

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 Children, Families, and Elder Affairs

BILL: SB 7054

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Agency for Persons with Disabilities

DATE: January 21, 2016 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Crosier</u>	<u>Hendon</u>	_____	CA Submitted as a Committee Bill

I. Summary:

SB 7054 creates and amends certain statutes to provide the Agency for Persons with Disabilities (“agency” or “APD”) the ability to assign priority of clients to the waiting list; allow family members of active duty service members to receive waiver services; conduct utilization reviews; allow contractors to use agency data management systems; perform annual reviews of persons involuntarily admitted to residential services and allows for the use of video and audio monitoring of the comprehensive transitional education programs facilities.

The bill allows certain individuals to receive waiver services if the parent or legal guardian is an active-duty military service member and at the time of transfer to this state, the individual was receiving waiver-based services in another state. The bill provides that individuals that are 18 but not yet 22 and staying in extended foster care are eligible to receive foster care services and waiver services. The bill directs persons or entities under contract with the agency to use the agency data management systems to document service provision to clients. The bill clarifies the process used in development of a client’s iBudget and adds transportation as a service that can be considered for an increase when determining the allocation of funds to the client’s iBudget.

Additionally, the bill directs the agency to conduct utilization review activities in both public and private intermediate care facilities as necessary to meet the requirements of the approved Medicaid state plan and federal law. The bill provides that persons involuntarily admitted to residential services by court order shall have such admission orders reviewed annually by a qualified evaluator employed by the agency. Such reviews shall consider the appropriateness of placement, treatment, habilitation, and rehabilitation in the residential setting.

The bill revises the purposes of comprehensive transitional education programs, authorizes the agency to approve the admission or readmission of individuals to the program and provides for video and audio recording and monitoring of common areas and program activities in the facilities. The bill would allow the establishment of a residential facilities that meets with local land use and zoning requirements that does not exceed a capacity of 15 persons.

The bill has an effective date of July 1, 2016.

II. Present Situation:

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, 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.¹

Individuals who meet Medicaid eligibility requirements, including individuals who have Down syndrome², may choose to receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver for individuals with developmental disabilities administered by APD or in an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

The HCBS waiver, known as iBudget Florida, offers 27 supports and services to assist individuals to live in their community. Such services are not covered under the regular Medicaid program. Examples of services provided include residential habilitation, behavioral services, companion, adult day training, employment services, and physical therapy.³ Services provided through the HCBS waiver enable children and adults to live in the community in their own home, a family home, or in a licensed residential setting, thereby avoiding institutionalization.

While the majority of individuals served by APD live in the community, a small number live in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DD's are defined in s. 393.063(22), F.S., as a residential facility licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400. ICF/DD's are considered institutional placements and provide intermediate nursing care.

Home- and Community-Based Services Waiver (iBudget Florida)

The iBudget Florida HCBS waiver program was developed in response to legislative proviso requiring a plan for an individual budgeting approach for improving the management of the waiver program.⁴ iBudget Florida involves the use of an algorithm, or formula, to set individuals' funding allocations for waiver services. The statute provides for individuals to receive additional funding in addition to that allocated through the algorithm under certain conditions (such as if they have a temporary or permanent change in need, or an extraordinary

¹ s. 393.063(9), F.S.

² s. 393.0662(1), F.S., provides eligibility for individuals with a diagnosis of Down syndrome.

³ Agency for Persons with Disabilities, Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2015-16, November 2015.

⁴ Agency for Persons with Disabilities, Report to the Legislature on the Agency's Plan for Implementing Individual Budgeting "iBudget Florida" (February 1 2010), available at <http://apd.myflorida.com/ibudget/rules-regs.htm> (last accessed Dec. 15, 2015).

need that the algorithm does not address)⁵ The agency phased in the implementation of iBudget Florida, with the final areas transitioned from the previous tiered waiver system on July 1, 2013.⁶

However, the iBudget Florida program has been the subject of litigation. In September 2014, in response to a ruling by the 1st District Court of Appeal that that the program's rules were invalid, APD reset approximately 14,000 individuals' budget allocations to higher amounts.⁷ APD began rulemaking to adopt new rules to replace the invalid ones.⁸ The agency, in conjunction with stakeholders, reviewed the algorithm used in the program and has filed for the adoption of rules providing a revised algorithm and related funding calculation methods.⁹ iBudget statutes were amended by the 2015-16 implementing bill to allow additional funding beyond that allocated by the algorithm for transportation to a waiver-funded adult day training program or to employment under certain conditions.¹⁰

Waiver Enrollment Prioritization

As of December 14, 2015, 31,665 individuals were enrolled on the iBudget Florida waiver.¹¹ The majority of waiver enrollees live in a family home with a parent, relative, or guardian. The Legislature appropriated \$994,793,906 for Fiscal Year 2015-2016 to provide services through the HCBS waiver program, including federal match of \$601,153,957.¹² However, this funding is insufficient to serve all persons desiring waiver services. To enable the agency to remain within legislative appropriations, waiver enrollment is limited. Accordingly, APD maintains a waiting list for waiver services. Prioritization for the wait list is provided in s. 393.065(5), F.S., and also in the FY 15-16 implementing bill.¹³ Those Medicaid eligible persons on the waiting list continue to receive Medicaid services.

