

By Senator Brodeur

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1 A bill to be entitled
2 An act relating to services for persons with
3 disabilities; amending s. 393.065, F.S.; revising
4 provisions related to the application for services for
5 persons with disabilities; revising timeframes within
6 which the Agency for Persons with Disabilities must
7 make certain eligibility determinations; requiring the
8 agency to request additional documentation from
9 applicants if it determines such documentation is
10 necessary to make an eligibility determination;
11 specifying requirements for the agency's eligibility
12 determinations; revising procedures for admissions to
13 intermediate care facilities for the developmentally
14 disabled; requiring the agency to assign certain
15 clients to a waiting list; revising provisions related
16 to the prioritization of clients waiting for certain
17 waiver services; requiring the agency to place certain
18 clients on an agency registration list; providing that
19 only agency clients are eligible for certain services;
20 specifying eligibility criteria for such services;
21 amending s. 393.0651, F.S.; conforming provisions to
22 changes made by the act; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 393.065, Florida Statutes, is amended to
27 read:

28 393.065 Application and eligibility determination.—

29 (1) Application for services must ~~shall~~ be made in writing

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30 to the agency, in the region ~~service~~ area in which the applicant
31 resides. The agency shall review each application and make an
32 eligibility determination ~~applicant for eligibility within 45~~
33 ~~days after the date the application is signed for children under~~
34 ~~6 years of age and~~ within 60 days after receipt of the signed
35 application. If an applicant is requesting enrollment in the
36 home and community-based services (HCBS) Medicaid waiver program
37 for a person with developmental disabilities due to crisis, as
38 specified in paragraph (5) (a), at the time of the application,
39 the agency must complete an eligibility determination within 45
40 days after receipt of the signed application.

41 (a) If the agency determines additional documentation is
42 necessary to make a proper determination on an applicant's
43 eligibility, the agency must request the necessary documentation
44 from the applicant ~~the date the application is signed for all~~
45 ~~other applicants.~~

46 (b) When necessary to definitively identify individual
47 conditions or needs, the agency shall provide a comprehensive
48 assessment.

49 (c) If the agency requests additional documentation from an
50 applicant or provides a comprehensive assessment, the agency's
51 eligibility determination must be completed within 90 days after
52 receipt of the signed application.

53 (2) To be eligible for services under this chapter, the
54 agency's eligibility determination must find the applicant has
55 satisfied all procedural requirements and eligibility criteria
56 found in rule, which must include, but need not be limited to,
57 the requirement that the applicant have a developmental
58 disability and be domiciled in Florida ~~Only applicants whose~~

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59 ~~domicile is in Florida are eligible for services.~~ Information
60 accumulated by other agencies, including professional reports
61 and collateral data, must ~~shall~~ be considered in this process
62 when available.

63 ~~(2) In order to provide immediate services or crisis~~
64 ~~intervention to applicants, the agency shall arrange for~~
65 ~~emergency eligibility determination, with a full eligibility~~
66 ~~review to be accomplished within 45 days of the emergency~~
67 ~~eligibility determination.~~

68 (3) The agency shall notify each applicant, in writing, of
69 its eligibility determination ~~decision~~. Any applicant or client
70 determined by the agency to be ineligible for services has the
71 right to appeal this decision pursuant to ss. 120.569 and
72 120.57.

73 (4) Any admission to an intermediate care facility for the
74 developmentally disabled must be authorized by the agency. As
75 part of the authorization, the agency, or its designee, shall
76 conduct an assessment, including an assessment of medical
77 necessity and level of reimbursement ~~The agency shall assess the~~
78 ~~level of need and medical necessity for prospective residents of~~
79 ~~intermediate care facilities for the developmentally disabled.~~
80 ~~The agency may enter into an agreement with the Department of~~
81 ~~Elderly Affairs for its Comprehensive Assessment and Review for~~
82 ~~Long Term Care Services (CARES) program to conduct assessments~~
83 ~~to determine the level of need and medical necessity for long-~~
84 ~~term care services under this chapter. To the extent permissible~~
85 ~~under federal law, the assessments shall be funded under Title~~
86 ~~XIX of the Social Security Act.~~

87 (5) The agency shall assign any client that meets the level

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88 of care requirement for an intermediate care facility for
89 individuals with intellectual disabilities pursuant to 42 C.F.R.
90 s. 435.217(b)(1) and 42 C.F.R. s. 440.150 to a waiting list, and
91 shall provide priority to clients waiting for waiver services in
92 the following order:

93 (a) Category 1, which includes clients deemed to be in
94 crisis as described in rule, shall be given first priority in
95 moving from the waiting list to the waiver.

