

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 Policy and Steering Committee on Ways and Means

BILL: CS/CS/SB 1468

INTRODUCER: Policy and Steering Committee on Ways and Means, Committee on Health and Human Services Appropriations and Senator Peaden

SUBJECT: Home and Community-based Services

DATE: March 26, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bradford	Hansen	HA	Fav/CS
2.	Bradford	Coburn	WPSC	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill:

- Requires the Agency for Persons with Disabilities (APD) to impose an expenditure cap of \$120,000 in tier one in the Home and Community Services waiver and reduces the expenditure caps in tiers two, three, and four by ten percent. The provision reducing the expenditure caps in tiers two, three, and four has an effective date contingent upon the state not receiving the enhanced Federal Medicaid Assistance Percentage (FMAP) rate for the period January 1, 2011, through June 30, 2011.
- Eliminates the provision of behavior assistant services provided in standard or behavior focus group homes and requires the APD to amend its contracts as necessary. The elimination of this provision has an effective date contingent upon the state not receiving the enhanced FMAP rate for the period January 1, 2011, through June 30, 2011.
- Creates s. 393.0662, F. S., directing the APD to develop individual budgets (iBudgets) for delivery of Home and Community-Based Services. Once the iBudget system is implemented the agency will be able to stay within the funds appropriated in the Home

and Community-Based Services waiver and eliminate deficits and program overruns the agency has been addressing each year.

If the enhanced FMAP rate for the period January 1, 2011, through June 30, 2011 is not received the estimated fiscal impact of the tier and behavioral assistant services adjustments in Fiscal Year 2010-11 is a reduction of \$13.8 million, of which \$5.3 is general revenue. The annualized fiscal impact is an estimated reduction of \$25.7 million, of which \$9.9 million is general revenue. The fiscal impact for the development stage of the iBudget system is indeterminate.

If the enhanced FMAP rate is received, the estimated fiscal impact from establishing an expenditure cap of \$120,000 on tier one in Fiscal Year 2010-11 is a reduction of \$6.3 million, of which \$2.4 is general revenue. The annualized fiscal impact is an estimated reduction of \$12.6 million, of which \$4.8 million is general revenue.

This bill amends s. 393.0661, F. S., and creates s. 393.0662, F. S.

II. Present Situation:

The Agency for Persons with Disabilities (APD or the agency) has the responsibility to provide services to persons with developmental disabilities. A developmental disability is a disorder or syndrome attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and constitutes a substantial handicap expected to continue indefinitely.¹ The agency annually serves about 30,000 Floridians with developmental disabilities. As of February 1, 2010, there were 18,861 individuals awaiting services.

An individual is eligible for services if he or she has a developmental disability and is three years of age or older. Children who are between the ages of three and five years of age and are at high risk of having a developmental disability are also eligible for services. Services provided by the agency include community services and supports as well as a limited institutional program. The agency determines eligibility, assesses service needs, and provides funding for purchasing the supports and services identified in assessments.

The range of services and supports available to an individual include employment and training services, environmental adaptive equipment, personal or family supports, residential habilitation, support coordination, and therapeutic supports. There are medical requirements specific to a particular service or support in addition to the general eligibility criteria for services from the APD. The majority of services are provided through one of two federal Medicaid waivers.

In 2007, the legislature directed the APD to redesign its Home and Community-Based Services waiver.² Section 393.0661, F.S., was modified to require a four tier delivery system for waiver services.

- Tier one includes only the most complex clients without a cap on expenditures.³

¹ Section 393.063(9), F.S.

² Chapter 2007-64, L.O.F.

³ Section 393.0661(3)(a), F.S..

