

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 Appropriations Subcommittee on Health and Human Services

BILL: SB 7054

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Agency for Persons with Disabilities

DATE: February 9, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Crosier	Hendon		CF Submitted as Committee Bill
1.	Brown	Pigott	AHS	Pre-meeting
2.			AP	

I. Summary:

SB 7054 creates and amends certain statutes to provide the Agency for Persons with Disabilities (APD) with the ability to assign priority to clients on the waiting list for receiving services from the home and community-based services Medicaid waiver; to allow family members of active duty service members to receive waiver services; conduct utilization reviews; to allow contractors to use APD data management systems; to allow annual reviews of persons involuntarily admitted to residential services; and to allow for the use of video and audio monitoring of the comprehensive transitional education program facilities.

The bill's fiscal impact is indeterminate.

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 syndrome,² 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

¹ See s. 393.063(9), F.S.

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

administered by the 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 HCBS waiver services 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 the APD live in the community, a small number live in ICF/DDs, which are defined in s. 393.063(22), F.S., as residential facilities licensed and certified by the Agency for Health Care Administration (AHCA). ICF/DDs are considered institutional placements and provide intermediate nursing care. There are approximately 2,866 private and public ICF/DD beds in Florida.⁴

Because ICF/DDs are considered institutional placements, the federal government requires routine utilization reviews for individuals in ICF/DDs 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 APD performs this utilization review function through an interagency agreement with the AHCA.⁵

Home and Community-Based Services Waiver (iBudget Florida)

The iBudget Florida program was developed in response to legislative direction requiring a plan for an individual budgeting approach for improving the management of the HCBS waiver program.⁶ iBudget Florida involves the use of an algorithm, or formula, to set individuals' funding allocations for waiver services. The law provides for individuals to receive funding in addition to that allocated through the algorithm under certain conditions, such as when they have a temporary or permanent change in need or an extraordinary need that the algorithm does not address.⁷ The APD phased-in the implementation of iBudget Florida, which was finalized on July 1, 2013.⁸

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,

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 *Id.*

⁵ *Id.*

⁶ 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).

⁷ See s. 393.0662, F.S.

⁸ *Supra*, note 3.

the APD reset approximately 14,000 individuals' budget allocations to higher amounts.⁹ The APD began rulemaking to adopt new rules to replace the invalid ones.¹⁰ The APD, in conjunction with stakeholders, reviewed the algorithm and has filed for the adoption of rules providing a revised algorithm and related funding calculation methods.¹¹

iBudget statutes were amended in 2015 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. However, the 2015 amendment sunsets July 1, 2016.

Waiver Enrollment Prioritization

As of December 14, 2015, 31,665 individuals were enrolled on the iBudget Florida waiver.¹² 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 \$601,153,957¹³. However, this funding is insufficient to serve all persons seeking waiver services. To enable the APD to remain within legislative appropriations, waiver enrollment is limited. Accordingly, the APD maintains a waiting list for waiver services. Prioritization for the wait list is provided in s. 393.065(5), F.S. Medicaid-eligible persons on the waiting list continue to receive Medicaid services not offered through iBudget Florida.

Waiting list prioritization statutory language has been changed, notwithstanding s. 393.065(5), F.S., in the past two legislative sessions. For example, s. 20 of ch. 2015-222, Laws of Florida, provides that:

- Youth with developmental disabilities who are in extended foster care may be served by both the waiver and the child welfare system;¹⁴ and
- An individual who has been receiving HCBS waiver services in other states may receive Florida HCBS waiver services if his or her parent or guardian is on active military duty and transfers to Florida.¹⁵

The provisions of s. 20 of ch. 2015-222, Laws of Florida, sunset on July 1, 2016.

⁹ Agency for Persons with Disabilities, iBudget Florida, <http://apd.myflorida.com/ibudget/> (last visited December 15, 2015).

¹⁰ Department of State, Florida Administrative Register, Vol. 40, No. 207, Oct. 23, 2014, pg. 4703-4706.

¹¹ These rules have been challenged as well. *See* DOAH Case No. 15-005803RP.

¹² 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 the Senate Committee on Children, Families and Seniors.

¹³ *See* Specific Appropriation 251, ch. 2015-232, Laws of Florida.

¹⁴ This provision also specifies the services that APD and the child welfare system must provide such enrollees. Since July 1, 2015, 30 individuals in extended foster care have been enrolled for HCBS waiver services.

¹⁵ This provision has been in effect since July 1, 2014, and since that time, 10 such individuals have been enrolled in the HCBS waiver. *Supra*, note 12.

Client Data Management System

In 2015, the Legislature appropriated a total of \$2.86 million¹⁶ for Fiscal Year 2015-2016 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.¹⁷ The 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 Centers for Medicaid & Medicare Services further requires the state maintain a quality improvement system that includes data collection, data analysis, and reporting. However, the APD currently relies heavily on manual processes and disparate systems to collect, analyze, and report data consistently.

The APD anticipates providers will begin using the system during Fiscal Year 2016-2017. Providers will need standard software and technology in order to log into the system.¹⁸

Direct Service Provider Staff Training and Professional Development

Under the waiver agreement with the federal government, the APD must coordinate, develop, and provide specialized training for providers and their employees to promote health and well-being of individuals served.¹⁹ 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 pre-service certification training. Training is typically offered several ways, such as through the Internet, DVD, and live classroom training.²⁰

Involuntary admission to residential services.

Courts have jurisdiction to conduct a hearing and enter an order that a person with a developmental disability requiring involuntary admission to residential services, is provided with care, treatment, habilitation, and rehabilitation services from the APD.²¹ When a court receives a petition for such involuntary admission, the APD and an examining committee (comprising 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

¹⁶ See Specific Appropriation 265 and section 41, ch. 2015-232, Laws of Florida.

