

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 899 Comprehensive Transitional Education Programs
SPONSOR(S): Children, Families & Seniors Subcommittee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Roth	Brazzell
2) Health & Human Services Committee	15 Y, 0 N	Roth	Calamas

SUMMARY ANALYSIS

The Agency for Persons with Disabilities (APD) provides services to persons with developmental disabilities through a Medicaid Home and Community-Based Services (HCBS) waiver. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, 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.

A Comprehensive Transitional Education Program (CTEP) is a group of jointly operating centers or units that provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors. Carlton Palms Educational Center (Carlton Palms), located in Mt. Dora, is the state's only CTEP. Carlton Palms provides 24-hour care for children and adults with intellectual and developmental disabilities, many of whom are dually diagnosed with mental and/or emotional disorders.

Under recently-issued federal Medicaid waiver guidelines, effective March 2019, the HCBS waiver funding will no longer be available for services provided at Carlton Palms. Additionally, there has been a shift for states to provide care to persons with developmental disabilities in home and community-based settings and move away from settings with institutional characteristics such as Carlton Palms.

As a result of state and federal reforms, as well as in response to incidents of verified abuse and neglect at Carlton Palms over the last several years, APD and Carlton Palms entered into a settlement agreement in 2016 agreeing that APD will not approve any new admissions of APD clients to Carlton Palms and that Carlton Palms will not accept any new residents. Furthermore, Carlton Palms will work with families, guardians, and other states or countries to transition its residents safely back to their places of origin or other agreed-upon locations for further services.

A receiver is a disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims. Currently, APD may petition a court for the appointment of a receiver for a residential habilitation center or a group home facility owned and operated by a corporation or partnership when certain conditions exist.

HB 899 authorizes APD to initiate receivership proceedings for CTEPs.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Agency for Persons with Disabilities

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, Down syndrome, Phelan-McDermid syndrome, 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 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).²

The HCBS waiver, known as iBudget Florida, offers 27 supports and services to assist individuals to live in the community. 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 their own home, a family home, or in a licensed residential setting, such as a group home, foster home, or residential habilitation center, 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(25), 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. As of March 2017, there are 2,806 private and public ICF/DD beds in Florida.⁴

Comprehensive Transitional Education Program

A Comprehensive Transitional Education Program (CTEP) is a group of jointly operating centers or units that provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors.⁵

CTEPs serve individuals with developmental disabilities with the most intensive of behavioral needs.⁶ A CTEP is designed to provide services to such individuals with the ultimate objective of allowing them to return to other less intensive settings within their own communities.⁷ There are presently two CTEPs

¹ S. 393.063(12), F.S.

² S. 393.0662, F.S.

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 Email from Robert Brown, Legislative Affairs Director, Agency for Persons with Disabilities, RE: updated agency analysis (March 6, 2017), on file with the Children, Families, and Seniors Subcommittee staff.

⁵ S. 393.18, F.S.

⁶ Agency for Persons with Disabilities, 2016 Agency Legislative Bill Analysis for HB 4037, November 9, 2015 (on file with Children, Families, and Seniors Subcommittee staff).

⁷ *Id.*

licensed in Florida, and both licenses are held by the same organization, Bellwether Behavioral Health, which operates the Carlton Palms Educational Center in Lake County.⁸

Prior to July 1, 2016, pursuant to s. 393.18, F.S., APD was only authorized to license CTEPs that were already in operation by July 1, 1989, or owned real property zoned and registered with APD to operate a CTEP by July 1, 1989. The statute also authorized licensure of facilities that provided residential services for children if those children had developmental disabilities needing special behavioral services and the residential facility served children with an open case in the child welfare system as of July 1, 2010. APD has interpreted this as a prohibition against licensing newer facilities.

The 2016 Legislature amended s. 393.18, F.S., to delete licensing requirements that had restricted APD's ability to license new CTEP providers. This means APD may now license new CTEP providers. No new providers been licensed as CTEP's.

Carlton Palms Educational Center

Carlton Palms Educational Center (Carlton Palms) located in Mt. Dora, is the state's only CTEP.⁹ Carlton Palms provides 24-hour care for children and adults with intellectual and developmental disabilities (IDD), many of whom are dually diagnosed with mental and/or emotional disorders.¹⁰ Typical diagnoses include:

- Autism;
- Pervasive Developmental Disorder;
- Prader-Willi;
- Attention Deficit Hyperactivity Disorder;
- Schizophrenia;
- Depression;
- Psychosis;
- Obsessive-Compulsive Disorder; and
- Pica.¹¹

Carlton Palms provides services to people whose severe behavioral challenges require safe and effective treatment.¹² Individuals are referred to Carlton Palms for intensive treatment when other placements and programs have failed.¹³ As of February 17, 2017, there were 186 residents at Carlton Palms.¹⁴

From 2001 through 2016, there were more than 140 neglect or abuse reports made to Department of Children and Families (DCF) involving Carlton Palms.¹⁵ Carlton Palms has an extensive history of complaints and regulatory action.¹⁶

⁸ Agency for Persons with Disabilities, *2017 Agency Legislative Bill Analysis for HB 899*, February 23, 2017 (on file with Children, Families, and Seniors Subcommittee staff).

