

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 Fiscal Policy

BILL: CS/SB 1594

INTRODUCER: Committee on Health Policy; Senator Brodeur and others

SUBJECT: Agency for Persons with Disabilities

DATE: April 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	Favorable
2.	<u>Brown</u>	<u>Brown</u>	<u>HP</u>	Fav/CS
3.	<u>Delia</u>	<u>Yeatman</u>	<u>RC</u>	Pre-meeting

I. Summary:

CS/SB 1594 requires adult day training (ADT) programs serving individuals with developmental disabilities to be licensed by the Agency for Persons with Disabilities (the APD). The bill also prohibits the licensure of comprehensive transitional educational programs (CTEPs) in Florida. The bill also modifies the eligibility criteria for, and operation of, Florida’s Home and Community-Based Services (HCBS) Medicaid Waiver administered by the APD.

Specifically, the bill:

- Clarifies the definitions of “adult day training”;
- Adds a definition for “licensee,” which is the same definition as used in s. 408.803(9), F.S., relating to health care licensing by the Agency for Health Care Administration (the AHCA) and the same, in part, as used in s. 400.023(2)(a), F.S., relating to nursing homes;
- Requires the licensing and regulation of ADT programs by the APD;
- Allows the APD to deny licenses for residential facilities and ADT programs when there is evidence that the applicant is unqualified due to lack of good moral character;
- Allows the APD to take disciplinary actions due to the noncompliance of ADT programs;
- Clarifies the circumstances for which the APD can take disciplinary action related to verified findings of abuse, neglect, or abandonment of a child or vulnerable adult being served by an APD licensed facility or ADT program;
- Removes obsolete language regarding CTEPs that no longer operate within the state;
- Requires APD-licensed facilities and ADT programs to allow local emergency management agencies to examine the approved emergency management plans and review and approve plans for facilities and programs serving individuals with a complex medical condition;
- Clarifies language that the APD must not authorize funds or services to an unlicensed facility or ADT program that requires a license;
- Clarifies the timeframes within which the APD must process applications for the HCBS Waiver;

- Identifies timeframes for processing an application for crisis waiver enrollment from an applicant who is not currently an APD client;
- Clarifies that eligibility for admissions to Intermediate Care Facilities for the Developmentally Disabled (ICF/DDs) are to be completed by the APD; and
- Clarifies that the level of care criteria for eligibility for the HCBS Waiver program is the same as that required by federal law.

The bill is expected to have a fiscal impact on state government and will likely have a significant, but indeterminate, impact on existing ADT programs. See Section V. Fiscal Impact Statement.

The bill provides an effective date of October 1, 2024.

II. Present Situation:

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (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 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

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

¹ See Section 20.197(3), F.S.

² Rule 59G-13.080(1), F.A.C.

³ The Centers for Medicare & 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 March 21, 2023).

⁴ *Id.*; Rule 59G-13.080(1), F.A.C.

⁵ See s. 393.062, F.S.

⁶ Agency for Persons with Disabilities, *Regional Offices*, available at <https://apd.myflorida.com/region/> (last visited March 21, 2023).

<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.

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.

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

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 ch. 400, F.S.

⁸ Section 393.0662, F.S.

⁹ Agency for Persons with Disabilities, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2022-23*, p. 2, November 15, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The Quarterly Report”).

¹⁰ *Id.*

¹¹ *Id.*

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 s. 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 March 1, 2023 there are approximately 22,225 individuals 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.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.¹⁸

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 E-mail from JP Bell, APD Legislative Affairs Director, March 16, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, “The APD March 16 E-mail”).

¹⁶ Section 393.065(5), F.S.

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

¹⁸ Section 393.065(5), F.S.

