

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 Committee on Children, Families, and Elder Affairs

BILL: SPB 7048

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: Developmental Disabilities

DATE: March 9, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hendon	Hendon		Pre-meeting

I. Summary:

SPB 7048 clarifies when the Agency for Persons with Disabilities will provide services to children with disabilities in foster care. The agency administers the Home and Community Based Services Medicaid waiver to provide services beyond those available under the traditional Medicaid program. The bill revises section 393.065, F.S., which establishes categories of priority groups to be added to the waiver. The waiver program currently has a waiting list and this bill clarifies the priority category 2 relating to children in foster care. The Agency for Persons with Disabilities will provide disability specific services to children in extended foster care, ages 18 to 21. The community-based care agencies, under contract with the Department of Children and Families, will continue to provide room and board to children with disabilities in extended foster care.

The bill would have an estimated fiscal impact of approximately \$3 million on the Agency for Persons with Disabilities. Costs for the community-based care agencies would be reduced. The bill is effective July 1, 2015.

II. Present Situation:

Children in Foster Care

A child can be placed in foster care by the state as a result of child abuse or neglect by a parent or other caregiver. Suspected child abuse is reported to the Florida Abuse Hotline under the Department of Children and Families. Calls accepted as a report are sent out to child protective investigators across the state to investigate. If the department verifies that the caregiver abused the child, he or she may be removed and placed in foster care. During this time, the department, through its contracted community-based care agencies, attempts to reunify the child with the parents or relatives. When this is not possible, the department moves to terminate parental rights and find adoptive parents for the child.

The removal of the child from the home, the placement of the child, the termination of parental rights, and the adoption of children in the foster care system are all overseen by the state's circuit

courts. Court hearings are required for these actions and attorneys to represent the state are employed by department, the Attorney General's Office, and in one case, a state attorney office. Indigent parents are represented at state expense through the offices of the Regional Conflict Counsel.

There are currently 20,302 children in the child welfare system.¹ This is the number of children who have been removed from their home and placed with relatives, foster families, or group home care. An additional 12,281 children are receiving in-home services. The community-based care agencies and their subcontractors are the primary providers of services to children and families in the child welfare system. There are 17 community-based care agencies with contracts covering all 20 judicial circuits. The agencies and their subcontractors employ case managers and supervisors to oversee the provision of services to children in the child welfare system.

The community-based care agencies provide or contract for placements for children in foster care. This includes shelters, for children recently removed from home, placement in a foster home or group home. Services include, but are not limited to: emergency shelter, family preservation services, foster care, room and board, foster care supervision, case management, coordination of mental health services, therapeutic foster care, residential group care, intensive residential treatment, independent living skills, postplacement supervision, permanent foster care, family reunification, or adoption services.

Medical care for children in foster care is provided through the Medicaid program. All children in care are eligible for Medicaid, including behavioral health services such as mental health and substance abuse. The state provides these services through managed care plans. Florida's Medicaid program offers a specialty plan, Sunshine Health, focusing on children in foster care. Children can also be served through a regular managed care plan.

Due to a lack of reliable data in the child welfare data system (Florida Safe Families Network), an accurate number of children in foster care who have a developmentally disability is unknown. Children in foster care with disabilities receive services to meet their needs through both the public school system and the community-based care agencies.

In 2013, the Legislature extended the age children in foster care who are not reunified with their family or adopted can stay in care until the age of 21.² Prior to this change, children who "aged out" of foster care without being reunified with their family or adopted, at age 18. Those with disabilities could stay until their 19th birthday. After exiting foster care, many young adults with disabilities were served by the Agency for Persons with Disabilities. Now, the children who stay in extended foster care with disabilities are served by the community-based care agencies until they reach their 22nd birthday.

Public School Services for Children with Developmental Disabilities

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, inclusive, including children

¹ Communication from the Department of Children and Families (March 9, 2015).

² Section 39.6251, F.S., created by Chapter 2013-178, Laws of Florida

with disabilities who have been suspended or expelled from school.³ As the state educational agency, the Department of Education must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.⁴

For each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, an individual educational plan (IEP) or individual family support plan must be developed, reviewed, and revised.⁵ In developing an IEP, the IEP team is required to consider a child's strengths, concerns of the parents for enhancing education, results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child, as well as special factors.⁶

Agency for Persons with Disabilities

In October 2004, the Agency for Persons with Disabilities became an agency separate from the Department of Children and Families, specifically tasked with serving the needs of Floridians with developmental disabilities. The agency works in partnership with local communities and private providers to assist people who have developmental disabilities and their families. The agency also provides assistance in identifying the needs of people with developmental disabilities for supports and services. The agency serves more than 50,000 Floridians with the following disabilities:⁷

