

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1271 Individuals with Disabilities

SPONSOR(S): Health Care Appropriations Subcommittee, Children, Families & Seniors Subcommittee, Buchanan

TIED BILLS: **IDEN./SIM. BILLS:** SB 1758

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N, As CS	Lloyd	Brazzell
2) Health Care Appropriations Subcommittee	15 Y, 0 N, As CS	Fontaine	Clark
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Agency for Persons with Disabilities (APD) provides services to individuals with certain developmental disabilities, including through a Medicaid Home and Community-Based Services (HCBS) waiver. The HCBS waiver allows these individuals to continue to live in their own homes or in another home-like setting and avoid institutionalization. Florida's HCBS waiver for individuals with developmental disabilities is called iBudget Florida (iBudget). Waiver applications are submitted through a paper-based process and then reviewed by APD based on statutory deadlines. Most eligible individuals are initially placed on a pre-enrollment list; some can wait for years before funding is available for waiver enrollment.

Applying and being determined eligible for the iBudget waiver can be confusing and frustrating. CS/HB 1271 enhances the individual's eligibility and enrollment experience through:

- Requiring an online application process;
- Specifying the steps or documentation required to meet the definition of a "complete application";
- Requiring APD to communicate with applicants about certain application actions;
- Specifying time standards for review and action on eligibility by pre-enrollment category.

The bill increases agency efficiency and improves access to services by:

- Reprioritizing individuals whose caregivers are between 60 and 69 years old higher on the pre-enrollment list (wait list);
- Creating care navigation to assist individuals waiting for services in accessing community resources;
- Limiting APD to developing support plans only for waiver enrollees;
- Authorizing funding for enrolling on the waiver individuals in pre-enrollment categories 3-5; and
- Requiring the Agency for Health Care Administration to contract with necessary experts, in consultation with APD, for the development of a plan for a new Medicaid waiver for clients transitioning into adulthood, which APD must submit by December 1, 2024.

The bill provides a total appropriation of \$38,852,223 to APD to enroll additional clients from the pre-enrollment list.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) provides services to certain individuals with developmental disabilities.¹ APD supports these individuals and families in living, learning, and working within their communities by creating multiple pathways to be successful through a variety of social, medical, behavioral, residential, and therapeutic services.²

Chapter 393, F.S., provides the authority and guidance to the APD on what programs to develop, who is eligible, and how to manage those programs within available resources. In s. 393.062, F.S., the legislative findings and declaration of intent state:

The greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements.

One of the ways in which services are delivered to individuals with developmental disabilities is through federal waivers, such as a Home and Community Based Services (HCBS) waiver³. The HCBS waiver allows these individuals to continue to live in their own homes or in another home-like setting and avoid institutionalization.⁴ To qualify for this waiver, an individual must meet the standards for institutional level of care.⁵

Home and Community Based Waiver Programs

iBudget Florida Program

The APD also administers the Medicaid HCBS waiver known as iBudget Florida (iBudget) for individuals with specified developmental disabilities who also meet Medicaid eligibility requirements.⁶ The iBudget waiver provides home and community-based services and supports to eligible persons with developmental disabilities living at home or in a home-like setting, with the costs shared with the federal government. The services for this waiver are delivered through a Fee-For-Service (FFS) delivery model, which means that providers are enrolled and reimbursed for services directly by the Agency for Health Care Administration (AHCA).

The iBudget program allocates available funding to clients, providing each one with an established budget with the flexibility to choose from the authorized array of services that that best meet their individual needs within their community.⁷ Each client has a waiver support coordinator who assists with determining needs and coordinating providers to meet them.

¹ S. 393.062, F.S.

² Agency for Persons with Disabilities, *About Us*, available at [About Us | APD - Agency for Persons with Disabilities - State of Florida \(myflorida.com\)](https://www.myflorida.com/about-us/apd) (last visited January 22, 2024).

³ Medicaid.gov, *Home and Community Based Services – 1915(c)*, available at <https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited January 22, 2024).

⁴ Rule 59G-13.080(1), F.A.C.

⁵ Id.

⁶ S. 392.00662, F.S.

⁷ Id.

