

**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 Children, Families, and Elder Affairs Committee

**BILL:** CS/SB 1516

**INTRODUCER:** Children, Families, and Elder Affairs Committee, Senator Negron, and others

**SUBJECT:** Agency for Persons with Disabilities

**DATE:** January 26, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	<b>Fav/CS</b>
2.			HR	
3.			BC	
4.				
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 and safety of individuals with disabilities, and that other services should be supported through natural supports and community resources, with the Medicaid waiver being the payor of last resort for home and community-based programs;
- Defines “adult day services,” “nonwaiver resources,” and “waiver”; amends the definition of “adult day training,” “personal care services,” 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 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 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 expenditures per year;
- Changes the definitions of tier two and three to include clients whose need for services meets the criteria of the tier above but which can be met within the expenditure of either tier two or three;
- Authorizes APD to collect fees, in addition to premiums or other cost sharing methods, from the parents of children being served by a waiver;
- Establishes a framework to evaluate waiver support coordinators;
- Provides flexibility to a client 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 a client's iBudget allocation;
- Provides for an abbreviated inspection and review process if a facility has certain accreditation;
- Authorizes APD to execute a petition for involuntary admission to residential services;
- Authorizes 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 clients includes the establishment, maintenance, and operation of sheltered workshops that include client wages;
- Prohibits the premium, fee, or other cost sharing paid by a parent on behalf of a child under the age of 18 from exceeding the cost of waiver services to the client;
- Provides that a client may not be denied waiver services due to nonpayment by a parent, however, adoptive and foster parents are exempt from payment of any premiums, fees, or other cost-sharing; and
- Makes technical and conforming changes.

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, 409.906, and 514.072.

## II. Present Situation:

In October 2004, the Developmental Disabilities Program separated from the Department of Children and Family Services (DCF or department) and became the Agency for Persons with Disabilities (APD or agency).<sup>1</sup> The agency was tasked with serving the needs of Floridians with developmental disabilities.<sup>2</sup> The primary purpose of APD is to work in partnership with local communities 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>

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<sup>1</sup> Agency for Persons with Disabilities, *About Us*, <http://apdcare.org/about/> (last visited Jan. 23, 2012).

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

<sup>3</sup> Office of Program Policy Analysis & Gov't Accountability, The Florida Legislature, *Agency for Persons with Disabilities*, <http://www.oppaga.state.fl.us/profiles/5060/> (last visited Jan. 23, 2012).

The agency provides services to individuals with developmental disabilities<sup>4</sup> through home and community-based settings, private intermediate care facilities, or state-run developmental services institutions. If an individual needs minimal or limited support, he or she 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 2009-10, APD served over 53,000 individuals in the community.<sup>5</sup>

One of the primary goals of 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, 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 can't 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, 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 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, APD was required to provide quarterly reports to the Executive Office

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<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 & Gov't 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 Jan. 23, 2012).

<sup>7</sup> Office of Program Policy Analysis & Gov't Accountability, *supra* note 3.

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

<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.*

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 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, 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 only a \$810 million legislative appropriation.<sup>15</sup>

In 2010, the Legislature directed APD to pursue the development and implement 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 legislative appropriation and factors that include an individual’s abilities, disability, needs, and living situation.<sup>16</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>17</sup>

### 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 evolvement 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>18</sup>

Specifically, the bill provides that it is the intent of the Legislature to prioritize state funds for those services needed to ensure the health and safety of individuals with disabilities, and that other services should be supported through natural supports and community resources. To accomplish this goal, the bill provides that the Medicaid waiver should be the payor of last resort for home and community-based programs.

<sup>11</sup> Chapter 2005-70 and Chapter 2005-71, Laws of Fla. The next year, the Legislature codified the requirement in s. 393.0611(8), F.S.

<sup>12</sup> Budget Committee, The Florida Senate, *Bill Analysis and Fiscal Impact Statement SB 2148*, at 2 (April 1, 2011), available at <http://www.flsenate.gov/Session/Bill/2011/2148/Analyses/YX4Y4hiD5jfSJG5bH97TJYAih0A=%7C7/Public/Bills/2100-2199/2148/Analysis/2011s2148.bc.PDF> (last visited Jan. 23, 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.*

The bill defines:

- “Adult day services” as services that are provided in a nonresidential setting, separate from the home or facility in which the client resides, unless the client resides in a planned residential community as defined in s. 419.001(1); that are intended to support the participation of clients in daily, meaningful, and valued routines of the community; and that may provide social activities.
- “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 clients.

The bill also amends the definitions of “adult day training,” “developmental disability,” “personal care services,” and “support coordinator.” The bill deletes the definition of “domicile.”

The bill limits eligibility for services to U.S. citizens and qualified noncitizens who meet the criteria provided in s. 414.095(3), F.S., and who have established domicile in Florida or are otherwise determined to be legal residents of this state.

The bill 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 avoid institutionalization. The bill revises the list of services allowed by adding adult day services, residential habilitation services, and support coordination. The bill removes from the list of services parent training, recreation, and social services. The bill requires 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. The bill deletes sections of current law relating to the development of day habilitation services.<sup>19</sup>

The bill specifies that tier eligibility may not be made until a waiver slot and funding becomes available. A client 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 a client to a lower tier if the client’s service needs change and can be met by services provided in a lower tier. Also, the bill provides that 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 clients whose needs for services meets the criteria for tier one but which can be met within the expenditure

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<sup>19</sup> According to 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.

limit of tier two. Tier three is also amended to provide that the tier includes clients whose needs for services meets the criteria for tier two but which can be met within the expenditure limit of tier three.