Because the APD receives extensive documentation to verify identity, domicile, and documentation of clinical eligibility, most applications are incomplete upon receipt and require additional time to process.¹⁹ The APD also provides for a comprehensive assessment when needed to confirm eligibility for an applicant.²⁰

Section 393.066, F.S., requires the APD to plan, develop, organize, and implement its programs of services and treatment for persons with developmental disabilities to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.²¹ All elements of community-based services must be made available, and eligibility for these services must be consistent across the state.²²

Necessary services for clients must be purchased, rather than provided directly by the APD, when the purchase of services is more cost-efficient than providing such services directly. However, all purchased services must be approved by the APD.²³

Although s. 393.066, F.S., indicates that the APD provides community services and treatment to clients, there is a conflict with s. 393.065, F.S., which indicates that to provide immediate services or crisis intervention to applicants, the APD must arrange for emergency eligibility determination, with a full eligibility review to be accomplished within 45 days of the emergency eligibility determination.²⁴ Crisis intervention services to address immediate emergencies are available through other programs outside of the APD, including child and adult protective services through the Department of Children and Families (the DCF).²⁵

Due to funding constraints, eligible individuals seeking HCBS waiver services are enrolled on the waiting list in the priority order defined in 393.065, F.S. As of March 1, 2023, there were 8,974 individuals under the age of 21 in Category 7 of the waiting list.²⁶ However, many of these individuals are eligible for full Medicaid benefits and are not waiting for services due to coverage through the Medicaid program under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) requirements. As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness.²⁷ The EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for Medicaid recipients who are the age of 21 years, as specified in Section 1905(a)(4)(B) of the Social Security Act (the Act) and defined in 42 U.S.C. § 1396d(r)(5) and 42 CFR 441.50.²⁸

¹⁹ Agency for Persons with Disabilities, *Agency Analysis of SB 1594*, p. 2 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, “The APD SB 1594 Analysis”).

²⁰ *Id.*

²¹ Section 393.066(1), F.S.

²² *Id.*

²³ Section 393.066(2), F.S.

²⁴ The APD SB 1594 Analysis at p. 2.

²⁵ *Id.*

²⁶ The APD March 16 E-mail.

²⁷ The Agency for Health Care Administration (the AHCA), *Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Benefit*, available at <https://ahca.myflorida.com/medicaid/prescribed-drugs/early-and-periodic-screening-diagnostic-and-treatment-epsdt-benefit> (last visited March 21, 2023).

²⁸ Agency for Health Care Administration, *Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Requirements in the Managed Medical Assistance Program*, at p. 1, available at

Intermediate Care Facilities for the Developmentally Disabled

In addition to meeting eligibility criteria identified in s. 393.063, F.S., clients who are seeking to enroll on the HCBS Waiver must meet the level of care for services in an ICF for placement on the waiting list.²⁹ An intermediate care facility for the developmentally disabled (ICF/DD) provides health and rehabilitative services to individuals with developmental disabilities in a protected residential setting.³⁰ ICF/DDs are licensed and regulated by the Agency for Health Care Administration (AHCA) under Part VIII of ch. 400, F.S., and ch. 59A-26, F.A.C. ICF/DDs provide the following services:

- Nursing services;
- Activity services;
- Dental services;
- Dietary services (including therapeutic diet);
- Pharmacy services;
- Physician services;
- Rehabilitative care services;
- Room/bed and maintenance services; and
- Social services.³¹

ICF/DD services are only covered by the Medicaid program. Eligible individuals include persons who:

- Have the level of need and level of reimbursement determined by the APD in the last six months; and
- Meet the requirements for the Institutional Care Program.³²

While the majority of individuals who have a developmental disability live in the community, a small number live in ICF/DDs. Currently, there are 104 privately owned ICF/DD facilities in Florida.³³

Some individuals identified on the waiting list are not waiting for services due to residing in an institutional setting, such as an IC/FDD, penal institution, hospital, or nursing home.³⁴

Individuals who live in institutional settings are not eligible for HCBS waiver services, however, any clients in ICF/DDs or nursing homes who request Waiver enrollment are prioritized for

https://ahca.myflorida.com/content/download/7074/file/EPSTDT_Overview_FAQs_2017-07-17.pdf (last visited March 21, 2023).

²⁹ Agency for Health Care Administration, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/DD) Services, available at

https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/behavioral_health_coverage/bhfu/Intermediate_Care.shtml (last visited March 21, 2023) (hereinafter cited as, “The AHCA ICF/DD Services”).

