

**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 Budget Subcommittee on Health and Human Services Appropriations

**BILL:** CS/CS/CS/SB 1516

**INTRODUCER:** Budget Subcommittee on Health and Human Services Appropriations; Health Regulation Committee; Children, Families, and Elder Affairs Committee; Senator Negron; and others

**SUBJECT:** Agency for Persons with Disabilities

**DATE:** February 28, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	<b>Fav/CS</b>
2.	Wilson	Stovall	HR	<b>Fav/CS</b>
3.	Bradford	Hendon	BHA	<b>Fav/CS</b>
4.			BC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill makes significant changes to Florida law relating to the Agency for Persons with Disabilities (APD or agency). Specifically, the bill:

- Provides that it is the intent of the Legislature to prioritize state funds for those services needed to ensure the health, safety, and welfare of individuals with disabilities in order to avoid institutionalization;
- Defines “adult day services,” “nonwaiver resources,” and “waiver”; amends the definition of “adult day training,” “personal care services,” “restraint,” and “support coordinator”; and deletes the definition of “domicile”;
- Requires an individual to be a U.S. citizen or qualified noncitizen in order to receive services;
- Makes the authorization of certain services contingent on available funding;
- Provides that tier eligibility under the four-tiered waiver system may not be made until a waiver slot and funding become available, and that assignment to a higher tier must be based on crisis criteria;

- Prohibits the APD from authorizing a waiver service if that service can be covered by the Medicaid state plan;
- Removes the \$150,000 per-client cap for total annual tier one expenditures per year;
- Changes the definitions of tier two and tier three to include individuals whose need for services meets the criteria of the tier above but which can be met within the expenditure of either tier two or tier three;
- Gives the APD discretion to collect premiums or cost sharing (rather than having it be mandatory);
- Establishes a framework to evaluate service providers and waiver support coordinators;
- Provides flexibility to an individual in determining the type, amount, frequency, duration, and scope of services if the agency determines such services meet the individual's health and safety needs;
- Provides a methodology for the determination of an individual's iBudget allocation;
- Provides for an abbreviated inspection and review process if a facility has certain accreditation;
- Requires the APD to conduct health and safety surveys that pertain to the regular monitoring and oversight of agency-licensed residential facilities;
- Authorizes the APD to execute a petition for involuntary admission to residential services;
- Authorizes the APD to issue a final order at the conclusion of a Medicaid hearing conducted by the Department of Children and Family Services (DCF or department);
- Provides that the welfare of individuals includes expenditure of funds for the employment wages of individuals receiving services;
- Authorizes the APD to provide or contract with another entity for the provision of food and inspection services to enforce food and environmental sanitation standards;
- Revises the membership of family care councils; and
- Makes technical and conforming changes.

This legislation will help the agency control its expenditures to stay within the resources appropriated in the General Appropriations Act.

This bill substantially amends the following sections of the Florida Statutes: 393.062, 393.063, 393.065, 393.066, 393.0661, 393.0662, 393.067, 393.068, 393.11, 393.125, 393.23, 393.502, and 514.072.

This bill creates section 393.28, Florida Statutes.

## II. Present Situation:

### Agency for Persons with Disabilities

In October 2004, the Developmental Disabilities Program separated from the DCF and became the APD.<sup>1</sup> The agency was tasked with serving the needs of Floridians with developmental disabilities.<sup>2</sup> The primary purpose of the APD is to work in partnership with local communities

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<sup>1</sup> Agency for Persons with Disabilities, *About Us*, <http://apdcare.org/about/> (last visited on Feb. 9, 2012).

<sup>2</sup> *Id.*

to ensure the safety, well-being, and self-sufficiency of the people served by the agency, and provide assistance in identifying needs and funding to purchase supports and services.<sup>3</sup>

The agency provides services to individuals with developmental disabilities<sup>4</sup> in home and community-based settings, private intermediate care facilities, or state-run developmental services institutions. Individuals who need minimal or limited support may live in their own home, a family home, or a group home, all of which are considered “home and community-based settings.” During fiscal year 2009-2010, the APD served over 53,000 individuals in the community.<sup>5</sup>

One of the primary goals of the APD is to improve the quality of life of persons with disabilities by helping them live and work in the community, rather than being placed in an institution. Toward that end, the APD administers the Home and Community-Based Services waivers (HCBS waivers) system. This system offers 28 supports and services to assist individuals with developmental disabilities live in their community.<sup>6</sup> The system has four tiers, described below:

- Tier one is limited to individuals with intensive medical or adaptive needs and for whom services are essential to avoid institutionalization, or who possess exceptional behavioral problems. Tier one has a \$150,000 per-client annual expenditure cap, unless the individual can show a documented medical necessity requiring intensive behavioral residential habilitation services, intensive behavioral residential habilitation services with medical needs, or special medical home care. Tier one is limited to persons with service needs that cannot be met in any of the other tiers.
- Tier two is for individuals who have high-cost residential facility and residential habilitation service needs or supported living needs that are greater than six hours per day. Tier two has a \$53,625 per-client annual expenditure cap.
- Tier three has a \$34,125 per-client annual expenditure cap and is for individuals who require lower residential placements, independent or supported living situations, and persons who live in their family home.
- Tier four has a \$14,422 per-client annual expenditure cap and is for individuals who were formerly enrolled in the Family and Supported Living Waiver. This tier funds 12 services.<sup>7</sup>

For Fiscal Year 2011-2012, the APD was appropriated \$1,009,499,581 by the Florida Legislature to operate the agency.<sup>8</sup> Out of that, \$810 million – or approximately 80 percent – is budgeted for

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<sup>3</sup> Office of Program Policy Analysis & Government Accountability, The Florida Legislature, *Agency for Persons with Disabilities*, <http://www.oppaga.state.fl.us/profiles/5060/> (last visited on Feb. 9, 2012).

<sup>4</sup> Section 393.063(9), F.S., defines the term “developmental disability” as a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

<sup>5</sup> Office of Program Policy Analysis & Government Accountability, *supra* note 3.

<sup>6</sup> Agency for Persons with Disabilities, *HCBS Waiver Services*, <http://apd.myflorida.com/brochures/supports-and-services-brochure.pdf> (last visited on Feb. 9, 2012).

<sup>7</sup> Office of Program Policy Analysis & Government Accountability, *supra* note 3.

<sup>8</sup> *Id.*

clients on the Medicaid HCBS waivers.<sup>9</sup> In October 2011, 29,641 individuals were served by the HCBS waivers.<sup>10</sup>

Historically, the agency has had problems keeping waiver spending in line with its appropriation. In Fiscal Year 2005-2006, the APD was required to provide quarterly reports to the Executive Office of the Governor, the chair of the Senate Ways and Means Committee, and the chair of the House Fiscal Council regarding the financial status of the HCBS waivers.<sup>11</sup> In a presentation on its Fiscal Year 2009-2010 Legislative Budget Request, the agency reported “significant progress” in managing the waivers.<sup>12</sup> However, in March 2009, the agency requested \$26 million to cover the remaining HCBS waivers deficit, and by February 2010, the APD’s budget recommendation included a request for \$100 million to eliminate the projected deficit in the HCBS waivers.<sup>13</sup> The deficit reached nearly \$169 million during the 2011 Regular Session,<sup>14</sup> and the agency is facing the same challenges in Fiscal Year 2011-2012, as the agency is projecting \$930 million in community-based expenditures which is to be covered with an \$810 million legislative appropriation.<sup>15</sup>

A number of strategies have been employed to achieve the goal of containing costs, including: a standardized rate structure; ongoing utilization reviews; a prior authorization process for services; pre-payment billing review; support coordination; and capping costs through use of a tiered rate structure based on an assessment of needs.<sup>16</sup>

In 2010, the Legislature directed the APD to pursue development and implementation of a comprehensive redesign of the HCBS waivers delivery system to combat deficit spending. Individual Budgeting, known as iBudget Florida, involves giving each waiver service recipient an annual budget that is based on the legislative appropriation and factors that include an individual’s abilities, disability, needs, and living situation.<sup>17</sup> The iBudget system will replace the tier structure. The state received federal approval to implement the iBudget system in March 2011, and implementation has begun in North Florida.<sup>18</sup>

### **Medicaid<sup>19</sup>**

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. Medicaid reimburses health care providers that have a

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<sup>9</sup> Agency for Persons with Disabilities, *2012 Bill Analysis, SB 1516* (Jan. 20, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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

<sup>11</sup> Chapter 2005-70 and Chapter 2005-71, L.O.F. This requirement is now codified in s. 393.0661(9), F.S.