96 (b) Category 2, which includes individuals on the waiting
97 list who are:

98 1. From the child welfare system with an open case in the
99 Department of Children and Families' statewide automated child
100 welfare information system and who are either:

101 a. Transitioning out of the child welfare system at the
102 finalization of an adoption, a reunification with family
103 members, a permanent placement with a relative, or a
104 guardianship with a nonrelative; or

105 b. At least 18 years but not yet 22 years of age and who
106 need both waiver services and extended foster care services; or

107 2. At least 18 years but not yet 22 years of age and who
108 withdrew consent pursuant to s. 39.6251(5)(c) to remain in the
109 extended foster care system.

110
111 For individuals who are at least 18 years but not yet 22 years
112 of age and who are eligible under sub-subparagraph 1.b., the
113 agency shall provide waiver services, including residential
114 habilitation, and the community-based care lead agency shall
115 fund room and board at the rate established in s. 409.145(3) and
116 provide case management and related services as defined in s.

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117 409.986(3)(e). Individuals may receive both waiver services and
118 services under s. 39.6251. Services may not duplicate services
119 available through the Medicaid state plan.

120 (c) Category 3, which includes, but is not required to be
121 limited to, clients:

122 1. Whose caregiver has a documented condition that is
123 expected to render the caregiver unable to provide care within
124 the next 12 months and for whom a caregiver is required but no
125 alternate caregiver is available;

126 2. At substantial risk of incarceration or court commitment
127 without supports;

128 3. Whose documented behaviors or physical needs place them
129 or their caregiver at risk of serious harm and other supports
130 are not currently available to alleviate the situation; or

131 4. Who are identified as ready for discharge within the
132 next year from a state mental health hospital or skilled nursing
133 facility and who require a caregiver but for whom no caregiver
134 is available or whose caregiver is unable to provide the care
135 needed.

136 (d) Category 4, which includes, but is not required to be
137 limited to, clients whose caregivers are 70 years of age or
138 older and for whom a caregiver is required but no alternate
139 caregiver is available.

140 (e) Category 5, which includes, but is not required to be
141 limited to, clients who are expected to graduate within the next
142 12 months from secondary school and need support to obtain a
143 meaningful day activity, maintain competitive employment, or
144 pursue an accredited program of postsecondary education to which
145 they have been accepted.

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146 (f) Category 6, which includes clients 21 years of age or
147 older who do not meet the criteria for category 1, category 2,
148 category 3, category 4, or category 5.

149 ~~(g) Category 7, which includes clients younger than 21~~
150 ~~years of age who do not meet the criteria for category 1,~~
151 ~~category 2, category 3, or category 4.~~

152 (6) Within categories 3, 4, 5, and 6, ~~and 7~~, the agency
153 shall maintain a waiting list of clients placed in the order of
154 the date that the client is determined eligible for waiver
155 services.

156 (7) The agency shall place on an agency registration list
157 any client who meets the level of care requirement for an
158 intermediate care facility for individuals with intellectual
159 disabilities pursuant to 42 C.F.R. s. 435.217(b)(1) and 42
160 C.F.R. s. 440.150 and is:

161 (a) Younger than 21 years of age, requesting but not
162 receiving waiver services, and not assigned to category 1,
163 category 2, category 3, category 4, or category 5; or

164 (b) An adult that resides in an institutional setting,
165 including, but not limited to, a penal institution, an
166 intermediate care facility for the developmentally disabled, a
167 mental health hospital, a nursing home, or a forensic facility
168 run by the agency pursuant to chapter 916.

169 (8)~~(6)~~ The agency shall allow an individual who meets the
170 eligibility requirements of subsection (2) ~~subsection (1)~~ to
171 receive home and community-based services in this state if the
172 individual's parent or legal guardian is an active-duty military
173 servicemember and if, at the time of the servicemember's
174 transfer to this state, the individual was receiving home and

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175 community-based services in another state.

176 (9)~~(7)~~ The agency shall allow an individual with a
177 diagnosis of Phelan-McDermid syndrome who meets the eligibility
178 requirements of subsection (2) ~~subsection (1)~~ to receive home
179 and community-based services.