³⁰ The Association of Rehabilitation Facilities, *Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs): Community Residential Living*, available at <https://www.floridaarf.org/category/62/ICF-IID-Info.html> (last visited March 21, 2023).

³¹ The AHCA ICF/DD Services.

³² *Id.*

³³ E-mail from Patrick Steele, AHCA Legislative Affairs Director, March 22, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

³⁴ The APD SB 1594 Analysis at p. 3.

services regardless of waiting list status.³⁵ Some APD clients request services from an ICF/DD rather than through the HCBS Waiver, and while ICF/DDs are licensed by the AHCA, the APD determines eligibility and level of reimbursement.³⁶

Licensure of Facilities by the APD

Pursuant to s. 393.067, F.S., the APD is charged with licensing community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities, residential habilitation centers, and Comprehensive Transitional Education Program (CTEPs).

The APD currently licenses over 2,100 residential facilities statewide but does not license ADT programs.³⁷ Through iBudget Florida, there are over 13,700 clients with ADT services on their cost plans.³⁸ There are also additional participants in ADT programs through Intermediate Care Facilities for the Developmentally Disabled (ICF/DDs) and private pay arrangements.³⁹

The APD is required to conduct annual inspections and reviews of facilities and programs licensed under s. 393.067.⁴⁰ Applications for licensure must be made to the APD on a form furnished by it and must be accompanied by the appropriate license fee.⁴¹ All applications for licensure must contain the following:

- The name and address of the applicant, if an applicant is an individual; if the applicant is a firm, partnership, or association, the name and address of each member thereof; if the applicant is a corporation, its name and address and the name and address of each director and each officer thereof; and the name by which the facility or program is to be known;
- The location of the facility or program for which a license is sought;
- The name of the person or persons under whose management or supervision the facility or program will be conducted;
- The number and type of residents or clients for which maintenance, care, education, or treatment is to be provided by the facility or program;
- The number and location of the component centers or units which will compose the comprehensive transitional education program;
- A description of the types of services and treatment to be provided by the facility or program;
- Information relating to the number, experience, and training of the employees of the facility or program;
- Certification that the staff of the facility or program will receive training to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, F.S., of residents and clients; and

³⁵ *Id.*

³⁶ *Id.*

³⁷ Agency for Persons with Disabilities, *Agency Analysis of SB 1444* at p. 2. (On file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, “The APD SB 1444 Analysis”).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 393.067(2), F.S.

⁴¹ Section 393.067(3), F.S.

- Such other information as the APD determines is necessary to carry out the provisions of ch. 393, F.S.⁴²

As a prerequisite for issuance of an initial or renewal license, the applicant, and any manager, supervisor, and staff member of a direct service provider of a licensed facility or program, must have submitted to Level 2 background screening as required under s. 393.0655, F.S., and a license may not be issued or renewed if the applicant or any manager, supervisor, or staff member of the direct service provider has failed background screenings.⁴³ The APD is required to determine by rule the frequency of background screening.⁴⁴ Applicants must submit with each initial or renewal application a signed affidavit under penalty of perjury stating that the applicant and any manager, supervisor, or staff member of the direct service provider is in compliance with all requirements for background screening.⁴⁵

Applicants are required to furnish satisfactory proof of the financial ability to operate and conduct a facility or program in accordance with the requirements of ch. 393, F.S., and agency rules.⁴⁶ APD rules⁴⁷ must establish minimum standards for licensed facilities and programs including rules requiring facilities and programs to train staff to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, F.S., respectively, of residents and clients, minimum standards of quality and adequacy of client care, incident reporting requirements, and uniform fire safety standards established by the State Fire Marshal which are appropriate to the size of the facility or of the component centers or units of the program.⁴⁸

After consultation with the Division of Emergency Management (DEM), the APD is also required to adopt rules for foster care facilities, group home facilities, and residential habilitation centers which establish minimum standards for the preparation and annual update of a comprehensive emergency management plan.⁴⁹ At a minimum, the rules must provide for plan components that address:

- Emergency evacuation transportation;
- Adequate sheltering arrangements;
- Post-disaster activities, including emergency power, food, and water;
- Post-disaster transportation;
- Supplies;
- Staffing;
- Emergency equipment;
- Individual identification of residents and transfer of records; and
- Responding to family inquiries.⁵⁰

⁴² Section 393.067(4), F.S.