- Tier two is limited to clients who are authorized for five or more hours of residential habilitation or require more than six hours of in-home support services per day. Tier two annual expenditures are capped at \$55,000.⁴
- Tier three includes clients requiring residential placements, clients in independent or supported living situations, and clients who live in their family homes. Annual expenditures for clients in tier three are capped at \$35,000.⁵
- Tier four is the family and supported living waiver and is capped at \$14,792 per client per year.⁶

One of the services available to waiver clients is behavior assistant services. These are one-on-one activities, designated by a licensed behavioral analyst in a client's behavior analysis service plan, and carried out by a behavior analyst assistant, in the client's home or in other community settings. These services are provided for clients for whom traditional residential habilitation services have been unsuccessful or are considered to be inappropriate for health or safety reasons; and for children who require behavioral services, but for whom providing services in the family home will likely be more effective and least restrictive. Services are intended to be provided for a limited time and discontinued as the support persons gain skills and abilities to assist the recipient to function in more independent and less challenging ways.⁷

Individual Budget or "iBudget"

In an effort to control funding deficits and reduce the growing waitlist, the Florida Legislature included proviso language in the 2009 GAA requiring the APD in consultation with the Agency for Health Care Administration to develop a plan to establish individual budgets for individuals enrolled in the home and community based services waivers. On February 1, 2010,⁸ the plan was submitted to the Governor and Legislature.

III. Effect of Proposed Changes:

Section 1 amends s. 393.0661, F.S., to impose or revise the expenditure caps on each of the four tiers and to eliminate the provision of behavior assistant services.

The bill directs the APD to implement an expenditure cap of \$120,000 for clients in tier one in the Home and Community Based Services Waiver. This will affect approximately 354 individuals.

The bill directs the APD to implement an expenditure reduction of ten percent in tiers two, three, and four in the Home and Community Based Services waiver. This will affect an estimated 29,535 individuals.

⁴ Section 393.0661(3)(b), F.S.

⁵ Section 393.0661(3)(c), F.S.

⁶ Section 393.0661(3)(d), F.S.

⁷ Agency for Health Care Administration, Florida Medicaid Developmental Disabilities Waiver Services Coverage and Limitations Handbook, "Behavior Assistant Services", (Tallahassee, FL, July 2007), 2-24.

⁸ Report to the Legislature on the Agency's Plan for Implementing Individual Budgeting "iBudget," February 1, 2010.

- Tier one annual expenditures are capped at \$120,000
- Tier two annual expenditures are capped at \$49,500
- Tier three annual expenditures are capped at \$31,500
- Tier four annual expenditures are capped at \$13,313

This bill directs the APD to eliminate behavior assistant services in a standard or behavior focus group home in the Home and Community Based Services waiver program and for the behavior analyst located in a these settings to train direct care staff to correctly and appropriately implement behavioral interventions.

Section 2 creates s. 393.0662, F. S., directing the APD to develop individual budgets (iBudgets) for delivery of Home and Community-Based Services.

The committee substitute provides additional direction to the APD in eliminating behavior assistant services only in behavior focus group homes. There is no fiscal impact to this language change.

The bill creates section 393.0662, Florida Statutes, which requires APD in consultation with the Agency for Health Care Administration, to develop and implement a comprehensive redesign of the service delivery system using individual budgets, or iBudgets, as the basis for allocating funds appropriated for the Home and Community Based Services waiver among eligible enrolled clients pursuant to the following:

- Defines the service delivery system using individual budgets as the iBudget.
- Requires the agency to establish an iBudget for each individual served by the HCSB waiver. The iBudget system allocates the agency's appropriated funds for waiver services among eligible, enrolled clients pursuant to certain provisions.
- Specifies that in developing the client's iBudget, the agency use an allocation algorithm and methodology. The algorithm and methodology may consider individual characteristics which may include, but not be limited to, a client's age and living setting, information from a formal assessment instrument which has been determined by the agency to be valid and reliable, and information from other assessment processes.
- Specifies that the agency has the authority to adjust the algorithm based on the individual having certain extraordinary needs or circumstances. The agency may use the services of an independent actuary in determining the portions to be reserved for certain extraordinary needs or circumstances.
- Specifies that the client's annual expenditures for waiver services may not exceed the limits of their iBudget and that the total of the clients' projected annual iBudget expenditures shall not exceed the agency's appropriation for waiver services.
- Requires the Agency for Health Care Administration, in consultation with APD to seek federal approval, including amending current waivers and requesting a new waiver, and amending contracts as necessary to implement the iBudget system for waiver services.
- Specifies that APD transition all eligible, enrolled clients to the iBudget system in a phased-in process. While the agency is phasing-in the iBudget system, the agency may continue to serve some untransitioned clients under the four-tiered waiver system. APD shall ensure that no client experiences more than one-half of any expected overall

