

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 117 Resource Information for Individuals with Disabilities

**SPONSOR(S):** Health & Human Services Committee and Children, Families & Seniors Subcommittee, Tant and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/CS/SB 714

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**FINAL HOUSE FLOOR ACTION:** 118 Y's      0 N's            **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 117 passed the House on April 15, 2021, as SB 714.

Individuals with specified disabilities 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, known as iBudget Florida, or in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD). The Agency for Persons with Disabilities (APD) is responsible for administering iBudget Florida.

Currently, due to demand exceeding available funding, individuals who would otherwise qualify for iBudget Florida HCBS services are placed on a wait list in priority of need. As of December 1, 2020, 22,718 individuals remain on the wait list. If an individual is deemed ineligible for waiver services, by rule, APD must offer suggestions regarding other programs, agencies, or services for which the applicant may be eligible.

The bill requires APD to provide all individuals applying for waiver services through iBudget Florida with specified written information pertaining to certain federal, state, and local assistance programs and resources, whether or not they are eligible for waiver services.

The bill further requires APD to also provide a disclosure statement stating that the agency does not guarantee an applicant's eligibility for or enrollment in any program or service.

The bill additionally directs APD to post the information and disclaimer statement on the agency's website.

The bill has no fiscal impact on either state or local governments.

The bill was approved by the Governor on June 16, 2021, ch. 2021-100, L.O.F., the effective date of this bill is July 1, 2021.

## 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.<sup>1</sup> The overarching goal of APD is to prevent or reduce the severity of the developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.<sup>2</sup> Currently, APD serves more than 58,000 Floridians.<sup>3</sup>

#### **iBudget Florida Program**

Individuals with specified disabilities 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, known as iBudget Florida, or in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).<sup>4</sup> The application process for individuals wishing to receive services through the iBudget Florida program is detailed in s. 393.065, F.S.

APD administers iBudget Florida pursuant to s. 393.0662, F.S. iBudget Florida uses an algorithm, or formula, to determine iBudget allocation amounts for individuals on the waiver and the prioritization categories of individuals on the waiting list.<sup>5</sup> The statute authorizes APD to give individuals additional funding under certain conditions (such as a temporary or permanent change in need, or an extraordinary need that the algorithm does not address).<sup>6</sup>

APD currently serves over 35,000 individuals through iBudget Florida and contracts with service providers to offer a wide array of supports and services to assist individuals to live, learn, and work in their community.<sup>7</sup> Such services include residential rehabilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.<sup>8</sup>

Currently, due to demand exceeding available funding, many individuals who would otherwise qualify for iBudget Florida HCBS services are placed on a wait list in priority of need.<sup>9</sup> Over 1,200 individuals were placed on the wait list between July 2019 and July 2020.<sup>10</sup> As of December 1, 2020, 22,718 individuals

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<sup>1</sup> S. 393.063(12), F.S.

<sup>2</sup> S. 393.062, F.S.

<sup>3</sup> Agency for Persons with Disabilities, *Long Range Program Plan: Fiscal Years 2021-2022 through 2025-2026*, page 9, September 30, 2020, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=21176&DocType=PDF> (last accessed January 29, 2021).

<sup>4</sup> S. 393.0662, F.S.

<sup>5</sup> *Supra* note 3, page 24.

<sup>6</sup> S. 393.0662(1)(b), F.S.

<sup>7</sup> Agency for Persons with Disabilities, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: Second Quarter Fiscal Year 2020-2021*, page 2, February 1, 2021 (last accessed February 23, 2021).

<sup>8</sup> *Id.* at page 5-6.

<sup>9</sup> S. 393.065, F.S.

<sup>10</sup> Compare *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: Second First Quarter of Fiscal Year 2020-2021* with *Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: Second First Quarter of Fiscal Year 2019-2020*.

remain on the wait list.<sup>11</sup> Close to 40% of those individuals on the wait list have been on the waitlist for more than 10 years.<sup>12</sup>

## **Other Programs Available to Individuals with Disabilities**

### Social Security Income

Individuals with disabilities may qualify for benefits under the Social Security Disability Insurance (SSDI) program and/or the Supplemental Security Income (SSI) program.<sup>13</sup> The amount of such benefits an individual receives depends on a variety of factors.