<sup>12</sup> Budget Committee, The Florida Senate, *Bill Analysis and Fiscal Impact Statement SB 2148*, (April 1, 2011), available at <http://www.flsenate.gov/Session/Bill/2011/2148/Analyses/YX4Y4hiD5jfSJG5bH97TJYAiHoA=%7C7/Public/Bills/2100-2199/2148/Analysis/2011s2148.bc.PDF> (last visited on Feb. 10, 2012).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Agency for Persons with Disabilities, *supra* note 9.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Information from the Senate Health Regulation Committee.

provider agreement with the Agency for Health Care Administration only for goods and services that are covered by the Medicaid program and only for individuals who are eligible for medical assistance from Medicaid.

The Agency for Health Care Administration is responsible for Medicaid. Medicaid serves approximately 3.19 million people in Florida. Estimated Medicaid expenditures for FY 2011-2012 are approximately \$20.3 billion. The statutory authority for the Medicaid program is contained in part III of ch. 409, F.S.

Medicaid HCBS waiver programs are authorized under s. 1915(c) of the Social Security Act and governed by Title 42, Code of Federal Regulations (C.F.R.), Parts 440 and 441. Section 409.906, F.S., and Chapter 59G, Florida Administrative Code (F.A.C.), authorizes the Florida Medicaid developmental disabilities waivers. There are six Medicaid HCBS waivers; the Developmental Disabilities waivers Tiers 1-4, the Consumer-Directed Care Plus Program and the Individual Budget waiver. The waivers are funded by the federal Centers for Medicare and Medicaid Services and matching state dollars.

### III. Effect of Proposed Changes:

This bill makes significant changes to Florida law relating to the Agency for Persons with Disabilities (APD or agency). According to the agency, the changes proposed in this bill will:

[A]ssist the agency in improving accountability, predicting cost and allocating [scarce] resources. . . The bill continues the evolution of the basic waiver program structure, and emphasizes a more robust utilization of natural supports and community resources to augment waiver resources. The bill's strategic approach is to make the Medicaid waivers only one of the many strategies employed to address the needs of individuals with disabilities and the waiver as the funding of last resort.<sup>20</sup>

**Section 1** amends s. 393.062, F.S., to state that priority *should*, rather than *shall*, be given to the development and implementation of community-based services for individuals with developmental disabilities which will protect their health, safety, and welfare, and enable them to achieve their greatest potential for independent and productive living in noninstitutional settings. The bill provides that it is the intent of the Legislature to prioritize state funds for those services needed to ensure the health, safety, and welfare of individuals who have developmental disabilities in noninstitutional settings.

**Section 2** amends s. 393.063, F.S., to define:

- “Adult day services” as services that are provided in a nonresidential setting, separate from the home or facility in which the individual resides, unless the individual resides in a planned residential community as defined in s. 419.001(1), F.S., and that are intended to support the participation of individuals in meaningful activities that do not require formal training, which may include a variety of activities, including social activities.

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

- “Nonwaiver resources” as supports or services obtainable through private insurance, the Medicaid state plan, nonprofit organizations, charitable donations from private businesses, other government programs, family, natural supports, community resources, and any other source other than a waiver.
- “Waiver” as a federally approved Medicaid waiver program, including, but not limited to, the Developmental Disabilities Home and Community-Based Services Waivers Tiers 1-4, the Developmental Disabilities Individual Budget Waiver, and the Consumer-Directed Care Plus Program, authorized pursuant to s. 409.906, F.S., and administered by the agency to provide home and community-based services to individuals.

The bill also amends the following definitions:

- “Adult day training” to mean training that is conducted in a nonresidential setting, separate from the home or facility in which the individual resides, *unless he or she resides in a planned residential community*.
- “Developmental disability” to include Down syndrome.
- “Personal care services” to mean individual assistance with activities of daily living for self-care that are essential, *and that are provided in the amount, duration, frequency, intensity, and scope determined by the agency to be necessary for an individual’s health, safety, and welfare and to avoid institutionalization*.
- “Restraint” to exclude seatbelts or wheelchair tie-downs, which are used to protect an individual from falling out of a wheelchair or when used for safety during transportation; and
- “Support coordinator” to mean a person who is contracting with the agency to assist individuals with locating or developing employment opportunities.

The bill also deletes the definition of “domicile.”

