

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families - The bill provides the agency the ability to deposit fees and when appropriated use these funds to assist individuals in the community to receive dental services at Developmental Disabilities Institutions.

B. EFFECT OF PROPOSED CHANGES:

Tier-Waiver System

The Agency for Persons with Disabilities (APD) and the Agency for Health Care Administration (AHCA) were directed by the 2007 Legislature to implement a four-tiered waiver system to serve clients with development disabilities in the developmental disabilities and family and supported living waivers.¹ APD assigns all clients receiving services through the developmental disabilities waiver to a tier based on a valid assessment instrument, client characteristics, and other assessment methods. Where appropriate, all services that are covered under the current development disabilities waiver are available to all clients in all tiers, except under certain circumstances or exceptions. AHCA received federal approval to implement all four tiers of the waiver system and APD is currently in the process of implementing the new program.

The bill specifies that Tier 2 services are available to clients whose service needs include a licensed residential facility and who are authorized to receive a moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitation services. The effect of this change will correct the reference in current statute² to reflect the corresponding level in the recently introduced consolidated residential habilitation rate structure APD was directed to develop pursuant to s. 393.0661(3)(f) (8), Florida Statutes.

In addition, the bill prohibits expanding services in the Tier 4 Family and Supported Living waiver during fiscal Year 2008-09. An appropriation to support the expansion of services within this tier was not included in the proposed 2008-09 General Appropriations Act.

Service Rates for Residential Habilitation

Residential habilitation provides supervision and specific training activities that assist the person to acquire, maintain or improve skills related to activities of daily living. Individuals with challenging behavioral disorders may require more intense levels of residential habilitation services described as behavior focus or intensive behavioral residential habilitation.³ The 2007 Legislature directed AHCA in consultation with APD to make substantive changes to the Medicaid waiver system for persons with developmental disabilities.⁴ Among other changes, the agency was directed to place maximum hour limitations on residential habilitation services and to implement a consolidated rate structure for this service. This was accomplished and the consolidated rates for residential habilitation services in a licensed facility were promulgated in 59G-13.081 and 59GER 07-5, Florida Administrative Code. The new rates are arranged in five levels of support including basic, minimal, moderate, extensive and intensive support. These levels apply to two types of residential habilitation services, which include the standard program and behavior focus.

The original proposed rule also reduced an additional geographic factor to increase the residential habilitation rate that is applied to areas 9 (West Palm), 10 (Broward), and 11 (Dade and Monroe). Prior to the consolidated rate structure, the geographic differential for these counties was much higher ranging from 11 to 28 percent above the standard rate with a 28 percent differential for Monroe

¹ s. 393.0661(3), F.S.

² 393.0661(3)(b).

³ Implementing Revisions to Residential Habilitation Rates in Licensed Facilities Required by Statute, Procedures Revised 10-22-07 for an Effective date of December 1, 2007, Agency for Persons with Disabilities.

⁴ s.393.0661(3), F.S.

County.⁵ The proposed geographical rate differential was evaluated and adjusted to reflect the Florida Consumer Price Index, which resulted in a revised geographic differential of 4.5 percent for Areas 9, 10 and 11, including Monroe County. This rule was challenged and a revised emergency rule was adopted pursuant to a settlement that increased the geographic differential for the areas to 10 percent with a 25 percent differential for Monroe County. This emergency rule is scheduled to expire at the end of March 2008. The newly proposed permanent rule that will replace the emergency rule once again proposes to reduce the differential to 4.5 percent for all counties in these three areas and eliminates the exceptional geographic rate for Monroe County, which reduces their rate to 10 percent.⁶

The bill phases in the reduction in the geographic differential percentage rate for residential habilitation services applied to Medicaid waiver service rates in Miami-Dade, Broward, Palm Beach and Monroe counties. Effective July 1, 2008, the percentage rate for Miami-Dade, Broward, and Palm Beach counties will be 7.5 percent, and effective July 1, 2009, the rate will be at 4.5 percent. Effective July 1, 2008, the percentage rate for Monroe County will be 20 percent, reducing to 15 percent on July 1, 2009, and then 10 percent on July 1, 2010. The effect of the bill will reduce the geographic rate differential for this service in these counties through a phased approach to allow providers time to adjust to the change in rates.

Cost Plans for APD Medicaid Waiver Programs

The 2007 Legislature directed the agency in s. 393.0661 (3)(f)(9), F.S. to extend support plans for clients receiving services under the Medicaid waivers for one year beginning July 1, 2007 or from the date when federal approval was received. A support plan is a plan that includes the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized. The plan includes provisions for the most appropriate level of care for the client. The cost plan is a plan of services that reflects the individual and total cost of services covered by a Medicaid waiver program for an enrolled person with a developmental disability. These plans are required to be updated annually and can be adjusted more frequently when an individual's needs change or when additional services are requested.