- Autism
- Cerebral palsy
- Spina bifida
- Intellectual disabilities
- Down syndrome
- Prader-Willi syndrome
- Children age 3-5 who are at a high risk of a developmental disability

The total budget for the Agency for Persons with Disabilities for fiscal year 2014-2015 is \$1,153.5 million. The largest program operated by the agency is the Medicaid Home and Community Based Services Waiver. This program is currently funded at \$908.6 million.⁸ State funds make up \$379.6 million of the waiver program funding and these funds are matched by the federal government. The current federal match rate is 59.56 percent.⁹ The purpose of the waiver is to allow the state to provide services outside of the Medicaid State Plan to enable persons with developmental disabilities to remain in the community and not be served in an institution. One of the more critical waiver services that is not available under the traditional Medicaid program is residential habilitation. Residential habilitation services include supervision and training of the

³ 20 U.S.C. s.1400 et. seq., *as amended by* P.L. 108-446; 34 C.F.R. s. 300.17.

⁴ 34 C.F.R. s. 300.149.

⁵ Rule 6A-6.03028(3), F.A.C.

⁶ 20 U.S.C. s.1414(d)(3)(A) and (B).

⁷ Florida Agency for Persons with Disabilities website, <http://apd.myflorida.com/about/>, (last visited March 9, 2015).

⁸ Specific Appropriation 268, HB 5001, 2014-2015 General Appropriations Act.

⁹ February 15, 2015 Social Services Estimating Conference, Office of Economic and Demographic Research.

person with the disability in performing activities of daily living, such as bathing, dressing, and food preparation. Acquiring these daily living skills can allow the person to remain in the community rather than living in an institution, such as an Intermediate Care Facility.

The Medicaid Home and Community Based Services Waiver has experienced deficits for the last several years and the Legislature has had to make supplemental appropriations and restrict the criteria for placement on the waiver to control costs. Section 393.065, F.S., specifies categories of persons in priority order to be added to the Home and Community Based Services Waiver. Category 2 is children in the child welfare system. Within that group, only those that need services to achieve permanency through adoption, reunification, or permanent placement with a guardian are currently being added to the Home and Community Based Services Waiver.¹⁰

While the goal is to help persons with developmental disabilities remain in the community, some must be served in an Intermediate Care Facility funded through the Agency for Health Care Administration. The current funding for developmental disabilities served in such facilities is \$245.7 million.¹¹

III. Effect of Proposed Changes:

Under the bill, the community-based care agencies and the public schools system will continue to care for children with disabilities from birth to age 18. The Agency for Persons with Disabilities will continue to provide waiver services to children in care that need specialized services to achieve permanency.

Section 1 of the bill amends s. 393.065, F.S., to clarify category 2 for the waiver waitlist. For children in care age 18 to 21, the Agency for Persons with Disabilities will serve them on the Home and Community Based Services waiver for disability specific services such as residential rehabilitation, while they are in extended foster care. Community-based care agencies will continue to be responsible for provide room and board.

Under current law, children in care with disabilities can stay in care an extra year to plan for their transition.¹² Such children will be in category 2 for the waiver until they reach their 22nd birthday.

Section 2 of the bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁰ Communication with the Director of the Agency for Persons with Disabilities, Feb. 27, 2015.

¹¹ Specific Appropriation 240, HB 5001, 2014-2015 General Appropriations Act.

¹² Section 39.6251 (5) (a), F.S.

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:

Community-based care agencies will receive additional assistance from the Agency for Persons with Disabilities in serving children in extended foster care who have developmental disabilities. This will reduce the costs to the private, community-based care agencies by an amount similar to the increase in costs to the Agency for Persons with Disabilities.

C. Government Sector Impact:

The bill could increase the demand for services under the Home and Community Based Services Medicaid waiver operated by the Agency for Persons with Disabilities. The waiver is funded in the current year at \$908.6 million. The number of young adults that would be served under the bill is estimated to be 62 by the Agency for Persons with Disabilities for fiscal year 2015-2016. If that estimate is accurate, the added cost to serve these young adults would be \$3.1 million, with state funds accounting for \$1.2 million.¹³ The impact of the cost of providing these services would depend on the demand for waiver services by other groups and the amount of funding for the waiver in fiscal year 2015-2016.

Fiscal Impact	Fiscal Year 2015-16		
	GR	Trust	Total
Agency for Persons with Disabilities			
Total	\$1,211,672	\$1,856,628	\$3,068,300

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹³The federal Medicaid match rate for fiscal year 2015-2016 is estimated to be 60.51% according to the Feb. 15, 2015 Social Services Estimating Conference, Office of Economic and Demographic Research.

VIII. Statutes Affected:

This bill substantially 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.
