

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 306

INTRODUCER: Senator Berman and others

SUBJECT: Fetal Alcohol Spectrum Disorders

DATE: February 7, 2022

REVISED: _____

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

I. Summary:

SB 306 amends the definition of “developmental disability” under Florida law to include fetal alcohol spectrum disorders. The bill defines “fetal alcohol spectrum disorders” (FASDs) to mean the range of adverse effects that can occur in an individual who is prenatally exposed to alcohol and that may include types of disabilities associated with possible lifelong implications such as physical, mental, behavioral, and learning.

The bill requires the Agency for Persons with Disabilities (the APD) to allow individuals diagnosed with a FASD, as defined under the bill, to receive home and community-based services under Florida’s iBudget waiver. The bill also adds individuals with FASDs to the list of individuals with disabilities who may request and receive a scholarship through the Family Empowerment Scholarship Program.

The bill is expected to have a significant fiscal impact on the APD. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Agency for Persons with Disabilities

The APD is responsible for the provision of services to individuals with developmental disabilities and for administering the Home and Community-Based Services (HCBS) Waiver.¹ Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.² The HCBS

¹ See Section 20.197(3), F.S.

² Rule 59G-13.080(1), F.A.C.

Waiver provides services to individuals with developmental disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.³ Eligible individuals must meet institutional level of care requirements.⁴ The overarching goal for the APD is to prevent or reduce the severity of a 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.⁵

Regional Offices

In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:⁶

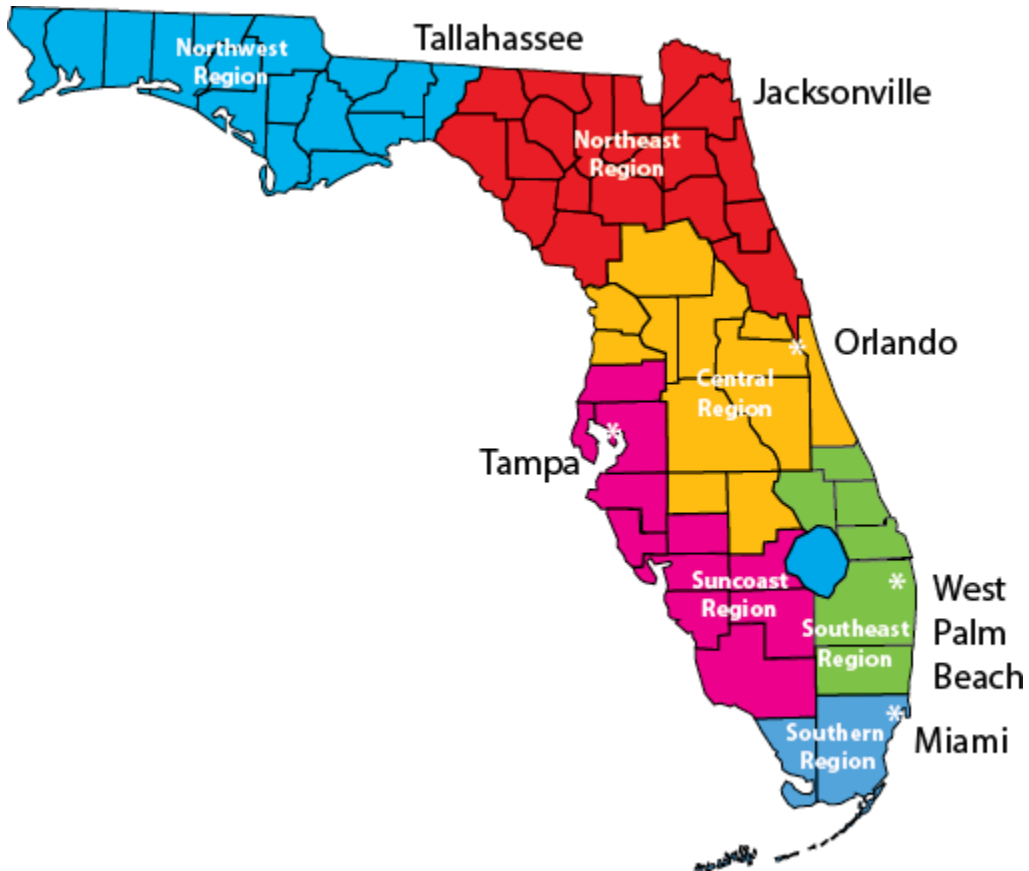
<u>Region</u>	<u>Counties</u>
Northwest	Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington Fields 1 and 2.
Northeast	Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, Union, and Volusia Fields 3, 4, and 12.
Central	Brevard, Citrus, Hardee, Hernando, Highlands, Lake, Marion, Orange, Osceola, Polk, Seminole, and Sumter Fields 7, 13, and 14.
Suncoast	Charlotte, Collier, DeSoto, Glades, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, and Sarasota Suncoast Field and Field 8.
Southeast	Broward, Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Fields 9 and 10.
Southern	Miami-Dade and Monroe Field 11.