Waiting list prioritization statutory language has been changed in the past two legislative sessions via the implementing bill. For example, Chapter 2015-222, Laws of Florida, allows:

- Youth with developmental disabilities who are in extended foster care to be served by both the waiver and the child welfare system. The implementing bill also specified the services that APD and the community-based care lead agencies shall provide such enrollees. Since July 1, 2015, 30 individuals in extended foster care have enrolled on the waiver.
- Individuals who are receiving home and community-based waiver services in other states to be enrolled on the waiver if their parent/guardian is on active duty and transfers to Florida. This bill language was also in the FY 14-15 implementing bill. Since July 1, 2014, 10 individuals have enrolled on the waiver pursuant to this section.¹⁴

⁵ s. 393.0662, F.S.

⁶ *Supra*, note 3.

⁷ Agency for Persons with Disabilities, iBudget Florida, <http://apd.myflorida.com/ibudget/> (last visited December 15, 2015).

⁸ Department of State, Florida Administrative Register, Vol. 40, No. 207, Oct. 23, 2014, pg. 4703-4706.

⁹ These rules have been challenged as well. DOAH Case No. 15-005803RP.

¹⁰ s. 21, Ch. 2015-222, Laws of Florida.

¹¹ E-mail from Caleb Hawkes, Deputy Legislative Affairs Director, Agency for Persons with Disabilities. RE: Requested information for bill analysis for APD agency bill (Dec. 14, 2015). On file with Children, Families and Seniors Subcommittee.

¹² Line 251, Ch. 2015-221, Laws of Florida.

¹³ s. 20, Ch. 2015-222, Laws of Florida.

¹⁴ *Supra*, note 11.

Client Data Management System

The Legislature re-appropriated \$1.5 million and appropriated \$1.359 million in funding in FY 2015-16 for the development of a client data management system to provide electronic verification of service delivery to recipients by providers, electronic billings for waiver services, and electronic processing of claims.¹⁵ APD must also meet federal requirements for administering the iBudget HCBS waiver, such as tracking, measuring, reporting, and providing quality improvement processes for 32 specific program performance measures in order to ensure the program funding can continue. The federal Center for Medicaid and Medicare Services further requires the state maintain a quality improvement system that requires data collection, data analysis, and reporting. However, APD currently relies heavily on manual processes and disparate systems to collect, analyze, and report data consistently, which is inefficient and error-prone.

APD anticipates providers will begin using the system during FY 2016-2017. Providers will need standard software and technology in order to log into the system.¹⁶

Direct Service Provider Staff Training and Professional Development

Pursuant to the waiver agreement with the federal government, APD must coordinate, develop, and provide specialized training for providers and their employees to promote health and wellbeing of individuals served.¹⁷ These requirements are currently included in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook. For example, the handbook outlines required basic training and required in-service training and continuing education for direct service providers on topics such as person-centered planning, maintaining health and safety, reporting to the abuse hotline, and first aid. Providers of certain services such as supported employment or supported living are required to take additional preservice certification training. Training is typically offered several ways, such as through the internet, DVD, and live classroom training.¹⁸

Utilization Review of Intermediate Care Facilities for the Developmentally Disabled

While the majority of individuals served by APD live in the community, a small number live in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DD's are defined in s. 393.063(22), F.S., as a residential facility licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400.¹⁹ There are approximately 2,866 private and public ICF beds in Florida.²⁰ Residents of these facilities need assistance with disability as well as nursing care.

¹⁵ SB 2500A, line 265.

¹⁶ Agency for Persons with Disabilities, Agency Analysis of 2016 Act Relating to the Agency for Persons with Disabilities.

¹⁷ *Id.*

¹⁸ Rule 59G-13.070, F.A.C. Handbook may be accessed at <http://apd.myflorida.com/ibudget/>

¹⁹ *Supra*, note 19.