⁴³ Section 393.067(5), F.S.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Section 393.067(6), F.S.

⁴⁷ Rules governing health and safety requirements for APD-licensed facilities can be found in Rule 65G-2, F.A.C.

⁴⁸ Section 393.067(7), F.S.

⁴⁹ Section 393.067(8), F.S.

⁵⁰ *Id.*

The comprehensive emergency management plan for all CTEPs and for homes serving individuals who have complex medical conditions is subject to review and approval by the local emergency management agency.⁵¹ During its review, the local emergency management agency shall ensure that the agency and the DEM, at a minimum, are given the opportunity to review the plan.⁵² Appropriate volunteer organizations must be given the opportunity to review the plan.⁵³ The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.⁵⁴

The APD may also conduct unannounced inspections to determine compliance by foster care facilities, group home facilities, residential habilitation centers, and CTEPs with the applicable provisions of ch. 393, F.S., and the associated rules, including the rules adopted for training staff of a facility or a program to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients.⁵⁵ The facility or program must make copies of inspection reports available to the public upon request.⁵⁶ All facilities and programs licensed by the APD must also adhere to all provisions of the Bill of Rights of Persons with Disabilities, delineated in ch. 393.13, F.S.⁵⁷

Adult Day Training Programs

Section 393.063, F.S. defines “adult day training” (ADT) to mean training services that take place in a nonresidential setting, separate from the home or facility in which the client resides, and are intended to support the participation of clients in daily, meaningful, and valued routines of the community. ADT may be provided in work-like settings that do not meet the definition of supported employment.⁵⁸

ADT services are training services intended to support the participation of recipients in valued routines of the community, including volunteering, job exploration, accessing community resources, and self-advocacy, in settings that are age and culturally appropriate.⁵⁹ Adult day training services can include meaningful day activities and training in the activities of daily living, adaptive skills, social skills, and employment.⁶⁰ The training, activities, and routine established by the ADT must be meaningful to the recipient and provide an appropriate level of variation and interest.⁶¹

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Section 393.067(9), F.S.

⁵⁶ *Id.*

⁵⁷ Section 393.067(13), F.S.

⁵⁸ “Supported employment” is defined as “employment located or provided in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is needed for job maintenance.” Section 393.063(43), F.S.

⁵⁹ Agency for Health Care Administration (the AHCA), *Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook* at p. 2-20. September 2021, available at https://apd.myflorida.com/ibudget/docs/September%202021%2059G-13.070_DD_iBudget_Waiver_Services.pdf (last visited March 21, 2023) (hereinafter cited as, “The iBudget Handbook”).

⁶⁰ *Id.*

⁶¹ *Id.*

ADT services generally begin at age 22 when a recipient is out of the public school system or when they have graduated from the public school system.⁶² Recipients who are age 22 years or older who have not graduated are also eligible.⁶³ Providers of ADT services must be designated by the APD regional office as ADT providers.⁶⁴ The service expectation for ADT services is to achieve individually determined goals and support recipient participation in less restrictive settings.⁶⁵ ADT must be provided in accordance with a formal implementation plan, developed under the direction of the recipient, reflecting goals from the recipient's current support plan.⁶⁶

The APD checks to see if those ADT programs that provide iBudget Waiver services meet the minimum education, experience, and background screening requirements to offer services at the time of the provider enrollment process.⁶⁷ This process currently does not include review of client care standards, site of services, operator(s), program(s), or ongoing monitoring.⁶⁸

ADT program providers operate through the iBudget Waiver via a contract with the APD called a Medicaid Waiver Services Agreement (MWSA).⁶⁹ However, current regulations and the current MWSA used by the APD does not provide the agency with a mechanism to ensure that the physical facility where clients receive ADT services is adequate to meet the health and safety needs of its clients.⁷⁰

Some ADT programs are not enrolled iBudget Waiver providers, and these settings are reimbursed via private pay arrangements with clients and their families. The absence of the provider having either a license or contract with APD effectively prevents the APD from initiating any type of disciplinary action against such programs in response to health and safety issues.⁷¹

The APD has the ability to levy administrative fines, sanctions, and moratoriums for residential facilities licensed by the agency,⁷² but there is no comparable statutory authority related to ADT facilities.