The bill authorizes APD to collect fees, in addition to premiums or other cost sharing, from the parents of children younger than 18 years of age being served by the agency through a waiver. The premium, fee, or other cost sharing may not exceed the cost of the services to the client, and for parents who have more than one child, the parent may not be required to pay more than the amount required for the child with the highest expenditures. The bill provides that a client may not be denied services due to nonpayment by a parent; however, adoptive and foster parents are exempt from payment of any premiums, fees, or other cost sharing.

The bill requires APD to review waiver support coordination performance to ensure that the support coordinator meets or exceeds the criteria established by the agency. Criteria for evaluating support coordinator performance include:

- The protection of the health and safety of clients.
- Assisting clients to obtain employment and pursue other meaningful activities.
- Assisting clients to access services that allow them to live in their community.
- The use of family resources.
- The use of private 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 clients' outcomes are met.

The agency is authorized to exempt a waiver support coordinator from annual quality assurance reviews if the coordinator consistently has superior performance, and the agency may sanction poor performance.

With respect to the iBudget, the bill provides that a client shall have 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, meet the requirements contained in the Coverage and Limitations Handbook, and comply with the other requirements of s. 393.0662, F.S.

Further, the bill provides that during the 2011-2012 and 2012-2013 fiscal years, APD shall determine a client's iBudget by comparing the client's algorithm allocation to the client's existing annual cost plan and the amount for the client's extraordinary needs. A client's allocation is the amount determined by the algorithm, adjusted to APD's appropriation, and any necessary set-asides, such as funding for extraordinary needs. A client's extraordinary needs shall be the annualized sum of any of the following services authorized on the client's cost plan

in the amount, duration, frequency, intensity, and scope determined by the agency to be necessary for the client's health and safety:

- Behavior assessment, behavior analysis services, and behavior assistant services.
- Consumable medical supplies.
- Durable medical equipment.
- In-home support services.
- Nursing services.
- Occupational therapy assessment and occupational therapy.
- Personal care assistance.
- Physical therapy assessment and physical therapy.
- Residential habilitation.
- Respiratory therapy assessment and respiratory therapy.
- Special medical home care.
- Support coordination.
- Supported employment.
- Supported living coaching.

The bill does not reference a client's "significant needs" when determining a client's iBudget allocation, although current law provides that APD may approve an increase in the amount of money allocated based on a client having significant needs (see lines 912-972 of the bill). However, according to APD, both a client's significant needs and extraordinary needs will be considered when calculating a client's iBudget allocation.<sup>20</sup>

The way APD determines a client's initial iBudget allocation is if the client's algorithm allocation is:

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

The bill provides that a client's initial iBudget amount may not be less than 50 percent of that client's existing annualized cost plan. Increases to the client's initial iBudget amount may only be granted if his or her situation meets the crisis criteria.

The bill authorizes APD to inspect and review facilities or programs that have certain accreditation once every two years, rather than annually. Notwithstanding accreditation, APD may continue to monitor the facility or program with respect to:

- Ensuring that services for which the agency is paying are being provided;

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<sup>20</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).

- 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; and
- Ensuring Medicaid compliance with federal certification and precertification review requirements.

The bill amends s. 393.11, F.S., authorizing APD to execute a petition for involuntary admission to residential services. In cases of involuntary admission, the individual ("defendant" as changed by this bill) has a right to notice and a hearing. At the hearing, if the defendant's attorney or any other interested party believes that the person's presence at the hearing is not in the person's best interest, or good cause is otherwise shown, the court may order that the defendant be excluded from the hearing.

The bill provides 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 APD and the agency shall issue the final order.

The bill provides that the welfare of clients includes the establishment, maintenance, and operation of sheltered workshops that include client wages.

Finally, the bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

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

None.

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

None.

##### **C. Trust Funds Restrictions:**

None.

#### **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 a client's iBudget allocation. The way APD determines a client's initial iBudget allocation is if the client's algorithm allocation is:

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

It appears that in certain situations, a client's iBudget allocation may be less than what they are receiving with their current cost plan.

**C. Government Sector Impact:**

According to APD, this bill is not expected to have a fiscal impact on the agency.

The bill amends s. 393.125, F.S., specifying that at the conclusion of a Medicaid hearing, the Department of Children and Family Services (DCF or department) shall submit a recommended order to APD, and the agency shall issue the final order. According to 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 DCF.<sup>21</sup>

**VI. Technical Deficiencies:**

Section 5 of the bill (starting on line 522) 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 533. 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 lines 1178-79, the bill authorizes 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 1184-1185). The bill does not require similar identifying information to be provided if the agency is the one executing the petition. According to APD, the agency and any agency witnesses are

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<sup>21</sup> Dep't of Children and Families, *Staff Analysis and Economic Impact, SB 1516* (Jan. 10, 2012) (on file with the Senate Committee with Children, Families, and Elder Affairs).

easily identified and contacted.<sup>22</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:**

None.

**VIII. Additional Information:**

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

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

**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 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.

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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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<sup>22</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).