**Section 3** amends s. 393.065, F.S., to limit eligibility for APD services to U.S. citizens and qualified noncitizens who meet the criteria provided in s. 414.095(3), F.S.,<sup>21</sup> and who have established domicile in Florida or are otherwise determined to be legal residents of this state.

**Section 4** amends s. 393.066, F.S., to clearly delineate the agency’s goal of providing community services in the most cost-effective manner, to the extent resources are specified in the General Appropriations Act, to support individuals with developmental disabilities in maximizing their independence using innovative, effective, efficient, and sustainable solutions and to avoid institutionalization. The bill narrows the scope of the purpose of APD services, removes a requirement that all elements of community-based services must be made available, and removes a requirement that eligibility for services must be consistent across the state.

The bill revises the list of services allowed by adding adult day services, personal support services, residential habilitation services, and support coordination. The bill removes from the list of services parent training, recreation, and social services. The bill requires the APD to identify and engage in efforts to develop, increase, or enhance the availability of nonwaiver resources to individuals and to promote collaborative efforts with families and organizations.

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<sup>21</sup> Section 414.095(3), F.S., defines which noncitizens are eligible for cash assistance through the Temporary Assistance for Needy Families (TANF) program.

Subsection (5) of s. 393.066, F.S., relating to the development of day habilitation services is deleted.<sup>22</sup>

**Section 5** amends s. 393.0661, F.S., to specify that the home and community-based services system must include a role for support coordinators which avoids conflicts of interest and ensures that an individual's needs for critical services, which maximize his or her independence and avoid institutionalization through the use of innovative, effective, efficient, and sustainable solutions, are addressed.

The bill also specifies that a final determination of tier eligibility may not be made until a waiver slot and funding becomes available. An individual who is eligible for a higher tier may only move based on crisis criteria as adopted by rule. The bill authorizes the agency to move an individual to a lower tier if the individual's service needs change and can be met by services provided in a lower tier. Also, the bill provides that the APD may not authorize services that are duplicated by, or above the coverage limits of, the Medicaid state plan.

The bill amends the current tier structure. First, the bill removes the \$150,000 per-client expenditure cap in tier one. The bill amends tier two to provide that it also includes individuals whose need for services meets the criteria for tier one but which can be met within the expenditure limit of tier two. Tier three is also amended to provide that the tier includes individuals whose need for services meets the criteria for tier two but which can be met within the expenditure limit of tier three.

The bill removes language concerning adjusting an individual's cost plan that is supported by certain waivers to conform to other sections of the bill, and the bill gives the APD discretion to collect premiums or cost sharing (rather than having it be mandatory).

In order to determine whether the APD should continue Medicaid waiver provider agreements for service providers, including support coordinators, the agency must review provider performance to ensure that the provider meets or exceeds the criteria established by the agency. Criteria for evaluating the performance of a service provider include:

- The protection of the health, safety, and welfare of the individual.
- Assisting the individual and his or her support coordinator in identifying nonwaiver resources that may be available to meet the individual's needs.
- Providing services that are authorized in the service authorization approved by the agency.

Criteria for evaluating support coordinator performance include:

- The protection of the health, safety, and welfare of individuals.
- Assisting individuals to obtain employment and pursue other meaningful activities.
- Assisting individuals to access services that allow them to live in their community.
- The use of family resources.

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<sup>22</sup> According to the APD, deleting the language in subsection (5) of s. 393.066, F.S., is technical and conforming in nature. Agency for Persons with Disabilities, *supra* note 9.

- The use of private or third-party resources.
- The use of community resources.
- The use of charitable resources.
- The use of volunteer resources.
- The use of services from other governmental entities.
- The overall outcome in securing nonwaiver resources.
- The cost-effective use of waiver resources.
- Coordinating all available resources to ensure that individuals' outcomes are met.

The bill makes a support coordinator responsible for assisting the individual in meeting his or her service needs through nonwaiver resources, as well as through the individual's budget allocation or cost plan under the waiver. Under the bill, the waiver is supposed to be the funding source of last resort.

The agency is authorized to exempt a service provider, including support coordinators, from annual quality assurance reviews for consistently has superior performance, and the agency may sanction poor performance.

**Section 6** amends s. 393.0662, F.S., relating to the iBudget. The bill requires that an individual's iBudget cost plan meet the requirements contained in the Coverage and Limitations Handbook, and comply with the other requirements of s. 393.0662, F.S. Under the bill, an individual has the flexibility to determine the type, amount, frequency, duration, and scope of the services on his or her cost plan if the agency determines that such services meet his or her health and safety needs, and are necessary to avoid institutionalization.

