.065, 393.066, 393.0673, 393.22, 409.906, 409.9127, and creates sections 400.961, 400.962, 400.963, 400.964, 400.965, 400.966, 400.967, and 400.968, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends s. 393.062, F.S., specifying that it is a finding of the Legislature that the eligibility criteria for Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) contained in Florida's Medicaid state plan that are in effect when this act becomes law are essential to the system of residential services for persons with developmental disabilities.

SECTION 2: Amends s. 393.065, F.S., to provide that the department must assess an individual's level of need and evaluate the medical necessity of their placement in an intermediate care facility for the developmentally disabled (ICF/DD) after October 1, 1999. The bill states that the department may enter into an agreement with the Department of Elderly Affairs for the Department of Elder Affairs' Comprehensive Assessment and Review for Long-Term Care Services (CARES)

program to conduct these assessments that will be funded under Title XIX of the Social Security Act to the extent permissible under federal law.

SECTION 3: Amends s. 409.9127, F.S., by including services to disabled persons in the preauthorization and concurrent utilization review process and the conflict of interest standards developed and enforced by the Agency for Health Care Administration. The bill states that the Agency for Health Care Administration must assist the Department of Children and Family Services in assessing the level of need and medical necessity for prospective residents of intermediate care facilities for developmental disabilities after October 1, 1999. Only those persons who are assessed pursuant to ch. 393.065(4), F.S., are eligible for reimbursement by the Medicaid program under ch. 409, F.S.

SECTION 4: Amends s. 393.22, F.S., by stating the Department of Children and Family Services and the Agency for Health Care Administration must ensure that whenever a sufficient number of persons move from an institution serving persons with developmental disabilities thereby allowing an entire residential unit to close, no less than 80 percent of the direct costs of providing services to those persons who had resided on that unit will be transferred to community services.

SECTION 5: Amends s. 393.0673, F.S. to increase administrative fines imposed on facilities from \$500 to \$1,000 for each violation and from \$5,000 to \$10,000 for total aggregate fines.

SECTION 6: Amends s. 409.906, F.S., 1998 Supp., by specifying that the Governor may direct the Agency for Health Care Administration to amend the Medicaid State Plan by deleting the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled" if it is necessary to safeguard the state's systems of providing services to elderly and disabled persons. This action must be done under the notice and review provisions of s. 216.177, F.S. The bill modifies the definition of "Intermediate Care Facility for the Developmentally Disabled Services" by deleting the provision that these facilities are owned and operated by the state. The bill specifies that these facilities are licensed and certified as a Medicaid Intermediate Care Facility for the Developmentally Disabled.

SECTION 7: Amends s. 409.908, F.S., 1998 Supp., by removing the language specifying that the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled" would only participate in the Medicaid Waiver program.

SECTION 8: Creates new sections of ch. 400, F.S., to transfer statutory authority for the licensure of Intermediate Care Facilities for the Developmentally Disabled in the chapter pertaining to "health related facilities" and under the auspices of the Agency. Provisions are included in the bill for elements such as background screening, a provisional license, proof of financial ability to operate a facility or program under ch. 400, F.S., specifications of the application, grounds for action against a licensee, receivership proceedings, rules and classification of deficiencies, right of entry into the premises for inspecting facilities, injunctive proceedings, imposing a moratorium, and penalty fines.

SECTION 9: The bill directs the Department of Children and Family Services to use appropriations for developmental services to design a system of providing services for persons with developmental disabilities that is consumer-directed and choice-based. The department is directed to institute not more than three pilot programs to test this payment model. Each of these models must be different. A progress report to the appropriate legislative committees must be submitted by the department by December 1, 2000, and by December 1, 2001. The bill specifies that these pilot programs will be reviewed by the Legislature prior to July 1, 2001, and on that date, the section of the bill containing the pilot programs is repealed.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

If direct service funds are transferred from a public or private institution's budget as a result of a residential unit closing, the community to which the funds are transferred will receive additional services for persons with developmental disabilities.

D. FISCAL COMMENTS:

The bill authorizes the Governor to have Florida withdraw from providing ICF/DD services. While this would represent a loss of over \$200 million in annual federal reimbursement, it is contemplated as an option only to protect the remaining \$4 billion in federal Medicaid reimbursement.

Licensure of the ICF/DDs will not have a workload impact on the Agency for Health Care Administration. Licensure was regularly conducted prior to a federal court striking a 1996 licensure law. The Agency for Health Care Administration lost none of its pre-1996 resources, so the workload impact should be within current resources.

No less than 80 percent of the costs to provide direct services would be transferred out of an institution's budget to community services if a residential unit is closed. Since only direct care costs are included, not fixed costs, the savings to the institution should substantially outweigh the amount transferred. No closing of residential units is required or suggested in the bill.

STORAGE NAME: h2275.hhs

DATE: April 21, 1999

PAGE 8

It is estimated that eligibility determination and prior authorization by the CARES teams in the Department of Elderly Affairs would require 5 FTEs for a total cost of \$202,137 (\$151,607 is federal trust fund and \$43,046 is recurring state general revenue) for FY 1999-2000 (nonrecurring general revenue is \$7,484).

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON HEALTH AND HUMAN SERVICES APPROPRIATIONS:

Prepared by:

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