²⁰ *Id.*

ICF/DD's are considered institutional placements rather than community placements. Accordingly, the federal government requires routine utilization reviews for individuals in ICF/DD's to ensure that individuals are not inappropriately institutionalized. Utilization reviews must be conducted by a group of professionals referred to as the Utilization Review Committee, which must include at least one physician and one individual knowledgeable in the treatment of intellectual disabilities.

The Medicaid state plan approved by the federal government provides that APD conduct utilization reviews. APD performs this function through an interagency agreement with AHCA.²¹

Involuntary admission to residential services.

When the court receives a petition for such involuntary admission, the courts have the jurisdiction to conduct a hearing and enter an order that a person with a developmental disability requiring involuntary admission to residential services receive care, treatment, habilitation, and rehabilitation services provided by the agency.²² When the court receives a petition for such involuntary admission, the agency and an examining committee (comprised of at least three disinterested experts in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities) must examine the person and provide a written report for the court. The report must explicitly document the extent that the person meets the criteria for involuntary admission.²³

A person charged with a felony and found to be incompetent to proceed due to an intellectual disability shall be committed to the agency. The agency is to provide appropriate training for the person. The court may order the person into a forensic facility designated by the agency for persons with intellectual disability or autism.

The person who has the intellectual disability must be represented by counsel at all stages of the judicial proceeding and, if the person is indigent and cannot afford counsel, a public defender must be appointed at least 20 days before the scheduled hearing.²⁴ The person must be physically present throughout the entire proceeding; however, if the person's attorney believes that the person's presence at the hearing is not in their best interest, their presence may be waived by the court once the court has seen the person and the hearing has commenced.²⁵

The court that enters the initial order for involuntary admission to residential services has continuing jurisdiction to enter orders to ensure the person is receiving adequate care, treatment, habilitation, and rehabilitation services.²⁶ The committing court may order a conditional release of the person based on an approved plan for providing community-based training. If at any time it is determined in a court hearing that the person on conditional release no longer requires court supervision follow-up care, the court shall terminate its jurisdiction and discharge the person.

²¹ *Id.*

²² s. 393.11(1), F.S.

²³ s. 393.11(4),(5), F.S.

²⁴ s. 393.11(6), F.S.

²⁵ s. 393.11(7), F.S.

²⁶ s. 393.11(11), F.S.

At any time and without notice, a person involuntarily admitted into residential services, or the person's parent or legal guardian, is entitled to file a petition for a writ of habeas corpus to question the cause, legality, and appropriateness of the involuntary admission.²⁷

Comprehensive transitional education program

Advoserv, a private provider, currently operates Carlton Palms, the only provider of comprehensive transitional education programs in Florida. This program is a group of jointly operating centers which provides educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors.²⁸ All services are to be temporary and delivered in a structured residential setting with the primary goal of incorporating the principle of self-determination in establishing permanent residence not associated with the comprehensive transitional education program.²⁹

Carlton Palms Education Center, operating in Lake County, is the comprehensive transitional education program provider for the agency as established in s. 393.18, F.S. As of December 31, 2015, the program currently serves 151 agency clients and 40 out-of-state clients. The total number of residents with maladaptive behaviors being provided with services may not exceed the licensed capacity of 120 residents.³⁰ Advoser holds two licenses for the provision of these programs which allows it to provide services for 240 individuals.

III. Effect of Proposed Changes:

Section 1 amends s. 393.063, F.S., updates current definitions and adds new terms.

Section 2 repeals s. 393.0641, F.S., which provided a program for the prevention and treatment of clients exhibiting severe self-injurious behavior. The agency currently serves individuals with self-injurious behaviors in the community in licensed homes that are specifically for intensive behavior issues. These services are funded under the iBudget waiver program.

Section 3 amends s. 393.065, F.S., to provide prioritization in Category 2 of the agency's home and community-based waiver of individuals with developmental disabilities in extended foster care to be served by both the agency and the community-based care organization. Specifically, the agency is to provide waiver services, including residential habilitation that supports individuals living in congregate settings, and the community-based care organization is to fund room and board at the prevailing foster care rate as well as provide case management and related services.

This section also specifies that after individuals formerly on the waiting list are enrolled in the waiver, individuals remaining on the waiting list are not substantially affected by agency action and not entitled to a hearing under s.393.125, F.S., or administrative proceedings under chapter 120, F.S.

²⁷ s. 393.11(13), F.S.

²⁸ s. 393.18, F.S.

²⁹ *Id.*

³⁰ s. 393.18(4), Note (4), F.S.

Section 4 amends s. 393.066, F.S., to require persons or entities under contract with the agency to use agency data management systems to document service provision to agency clients. Providers need to have the hardware and software necessary to use these systems, as established by the agency. Such contractors must also ensure any staff directly serving clients to meet agency requirements for training and professional development.