### Medicaid

Individuals who do not qualify for waiver services through iBudget Florida may still qualify for benefits through the Medicaid Program. Eligibility for Medicaid is based on several factors, including age, household or individual income, and assets. State Medicaid payment guidelines are specified in s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S. (Optional Payments for Eligible Persons).

### Early Steps

Managed by the Florida Department of Health, Early Steps is an early intervention system that offers services to eligible infants and toddlers who have or are at risk for developmental disabilities and delays.<sup>14</sup>

### Florida ABLE

Established by the Florida Achieving a Better Life Experience Act, the Florida ABLE program provides individuals with disabilities tax-free savings and investment options to encourage the saving of private funds to help cover costs that support their health, independence and quality of life.<sup>15</sup>

### Transition Planning

The Individuals with Disabilities Education Act of 2004 requires transition services for all students receiving services under an individualized education program.<sup>16</sup> Transition services are a coordinated set of activities for a child with a disability designed to facilitate the child's movement from school to post-school activities.<sup>17</sup> In Florida, transition planning begins at age 14 and continues throughout secondary education<sup>18</sup>

### Vocational Rehabilitation Services

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<sup>11</sup> *Supra* note 7, page 8.

<sup>12</sup> *Supra* note 7, page 10.

<sup>13</sup> Social Security Administration, Disability Benefits, <https://www.ssa.gov/benefits/disability/>, (last accessed February 25, 2021).

<sup>14</sup> Florida Department of Health, Early Steps, [www.floridahealth.gov/programs-and-service/childrens-health/early-steps/index.html](http://www.floridahealth.gov/programs-and-service/childrens-health/early-steps/index.html), (last accessed February 24, 2021).

<sup>15</sup> ABLE United, <https://www.ableunited.com/learn/about-able/>, (last accessed February 24, 2021).

<sup>16</sup> 20 U.S.C. § 1400 (2004).

<sup>17</sup> Florida Center for Students with Unique Abilities, Transition Planning Resources, [https://fcsua.org/K\\_transition.php](https://fcsua.org/K_transition.php), (last accessed February 25, 2021).

<sup>18</sup> Rule 6A-6.03028 (7)(i)(2), F.A.C.

The Florida Department of Education, Division of Vocational Rehabilitation, offers a variety of services to help individuals with disabilities get or keep a job. Such services include transition services, job coaching, job placement, on-the-job training, job site assessment and accommodations, and more.<sup>19</sup>

### Florida Postsecondary Comprehensive Transition Program

Signed into law in 2016, the Florida Postsecondary Comprehensive Transition Program Act established the Center for Students with Unique Abilities at the University of Central Florida and charged them with managing the Florida Postsecondary Comprehensive Transition Program (FPCTP) application and approval process.<sup>20</sup> A FPCTP is a program, offered at an institution of higher education, designed specifically to serve students with intellectual disabilities. Currently, there are 19 approved FPCTPs in Florida.<sup>21</sup>

### Guardianship and Guardianship Alternatives

When an individual is legally incapable of making decisions for him or herself, a guardian may be appointed to make decisions on behalf of that individual. A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person, property, or both.<sup>22</sup> Once an individual has been adjudicated incapacitated and a guardian is deemed necessary, such individual no longer holds certain civil and legal rights.<sup>23</sup> Accordingly, the Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.<sup>24</sup>

Less restrictive alternatives to guardianship include supported decision-making<sup>25</sup>, durable powers of attorney<sup>26</sup>, trusts, banking services, advance directives<sup>27</sup>, medical proxies<sup>28</sup>, and representative payees<sup>29</sup>.

### **Information Tools Currently Available**

APD currently provides an online resource directory on its website that allows members of the public to search for resources and organizations available in their local areas, programs offered through the state, and nationwide resources. Individuals can tailor their search based on criteria such as desired services, disability, and location.<sup>30</sup> APD's website also contains a library of digitized brochures covering topics such as supported employment services and decision-making options.

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<sup>19</sup> Florida Department of Education, Division of Vocational Rehabilitation, [www.rehabworks.org](http://www.rehabworks.org), (last accessed February 24, 2021).

<sup>20</sup> S. 1003.6495, F.S.

<sup>21</sup> Florida Center for Students with Unique Abilities, Find a Postsecondary Education Program, [https://fcsua.org/E\\_postsecondary.php](https://fcsua.org/E_postsecondary.php), (last accessed February 25, 2021).

