

By the Committee on Health and Human Services Appropriations;
and Senator Peadar

603-2262-07

1 A bill to be entitled

2 An act relating to home and community-based

3 services for persons with developmental

4 disabilities; amending s. 393.0661, F.S.;

5 requiring the Agency for Persons with

6 Disabilities, in consultation with the Agency

7 for Health Care Administration, to develop and

8 implement standards for a three-tiered waiver

9 system for the purpose of serving clients with

10 developmental disabilities; providing

11 requirements and limitations with respect to

12 each tier; requiring the Agency for Persons

13 with Disabilities to seek federal approval as

14 necessary to implement the waiver system;

15 requiring the agency to adopt rules providing

16 eligibility criteria; deleting authorization

17 for the agency to adopt certain emergency

18 rules; providing an effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Section 393.0661, Florida Statutes, is

23 amended to read:

24 393.0661 Home and community-based services delivery

25 system; comprehensive redesign.--The Legislature finds that

26 the home and community-based services delivery system for

27 persons with developmental disabilities and the availability

28 of appropriated funds are two of the critical elements in

29 making services available. Therefore, it is the intent of the

30 Legislature that the Agency for Persons with Disabilities

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1 shall develop and implement a comprehensive redesign of the
2 system.

3 (1) The redesign of the home and community-based
4 services system shall include, at a minimum, all actions
5 necessary to achieve an appropriate rate structure, client
6 choice within a specified service package, appropriate
7 assessment strategies, an efficient billing process that
8 contains reconciliation and monitoring components, a redefined
9 role for support coordinators that avoids potential conflicts
10 of interest, and ensures that family/client budgets are linked
11 to levels of need.

12 (a) The agency shall use an assessment instrument that
13 is reliable and valid. The agency may contract with an
14 external vendor or may use support coordinators to complete
15 client assessments if it develops sufficient safeguards and
16 training to ensure ongoing inter-rater reliability.

17 (b) The agency, with the concurrence of the Agency for
18 Health Care Administration, may contract for the determination
19 of medical necessity and establishment of individual budgets.

20 (2) A provider of services rendered to persons with
21 developmental disabilities pursuant to a federally approved
22 waiver shall be reimbursed according to a rate methodology
23 based upon an analysis of the expenditure history and
24 prospective costs of providers participating in the waiver
25 program, or under any other methodology developed by the
26 Agency for Health Care Administration, in consultation with
27 the Agency for Persons with Disabilities, and approved by the
28 Federal Government in accordance with the waiver.

29 (3) The agency, in consultation with the Agency for
30 Health Care Administration, shall develop and implement

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1 standards for a three-tiered waiver system to serve clients
2 with developmental disabilities.

3 (a) Tier one shall be limited to clients whose
4 services are paid under the home and community-based services
5 waiver, whose higher level of service needs are essential to
6 avoid institutionalization, or who possess behavioral concerns
7 that are exceptional in intensity, duration, or frequency and
8 present a substantial risk of harm to themselves or others.

9 (b) Tier two shall be limited to clients whose service
10 needs are paid under the home and community-based waiver.
11 However, residential habilitation services under tier two
12 shall be limited to the number of hours medically necessary,
13 but may not exceed 8 hours per day. Personal care assistance
14 services shall be limited to the number of hours medically
15 necessary, but may not exceed 150 hours per calendar month.
16 Total annual expenditures under this waiver shall be capped at
17 \$30,000 per client. Clients served through tier two include,
18 but need not be limited to, clients requiring residential
19 placements. All clients receiving services through the home
20 and community-based waiver on March 1, 2007, shall be moved to
21 tier two, with the exception of clients who:

22 1. Have service needs that exceed \$30,000 for
23 intensive medical or adaptive needs and that are essential for
24 avoiding institutionalization; or

25 2. Possess behavioral concerns that are exceptional in
26 intensity, duration, or frequency and present a substantial
27 risk of harm to themselves or others.

28 (c) Tier three, the family and supported living
29 waiver, shall include, but need not be limited to, clients in
30 independent or supported living situations or clients who live
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1 in their family home. Total annual expenditures under this
2 waiver shall be capped at \$14,792 per client.