Further, the bill provides that during the phase-in of the iBudget system, the APD shall determine a individual's iBudget by comparing the individual's algorithm allocation to the individual's current annualized cost plan and the individual's extraordinary needs. The bill removes "a chronic comorbid condition" from the list of extraordinary needs, and also replaces the word "total" with "significant" when referring to physical assistance with certain activities. This change lessens the degree of physical assistance needed for personal hygiene activities to qualify as an extraordinary need.

An individual's algorithm allocation is the amount determined by the algorithm, adjusted to the APD's appropriation, and any necessary set-asides, such as funding for extraordinary needs. An individual's extraordinary needs shall be reviewed for each individual by the area office in order to determine medical necessity for each service in the amount, duration, frequency, intensity, and scope that meets the individual's needs. The APD must consider the individual's characteristics based on a needs assessment as well as the individual's living setting, availability of natural supports, family circumstances, and other factors that may affect the level of service needed.

The individual's medical-necessity review must include a comparison of the following:

- If the individual's algorithm allocation is greater than the individual annualized cost plan, the individual's iBudget is equal to the annualized cost plan amount.

- If the individual's algorithm allocation is less than the individual's annualized cost plan but is greater than the amount for the individual's needs including extraordinary needs, the individual's iBudget is equal to the algorithm allocation.
- If the individual's algorithm allocation is less than the amount for the individual's needs including extraordinary needs, the individual's iBudget is equal to the amount for the individual's extraordinary needs.

The bill provides that an individual's annualized iBudget amount may not be less than 50 percent of that individual's existing annualized cost plan. If the individual's initial iBudget is less than the individual's current cost plan, and is within \$1,000 of the current cost plan, the APD may adjust the iBudget to equal the cost plan.

During the 2011-2012 and 2012-2013 fiscal years, increases to the individual's initial iBudget amount may only be granted if the criteria for extraordinary needs are met.

**Section 7** amends s. 393.067, F.S., to authorize the APD to inspect and review facilities or programs that have certain accreditation once every two years, rather than annually. Notwithstanding accreditation, the APD may continue to monitor the facility or program with respect to:

- Ensuring that services for which the agency is paying are being provided;
- Investigating complaints, identifying problems that would affect the safety or viability of the facility or program, and monitoring the facility or program's compliance with any resulting negotiated terms and conditions;
- Ensuring compliance with federal and state laws, federal regulations, or state rules if such monitoring does not duplicate the accrediting organization's review; and
- Ensuring Medicaid compliance with federal certification and precertification review requirements.

The agency must also conduct ongoing health and safety surveys that pertain to the monitoring and oversight of agency-licensed residential facilities.

**Section 8** amends s. 393.068, F.S., to make technical and conforming changes.

**Section 9** amends s. 393.11, F.S., to authorize the APD to execute a petition for involuntary admission to residential services. In cases of involuntary admission, the individual has a right to notice and a hearing. At the hearing, if the individual's attorney or any other interested party believes that the individual's presence at the hearing is not in the individual's best interest, or good cause is otherwise shown, the court may order that the individual be excluded from the hearing.

**Section 10** amends s. 393.125, F.S., to provide that at the conclusion of the hearing related to Medicaid programs, the Department of Children and Family Services (DCF or department) shall

submit its recommended order to the APD and the agency shall issue the final order. According to DCF, this is current practice.<sup>23</sup>

**Section 11** amends s. 393.23, F.S., to provide that the welfare of individuals includes expenditure of funds for the employment wages of individuals receiving services.

**Section 12** creates s. 393.28, F.S., authorizing the APD to provide or contract with another entity for the provision of food and inspection services to enforce food and environmental sanitation standards. The agency shall adopt sanitation standards by rule related to food-borne illnesses and environmental hazards to ensure the protection of individuals served in facilities licensed or regulated by the APD. The bill also authorizes the APD to impose sanctions against any establishment or licensed operator for violations of sanitary standards.

**Section 13** amends s. 393.502, F.S., to modify the membership of family care councils as follows:

- At least three of the members must be individuals receiving or waiting to receive services from the APD. One of these members must be an individual who has been receiving services within the 4 years before the date of recommendation.
- The remainder of the members must be parents, grandparents, nonpaid full-time caregivers, nonpaid legal guardians, or siblings of individuals who have developmental disabilities and who qualify for services under ch. 393, F.S.
- A nonpaid full-time caregiver or nonpaid legal guardian may not serve at the same time as the individual who is receiving care from the caregiver or who is the ward of the guardian.