The APD can revoke an ADT providers MWSA; however, the APD does not have a mechanism to sanction an ADT for not meeting specific health and safety-related standards of care. Terminating a MWSA impacts all programs, such as group homes, operated by those same providers, as opposed to addressing and correcting issues solely pertaining to the ADTs operated by those providers.⁷³

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See The APD, *Medicaid Waiver Services Agreement*, available at <https://apd.myflorida.com/forms/medicaid-waiver-services-agreement.doc> (last visited March 21, 2023).

⁷⁰ The APD Analysis at p. 2.

⁷¹ The APD Analysis at p. 3.

⁷² See s. 393.0673, F.S.

⁷³ *Id.*

Verified Findings of Abuse, Neglect, Exploitation, or Sexual Misconduct

The APD is required to conduct a termination review of an ADT provider's MWSA following incidents of abuse, neglect, exploitation, or sexual misconduct against a recipient of services, in addition to any other legal sanctions available.⁷⁴ The failure of a provider to report any incident of abuse, neglect, exploitation, or sexual misconduct on behalf of the recipient will also result in the termination review of the provider's MWSA.⁷⁵ Abuse, neglect, exploitation, or sexual misconduct related to the recipient by an employee of a provider or an employee's failure to report an incident of abuse, neglect, exploitation, or sexual misconduct can be imputed to the provider and will result in termination review of the provider's MWSA.⁷⁶

The APD conducted an analysis of incident data and abuse, neglect, or exploitation data and discovered a significant number of issues adversely impacting the health and safety of APD clients related to ADT services.⁷⁷ During the last 4 years, there have been 125 instances where the Department of Children and Families (the DCF) conducted protective services investigations for abuse, neglect, or exploitation related to ADT services with 34 instances of verified findings.⁷⁸ Additionally, APD received 2,807 incident reports related to ADT services.⁷⁹

The APD reviewed prior incident reports occurring in ADT facilities in order to mitigate similar future incidents.⁸⁰ The APD found that some incidents occurred as a result of environmental hazards not addressed through current waiver standards for ADT services.⁸¹ Additionally, the agency believes that increased enforcement of appropriate staffing ratios could reduce some incidents, such as elopements and client injuries.⁸² Required training could also assist ADTs in proper use of medical equipment and the implementation of behavioral interventions.⁸³ The APD believes that establishing facility licensure standards and enforcement authority could prevent, or reduce the prevalence of, such incidents in the future.⁸⁴

Comprehensive Transitional Education Programs

A 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.⁸⁵ The Legislature created the CTEP license in 2006 to serve individuals primarily, though not limited to those with developmental disabilities, who have severe or moderate maladaptive behaviors.⁸⁶

⁷⁴ The iBudget Handbook at p. 1-10.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ The APD SB 1444 Analysis at p. 3.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Section 393.18, F.S.

⁸⁶ Ch, 2006-227, L.O.F.; Disability Rights Florida, *Monitoring and Investigation of Carlton Palms Educational Center, Results and Recommendations March 2018* at p. 3., available at

The services provided by the CTEP were proscribed as “temporary in nature and delivered in a structured residential setting, having the primary goal of incorporating the principle of self-determination in establishing permanent residence for persons with maladaptive behaviors in facilities that are not associated with the comprehensive transitional education program.”⁸⁷

Carlton Palms, run by Bellwether Behavioral Health, was the only licensed CTEP in Florida.⁸⁸ The facility closed in 2018 following the death of a resident and numerous documented cases of abuse and neglect over the course of several years.⁸⁹ All 200 residents of Carlton Palms were moved to smaller community settings.