The iBudget program was phased in across the state beginning in May 2011 with the final area transitioned from the old system on July 1, 2013.⁸ The iBudget program uses an algorithm or formula to set each participant's funding allocation under the waiver.⁹ According to APD, over 35,000 enrolled individuals are currently receiving their services under the iBudget waiver program, and 21,000 individuals are on the pre-enrollment (wait) list for waiver services (see below).

Consumer Directed Care Plus Program

An individual who is enrolled on the iBudget waiver may choose to instead receive services through the Consumer Directed Care Plus Program, or CDC+, Program. The CDC+ Program allows individuals greater flexibility in the selection of providers and types of services and supports that may be purchased using the individual's budget. For instance, under CDC+, an individual and his or her family can directly hire personal caregivers instead of using a Medicaid-enrolled provider. As in the waiver, a support coordinator assists the individual and their families in identifying appropriate services and supports and making those selections through the system, though under CDC+, this individual is known as a consultant and has a more limited role.¹⁰

Program Eligibility

To receive services from APD, an individual must be found eligible through a paper application submission process. Information from the paper application is manually keyed into an electronic client data management system and reviewed both for eligibility based on information on the application and to identify if any additional information is needed. The APD determines eligibility based on Florida statutes and rules.

To be eligible, an individual must:

- Demonstrate evidence that one of the following developmental diagnoses manifested itself before the age of 18 and can reasonably be expected to continue indefinitely:
 - Intellectual disability.
 - Spina Bifida.
 - Cerebral palsy.
 - Autism.
 - Down syndrome.
 - Phelan McDermid syndrome.
 - Prader-Willi syndrome.¹¹
- Be domiciled in Florida;¹² and
- Be at least three years of age.¹³

The APD must review an application within 60 days depending on individual circumstances and the documentation received.¹⁴ Additional time to work with the applicant may be needed, for example, to conduct a comprehensive assessment to determine if the individual meets the clinical eligibility requirements.

⁸ The 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, available at <https://apd.myflorida.com/publications/reports/> (last visited January 22, 2024).

⁹ Id.

¹⁰ A support coordinator is defined in s. 393.063(37), F.S. Further responsibilities are also included in the Agency for Health Care Administration, *Consumer Directed Care Plus Program Coverage, Limitations, and Reimbursement Handbook (October 2015)*, available at https://apd.myflorida.com/cdcplus/docs/CDC_Plus_Program_Handbook_2015.pdf (last visited January 22, 2024).

¹¹ S. 393.063(11), F.S. and 393.065, F.S.

¹² S. 393.063(13), F.S. and 393.065, F.S.

¹³ *Supra*, note 2.

¹⁴ S. 393.065(1), F.S.

For an applicant deemed in crisis, APD must expedite the application review to within 45 days.¹⁵ If additional documentation is needed, APD may pend the application until that information is provided which would toll the clock until the information was provided by the applicant. Eligible individuals are either enrolled in the program (provided a slot) or placed on the pre-enrollment list if the demand exceeds the available funding.¹⁶

The APD assigns each waitlisted client to a pre-enrollment category based on their needs and prioritized in the following decreasing order of priority:¹⁷

- Category 1: Clients deemed to be in crisis.
- Category 2: Children in the child welfare system at the time of permanency or turning 18.
- Category 3: Intensive Needs
- Category 4 : Caregiver over the age of 70
- Category 5: Transition from School
- Category 6: Age 21 and Over
- Category 7: Age under 21

Eligible individuals that meet the criteria for Categories 1 or 2 are directly enrolled onto the iBudget waiver. Currently, there is a higher demand for iBudget services than the funding available, which means individuals who require services are put on the pre-enrollment list based on the categorization of their needs.

As of December 2023, as the table shows below, over 21,000 individuals were waiting for services, with approximately 50 percent of those between 25 through 59 years old.¹⁸

iBudget Pre-Enrollment List December 2023¹⁹		
Category	Description	Total Clients
Category 1	Crisis	0
Category 2	Children in welfare system at the time of permanency or turning 18	0
Category 3	Intensive Needs	210
Category 4	Caregiver over age 70	83
Category 5	Transition from School	20
Category 6	Age 21 and Over	12,809
Category 7	Age under 21	8,464
Grand Total:		21,587

For each client in a pre-enrollment category, APD develops a support plan and sends an annual status letter. During this annual check-in, APD verifies contact information, provides resources information, and also provides the family an opportunity to indicate if there are any new unmet needs or other changes that may impact the individual's eligibility.²⁰ The APD has recently begun providing care navigation to these clients, using positions that were repurposed for that effort.