Section 5 amends s. 393.0662, F.S., to make permanent the Fiscal Year 2015-16 appropriations implementing bill language that adds transportation needs to the list of circumstances which may qualify individuals to receive additional funding beyond that calculated through the algorithm. The bill provides that the agency may grant a funding increase to individuals whose iBudget allocation is insufficient to pay for transportation services to a waiver-funded adult day training program or employment services and who have no other reasonable transportation options. This section also directs the agency to work with the Agency for Health Care Administration to amend the current home and community-based waiver to improve services for eligible and enrolled clients and to improve the delivery of services to persons with a dual diagnosis of a developmental disability and a mental health diagnosis.

Section 6 creates s. 393.0679, F.S., to require the agency to conduct utilization reviews in intermediate care facilities for individuals with developmental disabilities, both public and private, and requires the intermediate care facilities to cooperate with these reviews, including requests for information, documentation, and inspection. This will ensure that Florida continues to meet federal requirements for conducting utilization reviews pursuant to the approved Medicaid state plan.

Section 7 amends s. 393.11, F.S. to include a person with autism as a person who may require involuntary admission to residential services provided by the agency under this part.

Section 393.11(14), F.S., is created to provide a framework for an annual review of a court's order of person for involuntary admission to residential services. Reviews are required annually by a qualified evaluator under contract with the agency. The review shall consider whether the person continues to meet the criteria for involuntary admission for residential services. If the person is determined to meet the criteria, the court shall determine whether the person is in the most appropriate and least restrictive setting. The court must also determine whether the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting. The bill provides for notice requirements of the hearing to the appropriate state's attorney, if applicable, and the person's attorney and guardian or guardian advocate, if one is appointed.

Section 8 repeals s. 26 of chapter 2015-222, Laws of Florida, which requires that amendments made by the implementing bill to s. 393.18, F.S., expires July 1, 2016, and shall revert to text in existence on June 30, 2015, except for amendments enacted other than by the implementing bill are to be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of this text which expire pursuant to this section.

Section 9 reenacts and amends s. 393.18, F.S., to provide that the comprehensive transitional education program serve individuals who have developmental disabilities, severe maladaptive behaviors and co-occurring complex medical conditions, or a dual diagnosis of developmental

disability and mental illness. The bill provides that the clinical director of such program must hold a doctorate degree with a primary focus in behavior analysis, be a certified behavior analyst and have at least 1 year of experience in providing behavior analysis services for individuals with developmental disabilities.

Additionally, the bill requires the comprehensive transitional education program to include components of intensive treatment and education, intensive training and education, and transition services to avoid regression to more restrictive environments while preparing individuals for independent living. Any educational components of the program, including individual education plans, must be integrated with the local school district to the extent possible.

Beginning July 1, 2016, the agency may approve proposed admission or readmission of individuals into the comprehensive transitional education program for up to 2 years. The agency may allow an individual to live in this setting for a longer period of time subject to a clinical review conducted by the agency. To improve resident and staff safety, programs must provide continuous recorded video and audio monitoring in all residential common areas which recordings must be maintained for at least 60 days. The programs must operate and maintain video and audio monitoring systems that allows authorized agency staff to monitor program activities in real time from off-site locations.

The agency is authorized to license a facility that provides residential services for children with developmental disabilities and intensive behavioral problems as defined by the agency and, as of July 1, 2010, serve children who were served by the child welfare system and who have an open case in the State Automated Child Welfare Information System. The facility must be in compliance with all program criteria and local land use and zoning requirements and may not exceed a capacity of 15 children.

Section 10 amends s. 393.501, F.S., to clarify that rules adopted by the agency regarding comprehensive transitional education programs meet certain criteria.

Section 11 amends s. 383.141, F.S., to correct cross-references.

Section 12 amends s. 1002.385, F.S., to correct cross-references.

Section 13 provides an effective date of July 1, 2016.

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:

Direct care providers may see increased costs to provide data to the new agency client data management system. It is unknown what training and career development requirements or hardware and software requirements the agency will establish, or the extent to which providers will have to acquire hardware and software to meet those requirements. Providing utilization data is often a condition for contracting with the state.

C. Government Sector Impact:

The agency may experience increased costs of conducting additional involuntary commitment reviews. This cost is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections 393.063, 303.065, 393.066, 303.0662, 393.11, 393.18, 393.501, 383.141, and 1002.385.

This bill creates the following sections of the Florida Statutes: 393.0679, and 393.11(14)

This bill repeals the following section 393.0641, of the Florida Statutes and Section 26 of chapter 2015-222, Laws of Florida

IX. Additional Information:

A. Committee Substitute – Statement of 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.