However, s. 393.18, F.S., still authorizes the CTEP license.⁹⁰ CTEPs provide treatment in large-scale residential settings but federal law prohibits the provision of iBudget Waiver services in such environments.⁹¹ Because the majority of the APD’s clients are receiving services through the iBudget Waiver, the agency states that it is focused on offering community-based services in smaller and more family-like settings and does not anticipate licensing new CTEPs.⁹²

III. Effect of Proposed Changes:

ADT Licensure Requirements

The bill clarifies that ADT services specifically include, but are not limited to, the acquisition, retention, or improvement of self-help, socialization, and adaptive skills. The bill eliminates a provision allowing ADT to be provided in work like settings that do not meet the definition of supported employment.

The bill adds a definition of “licensee” to that section. Specifically, the bill defines “licensee” to mean “an individual, a corporation, a partnership, a firm, an association, a governmental entity, or other entity that is issued a permit, registration, certificate, or license by the agency. The licensee is legally responsible for all aspects of the provider operation.” This is the same definition of “licensee” used in s. 408.803(9), F.S., relating to health care licensing by the Agency for Health Care Administration (the AHCA) and the same, in part, as used in s. 400.023(2)(a), F.S., relating to nursing homes.

The bill requires all direct service providers employed by ADT programs to undergo a level 2 background screening. The bill also requires applicants, managers, supervisors, and staff members of direct service providers employed by ADT programs to undergo level 2 background screenings.

https://disabilityrightsflorida.org/documents/Carlton_Palms_Report_3-5-18.pdf (last visited March 21, 2023) (hereinafter cited as, “The DRF Report”).

⁸⁷ The DRF Report at p. 3.

⁸⁸ *Id.* at p. 1.

⁸⁹ The Daily Commercial, *Troubled Carlton Palms Home for the Disabled to Close*, May 11, 2018, available at <https://www.dailycommercial.com/story/news/local/mount-dora/2018/05/11/troubled-carlton-palms-home-for-disabled-to-close/12261119007/> (last visited March 21, 2023).

⁹⁰ The APD SB 1444 Analysis at p. 3.

⁹¹ *Id.*

⁹² *Id.*

The bill applies the facility licensure requirements currently in place for foster care facilities, group home facilities, and residential habilitation facilities to ADT programs. The bill also requires the APD to conduct annual inspections and reviews of ADT programs licensed under the bill.

The bill implements many of the same application requirements for other facilities licensed by the APD to applications for licensure as ADT programs. Specifically, an application for licensure as an ADT program must include:

- The location of the ADT program for which a license is sought;
- The name of the person or persons under whose management or supervision the ADT program will be conducted;
- The number and type of residents or clients for which maintenance, care, education or treatment is to be provided by the ADT program;
- A description of the type of services and treatment to be provided by the facility or ADT program;
- Information relating to the number, experience, and training of the employees of the ADT program;
- Certification that the staff of the ADT program will receive training to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment of residents and clients; and
- Information the APD determines is necessary to carry out other statutory requirements delineated in s. 393.067, F.S.

The bill requires applicants for licensure as ADT programs to furnish satisfactory proof of financial ability to operate and conduct the program in accordance with s. 393.067, F.S., and adopted rules.

The bill requires the APD to adopt rules establishing minimum standards for ADT programs, including:

- Rules requiring ADT programs to train staff to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment of residents and clients;
- Minimum standards of quality and adequacy of client care;
- Incident reporting requirements; and
- Uniform fire safety standards established by the State Fire Marshal which are appropriate to the size of the ADT program.

Under the bill, as with other facilities licensed by the agency, the APD must consult with the Division of Emergency Management and adopt rules for ADT programs which establish minimum standards for the preparation and annual update of a comprehensive emergency management plan. As with plans applicable to other APD-licensed facilities and providers, the plan is subject to review and approval by the local emergency management agency, and the local emergency management agency must complete its review within 60 days and either approve the plan or advise the ADT program of necessary revisions.

