

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 Appropriations Subcommittee on Health and Human Services

BILL: SB 380

INTRODUCER: Senator Bradley

SUBJECT: Persons with Developmental Disabilities

DATE: March 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	Favorable
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 380 requires the Agency for Persons with Disabilities (APD) to allow the dependent of an active duty military member to receive Medicaid home and community-based services upon the military member's transfer to Florida if the dependent has a developmental disability, was receiving such services in another state prior to the transfer, and meets Florida's eligibility requirements. The bill also requires the APD to allow a dependent of a Florida National Guard member or U.S. military reservist who is based in Florida to receive home and community-based services upon meeting Florida's eligibility requirements.

The bill has an estimated recurring cost of approximately \$3 million from the General Revenue Fund. See Section V.C.

The bill has an effective date of July 1, 2015.

II. Present Situation:

Home and Community-Based Waiver Services

The Agency for Persons with Disabilities (APD) is responsible for providing all services for persons with developmental disabilities that are authorized under ch. 393, F.S., including the operation of all state-related institutional programs and the programmatic management of Medicaid waivers established to provide services to persons with developmental disabilities.¹ A person determined eligible by the APD to receive APD services is known as a "client,"² and the term includes persons receiving APD services and those on a waiting list to receive APD services.

¹ See s. 20.197(3), F.S.

² See s. 393.063(5), F.S.

Florida's Medicaid program is administered by the Agency for Health Care Administration (AHCA). The AHCA has been granted waiver authority from the federal Medicaid program for the state to implement a four-tiered system to serve eligible APD clients through a home and community-based services waiver (HCBS waiver). For the purpose of this waiver program, eligible clients include individuals with a diagnosis of Down syndrome or a developmental disability. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, 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.³ The APD is required to assign all clients receiving services through this waiver to a tier, based on financial eligibility guidelines and APD assessments.⁴

Under the HCBS waiver, the APD operates four tier-based programs that provide home and community-based supports and services to clients living at home or in a home-like setting. HCBS waiver services are funded by state revenue and federal Medicaid matching dollars. APD operates the HCBS waiver under the authorization of the AHCA's Division of Medicaid.

The purpose of the HCBS waiver is to promote, maintain, and restore the health of APD clients; to minimize the effects of illness and disabilities through the provision of needed supports and services in order to delay or prevent institutionalization; and to foster the principles of self-determination as a foundation for services and supports. The intent of the waiver is to provide a viable choice of services that allow clients to live as independently as possible in their own home or in the community and to achieve productive lives as close to normal as possible, as opposed to residing in an institutional setting.⁵

An individual is eligible for services under the HCBS waiver program if their domicile is in Florida, they have Down syndrome or a developmental disability, and are three years of age or older. Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services. As of February 12, 2015, there are 30,983 individuals currently receiving benefits from the HCBS waiver and an additional 20,824 disabled persons on the waiting list for services in Florida.⁶ The Legislature appropriated \$941,032,259 for Fiscal Year 2014-2015 to provide services through the HCBS waiver program.⁷ Florida's appropriated federal match for the waiver in Fiscal Year 2014-2015 is \$560,478,813.⁸

An application must be submitted in writing to the APD either by mail or by hand to be considered for a Medicaid waiver. The APD is required to return a decision on eligibility within 45 days for children under 6 and within 60 days for all other applicants.⁹ Applications for those in crisis will be considered for eligibility within 45 days.¹⁰ All applicants must undergo a

³ See s. 393.063(9), F.S.

⁴ See s. 393.0661(2), F.S.

⁵ Agency for Health Care Administration, *Developmental Disabilities Waiver Services Coverage and Limitations Handbook*, November 2010, sec. 1, p. 8, available at <
http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/DD_Waiver_Handbook_Final_Rule_Nov_2010.pdf>, last visited March 20, 2014.

⁶ Agency for Persons with Disabilities, Allocation Budget Control (ABC) System (data retrieved on February 12, 2015).

⁷ Chapter 2014-51, Laws of Fla. (line 268)

⁸ *Id.*

⁹ See s. 393.065, F.S.

¹⁰ *Id.*

comprehensive assessment to determine eligibility. If an applicant is determined to be ineligible for services, the applicant may appeal the decision to the APD.¹¹

Clients who are determined to be eligible for the waiver program are either awarded a slot in the program or placed on a waiting list. As part of the wait list prioritization process, clients are assigned to a category as prescribed by s. 393.065(5), F.S., and further refined in Section 9 of ch. 2014-53, Laws of Florida. There are seven categories listed below in decreasing order of priority.

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Children from the child welfare system at the time of:
 - Finalization of an adoption with placement in a family home;
 - Reunification with family members with placement in a family home; or
 - Permanent placement with a relative in a family home.
- Category 3 – Includes, but is not limited to, clients:
 - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;
 - Who are at substantial risk of incarceration or court commitment without supports;
 - Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
 - Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.
- Category 4 – Includes, but is not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available;
- Category 5 – Includes, but is not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive employment or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.