180 (10) Only a client may be eligible for services under the
181 HCBS Medicaid waiver program. To receive services under the HCBS
182 Medicaid waiver program, there must be available funding
183 pursuant to s. 393.0662 or other legislative appropriation, and
184 a client must:

185 (a) Meet the eligibility criteria as provided in subsection
186 (2), which must be confirmed by the agency;

187 (b) Be eligible for the state Medicaid program under Title
188 XIX of the Social Security Act or the Supplemental Security
189 Income program;

190 (c) Meet the level of care requirements for an intermediate
191 care facility for individuals with intellectual disabilities
192 pursuant to 42 C.F.R. s. 435.217(b)(1) and 42 C.F.R. s. 440.150;
193 and

194 (d) Meet the requirements set forth in the approved federal
195 waiver authorized under s. 1915(c) of the Social Security Act
196 and 42 C.F.R. s. 441.302.

197 (11)~~(8)~~ Agency action that selects individuals to receive
198 waiver services pursuant to this section does not establish a
199 right to a hearing or an administrative proceeding under chapter
200 120 for individuals remaining on the waiting list.

201 (12)~~(9)~~ The client, the client's guardian, or the client's
202 family must ensure that accurate, up-to-date contact information
203 is provided to the agency at all times. Notwithstanding s.

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204 393.0651, the agency shall send an annual letter requesting
205 updated information from the client, the client's guardian, or
206 the client's family. The agency shall remove from the waiting
207 list any individual who cannot be located using the contact
208 information provided to the agency, fails to meet eligibility
209 requirements, or becomes domiciled outside the state.

210 (13) (a) ~~(10) (a)~~ The agency shall provide the following
211 information to all applicants or their parents, legal guardians,
212 or family members:

213 1. A brief overview of the vocational rehabilitation
214 services offered through the Division of Vocational
215 Rehabilitation of the Department of Education, including a
216 hyperlink or website address that provides access to the
217 application for such services;

218 2. A brief overview of the Florida ABLE program as
219 established under s. 1009.986, including a hyperlink or website
220 address that provides access to the application for establishing
221 an ABLE account as defined in s. 1009.986(2);

222 3. A brief overview of the supplemental security income
223 benefits and social security disability income benefits
224 available under Title XVI of the Social Security Act, as
225 amended, including a hyperlink or website address that provides
226 access to the application for such benefits;

227 4. A statement indicating that the applicant's local public
228 school district may provide specialized instructional services,
229 including transition programs, for students with special
230 education needs;

231 5. A brief overview of programs and services funded through
232 the Florida Center for Students with Unique Abilities, including

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233 contact information for each state-approved Florida
234 Postsecondary Comprehensive Transition Program;

235 6. A brief overview of decisionmaking options for
236 individuals with disabilities, guardianship under chapter 744,
237 and alternatives to guardianship as defined in s. 744.334(1),
238 which may include contact information for organizations that the
239 agency believes would be helpful in assisting with such
240 decisions;

241 7. A brief overview of the referral tools made available
242 through the agency, including a hyperlink or website address
243 that provides access to such tools; and

244 8. A statement indicating that some waiver providers may
245 serve private-pay individuals.

246 (b) The agency must provide the information required in
247 paragraph (a) in writing to an applicant or his or her parent,
248 legal guardian, or family member along with a written disclosure
249 statement in substantially the following form:

250
251 DISCLOSURE STATEMENT
252

253 Each program and service has its own eligibility requirements.
254 By providing the information specified in section 395.065(13)(a)
255 ~~393.065(10)(a)~~, Florida Statutes, the agency does not guarantee
256 an applicant's eligibility for or enrollment in any program or
257 service.

258 (c) The agency shall also publish the information required
259 in paragraph (a) and the disclosure statement in paragraph (b)
260 on its website, and shall provide that information and statement
261 annually to each applicant placed on the waiting list or to the

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262 parent, legal guardian, or family member of such applicant.

263 (14)~~(11)~~ The agency and the Agency for Health Care
264 Administration may adopt rules specifying application
265 procedures, criteria associated with the waiting list
266 categories, procedures for administering the waiting list,
267 including tools for prioritizing waiver enrollment within
268 categories, and eligibility criteria as needed to administer
269 this section.