The bill permits the APD to conduct unannounced inspections of ADT programs to determine compliance with the standards described above and throughout ch. 393.067, F.S., as well as

applicable rules, specifically including the rules adopted to detect sexual abuse, abuse, neglect, exploitation, and abandonment of residents and clients. ADT programs are required to make copies of inspection reports available to the public upon request.

The bill requires licensed ADT programs to adhere to all provisions of the Bill of Rights of Persons with Disabilities delineated in ch. 393.13, F.S.

The bill prohibits the APD from authorizing funds or services to unlicensed ADT programs, and prohibits the APD from renewing a license for an ADT program if the licensee has any outstanding fines assessed wherein final adjudication of such fines has not been entered.

The bill specifies that the APD is not required to contract with licensed ADT programs.

The bill applies many of the same grounds for which the APD can take disciplinary action against a licensed facility to ADT programs licensed under the bill. Disciplinary action may include revoking or suspending a license and imposing an administrative fine not to exceed \$1,000 per day. Grounds for discipline include instances where the licensee has:

- Falsely represented or omitted a material fact in its license application submitted under s. 393.067, F.S.;
- Had prior action taken against it under the Medicaid or Medicare program; or
- Failed to comply with the applicable requirements of ch. 393, F.S., or rules applicable to the licensee.

The APD can also take disciplinary action when the DCF has verified that the licensee is responsible for the abuse, neglect, exploitation, of a vulnerable adult.

The bill provides that for purposes of disciplinary action for verified findings of abuse, neglect, abandonment, or exploitation of a child or vulnerable adult, all APD licensees, including facilities already requiring licensure in current law and ADT programs newly requiring licensure under the bill, are responsible not only for administration of the facilities in compliance with the standards set out by statute and administrative rule, but for the care and supervision of the clients in the facility or the participants of the program.

The bill specifies that a licensee may not delegate to others the ultimate responsibility for the safety of the clients in its care. Further, a licensee is subject to disciplinary action for an employee's lapse in care or supervision of the clients at the facility or the participants of the program in which a verified finding of abuse, neglect, abandonment, or exploitation occurred. The bill requires that remedial action taken by the licensee not affect the APD's ability to impose disciplinary action for the underlying violation.

The bill also specifies that the APD may deny an application for licensure if:

- An applicant has previously had a license to operate an ADT program revoked by the APD;
- The DCF has verified that the applicant is responsible for the abuse, neglect, abandonment, or exploitation of a child or vulnerable adult; or
- The APD has determined that there is clear and convincing evidence that the applicant is unqualified for a license because of a lack of good moral character. Under the bill, the term

“good moral character” means “a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and the Federal Government.”

Under the bill, all licensee hearings must be held within the county in which the licensee or applicant operates or applies for a license to operate an ADT program. The APD is permitted to issue orders immediately suspending or revoking a license when it determines that any condition of an ADT program presents a danger to the health, safety, or welfare of the program participants.

The bill allows the APD to impose an immediate moratorium on service authorizations to a facility or ADT program when the agency determines that any condition of the facility or the program presents a threat to the health, safety, or welfare of the residents in the facility or the program participants.

Repeal of CTEP Provisions

The bill strikes the definition of “comprehensive transitional education program” in s. 393.063, F.S., and removes a requirement for CTEP employees to undergo level 2 background screenings, as the statutory authority to license a CTEP is removed entirely by the bill. The bill repeals s. 393.18, F.S., which authorizes the licensure of CTEPs. The bill makes other conforming changes and removes all references to CTEPs remaining in statute.

Changes to Waiver Waitlist Provisions

The bill requires the APD to process all applications for services within 60 days of receipt, regardless of the age of the applicant. The bill eliminates the requirement for the APD to make eligibility determinations within 45 days for applicants under 6 years of age.

If an applicant is seeking enrollment due to crisis, the bill requires the APD to complete an eligibility determination within 45 days after receipt of the signed application. In instances where the APD needs additional documentation to make a proper determination of an applicant’s eligibility, the bill requires the APD to request such documentation from the applicant. If the APD requests additional documentation or provides a comprehensive assessment, the agency must then complete the eligibility determination within 90 days after receipt of the signed application.