⁹ Bellwether Behavioral Health website, Carlton Palms Educational Center, available at <http://bellbh.com/programs/florida-program/carlton-palms-education-center/> (last viewed March 23, 2017).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Email from Robert Brown, Legislative Affairs Director, Agency for Persons with Disabilities, (February 27, 2017), on file with the Children, Families, and Seniors Subcommittee staff.

¹⁵ Carol Marbin Miller, *After Latest Abuse Case, Florida Moves to Close Home for Disabled*, MIAMI HERALD, (June 23, 2016), available at <http://www.miamiherald.com/news/article85592982.html> (last viewed March 23, 2017).

¹⁶ APD has filed 4 administrative complaints against the facility since 2011, detailing inadequate training of staff, physical violence, inadequate care, and inadequate supervision of residents while in the care and custody of Carlton Palms. APD has twice sought moratoria on new admissions to the facility, once in 2012 and most recently in September of 2014. In this most recent administrative complaint, DOAH Case No: 14-004853, APD sought the maximum fine allowed by law, \$10,000, as well as a moratorium on new admissions. APD has settled each of these administrative complaints without the imposition of a moratorium, but did collect the \$10,000 fine in May 2015.

Under federal Medicaid waiver rules, effective March 2014, the HCBS waiver funding will no longer be available for services provided at Carlton Palms by March of 2019.¹⁷ The intent of the rule is to ensure individuals receiving long-term services and support through HCBS programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities, have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate.¹⁸ Furthermore, the rule intends to enhance the quality of HCBS and provide protections to participants,¹⁹ by helping participants be active in their community, providing them a home-like environment, and enabling them to make personal choices.²⁰

As a result of federal reforms, as well as the prior incidents of verified abuse and neglect at Carlton Palms over the last several years, APD and Carlton Palms entered into a settlement agreement in 2016, and agreed that APD will not approve any new admissions of APD clients to Carlton Palms and that Carlton Palms will not accept any new residents.²¹ Furthermore, Carlton Palms will work with families, guardians, and other states or countries to transition its residents safely back to their places of origin or other agreed upon locations for further services.²² As of February 17, 2017, 11 APD residents have been discharged from Carlton Palms.²³

Receivership

A receiver is “[a] disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims.”²⁴ The power to appoint a receiver is one that is inherent in a court of equity.²⁵ Pursuant to s. 393.0678(1), F.S., APD may petition a court for the appointment of a receiver for a residential habilitation center or a group home facility owned and operated by a corporation or partnership when certain conditions exist:

- A person is operating a facility without a license and refuses to make an application for a license;
- The licensee is closing the facility or has informed the department that it intends to close the facility, and adequate arrangements have not been made for relocation of the residents within seven days, exclusive of weekends and holidays, of the closing of the facility;
- The agency determines that conditions exist in the facility which presents an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result; or
- The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities.

¹⁷ Email from Robert Brown, Legislative Affairs Director, Agency for Persons with Disabilities, (March 27, 2017), on file with the Children, Families, and Seniors Subcommittee staff. On January 16, 2014, the Department of Health and Human Services amended 42 CFR § 441.301 to define and describe HCBS settings, institutional settings, and settings that are presumptively institutional. These changes were reflected in Volume 79, Number 11 of the Federal Register. On March 17, 2014, the amendment became effective and is referred to as the CMS Final Rule. The HCBS setting rule affects Carlton Palms because the CMS Final Rule defines and describes inappropriate settings that have the effect of isolating Medicaid recipients from the broader community, and Carlton Palms meets two of the definitions of inappropriate settings that have the effect of isolating. Every state has five years (until March 17, 2019) to come into compliance with the CMS Final Rule, and provide appropriate community settings, but since Carlton Palms is a CTEP, there is no way for it to come into compliance under its current structure.

¹⁸ Agency for Health Care Administration Presentation, *Home and Community-Based Settings and Transition Planning*, August 2014, slide 4, available at http://ahca.myflorida.com/Medicaid/hcbs_waivers/docs/AHCA_HCBS_Rule_Overview_and_Transition_Planning_2014.pdf (last viewed March 23, 2017).

¹⁹ *Id.*

²⁰ Agency for Health Care Administration, *Home and Community-Based Settings Rule*, 2017, available at http://ahca.myflorida.com/Medicaid/hcbs_waivers/index.shtml, (last viewed March 23, 2017).

²¹ Amended Settlement Agreement between Agency for Persons with Disabilities and Carlton Palms Educational Center, November 10, 2016, p. 1.

²² *Id.* at p. 4.

²³ *Supra*, at FN 14.

²⁴ *Black's Law Dictionary* (10th ed. 2014).

²⁵ *Granada Lakes Villas Condominium Assoc., Inc. v. Metro-Dade Investments*, 125 So.3d 756 (Fla. 2013).

Upon taking receivership for a residential habilitation center or a group home facility, APD must make provisions for the continued health, safety, and welfare of all residents of the facility.²⁶

Effect of Proposed Changes

HB 899 authorizes APD to initiate receivership proceedings for CTEPs.

The bill provides an effective date upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 393.0678, F.S., relating to receivership proceedings.

Section 2: Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

²⁶ S. 393.0678(3), F.S.
STORAGE NAME: h0899c.HHS
DATE: 3/30/2017

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the prohibitions against renewing Carlton Palms' license and issuing new CTEP licenses. This analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.