¹⁷ See Specific Appropriation 265, ch. 2015-232, Laws of Florida.

¹⁸ Agency for Persons with Disabilities, *Agency Analysis of SB 7054* (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁹ *Id.*

²⁰ Rule 59G-13.070, F.A.C. Handbook may be accessed at <http://apd.myflorida.com/ibudget/>

²¹ See s. 393.11(1), F.S.

report must explicitly document the extent to which the person meets the criteria for involuntary admission.²²

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

A person who has an intellectual disability must be represented by counsel at all stages of these judicial proceedings, and, if the person is indigent and cannot afford counsel, a public defender must be appointed at least 20 days before a scheduled hearing.²³ 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 his or her best interest, the requirement may be waived by the court once the court has seen the person and the hearing has commenced.²⁴

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.²⁵ 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 and follow-up care, the court must terminate its jurisdiction and discharge the person.

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.²⁶

Comprehensive transitional education program

A private entity known as AdvoServ currently operates Carlton Palms, the only provider of comprehensive transitional education programs (CTEP) in Florida.²⁷ This program, operating in Lake County, is a group of jointly operating centers and 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

²² See s. 393.11(4),(5), F.S.

²³ See s. 393.11(6), F.S.

²⁴ See s. 393.11(7), F.S.

²⁵ See s. 393.11(11), F.S.

²⁶ See s. 393.11(13), F.S.

²⁷ See AdvoServ: Carlton Palms Educational Center, available at <http://www.advoserv.com/programs/florida-program/carlton-palms-education-center/> (last visited Feb. 4, 2016).

²⁸ See s. 393.18, F.S.

²⁹ *Id.*

Carlton Palms is the CTEP provider for the APD as established in s. 393.18, F.S. As of December 31, 2015, the program served 151 APD 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 AdvoServ holds two licenses for the provision of these services, allowing it to serve up to 240 individuals.

Under s. 25 of ch. 2015-222, Laws of Florida, the Legislature amended s. 393.18, F.S., to provide that, for CTEPs, each residential unit within a CTEP's component centers may not in any instance exceed 15 residents, except that CTEPs authorized to operate residential units with more than 15 residents before July 1, 2015, may continue to operate such units. The 2015 legislation also deleted provisions authorizing the licensure of CTEPs that met certain criteria on July 1, 1989, and other provisions relating to the maximization of federal funds and providing for children needing special behavioral services. These 2015 amendments to s. 393.18, F.S., will sunset on July 1, 2016, under s. 26 of ch. 2015-222, Laws of Florida.

III. Effect of Proposed Changes:

Section 1 amends s. 393.063, F.S., to update current definitions and add new terms.

Section 2 repeals s. 393.0641, F.S., which currently provides a program for the prevention and treatment of clients exhibiting severe self-injurious behavior. The APD 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 the APD's home and community-based waiver relating to individuals with developmental disabilities in extended foster care and allows such individuals to receive both HCBS waiver services and child welfare services. The bill also provides that after individuals formerly on the waiting list are enrolled in the waiver, individuals remaining on the waiting list are not substantially affected by APD action and are not entitled to a hearing under s.393.125, F.S., or administrative proceedings under chapter 120, F.S.

These provisions are comparable to current provisions that sunset on July 1, 2016, and will remain in effect in perpetuity unless amended by subsequent legislative action.

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

Section 5 amends s. 393.0662, F.S., to add transportation needs to the list of circumstances that may qualify individuals to receive additional funding beyond that calculated through the algorithm. The bill provides that the APD 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

³⁰ See s. 393.18(4), Note (4), F.S.

options. The bill also directs the APD 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 APD to conduct utilization reviews in intermediate care facilities for individuals with developmental disabilities (ICF/DDs), both public and private, and requires ICF/DDs 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.

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 APD.

Section 393.11(14), F.S., is created to provide a framework for an annual review of a court's order for involuntary admission to residential services. Reviews are required annually by a qualified evaluator under contract with the APD. The review must 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 must 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 ch. 2015-222, Laws of Florida, which currently provides that the amendments made to s. 393.18, F.S., under s. 25 of that law, will sunset on July 1, 2016.

Section 9 reenacts and amends s. 393.18, F.S., to provide that a CTEP serve individuals who have developmental disabilities, severe maladaptive behaviors, and co-occurring complex medical conditions, or has a dual diagnosis of developmental disability and mental illness. The bill provides that the clinical director of a CTEP must hold a doctoral degree with a primary focus in behavior analysis, be a certified behavior analyst, and have at least one year of experience in providing behavior analysis services for individuals with developmental disabilities.

Additionally, the bill requires a CTEP 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 APD may approve proposed admission or readmission of individuals into a CTEP for up to two years. The APD may allow an individual to reside in a CTEP for a longer period of time subject to a clinical review conducted by the APD. To improve resident and staff safety, CTEPs must provide continuous recorded video and audio monitoring in all residential common areas, and those recordings must be maintained for at least 60 days. The

programs must operate and maintain video and audio monitoring systems that allow authorized APD staff to monitor program activities in real-time from off-site locations.

The APD is authorized to license a facility that provides residential services for children with developmental disabilities and intensive behavioral problems as defined by the APD and which, as of July 1, 2010, serves children who have been served by the child welfare system and who have an open case in the State Automated Child Welfare Information System. Such a 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 APD regarding CTEPs 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:

Under SB 7054, direct care providers may see increased costs to provide data to the new APD client data management system. It is unknown what training and career development requirements or hardware and software requirements the APD will establish, or the extent to which providers will have to acquire hardware and software to meet those requirements.

C. **Government Sector Impact:**

The APD 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 section 393.0679 of the Florida Statutes.

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.