A wait list is utilized by the APD for those who qualify under categories 3-7. Clients may be removed from the waitlist or denied a waiver slot should the parent or guardian fail to maintain accurate contact information, fail to meet eligibility requirements, or become domiciled outside the state. There is currently no special consideration in the Florida Statutes for military families relocating to Florida.

During the 2014 Regular Session, the Legislature passed HB 5003 to require the APD to allow an individual meeting eligibility requirements to receive home and community-based services in this state if the individual's parent or legal guardian is an active-duty military service member and, at the time of the service member's transfer to Florida, the individual was receiving home and community-based services in another state. This statutory change is in place for one year and expires July 1, 2015. As of February 12, 2015, the APD has processed six requests for

¹¹ *Id.*

enrollment from military families under this temporary statutory provision. Out of the six requests for enrollment, four military families have enrolled and two families are in the process of enrollment.¹² Military families are encouraged to apply for the waiver program prior to relocating to Florida, but applicants cannot be eligible to receive services until they are Florida residents.¹³

Military Family Relocations

According to the Military One Source 2013 Demographic Report, Florida has the seventh largest population of active duty service men and women at 60,234 and the third largest population of reserve forces at 36,745, which includes the 12,000 members of the Florida National Guard^{14, 15} Florida is home to 20 major military bases and three of the nation's seven unified combatant commands.¹⁶ For military families transferring to Florida, the state offers temporary professional licensure for military spouses, participates in the Interstate Compact on Educational Opportunity for Military Children, and recognizes a military driving permit or valid driver's license issued by another state in lieu of requiring a new Florida license.

Active-duty military service members with developmentally disabled children or dependents who receive military orders to move are called upon to physically relocate and reestablish care for their disabled family member. When such military members are reassigned to an installation across state lines, they generally have to start the entire Medicaid waiver process again and reestablish eligibility based on the new state's criteria.¹⁷

III. Effect of Proposed Changes:

The bill amends s. 393.065, F.S., to require the Agency for Persons with Disabilities to allow an applicant who meets eligibility requirements to receive home and community-based services in this state if:

- The applicant's parent or legal guardian is a military service member on active duty and, at the time of the service member's transfer to this state, the applicant was receiving home and community-based care services in another state; or
- The applicant's parent or legal guardian is a member of the Florida National Guard or a member of the United States Reserve Forces and is based in this state.

This bill provides an effective date of July 1, 2015.

¹² E-mail correspondence with APD staff. February 12, 2015. (On file with Military and Veterans Affairs, Space, and Domestic Security staff.)

¹³ E-mail correspondence with APD staff. February 11, 2015. (On file with Military and Veterans Affairs, Space, and Domestic Security staff.)

¹⁴ Military One Source, *2013 Demographic Report*, <http://www.militaryonesource.mil/12038/MOS/Reports/2013-Demographics-Report.pdf> (last visited February 13, 2015).

¹⁵ Department of Military Affairs, <http://dma.myflorida.com/about-us/> (last visited February 13, 2015).

¹⁶ Florida Defense Alliance, <http://www.enterpriseflorida.com/floridadefense/> (last visited February 13, 2015).

¹⁷ USA4Military Families, *Issue 6: Allow service members to retain their earned priority for receiving Medicaid home and community care waivers*, http://www.usa4militaryfamilies.dod.mil/MOS/f?p=USA4:ISSUE:0:::P2_ISSUE,P2_STATE:6,FL# (last visited February 13, 2015).

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:

None.

C. Government Sector Impact:

The Agency for Persons with Disabilities (APD) estimates that 534 military dependents will qualify for home and community-based waiver services under SB 380. If all 534 receive services, APD estimates a recurring need for \$2,958,205 in state general revenue plus \$4,351,420 in federal Medicaid funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current law under s. 393.065(5), F.S., requires the APD to assign priority to applicants for enrollment into waiver services based on specified criteria. However, the bill creates a new subsection (7) within s. 393.065, F.S., that stands alone, separate from the priority criteria found in subsection (5). The new subsection (7) requires the APD to allow an applicant meeting eligibility requirements to receive home and community-based services in this state if the applicant's parent or legal guardian is a member of the Florida National Guard or a member of the United States Reserve Forces and is based in this state, without regard to the APD's prioritization requirements set forth under subsection (5).

Because of the stand-alone nature of the new requirement in subsection (7), the bill seems to require the APD to bypass the prioritization categories under subsection (5) and give preference to those who qualify for services under subsection (7). For example, the bill appears to require

that an applicant who would otherwise be classified in priority category 6 or 7 to be enrolled into waiver services if his or her parent or guardian is a member of the National Guard, ahead of applicants from non-National Guard families in higher priority categories 1 through 5.^{18, 19}

VIII. Statutes Affected:

This bill amends section 393.065 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁸ Agency for Persons with Disabilities, *2015 Agency Legislative Bill Analysis, SB 380*, February 16, 2015, p. 4-5, on file with the Senate Appropriations Subcommittee on Health and Human Services.

¹⁹ Telephone discussion between staff of the Agency with Persons with Disabilities and staff of the Senate Appropriations Subcommittee on Health and Human Services, February 25, 2015.