

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 82

INTRODUCER: Senator Bean

SUBJECT: Individuals With Disabilities

DATE: January 14, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 82 makes operational changes to improve the fiscal stability of the Medicaid Home and Community Based Services (HCBS) waiver. The bill requires the Agency for Persons with Disabilities (APD) to competitively procure qualified organizations to provide waiver support coordination services for HCBS waiver clients. The bill also requires the Agency for Health Care Administration (AHCA) to competitively procure a qualified organization to perform medical necessity determinations for clients who request an increase to their initial funding amount under the HCBS waiver. The bill creates a definition of ‘significant additional needs’ for clients HCBS waiver clients. The bill provides APD with statutory authority to require service providers to both bill for services and submit all required documentation through the agency’s electronic client data management system.

The bill eliminates obsolete language from chapter 393 of the Florida Statutes. The bill also requires APD to certify and document that an HCBS waiver client has utilized all available resources before submitting a request for a funding increase related to significant additional needs, and it prohibits such requests from occurring until the total amount of funding to be provided to a client under the waiver is determined. The bill also allows AHCA to seek federal approval to implement a payment rate for Medicaid intermediate care facilities serving individuals with developmental disabilities who may not be appropriate for placement in community settings.

The bill is expected to have a positive fiscal impact and takes effect July 1, 2020.

II. Present Situation:

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, 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 administered by the APD or in an intermediate care facility for the developmentally disabled (ICF/DD).

The HCBS waiver, known as the iBudget, offers 28 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 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. In Florida, there are 88 privately-owned ICF/DD facilities.⁴ As of April 2018, the ICF/DDs are 94.6 percent occupied, with 1,948 individuals in 2,060 possible slots. Facility size ranges from six to 120 beds. The most common ICF/DD facility size is six beds. The average number of beds across all ICF/DDs in Florida is about 24.⁵

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 The iBudget involves the use of an algorithm, or formula, to set individual allocations for waiver services, allocating program funding based on the needs of each client. To assist clients, the iBudget offers various supports and services delivered by contracted service

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.

³ Agency for Persons with Disabilities, Monthly Surplus-Deficit Report for Waiver Program Expenditures: Fiscal Year 2019-20, December 2019. On file with the Senate Children Families and Elder Affairs Committee.

⁴ Florida Medicaid ICF/IID Rate Study Report, prepared by Navigant for the Florida Agency for Health Care Administration. 2019. On file with the Senate Children Families and Elder Affairs Committee.

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 visited January 13, 2020).

providers. These services include residential habilitation, behavioral services, companion services, adult day training, employment services, and physical therapy.⁷

Waiver Enrollment Prioritization

As of October 17, 2019, 34,919 individuals were enrolled on the iBudget waiver.⁸ The majority of waiver enrollees live in a family home with a parent, relative, or guardian. The Legislature appropriated \$1,196,369,280 for Fiscal Year 2019-2020 to provide services through the HCBS waiver program, including state funding of \$462,755,638 and a federal match of \$733,613,642.⁹ However, this funding is insufficient to serve all persons seeking waiver services. To enable APD 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. Medicaid-eligible persons on the waiting list continue to receive Medicaid services not offered through the iBudget.

Significant Additional Needs Requests

State 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 did not address in the initial allocation of funding.¹⁰

APD annually authorizes a cost plan for each client outlining the client's approved services and costs for the fiscal year. To implement the algorithm under the HCBS waiver, clients and their families meet with Waiver Support Coordinators (WSCs) who are responsible for preparing an Amount Implementation Meeting (AIM) Worksheet that communicates a client's algorithm amount, identifies proposed services based on the algorithm amount, and documents significant additional needs (SANs), if any, that cannot be met by the algorithm amount.¹¹ The Agency conducts individual reviews to determine whether the services requested meet health and safety needs and waiver coverage limitations. The agency is to approve an amount greater than the algorithm amount if additional funding is required to meet a client's SANs. Within 30 days of receiving an AIM worksheet, APD is to advise the client or their representative of the agency's decision and approved cost plan amount.

Medical or allied care, goods, or services furnished or ordered pursuant to SANs requests must meet the following conditions in order for the funding increase to be approved:¹²

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain,

⁷ See s. 393.0662, F.S.

⁸ Attachment to e-mail from Jeff Ivey, Legislative Affairs Director, Agency for Persons with Disabilities. (Oct. 17, 2019). On file with the Senate Committee on Children, Families and Elder Affairs.

⁹ See Specific Appropriation 245, ch. 2019-115, Laws of Florida.

¹⁰ See s. 393.0662, F.S.

¹¹ SANs represent needs for additional funding that if not provided would place the health and safety of the client, their caregiver, or public in serious jeopardy that are authorized by Section 393.0662(1)(b), Florida Statutes.

¹² Rule 59G-1.1010, F.A.C.