When an individual is deemed eligible for services, the APD is required to consult with the client, if the client is competent, if not then the client's parent or guardian to devise a support plan. For children ages 3 to 18 and other individuals, the support plan must include the most appropriate, the least

¹⁵ Id.

¹⁶ Rule 65G-1.047, F.A.C. The rule provides that the severity of the crisis is determined by the risk to the health, safety, and welfare of each applicant relative to other applicant. Rule 65G-11.004 provides a procedure for determining if a client is considered to be in crisis.

¹⁷ *Supra*, note 12.

¹⁸ Id.

¹⁹ *Supra*, note 12.

²⁰ Id.

restrictive, and most cost beneficial environment for the individual's progress, and have the appropriate specification for the services authorized.²¹

Effect of the Bill

Care Navigators

CS/HB 1271 authorizes the APD to offer clients and their caregivers care navigation services within available resources at the time of application and as part of any eligibility or renewal review. A care navigator would assist the client and the client's family with navigating the systems and accessing services, supports, and available resources to meet an individual non-waiver enrolled client's needs, as well as identifying and addressing any barriers preventing individuals from accomplishing their goals. The care navigator would also connect individuals to supports and services in a timely manner and address immediate or critical needs to stabilize the individual seeking assistance before the individual reaches a crisis point.

Under s. 393.064, F.S., a care navigator would be involved in activities such as assessing client needs, developing care plans, and connecting individuals to resources that address the individual's immediate, intermediate, and long-term needs, goals leading to increased opportunities in education, employment, social engagement, community integration, and caregiver support.

For an individual who is also a public school student, the student's Individuals with Disabilities Education Act (I.D.E.A.) plan, as amended, would also be incorporated into the care plan.

Online Application

CS/HB 1271 modernizes the application and eligibility processes at APD to incorporate a requirement for an online application, identify the federal time standards for eligibility review and processing, specify the steps for a complete application, and provide specificity for eligibility determination time standards.

With only a paper application currently available, CS/HB 1271 requires APD to develop and implement an online application process and system that meets certain minimum requirements, including the directive to:

- Create and maintain a paperless, electronic application.
- Maintain access to a printable, paper application on the APD website.
- Provide paper applications upon request.
- Designate a central or regional address for submission of paper applications via regular U.S. mail or via confidential fax.
- Provide immediate confirmation of receipt in the same manner as application was submitted, unless the applicant has designated otherwise.

For those individuals seeking enrollment in the HCBS waiver program who identify as being in crisis, the APD must make an eligibility determination in an expedited manner of 15 calendar days after receipt of a completed application. To be considered a completed application, the application must:

- Include a signature and date by the applicant or someone with legal authority to apply for public benefits on behalf of the applicant.
- Be responsive on all parts of the application.
- Contain documentation of a diagnosis.

For individuals with developmental disabilities who meet the criteria in s. 393.065(5)(b), F.S., which are children who are in the child welfare system (Category 2 on the pre-enrollment list), the APD must make eligibility determinations as soon as practicable. For the remaining categories under s. 393.065, F.S., CS/HB 1271 requires an eligibility determination standard of 60 days after receipt of a complete application. The APD may toll the clock on the 60 day time period if documentation is missing; however,

²¹ S. 393.0651, F.S.
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APD must convey this delay to the client verbally as soon as the action is taken and follow up with a written confirmation which details the anticipated length of the delay and a contact person for the client to reach should he or she have questions.

The bill amends the individual support plan requirement in s. 393.0651, F.S., to limit that requirement to only individuals served by the current iBudget waiver. CS/HB 1271 adds a time standard of 60 calendar days after an APD eligibility determination for the development of the individual support plan and a requirement that the waiver support coordinator specifically inform the client, the client's parent or guardian about the CDC+ program. This will ensure that individuals eligible for CBC+ are informed about the opportunity.