270 Section 2. Section 393.0651, Florida Statutes, is amended
271 to read:

272 393.0651 Family or individual support plan.—The agency
273 shall provide directly or contract for the development of a
274 family support plan for children ages 3 to 18 years of age and
275 an individual support plan for each client. The client, if
276 competent, the client's parent or guardian, or, when
277 appropriate, the client advocate, shall be consulted in the
278 development of the plan and shall receive a copy of the plan.
279 Each plan must include the most appropriate, least restrictive,
280 and most cost-beneficial environment for accomplishment of the
281 objectives for client progress and a specification of all
282 services authorized. The plan must include provisions for the
283 most appropriate level of care for the client. Within the
284 specification of needs and services for each client, when
285 residential care is necessary, the agency shall move toward
286 placement of clients in residential facilities based within the
287 client's community. The ultimate goal of each plan, whenever
288 possible, shall be to enable the client to live a dignified life
289 in the least restrictive setting, be that in the home or in the
290 community. ~~For children under 6 years of age,~~ The family or

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291 individual support plan shall be developed within the timeframes
292 ~~45-day application period as specified in s. 393.065(1); for all~~
293 ~~applicants 6 years of age or older, the family or individual~~
294 ~~support plan shall be developed within the 60-day period as~~
295 ~~specified in that subsection.~~

296 (1) The agency shall develop and specify by rule the core
297 components of support plans.

298 (2) The family or individual support plan shall be
299 integrated with the individual education plan (IEP) for all
300 clients who are public school students entitled to a free
301 appropriate public education under the Individuals with
302 Disabilities Education Act, I.D.E.A., as amended. The family or
303 individual support plan and IEP shall be implemented to maximize
304 the attainment of educational and habilitation goals.

305 (a) If the IEP for a student enrolled in a public school
306 program indicates placement in a public or private residential
307 program is necessary to provide special education and related
308 services to a client, the local education agency shall provide
309 for the costs of that service in accordance with the
310 requirements of the Individuals with Disabilities Education Act,
311 I.D.E.A., as amended. This shall not preclude local education
312 agencies and the agency from sharing the residential service
313 costs of students who are clients and require residential
314 placement.

315 (b) For clients who are entering or exiting the school
316 system, an interdepartmental staffing team composed of
317 representatives of the agency and the local school system shall
318 develop a written transitional living and training plan with the
319 participation of the client or with the parent or guardian of

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320 the client, or the client advocate, as appropriate.

321 (3) Each family or individual support plan shall be
322 facilitated through case management designed solely to advance
323 the individual needs of the client.

324 (4) In the development of the family or individual support
325 plan, a client advocate may be appointed by the support planning
326 team for a client who is a minor or for a client who is not
327 capable of express and informed consent when:

328 (a) The parent or guardian cannot be identified;

329 (b) The whereabouts of the parent or guardian cannot be
330 discovered; or

331 (c) The state is the only legal representative of the
332 client.

333

334 Such appointment shall not be construed to extend the powers of
335 the client advocate to include any of those powers delegated by
336 law to a legal guardian.

337 (5) The agency shall place a client in the most appropriate
338 and least restrictive, and cost-beneficial, residential facility
339 according to his or her individual support plan. The client, if
340 competent, the client's parent or guardian, or, when
341 appropriate, the client advocate, and the administrator of the
342 facility to which placement is proposed shall be consulted in
343 determining the appropriate placement for the client.

344 Considerations for placement shall be made in the following
345 order:

346 (a) Client's own home or the home of a family member or
347 direct service provider.

348 (b) Foster care facility.

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349 (c) Group home facility.

350 (d) Intermediate care facility for the developmentally
351 disabled.

352 (e) Other facilities licensed by the agency which offer
353 special programs for people with developmental disabilities.

354 (f) Developmental disabilities center.

355 (6) In developing a client's annual family or individual
356 support plan, the individual or family with the assistance of
357 the support planning team shall identify measurable objectives
358 for client progress and shall specify a time period expected for
359 achievement of each objective.

360 (7) The individual, family, and support coordinator shall
361 review progress in achieving the objectives specified in each
362 client's family or individual support plan, and shall revise the
363 plan annually, following consultation with the client, if
364 competent, or with the parent or guardian of the client, or,
365 when appropriate, the client advocate. The agency or designated
366 contractor shall annually report in writing to the client, if
367 competent, or to the parent or guardian of the client, or to the
368 client advocate, when appropriate, with respect to the client's
369 habilitative and medical progress.

370 (8) Any client, or any parent of a minor client, or
371 guardian, authorized guardian advocate, or client advocate for a
372 client, who is substantially affected by the client's initial
373 family or individual support plan, or the annual review thereof,
374 shall have the right to file a notice to challenge the decision
375 pursuant to ss. 120.569 and 120.57. Notice of such right to
376 appeal shall be included in all support plans provided by the
377 agency.

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Section 3. This act shall take effect July 1, 2023.