

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2214

SPONSOR: Committee on Children and Families and Senator Forman

SUBJECT: Persons With Developmental Disabilities

DATE: April 15, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2214 addresses improvements in the developmental services program in the following areas:

- client assessments to determine the need and medical necessity for long-term care services.
- licensure of intermediate care facilities for the developmentally disabled.
- transfer of funds from institutions to community-based care if residential units are voluntarily closed.
- development of a consumer-directed, choice-based system of care.

This bill substantially amends sections 393.062, 393.065, 393.066, 393.067, 393.0673, 393.22, 409.906, 409.9127, and creates sections 400.960, 400.962, 400.963, 400.964, 400.965, 400.966, 400.967, and 400.968, Florida Statutes.

II. Present Situation:

The General Appropriations Act for FY 1998-1999 required a comprehensive plan for developmental services to be developed under the coordination of the Executive Office of the Governor. The Appropriations Act specified that the plan must include, at a minimum, actions necessary to resolve current litigation issues, reimbursement plan inequities, Boren amendment repeal impacts, the principle of consumer directed care, inappropriate client placements, and quality of care issues.

The plan, which suggested possible improvements to the system of providing services and contemplated future increases in service funding, was completed after substantial public input and participation and submitted to the Legislature during September, 1998.

In an effort to improve services to persons with developmental disabilities, the Governor included an increase of almost \$214 million for the developmental services program in his legislative budget recommendations for FY 1999-2000. Additionally, the Governor focused on several quality of care issues that address deficiencies in the developmental services program including: client assessments to determine the need and medical necessity for long-term care services; licensure of intermediate care facilities for the developmentally disabled; transfer of funds from institutions to community-based care; and developing a consumer-directed, choice-based system of care.

Chapter 393, F.S., is Florida's law on developmental disabilities. It covers, among other things, eligibility, services, rights of persons with developmental disabilities, and licensure of programs. The law related to licensure of certain residential programs is unclear since certain provisions amended in 1996 have been struck by a federal court.

III. Effect of Proposed Changes:

The major provisions of CS/SB 2214 include the following:

- Amends s. 393.062, F.S., specifying that it is a finding of the Legislature that the eligibility criteria for Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) contained in Florida's Medicaid state plan that are in effect when this act becomes law are essential to the system of residential services for persons with developmental disabilities.
- Amends s. 393.065, F.S., by stating that the Department of Children and Family Services must assess the level of need and medical necessity for prospective residents of intermediate care facilities for the developmentally disabled after October 1, 1999. The bill states that the department may enter into an agreement with the Department of Elderly Affairs for the Department of Elder Affairs' Comprehensive Assessment and Review for Long-Term Care Services (CARES) program to conduct these assessments that will be funded under Title XIX of the Social Security Act to the extent permissible under federal law.
- Amends s. 393.0673, F.S., to increase the administrative fines for facilities licensed under ch. 393, F.S., from \$500 to \$1,000 per violation per day and specifies that the aggregate amount of any fine may not exceed \$10,000 rather than \$5,000.
- Amends s. 393.22, F.S., by stating the Department of Children and Family Services and the Agency for Health Care Administration must ensure that whenever a sufficient number of persons move from an institution serving persons with developmental disabilities allowing an entire residential unit to close, no less than 80 percent of the direct costs of providing services to those persons who had resided on that unit will be transferred to community services.

- Amends s. 409.906, F.S., 1998 Supp., by specifying that the Governor may direct the Agency for Health Care Administration to amend the Medicaid State Plan by deleting the optional Medicaid service known as “Intermediate Care Facilities for the Developmentally Disabled” if it is necessary to safeguard the state’s systems of providing services to elderly and disabled persons. This action must be done under the notice and review provisions of s. 216.177, F.S. The bill modifies the definition of “Intermediate Care Facility for the Developmentally Disabled Services” by deleting the provision that these facilities are owned and operated by the state. The bill specifies that these facilities are licensed and certified as a Medicaid Intermediate Care Facility for the Developmentally Disabled.
- Amends s. 409.9127, F.S., by including services to disabled persons in the preauthorization and concurrent utilization review process and the conflict of interest standards developed and enforced by the Agency for Health Care Administration. The bill states that the Agency for Health Care Administration must assist the Department of Children and Family Services in assessing the level of need and medical necessity for prospective residents of intermediate care facilities for developmental disabilities after October 1, 1999. Only those persons who are assessed pursuant to ch. 393.065(4), F.S., are eligible for reimbursement by the Medicaid program under ch. 409, F.S.
- Creates new sections of ch. 400, F.S., to establish statutory authority for the licensure of Intermediate Care Facilities for the Developmentally Disabled. Provisions are included in the bill for elements such as background screening, a provisional license, proof of financial ability to operate a facility or program under ch. 400, F.S., specifications of the application, grounds for action against a licensee, receivership proceedings, rules and classification of deficiencies, right of entry into the premises for inspecting facilities, injunctive proceedings, imposing a moratorium, and penalty fines.
- The bill directs the Department of Children and Family Services to use appropriations for developmental services to design a system of providing services for persons with developmental disabilities that is consumer-directed and choice-based. The department is directed to institute not more than three pilot programs to test this payment model. Each of these models must be structurally different. A progress report to the appropriate legislative committees must be submitted by the department by December 1, 2000, and by December 1, 2001. The bill specifies that these pilot programs will be reviewed by the Legislature prior to July 1, 2001, and on that date, the section of the bill containing the pilot programs is repealed.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If direct service funds are transferred from an institution's budget as a result of a residential unit closing, the community to which the funds are transferred will receive additional services for persons with developmental disabilities.

The bill increases administrative fines for facilities licensed under ch. 393, F.S., from \$500 to \$1,000 per violation per day but the aggregate amount of any fine may not exceed \$10,000.

C. Government Sector Impact:

The bill authorizes the Governor to have Florida withdraw from providing ICF/DD services. While this would represent a loss of over \$200 million in annual federal reimbursement, it is contemplated as an option only to protect the remaining \$4 billion in federal Medicaid reimbursement.

Licensure of ICF/DD will have a workload impact on the Agency for Health Care Administration. Licensure was regularly conducted prior to a federal court striking a 1996 licensure law. The Agency for Health Care Administration lost none of its pre-1996 resources, so the workload impact should be within current resources.

No less than 80 percent of the costs to provide direct services would be transferred out of an institution's budget to community services if a residential unit is closed. Since only direct care costs are included, not fixed costs, the savings to the institution should substantially outweigh the amount transferred. No closing of residential units is required or suggested in the bill.

It is estimated that eligibility determination and prior authorization by the CARES teams in the Department of Elderly Affairs would require 5 FTEs for a total cost of \$202,137 (\$151,607 is federal trust fund and \$43,046 is recurring state general revenue) for FY 1999-2000 (nonrecurring general revenue is \$7,484).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
