

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1594

INTRODUCER: Senator Brodeur

SUBJECT: Services for Persons with Disabilities

DATE: April 2, 2023

REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 1594 modifies the eligibility criteria for, and operation of, Florida’s Home and Community-Based Services (HCBS) Medicaid Waiver administered by the Agency for Persons with Disabilities (the APD).

Specifically, the bill:

- 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;
- Eliminates category 7 of the HCBS Waiver waitlist;
- Replaces category 7 of the HCBS Waiver waitlist with an APD Registration Listing for individuals under the age of 21 who meet eligibility requirements and do not meet the criteria for other waiting list categories and eligible adults in institutional settings; 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 provides an effective date of July 1, 2023.

**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.<sup>1</sup> Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.<sup>2</sup> 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.<sup>3</sup> Eligible individuals must meet institutional level of care requirements.<sup>4</sup>

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.<sup>5</sup>

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:<sup>6</sup>

<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.

<sup>1</sup> See Section 20.197(3), F.S.

<sup>2</sup> Rule 59G-13.080(1), F.A.C.

<sup>3</sup> 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 March 21, 2023).

<sup>4</sup> *Id.*; Rule 59G-13.080(1), F.A.C.

<sup>5</sup> See s. 393.062, F.S.

<sup>6</sup> The APD, *Regional Offices*, available at <https://apd.myflorida.com/region/> (last visited March 21, 2023).

## **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)<sup>7</sup> through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).<sup>8</sup>

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.<sup>9</sup> The iBudget Florida program uses an algorithm, or formula, to set individuals’ funding allocations for waiver services.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

### ***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.<sup>13</sup> 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.<sup>14</sup> As of March 1, 2023 there are approximately 22,225 individuals on the HCBS Waiver wait list.<sup>15</sup>

The needs of APD clients are classified into seven categories<sup>16</sup> and are prioritized in the following decreasing order of priority:

- Category 1 – Clients deemed to be in crisis.

<sup>7</sup> 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.

<sup>8</sup> Section 393.0662, F.S.

<sup>9</sup> The APD, *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”).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Section 393.065(1), F.S.

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

<sup>15</sup> 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”).

<sup>16</sup> Section 393.065(5), F.S.

- Category 2 – Specified children from the child welfare system.<sup>17</sup>
- 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.<sup>18</sup>

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.<sup>19</sup> The APD also provides for a comprehensive assessment when needed to confirm eligibility for an applicant.<sup>20</sup>

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.<sup>21</sup> All elements of community-based services must be made available, and eligibility for these services must be consistent across the state.<sup>22</sup>

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.<sup>23</sup>

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

<sup>17</sup> See s. 393.065(5)(b), F.S., for specific criteria.

<sup>18</sup> Section 393.065(5), F.S.

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

<sup>20</sup> *Id.*

<sup>21</sup> Section 393.066(1), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 393.066(2), F.S.

determination, with a full eligibility review to be accomplished within 45 days of the emergency eligibility determination.<sup>24</sup> 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).<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

### **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.<sup>29</sup> 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.<sup>30</sup> 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;

<sup>24</sup> The APD Analysis at p. 2.

<sup>25</sup> *Id.*

<sup>26</sup> The APD March 16 E-mail.

<sup>27</sup> 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).

<sup>28</sup> The AHCA, *Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Requirements in the Managed Medical Assistance Program*, at p. 1, available at [https://ahca.myflorida.com/content/download/7074/file/EPSDT\\_Overview\\_FAQs\\_2017-07-17.pdf](https://ahca.myflorida.com/content/download/7074/file/EPSDT_Overview_FAQs_2017-07-17.pdf) (last visited March 21, 2023).

<sup>29</sup> The AHCA, *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](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”).

<sup>30</sup> 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).

- Rehabilitative care services;
- Room/bed and maintenance services; and
- Social services.<sup>31</sup>

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.<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup> 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 services regardless of waiting list status.<sup>35</sup> 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.<sup>36</sup>

### III. Effect of Proposed Changes:

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:

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<sup>31</sup> The AHCA ICF/DD Services.

<sup>32</sup> *Id.*

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

<sup>34</sup> The APD Analysis at p. 3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

- 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 and level of reimbursement. 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 eliminates category 7 of the HCBS Waiver waitlist and replaces it with an agency registration list for any client who meets the federal ICF/DD level of care requirements and is:

- Younger than 21 years of age, requesting but not receiving waiver services, and not assigned to category 1, category 2, category 3, category 4, or category 5; or
- An adult that resides in an institutional setting, including, but not limited to, a penal institution, an intermediate care facility for the developmentally disabled, a mental health hospital, a nursing home, or a forensic facility run by the agency 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 July 1, 2023.

**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:

The APD anticipates that the bill will not have a fiscal impact on the private sector.<sup>37</sup>

## C. Government Sector Impact:

The APD anticipates that the bill will not have a fiscal impact on the agency.<sup>38</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>37</sup> The APD Analysis at p. 4.

<sup>38</sup> *Id.*



**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.)

None.

B. **Amendments:**

None.

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

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