

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 899	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Comprehensive Transitional Education Programs	118	Y's 0	N's
SPONSOR(S):	Children, Families & Seniors Subcommittee; Stevenson	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	CS/SB 714			

SUMMARY ANALYSIS

CS/HB 899 passed the House on April 20, 2017, and subsequently passed the Senate on May 5, 2017.

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 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 new federal Medicaid waiver guidelines, effective March 2019, 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 an agreement in 2016 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 to 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 was approved by the Governor on June 26, 2017, ch. 2017-174, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 residential facilities 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 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

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 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.*

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).

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 the Department of Children and Families (DCF) involving Carlton Palms.¹⁵ Carlton Palms has an extensive history of complaints and regulatory action.¹⁶

Under a new federal Medicaid waiver rule, HCBS waiver funding will no longer be available for services provided at Carlton Palms by March of 2019. The amended rule prohibits HCBS waiver payment for

⁹ Bellwether Behavioral Health website, Carlton Palms Educational Center, available at <http://bellbh.com/programs/florida-program/carlton-palms-education-center/> (last viewed May 8, 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 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 May 8, 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.

institutional settings, including ICF/DDs, nursing homes, and any other setting that has the qualities of an institution – like Florida’s CTEP. States have until 2019 to comply with the amended rule, and provide appropriate community settings.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 intent of the rule is to enhance the quality of HCBS and provide protections to participants¹⁹ 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 agency 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 present 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.

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.

¹⁷ Contents of Requests for a Waiver, 79 Fed. Reg. 2947,3029-3031, 2947,2980 (Jan. 16, 2014) (to be codified at 42 C.F.R. 441. 301).

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 May 8, 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 May 8, 2017).

²¹ Amended Settlement Agreement between APD 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).

²⁶ S. 393.0678(3), F.S.

The bill 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.