<sup>22</sup> S. 744.102(9), F.S.

<sup>23</sup> S. 744.101(1), F.S.

<sup>24</sup> S. 744.101(2), F.S.

<sup>25</sup> Supported decision making involves trusted supports used to enhance an individual's capacity in the decision making process, enabling them to retain autonomy in life decisions. National Center for Biotechnology Information, Supported Decision Making in Serious Mental Illness, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6093283/> (last accessed February 25, 2021).

<sup>26</sup> s. 709.2102, F.S. A power of attorney (POA) is a writing that grants authority to an agent to act in the place of the principal, and a durable power of attorney is a POA which is not terminated by the principal's incapacity.

<sup>27</sup> See s. 765.101(1), F.S.

<sup>28</sup> See ss. 765.101(19) and 765.401, F.S.

<sup>29</sup> 42 U.S. Code § 1007. A representative payee is person deemed qualified by the Social Security Administration who manages the social security benefits of another person who is incapable of managing his or her own benefits.

<sup>30</sup> Agency for Persons with Disabilities, Resource Directory, <https://resourcedirectory.apd.myflorida.com>, (last accessed February 24, 2021).

Additionally, APD maintains the Florida Navigator, an online tool designed to inform individuals with disabilities, caregivers, and professionals about State of Florida resources including, but not limited to, various Florida Medicaid programs, Florida Early Steps Program, and Vocational Rehabilitation programs.<sup>31</sup>

APD also has created a Resource Flyer that contains links to the APD Resource Directory, APD Florida Navigator, Department of Children and Families ACCESS program, and Florida KidCare.<sup>32</sup> The flyer is shared with individuals who are not eligible for APD services but are seeking assistance.<sup>33</sup>

Moreover, Rule 65G-4.016(5), F.A.C., requires that if an applicant is determined to be ineligible to receive services from APD, the agency must offer suggestions regarding other programs, agencies, or services for which the applicant may be eligible.<sup>34</sup>

### **Effect of the Bill**

Under this bill, APD must provide specified information to any individual applying for HCBS waiver services, the parent, the legal guardian, or another family member, whether or not the individual is eligible to receive HCBS waiver services and is ultimately enrolled in iBudget Florida.

Specifically, APD must provide each applicant, the parent, the legal guardian, or another family member with the following information in writing:

- A brief overview of the vocational rehabilitation services offered through the Division of Vocational Rehabilitation, along with a hyperlink or website address that provides direct access to the application for such services;
- A brief overview of the Florida ABLE program, along with a hyperlink to or website address for the application for establishing an ABLE account as defined in s. 1009.986(2), F.S;
- A brief overview of supplemental social security income benefits and social security income benefits, along with a hyperlink to or website address for the application for such benefits;
- A statement indicating that the applicant's local school district may provide specialized instructional services, including transition programs, for students with special education needs;
- A brief overview of programs and services funded through the Center for Students with Unique Abilities, including contract information for each state-approved Florida Postsecondary Comprehensive Transition Program;
- A brief overview of decision-making options for persons with developmental disabilities, guardianship programs, and alternatives to guardianship;
- A brief overview of the referral tools made available through APD; and
- A statement informing the applicant that some waiver providers may serve private pay individuals.

This bill also requires APD to provide a written disclosure statement with the information, which states:

“Each program and service has its own eligibility requirements. By providing the information specified in Section 393.065(10)(a), Florida Statutes, the agency does not guarantee an applicant's eligibility for or enrollment in any program or service.”

Finally, the bill requires APD to post the information and disclaimer statement on its website and provide the information and disclaimer statement annually to each individual (or the individual's parent, family member, or guardian) on the iBudget waitlist.

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<sup>31</sup> Agency for Persons with Disabilities, Florida Navigator, <https://navigator.apd.myflorida.com/Default.aspx>, (last accessed February 24, 2021).

<sup>32</sup> *Supra* note 3, page 13.

<sup>33</sup> Email from JP Bell, Deputy Legislative Affairs Director, Agency for Persons with Disabilities, RE: distribution of the resource flyer (February 23, 2021).

<sup>34</sup> Rule 65G-4.016(5), FAC.

This bill provides an effective date of July 1, 2021.

## 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.