³ The Centers for Medicare and Medicaid Services, *Home and Community-Based Services 1915(c)*, available at <https://www.medicare.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited February 5, 2022).

⁴ *Id.*; Rule 59G-13.080(1), F.A.C.

⁵ See s. 393.062, F.S.

⁶ The APD, *Regional Offices*, available at <https://apd.myflorida.com/region/> (last visited February 5, 2022).



iBudget Florida Program

The APD administers Florida’s individual budget-based HCBS waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements. These individuals may choose to receive services in the community through iBudget Florida. Alternatively, they may choose to live in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD)⁷ through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).⁸

The APD initiated implementation of iBudget Florida on May 1, 2011 with the final areas transitioned from the previous tiered waiver system on July 1, 2013.⁹ The iBudget Florida program uses an algorithm, or formula, to set individuals’ funding allocations for waiver services.¹⁰ The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

⁷ Section 393.063(25), F.S., defines “intermediate care facility for the developmentally disabled” to mean a residential facility licensed and certified under part VIII of chapter 400, F.S.

⁸ Section 393.0662, F.S.

⁹ The APD, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2021-22*, p. 2, November 15, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The Quarterly Report”).

¹⁰ *Id.*

The APD serves just over 34,900 individuals through iBudget Florida, contracting with service providers to offer 27 supports and services to assist individuals to live in their community.¹¹ Examples of waiver services enabling children and adults to live, learn, and work in their communities include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.¹²

Eligibility for iBudget Services

The application process for individuals wishing to receive services through the iBudget program are detailed in section 393.065, F.S. The APD must review applications for eligibility within 45 days for children under 6 years of age and within 60 days for all other applicants.¹³ Individuals who are determined to be eligible for the waiver program are either given a slot in the program or placed on a wait list. Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive HCBS services from the APD are placed on a wait list for services in priority categories of need, unless they are in crisis.¹⁴ As of November 2021, approximately 22,700 individuals were on the HCBS Waiver wait list.¹⁵

The needs of APD clients are classified into seven categories¹⁶ and are prioritized in the following decreasing order of priority:

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Specified children from the child welfare system.¹⁷
- Category 3 – Includes, but is not limited to, clients:
 - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;
 - Who are at substantial risk of incarceration or court commitment without supports;
 - Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
 - Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.
- Category 4 – Includes, but is not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available;
- Category 5 – Includes, but is not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.

¹¹ *Id.*

¹² *Id.*

¹³ Section 393.065(1), F.S.

¹⁴ Section 393.065, F.S.; *See* Rule 65G-1.047, F.A.C. for crisis status criteria.

¹⁵ The Quarterly Report at p. 2.

¹⁶ Section 393.065(5), F.S.

¹⁷ *See* s. 393.065(5)(b) for specific criteria.

- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.¹⁸

Definition of Developmental Disability

The Legislature added “developmental disability” to the Florida Statutes in 1977,¹⁹ defining the term to mean a disorder or syndrome attributable to, among other things, cerebral palsy, autism, or epilepsy, originating prior to age 18 and which constitutes a substantial handicap that can reasonably be expected to continue indefinitely.²⁰

Currently, s. 393.063(12), F.S., defines “developmental disability” to mean:

- A disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermind 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.

Fetal Alcohol Spectrum Disorder

Fetal alcohol spectrum disorders (FASDs) are a set of medical conditions that can occur in a person who was exposed to alcohol before birth.²¹ These effects can include physical problems and problems with behavior and learning.²² Individuals with an FASD often experience a combination of these issues.²³

FASDs are the result of exposure to alcohol before birth.²⁴ Alcohol passes through the mother’s blood and is delivered to the baby via the umbilical cord.²⁵

FASDs encompass a collection of diagnoses which represent the range of effects that can affect a person who was exposed to alcohol before birth. These conditions can affect each person in different ways, and can range from mild to severe.²⁶

A person with a FASD might have:

- Low body weight;
- Poor coordination;
- Hyperactive behavior;
- Difficulty with attention;
- Poor memory;

¹⁸ Section 393.065(5), F.S.