- increase or decrease to his or her existing annualized cost plan for the first year the client is provided an iBudget.
- Requires that clients must use all available State Plan Medicaid services, school-based services, private insurance and other benefits, and any other resources that may be available to the client before using funds from their iBudget to pay for supports and services.
 - Specifies that rates for services established through the Agency for Health Care Administration rules shall be designated as a maximum rather than fixed amounts for individuals who receive an iBudget, except for services specifically identified in rule which the agency determines are not appropriate for negotiation and may include but not be limited to residential habilitation services.
 - Requires APD to ensure that clients and caregivers have access to training and education to inform them about the iBudget system and to enhance their ability for self-direction.
 - Specifies that APD collect data to evaluate the implementation and outcomes of the iBudget system and authorizes APD and the Agency for Health Care Administration to adopt rules for the iBudget system.

Section 3 provides an effective date of July 1, 2010.

The provision eliminating behavior assistant services provided in standard or behavior focus group homes and the provision reducing the expenditure caps in tiers two, three, and four by ten percent have an effective date contingent upon the state not receiving the enhanced FMAP rate for the period January 1, 2011, through June 30, 2011. This FMAP enhancement increases the share of Medicaid costs paid by the federal government from the actual match rate of 55.45 percent for federal fiscal year 2011 to an enhanced rate of 67.64 percent.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Private sector providers will see a reduction to their rates if the state does not receive the enhanced FMAP rate for the second half of fiscal year 2010-2011.

C. Government Sector Impact:

If the enhanced FMAP rate is not provided, the bill has an estimated annual savings of \$25.7 million related to:

- limiting expenditures in the Home and Community Based Service waiver for individuals in all four tiers, and
- increasing efficiencies in behavior assistant services.

If the enhanced FMAP rate is received, the bill has an estimated annual savings of \$12.6 million, of which \$4.8 million is general revenue related to limiting expenditures in the Home and Community Based Service waiver for individuals in tier one.

While the fiscal impact on the implementation of the iBudget system is indeterminate, it is anticipated that clients and the agency will be able to operate within annual appropriated amounts once fully implemented, and thus, eliminate recurring deficits that the agency has faced in past years.

According to the APD's report, individual budgets would not change the fundamental reality of the state's budget process. The Legislature will continue to decide how much to appropriate to the APD and the agency will have a lawful obligation to operate within this amount. Policymakers will still have the prerogative to reduce or increase the agency's budget. However, in contrast to the current system, individual budgeting would allow any budget adjustments—up or down—to be made more equitably and in a fashion that keeps maximum control about service decisions in the hands of the consumer and his or her family.

VI. Technical Deficiencies:

None.

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.)

CS by Policy and Steering Committee on Ways and Means on March 26, 2010:

The committee substitute provides that the elimination of behavior assistant services in standard or behavioral group homes and the reductions to tiers two, three, and four in the Home and Community Based Service waiver are contingent upon the state failing to receive the enhanced FMAP rate for the period January 1, 2011, through June 30, 2011.

CS by Health and Human Services Appropriations on March 19, 2010:

Senate Bill 1468 was originally filed as a shell bill expressing legislative intent to revise laws relating to Health and Human Services. The Health and Human Services Appropriations Committee adopted the committee substitute as described in this bill analysis.

The Committee Substitute:

- directs the APD to impose or revise the expenditure caps on each of the four tiers and to eliminate the provision of behavior assistant services;
- eliminates behavioral assistant services in standard or behavioral group homes; and
- creates s. 393.0662, F. S., directing the APD to develop individual budgets (iBudgets) for delivery of Home and Community-Based Services.

- B. **Amendments:**

None.