The bill clarifies eligibility criteria for the HCBS Waiver by requiring the APD’s eligibility determination of an applicant to find that the applicant has satisfied all procedural requirements and eligibility criteria found in rule, which must include, but not need be limited to, the requirement that the applicant:

- Have a developmental disability; and
- Be domiciled in Florida.

The bill removes an existing requirement for the APD to arrange for emergency eligibility determinations, with a full review to be accomplished within 45 days of the emergency eligibility determination.

The bill clarifies that any admission to an ICF/DD must be authorized by the APD, and that as part of that authorization the APD or its designee must conduct an assessment, including an assessment of medical necessity, level of care, and level of reimbursement. The bill specifies that this process is to be conducted in order to ensure that the setting is the least restrictive to meet the individual's needs. The bill removes the ability of the APD to enter into an agreement with the Department of Elder Affairs' Long-Term Care Services (CARES) Program to conduct assessments of the level of need and medical necessity for long-term care services. This change will make the APD solely responsible for determining ICF/DD placement eligibility.

The bill clarifies the level of care requirement for HCBS waiver services as already specified in the approved federal waiver program. The bill replaces instances of the term 'wait list' with the term 'pre-enrollment categories' throughout s. 393.065, F.S. The bill also requires the APD to prioritize enrollment for the waiver program based on the time each client has been assigned to any pre-enrollment category without interruption, with the longest having the highest priority. Under the bill, a client that resides in an institutional setting, including, but not limited to the following may not be assigned to a pre-enrollment category:

- A penal institution;
- An ICF/DD;
- A mental health hospital;
- A nursing home; or
- A forensic facility operated by the APD pursuant to ch. 916, F.S.

The bill addresses conflicts between ss. 393.065 and 393.066, F.S., by clarifying that the APD provides services only to eligible clients. The bill also clarifies that in order for a client to receive services under the HCBS Waiver there must be sufficient funding available within the client's iBudget or other legislative appropriation and must also:

- Meet the eligibility criteria as provided under the bill, which must be confirmed by the agency;
- Be eligible for the state Medicaid program under Title XIX of the Social Security Act or the Supplemental Security Income program;
- Meet the level of care requirements for an intermediate 191 care facility for individuals with intellectual disabilities pursuant to 42 C.F.R. s. 435.217(b)(1) and 42 C.F.R. s. 440.150; and
- Meet the requirements set forth in the approved federal waiver authorized under s. 1915(c) of the Social Security Act and 42 C.F.R. s. 441.302.

The bill also makes various conforming changes throughout, including changing instances of the word 'decision' to 'determination' and specifying that the APD is required to notify both applicants and clients of appellate rights following determinations of service eligibility.

The bill provides an effective date of October 1, 2024.

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 likely be an indeterminate fiscal impact to existing ADT programs relating to the cost of licensure application and other costs associated with obtaining initial and continuing licensure.

C. Government Sector Impact:

The APD anticipates that the bill will require seven full-time equivalent (FTE) positions for implementation, totaling \$457,616 in recurring funds.⁹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁹³ The APD SB 1444 Analysis at p. 5.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 393.065 and 393.0651

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Committee Substitute by Health Policy on April 4, 2023

The CS:

- Merges SB 1444 into SB 1594. SB 1444 is the other APD legislative package relating to adult day training programs and background screening of direct service providers.
- Restores category 7 of the waiver list (which was removed by the underlying bill) and deletes provisions for registration lists for clients on this category.
- Renames the HCBS waiver as the developmental disabilities home and community-based services Medicaid waiver program.
- Requires the APD to specifically authorize admissions to ICFs for individuals with intellectual disabilities to ensure the setting is the least restrictive. The APD must conduct a comprehensive assessment including medical necessity, level of care, and level of reimbursement.
- Changes “wait list” to “pre-enrollment categories” throughout s. 393.065, F.S.

B. Amendments:

None.