¹⁹ Chapter 77-335, L.O.F.

²⁰ *Id.*

²¹ The Centers for Disease Control and Prevention (the CDC), *Basics About FASDs*, available at <https://www.cdc.gov/ncbddd/fasd/facts.html> (last visited February 4, 2022) (hereinafter cited as “The CDC Guide”).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

- Difficulty in school (especially with math);
- Learning disabilities;
- Speech and language delays;
- Intellectual disability or low IQ;
- Poor reasoning and judgment skills;
- Sleep and sucking problems as a baby;
- Vision or hearing problems;
- Problems with the heart, kidneys, or bones;
- Shorter-than-average height;
- Small head size; and
- Abnormal facial features, such as a smooth ridge between the nose and upper lip (this ridge is called the philtrum).²⁷

Recent prevalence studies estimate that approximately 1 to 5 percent of U.S. first-grade children have FASD.²⁸

Diagnosis

Different FASD diagnoses are based on specific symptoms and include:

- Fetal Alcohol Syndrome (FAS): FAS represents the most involved end of the FASD spectrum. People with FAS have central nervous system (CNS) problems, minor facial features, and growth problems. People with FAS can have problems with learning, memory, attention span, communication, vision, or hearing, or a mix of these problems.
- Alcohol-Related Neurodevelopmental Disorder (ARND): People with ARND might have intellectual disabilities and problems with behavior and learning.
- Alcohol-Related Birth Defects (ARBD): People with ARBD might have problems with the heart, kidneys, or bones or with hearing.
- Neurobehavioral Disorder Associated with Prenatal Alcohol Exposure (ND-PAE): A child or youth with ND-PAE will have problems in three areas:
 - Thinking and memory, where the child may have trouble planning or may forget material he or she has already learned;
 - Behavior problems, such as severe tantrums, mood issues, and difficulty shifting attention from one task to another; and
 - Trouble with day-to-day living, which can include problems with bathing, dressing for the weather, and playing with other children.
 - In addition, to be diagnosed with ND-PAE, the mother of the child must have consumed more than minimal levels of alcohol before the child's birth, which APA defines as more than 13 alcoholic drinks per month of pregnancy (that is, any 30-day period of pregnancy) or more than 2 alcoholic drinks in one sitting.²⁹

²⁷ *Id.*

²⁸ The National Institute on Alcohol Abuse and Alcoholism, *Fetal Alcohol Spectrum Disorders*, available at <https://www.niaaa.nih.gov/fetal-alcohol-spectrum-disorders> (last visited February 5, 2022).

²⁹ The CDC Guide.

Treatment

No cure exists for FASDs; however research shows that early intervention treatment services may improve a child’s development.³⁰

Several treatment options exist, including medication to help with some symptoms, behavior and education therapy, parent training, and other alternative approaches. Treatment plans often include close monitoring, follow-ups, and changes as needed.³¹

Also, “protective factors” can help reduce the effects of FASDs and help people with these conditions reach their full potential.³² Protective factors include:

- Diagnosis before 6 years of age;
- Loving, nurturing, and stable home environment that is absent of violence during the school years; and
- Involvement in special education and social services.³³

Family Empowerment Scholarship Program

The Family Empowerment Scholarship (FES) program was established in 2019 to provide educational options to eligible children of families with limited financial resources.³⁴ A student who receives a scholarship remains eligible to participate until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student’s household income level.³⁵

To be eligible for an award under the FES program, a student must meet the following criteria:³⁶

- The student is:
 - On the direct certification list³⁷ pursuant to law or the student’s household income level does not exceed 300 percent of the federal poverty level; or
 - Currently placed, or during the previous fiscal year was placed, in foster care or in out-of-home care.³⁸
- The student is eligible to enroll in kindergarten or has spent the prior school year in attendance at a Florida public school.³⁹
- The parent has obtained acceptance for admission of the student to a private school that is eligible for the program and the parent has requested a scholarship from the Department of Education at least 60 days before the date of the first scholarship payment.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Section 6, ch. 2019-21, L.O.F.

³⁵ Section 1002.394(5)(a), F.S.