Category 4 Expansion

The Category 4 pre-enrollment category is also modified. Instead of this category including those individuals whose caregivers are aged 70 of age or older, and for whom a caregiver is required but no alternate caregiver is available, CS/HB 1271 reduces the qualifying age in the category for the caregiver to 60 years old. This will make more individuals eligible in a higher priority category, likely moving from category 6 up to category 5, and providing help to caregivers sooner.

Waiver Study

The AHCA, APD, and other stakeholders are directed to work together to jointly develop a comprehensive plan for the administration, finance, and delivery of a new HCBS Medicaid waiver program focused on successfully transitioning clients into adulthood and proactively preventing crisis situations. The AHCA is authorized to contract with the necessary experts, in consultation with APD, to develop the plan. APD; however, is responsible for the submission of the final report, in consultation with AHCA, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2024. The report must specifically address, at a minimum:

- The purpose, rationale, and expected benefits of the new waiver program.
- The proposed eligibility criteria for clients and the service benefit package to be offered through the waiver.
- A proposed implementation plan and timeline, including the recommended number of clients to be served at implementation and at different program intervals.
- Proposals for how clients may transition off and on the program and between other designated waiver programs.
- The fiscal impact of the program for the implementation year and over the next five fiscal years, determined on an actuarially sound basis.
- An analysis of the availability of the services that would be offered under the waiver program and recommendations for how to increase access, if necessary.
- A list of participating stakeholders, public and private, involved in or consulted about the proposed waiver program.

The effective date of the bill is July 1, 2024.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 393.064; F.S.; Care navigation.
- Section 2:** Amends s. 393.065, F.S.; Application and eligibility determination.
- Section 3:** Amends s. 393.0651, F.S.; Family or individual support plan.
- Section 4:** Provides an appropriation.
- Section 5:** Creates an unnumbered section of law, related to a report.
- Section 6:** Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates a recurring total of \$38,852,223 (\$16,562,703 from the General Revenue Fund and \$22,289,520 the Operations and Maintenance Trust Fund) to expand HCBS waiver services to additional clients. This funding is expected to offer waiver services to individuals from pre-enrollment categories 3, 4, and 5.

The bill requires the agency to implement an electronic application process. The agency indicates a cost of between \$1,750,000 to \$1,850,000 to develop the system, based upon the level of sophistication desired. Total implementation may take longer than a year.²² Based on a review of historical reversions, the agency has sufficient existing resources to begin system development during FY 2024-25. APD can submit a Legislative Budget Request for the following year to request the additional resources needed to complete the system and for recurring maintenance needs.

The bill requires APD to collaborate with AHCA and other stakeholders to develop a plan for the administration, finance, and delivery of a new HCBS Medicaid waiver. The new program will transition clients into adulthood by offering services to prevent crisis situations. The House proposed General Appropriations Act for FY 2024-25 provides \$800,000 for actuarial services to determine appropriate capitation rates for the newly-created program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to affect local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those individuals enrolled on the waiver under the bill will receive additional supports and services. The number of individuals who will be enrolled on the waiver under the bill is unknown, as under the iBudget waiver the specific budget for each individual is determined after enrollment.

Providers of services to these individuals will have increased revenue.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

²² *Supra*, Note 12.
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None.

B. RULE-MAKING AUTHORITY:

The Agency for Persons with Disabilities has sufficient rule-making authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Children, Families, and Seniors Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Define the term “complete application,” which means an application that:
 - Has been signed and dated,
 - Is responsive on all parts, and
 - Contains documentation of a diagnosis.
- Identify the Agency for Persons with Disabilities (APD) as responsible for the report on the waiver study, and require the Agency for Health Care Administration (AHCA) to consult APD when hiring any experts to assist with the study.

On January 29, 2024, the Health Care Appropriations Subcommittee adopted one amendment that modifies the appropriation funding sources to reflect the most recently adopted Federal Medical Assistance Percentage (FMAP). The total appropriation amount of \$38,852,223 does not change; rather, the amounts from the General Revenue Fund and the Operations and Maintenance Trust Fund are updated for the FMAP fund split.

The analysis is drafted to the bill as amended and passed by the Health Care Appropriations Subcommittee.