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4 The agency, in consultation with the Agency for Health Care
5 Administration, shall seek federal approval as needed to carry
6 out the provisions of this subsection, including placing
7 limitations or restrictions on the home and community-based
8 waiver. The agency may adopt rules providing for eligibility
9 criteria, rate modifications, and procedures for administering
10 this subsection.

11 ~~(3) Pending the adoption of rate methodologies~~
12 ~~pursuant to nonemergency rulemaking under s. 120.54, the~~
13 ~~Agency for Health Care Administration may, at any time, adopt~~
14 ~~emergency rules under s. 120.54(4) in order to comply with~~
15 ~~subsection (4). In adopting such emergency rules, the agency~~
16 ~~need not make the findings required by s. 120.54(4)(a), and~~
17 ~~such rules shall be exempt from time limitations provided in~~
18 ~~s. 120.54(4)(c) and shall remain in effect until replaced by~~
19 ~~another emergency rule or the nonemergency adoption of the~~
20 ~~rate methodology.~~

21 (4) Nothing in this section or in any administrative
22 rule shall be construed to prevent or limit the Agency for
23 Health Care Administration, in consultation with the Agency
24 for Persons with Disabilities, from adjusting fees,
25 reimbursement rates, lengths of stay, number of visits, or
26 number of services, or from limiting enrollment, or making any
27 other adjustment necessary to comply with the availability of
28 moneys and any limitations or directions provided for in the
29 General Appropriations Act.

30 (5) The Agency for Persons with Disabilities shall
31 submit quarterly status reports to the Executive Office of the

1 Governor, the chair of the Senate Ways and Means Committee or
2 its successor, and the chair of the House Fiscal Council or
3 its successor regarding the financial status of home and
4 community-based services, including the number of enrolled
5 individuals who are receiving services through one or more
6 programs; the number of individuals who have requested
7 services who are not enrolled but who are receiving services
8 through one or more programs, with a description indicating
9 the programs from which the individual is receiving services;
10 the number of individuals who have refused an offer of
11 services but who choose to remain on the list of individuals
12 waiting for services; the number of individuals who have
13 requested services but who are receiving no services; a
14 frequency distribution indicating the length of time
15 individuals have been waiting for services; and information
16 concerning the actual and projected costs compared to the
17 amount of the appropriation available to the program and any
18 projected surpluses or deficits. If at any time an analysis by
19 the agency, in consultation with the Agency for Health Care
20 Administration, indicates that the cost of services is
21 expected to exceed the amount appropriated, the agency shall
22 submit a plan in accordance with subsection (4) to the
23 Executive Office of the Governor, the chair of Senate Ways and
24 Means Committee or its successor, and the chair of the House
25 Fiscal Council or its successor to remain within the amount
26 appropriated. The agency shall work with the Agency for Health
27 Care Administration to implement the plan so as to remain
28 within the appropriation.

29 Section 2. This act shall take effect July 1, 2007.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1124

4 Requires the Agency for Persons with Disabilities (APD) in
5 consultation with the Agency for Health Care Administration
(AHCA) to develop standards for a three-tiered waiver system.

6 Tier one will be limited to clients who:

- 7 o have service needs that exceed \$30,000 for intensive
8 medical or adaptive needs and that are essential to
9 avoid institutionalization; or
- 10 o possess behavioral concerns that are exceptional in
11 intensity, duration, or frequency, and present a
12 substantial risk of harm to themselves or others.
13 Services will not be capped, but must be medically
14 necessary. This tier is similar to the current HCBS
15 waiver.

16 Tier two will be similar to the current HCBS waiver. The
17 residential rehabilitation services per client will be capped
18 at 8 hours per day and personal care services will be capped
19 at 150 hours per calendar month. The total annual expenditure
20 per client will be capped at \$30,000. All clients receiving
21 services through the HCBS Waiver on March 1, 2007 will be
22 moved to tier two except clients who:

- 23 o have service needs that exceed \$30,000 for intensive
24 medical or adaptive needs and that are essential to
25 avoid institutionalization; or
- 26 o possess behavioral concerns that are exceptional in
27 intensity, duration, or frequency, and present a
28 substantial risk of harm to themselves or others.

29 Tier three will be the current family and supported living
30 waiver with total annual expenditures capped at \$14,792 per
31 client.