**Section 14** amends s. 514.072, F.S., to correct a cross-reference, delete obsolete language, and make conforming changes.

**Section 15** provides that the bill shall take effect upon becoming a law.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

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<sup>23</sup> Department of Children and Families, *Staff Analysis and Economic Impact, SB 1516* (Jan. 10, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill spells out the Agency for Persons with Disabilities' (APD or agency) methodology for determining an individual's iBudget allocation. The way the APD determines an individual's iBudget allocation is if the individual's algorithm allocation is:

- Greater than the individual's cost plan, the individual's iBudget is equal to the total cost plan amount.
- Less than the individual's cost plan but greater than the amount for the individual's needs including extraordinary needs, the individual's iBudget is equal to the algorithm allocation.
- Less than the amount for the individual's needs including extraordinary needs, the individual's iBudget is equal to the amount for the individual's extraordinary needs.

It appears that in certain situations, an individual's iBudget allocation may be less than what he or she is receiving with their current cost plan.

C. Government Sector Impact:

According to the APD and the Agency for Health Care Administration, this bill is not expected to have a fiscal impact on either agency.

The bill amends s. 393.125, F.S., specifying that at the conclusion of a Medicaid hearing, the DCF shall submit a recommended order to the APD, and the agency shall issue the final order. According to the Department of Children and Family Services (DCF), its Office of Appeals Hearings currently issues recommended orders in Medicaid waiver benefits cases. Accordingly, the bill does not appear to have a fiscal impact on the DCF.<sup>24</sup>

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<sup>24</sup> *Id.*

## VI. Technical Deficiencies:

On lines 202-203, the definition of “down syndrome” is changed. Down syndrome occurs when some or all of a person’s cells have an extra full or partial copy of chromosome 21.<sup>25</sup> The words “full or partial” should be inserted after the word “extra.”

Section 5 of the bill (starting on line 532) removes intent language that APD develop and implement a comprehensive redesign of the home and community-based services delivery system. Reference to the “redesign” is also deleted on line 543. These references are being deleted because the system redesign has already occurred. Accordingly, the Legislature may wish to amend the bill to remove “comprehensive redesign” from the catch-line of the statute on line 535.

Starting on line 758, the bill establishes a framework for evaluating the performance of service providers. It appears that on line 760, the sentence structure may need to be amended to “Protecting the health, safety, and welfare of the individual” rather than “The protection of . . . .”

On line 848, the bill refers to “Medicaid” waiver programs. The word “Medicaid” is removed in the rest of the bill when referring to waivers or waiver programs.

Section 6 of the bill (starting on line 885), relating to the iBudget system, refers to a cost plan. This term is not defined in statute. The Legislature may wish to include a definition of “cost plan” in s. 393.063, F.S. The cost plan is the document used by the waiver support coordinator that lists all waiver services requested by the recipient on the support plan and the anticipated cost of each waiver service.<sup>26</sup>

Throughout the bill, the phrase “health, safety, and welfare” is reinstated (rather than just “health and safety”). On lines 1011-1015, the bill provides that an individual has flexibility in determining his or her services as long as the agency determines that the services meet the individual’s health and safety needs. It appears that the term “welfare” was inadvertently omitted from this section. The Legislature may wish to amend the bill to add the term “welfare.”

On line 1045, the word “the” should be removed from the sentence.

On lines 1216-1218, the bill authorizes the APD to execute a petition for involuntary admission to residential services. In current law only a petitioning commission can execute the petition and the “name, age, and present address of the commissioners and their relationship to the person” must be listed in the petition (see lines 1222-1226). The

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<sup>25</sup> Nat’l Down Syndrome Society, *Down Syndrome Fact Sheet*, [http://www.ndss.org/index.php?option=com\\_content&view=article&id=54:down-syndrome-fact-sheet&catid=35:about-down-syndrome&Itemid=74](http://www.ndss.org/index.php?option=com_content&view=article&id=54:down-syndrome-fact-sheet&catid=35:about-down-syndrome&Itemid=74) (last visited Feb. 29, 2012).