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs,
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational,
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide, and
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

The iBudget and APD Deficits

The State of Florida Auditor General evaluated the effectiveness of APD's allocation methodology and algorithm in achieving the legislative intent of the iBudget.¹³ Prior audits have found a lack of documentation for justifying increases in the iBudgets. The report concluded that despite statistical validity underlying the algorithm, a lack of available funding to meet additional client needs and differences in client circumstances and needs have prevented APD from achieving the financial management goals of the iBudget and reducing the number of individuals on the waiting list.¹⁴ The table below depicts the difference between annual appropriations, expenditures, surpluses/deficits, the number of clients served, the number of individuals on the waiting list and the number moved off of the waiting from FY 2013 – 2014 through FY 2017 – 2018.¹⁵

In 2019, the Legislature directed APD, in conjunction with AHCA, to develop and submit a plan to redesign the iBudget to the President of the Senate and the Speaker of the House of Representatives for consideration and potential legislative approval.¹⁶ The plan was required to address the following areas:¹⁷

In response, APD submitted a proposed redesign of the iBudget consisting of the following elements:¹⁸

- Inclusion of the iBudget waiver program in the Social Services Estimating Conference;
- Implementation of a behavioral health intermediate care facility service rate;
- Individual caps on the dollar amount of services for waiver clients;
- Budget transfers from the Medicaid State Plan to the iBudget waiver program for waiver clients turning 21;
- Expansion of the Medicaid Assistive Care Services program to include waiver group homes;

¹³ State of Florida Auditor General Report No. 2020-012, August 2019, *available at* https://flauditor.gov/pages/pdf_files/2020-012.pdf (last visited January 13, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ch. 2019-116, Laws of Florida.

¹⁷ *Id.*

¹⁸ Agency for Persons with Disabilities; Agency for Health Care Administration: 2019 iBudget Waiver Redesign. On file with the Senate Children, Families, and Elder Affairs Committee.

- Service limitations on Life Skills Development services;
- Centralization of the Significant Additional Needs approval process;
- Restructuring of support coordination services; and
- Implementation of a new client needs assessment tool, specifically the Next Generation Questionnaire for Situational Information.

Waiver Support Coordinators

WSCs are enrolled waiver providers of support coordination services selected by a waiver client or their guardian to assist the client in gaining access to waiver and Medicaid state plan services, as well as medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.¹⁹ WSCs are responsible for the ongoing monitoring of supports and services provided clients and are tasked with ensuring that clients receive the level of services they are entitled to and need under the HSBC waiver.²⁰

WSCs must enroll as either solo or individual providers, or through an agency or group provider.²¹ WSCs can be employed in a part-time capacity (known as ‘limited support coordination’) or full-time.²² To be employed as a WSC, an individual:²³

- Must be certified and enrolled as a Medicaid Waiver provider of Support Coordinator.
- May be either single (solo) providers or agency providers.
- If employed by an agency, must have a bachelor's degree and two years professional experience in developmental disabilities, special education, mental health, counseling, guidance, social work or health and rehabilitative services.
- If a solo provider, must have a bachelor's degree and three years’ experience in developmental disabilities, special education, mental health, counseling, guidance, social work or health and rehabilitative services.
- Must have a minimum of 60 hours of pre-service training is required consisting of 34 hours of statewide pre-service training and 26 hours of district specific training which includes orientation to the district, local resources and local operational procedures.

Tasks performed by WSCs include:²⁴

- Recording monthly progress notes, which adequately document the support coordination services rendered.
- Conducting, at a minimum, two monthly contacts with or on behalf of the individual. These include telephone contact, face-to-face visits in the individual's home or elsewhere, contact with another provider to discuss progress toward achieving goals identified on the support plan and letter writing if related to services and benefits specific to the individual's needs. Support coordinators are expected to meet the needs of the individuals they serve regardless of the number of contacts it takes to meet those needs.

¹⁹ See Rule 59G-13.070, F.A.C.

²⁰ *Id.*

²¹ *Id.*

²² Agency for Persons with Disabilities, Support Coordination Frequently Asked Questions (FAQs), available at <http://apd.myflorida.com/waiver/support-coordination/frequently-asked-questions.htm> (last visited January 13, 2020).

²³ *Id.*

²⁴ *Id.*

- Ensuring contacts are meaningful and relate to follow up on the individual or family's concerns, advocacy, increasing the individual's involvement in the community, monitor health and safety or assist the individual reach desired outcomes on the support plan.
- Having and maintaining on file in the individual's central record, the current annual support plan, cost plan and supporting documents.

Support coordinators are monitored on an annual basis; providers who have achieved at least an overall score of 85% are considered to have a successful monitoring; those below 85% must complete a plan of corrective action.²⁵ The quality assurance process includes both a provider performance review, which is a review of regulatory compliance, and a person-centered review that focuses on an interview with the individual receiving services to assure outcomes are being met, adequate follow through is being done and services are satisfactory to the individual.²⁶

Client Data Management System

The Legislature appropriated a total of \$2.86 million²⁷ 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.²⁸ These changes were needed to improve efficiency and reduce fraud. APD must 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. Historically, APD has relied heavily on manual processes and disparate systems to collect, analyze, and report data consistently.

