

Supported Living

Section 393.063(50), F.S., defines “supported living” as a category of individually determined services designed and coordinated in such a manner as to provide assistance to adult clients who require ongoing supports to live as independently as possible in their own homes, to be integrated into the community, and to participate in community life to the fullest extent possible.

Supported living was first initiated in Colorado, Florida, Missouri, North Dakota, Ohio, Oregon, and Wisconsin in the mid-1980s. Supported living emphasizes individual choice, control over housing, and individualized, person-centered planning. Supported living homes are not licensed and are considered private residences. The program allows a person to receive personalized supports needed to maintain his or her own private home. The supported living programs allows a person to choose the location of housing in which ownership is by someone other than the support provider (i.e., by the individual, the family, a landlord, or a housing cooperative). The person also chooses with whom he or she lives and has a flexible support plan based on individualized needs. Natural supports are developed to assist persons in gaining access to community resources, develop lasting friendships and be integrated into the surrounding neighborhood and community. A supported living coach is selected by each participant to assist in acquiring and maintaining the skills and the capacity to live in his or her own home. The coach is on call 24 hours 7 days a week for emergency support. Most states have limited supported living to 3 persons (with disabilities) or fewer.

Section 65-B-11.005, Florida Administrative Code, contains the provisions for Florida’s supported living program including the requirement specifying that an eligible supported living setting for persons with developmental disabilities may have no more than three persons with developmental disabilities living together in a single housing unit. The department reports that statutory authority does not exist in chapter 393, F.S., to maintain supported living administrative rule provisions, including the limit of three persons in a supported living setting. In order to prevent a conflict between supported living arrangements and licensure requirements for group home facilities and foster home facilities, it is essential that this limit for supported living be clarified in ch. 393, F.S.. The size of a group home facility is specified in s. 393.063(24), F.S., and the size of a foster care facility is contained in s. 393.063(23), F.S.

Supported living services are provided to over 2,500 persons in Florida at a median cost of \$14,010 per year. This compares favorably to the \$34,000 per year cost for individuals living in group homes and over \$75,000 for those in institutions.

Developmental Services Home and Community-Based Services Waiver Program

Section 409.906(13), F.S., specifies that the Agency for Health Care Administration may pay for home-based or community-based services that are rendered to a recipient in accordance with a federally approved waiver program. The developmental services home and community-based services waiver program for persons with developmental disabilities began in Florida in 1982. The current waiver agreement with the federal Center for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) was signed in 1998 and states that Florida’s home and community-based services waiver program will be operated by the department. Seventy-three percent of the persons with developmental disabilities who receive

services from the department and live in the community (approximately 24,618 persons on November 1, 2001) are served under the developmental services home and community-based services waiver, which results in the federal government matching state expenditures for services for those persons at a 45 percent state, 55 percent federal expenditure ratio.

The purpose of the home and community-based waiver is to promote and maintain the health of individuals with developmental disabilities through the provision of medically necessary supports and services that will help the individual live in the community and avoid the necessity for institutional placement. Waiver services may only be provided when the service or item is medically necessary. The department's district developmental disabilities program administrator or designee makes the determination of "medical necessity" for each requested service or item. Each individual client selects a waiver support coordinator to assist in: the selection of services, the development of a support plan, selection of service providers, and necessary arrangement for services. Prior to an individual receiving a service, an individual's support plan and cost plan must be approved by the district developmental disabilities program office. Most community-based services for the developmental disabilities program are delivered by the private sector, both non-profit and for-profit organizations, and include services such as support coordination, personal attendant services, respite, supported employment, adult day training, companion, and dental services.

The department states that no current section of Florida law provides specific authority for the department to adopt the necessary administrative rules to implement the developmental services home and community-based waiver program. As stated above, administrative rules currently exist for supported living (chapter 65-11, Florida Administrative Code) which is only one component of the waiver program.

Medical Care for a Person with a Developmental Disability

The issue of who is legally authorized to provide consent on behalf of an adult patient with a developmental disability for a medical or dental procedure is a problem experienced by health care providers. Shands Hospital, for example, reports that relatives, usually parents, bring an adult family member who has a developmental disability to the hospital for medical or dental treatment and because he or she is no longer a minor, the parent cannot consent for medical treatment on that person's behalf. The person needing medical treatment does not receive it or treatment is delayed until the court or court appointed guardian advocate can consent on behalf of the adult with a developmental disability. Shands Hospital states that in most cases, these parents do not have adequate resources to hire a lawyer as required under ch. 744, F.S., (guardianship) or under s. 393.12, F.S. (guardian advocate). Access to legal aid clinics is frequently unavailable because parents and caregivers do not qualify for their assistance.

Section 765.401, F.S., specifies that if a patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made by one of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:

- The judicially appointed guardian of the patient who has been authorized to consent to medical treatment, if the guardian has previously been appointed;
- The patient's spouse;
- An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
- A parent of the patient;
- The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation.
- An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient and who is familiar with the patient's activities, health, and religious or moral beliefs; or
- A close friend of the patient.

III. Effect of Proposed Changes:

Mental Retardation

CS/SB 364 amends s. 393.063, F.S., by specifying that the standardized intelligence test that determines mental retardation must be administered by a person who is authorized to administer such a test under ch. 490, F.S. Section 490.003(4) and (5) F.S., state that the practice of psychology and the practice of school psychology include the evaluation of intellectual functioning.

Supported Living

CS/SB 364 amends the definition of "supported living" in s. 393.063(51), F.S., to require that the department adopt a rule that specifies the number of persons having a developmental disability who may live together in a single housing unit in a supported living program. This provision will assure that supported living settings may not be inappropriately substituted for licensed foster care or group care facilities.

The bill amends s. 393.501, F.S., to include a provision for the department to adopt rules for the supported living program that will include definitions of terms, standards for eligibility, selection of housing, selection of providers, planning for services, and ongoing monitoring.

Developmental Services Home and Community-Based Services Waiver Program

The bill amends s. 393.501, F.S., directing the department to adopt rules for administering federal waivers authorized under s. 409.906, F.S., for developmental services and home and community-based services including eligibility criteria for recipients and providers, criteria and procedures for enrollment and termination, qualifications for providing and receiving services, criteria for authorizing and using services, and standards for the quality and delivery of services. The bill also provides the authority for standards and procedures for coordinating support services including criteria for applications and determining eligibility for services, procedures for support planning, responsibilities of support coordinators, and standards for quality and delivery of services.

Medical Care for a Person with a Developmental Disability

CS/SB 364 amends s. 765.401(1), F.S., to include persons having a developmental disability defined pursuant to s. 393.063(12), F.S., under the proxy provision that designates persons to provide health care decisions. The bill also amends s. 765.401(3), F.S., to specify that a proxy must comply with s. 393.12, F.S., before life-prolonging procedures are withdrawn or withheld for a person who has a developmental disability.

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:

The bill has the potential to save legal and medical costs for families who have a family member with a developmental disability who needs immediate medical or dental care.

C. Government Sector Impact:

There will be minimal costs to the department to develop and promulgate the necessary administrative rules for: 1) administering the home and community-based waiver program, 2) standards and procedures for coordinating support services, and 3) provisions for the supported living program.

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.