<sup>26</sup> Agency for Health Care Administration, Florida Medicaid, *Developmental Disabilities Waiver Services Coverage and Limitations Handbook*, 2-9 (May 2010), available at [http://portal.flhmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL\\_10\\_100501\\_DD\\_Waiver\\_ver1.0.pdf](http://portal.flhmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_10_100501_DD_Waiver_ver1.0.pdf) (last visited Feb. 10, 2012).

bill does not require similar identifying information to be provided if the agency is the one executing the petition. According to the APD, the agency and any agency witnesses are easily identified and contacted.<sup>27</sup> However, it may still be beneficial to provide a requirement for the agency to list some contact information in the petition.

## VII. Related Issues:

Under the bill, the APD would be the agency that issues final orders in Medicaid fair hearings. This creates a conflict with existing state law and federal law and rules that require the Agency for Health Care Administration to be the single state Medicaid agency designated to administer or supervise the administration of the State Medicaid Plan, including providing for Medicaid Fair Hearings. The DCF conducts fair hearings pursuant to an agreement with the Agency for Health Care Administration.<sup>28</sup>

## VIII. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes:

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

#### **CS/CS/CS by Budget Subcommittee on Health and Human Services Appropriations on February 28, 2102:**

The committee substitute:

- Replaces the word “client” and “persons” with the word “individual”;
- Reinstates the phrase “health, safety, and welfare” (rather than just “health and safety”);
- Adds the phrase “to avoid institutionalization” in certain places in the bill to emphasize that the mission of the Agency for Persons with Disabilities (APD or agency) is to support individuals with developmental disabilities living in their communities;
- Amends the definition of “restraint” to exclude seatbelts or wheelchair tie-downs, which are used to protect an individual from falling out of a wheelchair or when used for safety during transportation;
- Amends the definition of “adult day services”;
- Adds personal support services and restores habilitative and rehabilitative services to the list of community services allowed;
- Gives the APD discretion to collect premiums or cost sharing (rather than having it be mandatory);
- Establishes a framework to evaluate service providers and authorizes APD to exempt certain *service providers*, including support coordinators, from annual quality assurance reviews;
- Removes “a chronic comorbid condition” from the list of extraordinary needs;

<sup>27</sup> E-mail from Chris Coker, Legislative Affairs Director, Agency for Persons with Disabilities, to Senate professional staff of the Committee on Children, Families, and Elder Affairs (Jan. 24, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>28</sup> Agency for Health Care Administration, *2012 Bill Analysis and Economic Impact Statement for SB 1516* (on file with the Senate Committee on Health Regulation).

- Replaces the word “total” with “significant” when referring to physical assistance with certain activities;
- Removes the requirement that a significant change in circumstances must occur in order to increase an individual’s initial iBudget amount during the 2011-2012 and 2012-2013 fiscal years;
- Requires the APD to conduct ongoing health and safety surveys that pertain to the regular monitoring and oversight of agency-licensed residential facilities;
- Removes the word “defendant” from the involuntary admission to residential services section of law;
- Provides that the welfare of individuals includes expenditure of funds for the employment wages of individuals receiving services and removes “sheltered workshops”;
- Creates s. 393.28, F.S., authorizing the APD to provide or contract with another entity for the provision of food and inspection services to enforce food and environmental sanitation standards;
- Removes s. 409.906, F.S., from the bill, thus restoring current law;
- Changes the effective date from July 1, 2012, to “upon becoming a law”; and
- Makes technical and conforming changes.

**CS/CS by Health Regulation on February 9, 2012:**

The committee substitute:

- Provides direction to the APD to implement its programs of services and treatment to support clients in maximizing their independence using innovative, effective, efficient, and sustainable solutions;
- Modifies the criteria for developing an individual’s initial iBudget; and
- Revises the composition of family care councils.

**CS by the Children, Families, and Elder Affairs Committee on January 25, 2012:**

The committee substitute:

- Adds the phrase “unless the client resides in a planned residential community as defined in s. 419.001(1)” to both the newly created definition of “adult day services” and to the current definition of “adult day training”;
- Removes the prohibition of a client or support coordinator from applying for additional waiver funding unless the client is determined to be in crisis;
- Revises the list of available community services allowed as long as the APD has the resources specified in the General Appropriations Act; and
- Reinstates current law relating to the rate structure for reimbursing a provider of services rendered to a persons with developmental disabilities pursuant to a waiver.

**B. Amendments:**

None.