³⁶ Section 1002.394(3), F.S.

³⁷ Pursuant to s. 1002.395(2)(c), F.S.

³⁸ Pursuant to ch. 39, F.S.

³⁹ However, a dependent child of a member of the United States Armed Forces who transfers to a school in this state from out of state or from a foreign country due to a parent’s permanent change of station orders or a foster child is exempt from the prior public school attendance requirement.

Additionally, a sibling of a student who is participating in the FES program is eligible for a scholarship if the student resides in the same household as the sibling.⁴⁰

A parent of a student with a disability may request and receive from the state a scholarship if the student:

- Is a Florida resident;
- Is 3 or 4 years of age on or before September 1 of the year in which the student applies for program participation or is eligible to enroll in kindergarten through grade 12 in a public school in Florida;
- Has a disability; and
- Is the subject of an IEP written in accordance with rules of the State Board of Education or with the applicable rules of another state or has received a diagnosis of a disability from a physician who is licensed under ch. 458, F.S., or ch. 459, F.S., a psychologist who is licensed under ch. 490, F.S., or a physician who holds an active license issued by another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.⁴¹

The definition of “disability” as defined in s. 1002.394(2)(d), F.S., includes a 3- or 4-year-old child or, for a student in kindergarten to grade 12:

- Autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association;
- Cerebral palsy, as defined in s. 393.063, F.S.;
- Down syndrome, as defined in s. 393.063, F.S.;
- An intellectual disability, as defined in s. 393.063, F.S.;
- A speech impairment;
- A language impairment;
- An orthopedic impairment;
- An other health impairment;
- An emotional or a behavioral disability;
- A specific learning disability, including, but not limited to:
 - Dyslexia,
 - Dyscalculia, or
 - Developmental aphasia;
- Phelan-McDermid syndrome, as defined in s. 393.063, F.S.;
- Prader-Willi syndrome, as defined in s. 393.063, F.S.;
- Spina bifida, as defined in s. 393.063, F.S.;
- Being a high-risk child, as defined in s. 393.063(23)(a), F.S.;
- Muscular dystrophy;
- Williams syndrome;
- Rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders;
- Anaphylaxis;
- A hearing impairment, including deafness;

⁴⁰ Section 1002.394(3), F.S.

⁴¹ Section 1002.394(3)(b), F.S.

- A visual impairment, including blindness;
- Traumatic brain injury;
- Being hospital or homebound;⁴² or
- Identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts.⁴³

III. Effect of Proposed Changes:

The bill amends s. 393.063, F.S., expanding the definition of “developmental disability” and APD eligibility criteria to include FASD. The bill defines “fetal alcohol spectrum disorders” (FASDs) to mean the range of adverse effects that can occur in an individual who is prenatally exposed to alcohol and that may include the following types of disabilities associated with possible lifelong implications:

- Physical;
- Mental;
- Behavioral; and
- Learning.

The bill also amends s. 393.065, F.S., to allow for the automatic enrollment of individuals with FASD onto the HCBS Waiver. Therefore, under the bill, individuals with FASD will bypass the waiting list, and the APD must allow individuals diagnosed with a FASD who meet the relevant eligibility criteria to receive HCBS Waiver services. It is estimated that approximately 2,200 individuals are born in Florida each year with FASD that would potentially meet the level of care requirement for waiver services with an additional 74,800 existing population.⁴⁴

The bill also adds FASD to the list of disabilities which entitles an individual to request and receive a scholarship under the Family Empowerment Scholarship Program.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

⁴² The term “hospital or homebound” includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months. Section 1002.394(3)(d), F.S.

⁴³ Section 1002.394(3)(b), F.S.

⁴⁴ The APD, *Agency Analysis of SB 306*, p. 3, (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The APD Analysis”).

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:

None.

C. Government Sector Impact:

The APD anticipates that approximately 74,800 individuals have FASD in Florida.⁴⁵ The estimated cost of enrollment per individual is \$38,000.⁴⁶ Thus, the anticipated initial impact of the bill is approximately \$2,842,400,000.⁴⁷ Assuming that 1 percent⁴⁸ of babies born annually have FASD, the APD anticipates that the annual recurring cost of the bill is approximately \$83,600,000.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 393.063 393.065, and 1002.394 of the Florida Statutes.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ The CDC estimates that approximately 1 to 5% of newborns are born with FASD.

⁴⁹ The APD Analysis, p. 4.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