Service providers bill for services in the AHCA Florida Medicaid Management Information System (FMMIS).²⁹ Providers are able to offer services, receive payment, and provide documentation to the WSC for 10 days following provision of services. If providers submit documentation late or do not submit any documentation, staff time is expended on obtaining the documentation or referring the provider to AHCA for the recoupment funds for undocumented services.³⁰

APD has contracted with an external vendor to create a central client data management system, known as iConnect.³¹ APD believes iConnect will serve as a central repository of information that will benefit and create efficiencies for providers, WSCs, and APD staff. The agency anticipates that this will result in an increase in program efficiency, accountability, and oversight, and that it will enable the agency to collect data, analyze trends, and evaluate service

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Specific Appropriation 265 and section 41, ch. 2015-232, Laws of Florida.

²⁸ See Specific Appropriation 265, ch. 2015-232, Laws of Florida.

²⁹ Agency for Persons with Disabilities iConnect Proposed Redraft Analysis. On file with the Senate Children, Families, and Elder Affairs Committee.

³⁰ *Id.*

³¹ *Id.*

effectiveness; identify and reduce fraud, waste and abuse; and report information related to client needs and services.³²

III. Effect of Proposed Changes:

Section 1 amends s. 393.063, F.S., defining ‘significant additional needs’ as medically necessary needs for service increases arising after the beginning of the service plan year which would place the health and safety of the client, their caregiver, or the public in serious jeopardy. The bill also redefines support coordinators as employees of a qualified organization contracted by the agency.

Section 2 amends s. 393.066, F.S., requiring agency providers to bill for services through the iConnect system and requiring submission of documentation verifying services rendered prior to receiving payment.

Section 3 repeals section 393.0661, F.S. This section contains outdated provisions relating to the waiver program design prior to the implementation of the iBudget. Other provisions are moved to s. 393.0662, F.S.

Section 4 amends s. 393.0662, F.S., providing that additional waiver client funding for significant additional needs, as defined in the bill, may be provided only after the determination of a client’s initial iBudget allocation amount is assigned and after the agency has certified and documented, in the client’s cost plan, the use of all available resources under the Medicaid state plan. The bill also eliminates the existing review criteria in statute for determining funding of significant additional needs requests. Such criteria has not been effective in limiting the iBudget increases approved by APD.

The bill also preserves language from current law in s. 393.0661, F.S., relating to premiums and cost sharing, rate adjustments, the ability of AHCA to seek federal approval to amend waivers as needed, and the responsibility of APD to submit quarterly status reports to the Governor and the Legislature containing information on the financial status of HCBS services, the number of individuals who have requested services, the number of individuals on the waiver waitlist, and information on the actual and projected costs of operating the waiver compared to the amount of the appropriation available to the program and any projected surpluses or deficits. The bill also provides rulemaking authority for both APD and AHCA regarding criteria and processes for clients to access funds for significant additional needs.

Section 5 creates s. 393.0663, F.S., requiring APD to competitively procure two or more qualified organizations to provide all support coordination services to waiver clients. The bill requires the agency to consider price, quality, and accessibility when awarding contracts, and it requires procurement to begin on October 1, 2020. The bill provides that the contracts must:

- include provisions requiring compliance with existing agency cost-containment initiatives,
- require support coordinators to ensure client budgets are linked to respective levels of need,

³² *Id.*

- require support coordinators to avoid potential conflicts of interest, and
- require the organizations awarded the contracts to perform and meet all standards related to support coordination currently in statute and rule.

The bill requires that the contracts be 3 years in length and may be renewed up to 3 times. The contracts may not exceed 1 year in length for each renewal. The bill also provides APD with discretion to choose whether support coordination services are provided statewide or by agency region.

Section 6 amends s. 409.906, F.S., requiring AHCA to competitively procure a qualified organization to perform medical necessity determinations of all significant additional needs requests. The bill also directs AHCA to seek federal approval to implement a payment rate for Medicaid intermediate care facilities serving individuals with developmental disabilities, severe maladaptive behaviors, severe maladaptive behaviors and co-occurring complex medical conditions, or a dual diagnosis of a developmental disability and a mental illness.

Section 7 amends s. 409.968, F.S., to conform a cross-reference.

Section 8 amends s. 1002.385, F.S., to conform a cross-reference.

Section 9 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will be a negative but indeterminate fiscal impact on current waiver support coordinators who do not successfully bid for support coordination contracts provided under the bill. Qualified organizations who successfully acquire contracts for support coordination and for medical necessity determinations will see a positive fiscal impact.

Service providers who do not currently utilize the iConnect billing system may be required to purchase new hardware and train staff on the use of iConnect. Private providers may also incur costs associated with dual data entry if the provider already utilizes a different IT system. The impact of these requirements is indeterminate.

C. Government Sector Impact:

The Agency for Persons with Disabilities will likely experience a positive but indeterminate fiscal impact by contracting out support coordination and medical necessity determination functions to qualified organizations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 393.063, 393.066, 393.0662, 409.906, 409.968, and 1002.385 of the Florida Statutes.

This bill creates section 393.0663 of the Florida Statutes.

This bill repeals section 393.0661 of the Florida Statutes.

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.