The bill allows the agency to adjust a client's cost plan to reflect the amount of expenditures for the previous fiscal year plus 5 percent and provides a mechanism for adjustment if the client was not served the entire fiscal year. This provision will control the growth in utilization of waiver services by limiting the increase to the previous year's spend plus 5 percent if the calculated amount is less than the individual's existing cost plan. This provision expires June 30, 2009 unless re-enacted by the legislature.

Client Fees

The agency is authorized to collect client fees in accordance with s. 402.33, F.S., titled "Department Authority to Charge Fees for Services Provided." The agency currently collects client fees from third parties such as supplemental security income on behalf of an institution resident or Medicaid payments for services rendered.

As a result of safety issues, payment schedules and other issues involved in providing services to persons with developmental disabilities, many private dentists decline to serve this population. As a result, many community clients come to Developmental Disability Institutions to obtain dental treatment. The facility performs the services using resources appropriated to the institution and then bills Medicaid or private insurances or receives payment from the client. The reimbursements are returned to the agency trust fund, but the agency has no additional spending authority from the trust fund to purchase supplies to provide this service to the community population.

The bill provides the agency authority to deposit client fees into the Operations and Maintenance Trust Fund. The proposed 2008-09 General Appropriations Act provides additional spending authority in the agency's Operations and Maintenance Trust fund to use funds collected from community client reimbursements to provide dental services within state institutions.

⁵ Agency for Persons with Disabilities, Residential Habilitation Rate Revisions Summary, August 7, 2008.

⁶ Ibid.

Fair Hearings

Pursuant to s. 393.125, F.S., individuals receiving services through APD as well as their parent, guardian, guardian advocate, or authorized representative – are guaranteed the right to request an administrative hearing pursuant to chapter 120, F.S., whenever a substantial interest of such individual is determined by the agency.

Administrative hearings under chapter 120, F.S., are reserved for proceedings in which the substantial interests of a party are determined by an agency.⁷ If an agency receives a request for a hearing under chapter 120, F.S., such agency may request that the hearing be presided over by an administrative law judge (ALJ) from the Florida Division of Administrative Hearings (DOAH). Upon such request, DOAH assigns an ALJ with due regard to the expertise required for the particular matter.

For Medicaid programs administered through the agency, this hearing right is guaranteed by 42 C.F.R.431.200, et.seq.⁸ The situations upon which a state agency must provide an opportunity for a hearing for individuals receiving services through a Medicaid program include when an applicant's claim for services is denied or not acted upon with reasonable promptness,⁹ and when a recipient believes such agency has taken an action erroneously.¹⁰ For purposes of Part 431 of Title 41 of the Code of Federal Regulations, agency "action" includes the "termination, suspension, or reduction of Medicaid eligibility or covered services."¹¹

Prior to 2006, APD conducted Medicaid-related fair hearing reviews through the Office of Appeal Hearings (OAH) within the Department of Children and Family Services (DCF, or the "department"). The OAH was created to provide administrative review of the denial, suspension, or reduction of benefits in those medical assistance and social services programs where a due process proceeding is mandated by federal law.

In 2006, the 1st D.C.A. of Florida heard the case of *J.M. v. Florida Agency for Persons with Disabilities*,¹² which arose following the attempted reduction of services ordered by the agency for a child with autism and mental retardation living in a group home and receiving benefits under a community-based Medicaid waiver program administered by the agency. The court concluded that despite being administratively housed within DCF,¹³ the agency could not make use of the exception to the chapter 120, F.S., hearing requirements created for DCF under s. 120.80(7), F.S.,¹⁴ the court continued by holding that "APD must grant a formal hearing pursuant to s. 120.57(1), F.S., when material facts are in dispute and an applicant or client is 'determined by the agency to be ineligible for developmental services' if the applicant or client is substantially affected by the ... initial family or individual support plan, or the annual review thereof."¹⁵

The bill specifies that, for Medicaid programs administered by the agency, any client, or his or her parent, guardian, guardian advocate, or authorized representative, has the right to request a hearing pursuant to federal Medicaid laws and rules, and that such hearings are to be conducted by DCF pursuant to s. 409.285, F.S. In effect, this authorizes fair hearings for agency participants in Medicaid

⁷ S. 120.569(1), F.S.

⁸ 42 C.F.R.431.205 provides that a state's hearing system must provide for either 1) a hearing before the Medicaid agency, or 2) an evidentiary hearing at the local level, with a right of appeal to a State agency hearing. Additionally, this section provides that such hearing system must meet the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970).

⁹ 42 C.F.R. 431.220(a) (1).

¹⁰ 42 C.F.R. 431.220(a)(2).

¹¹ 42 C.F.R. 431,291.

¹² 938 So. 2d 535 (2006).

¹³ S. 20.197, F.S.

¹⁴ S. 120.80(7), F.S., states that "(notwithstanding s, 120, 57(1) (a), hearings conducted within the Department of Children and Family Services in the execution of those social and economic programs administered by the former Division of Family Services of the former Department of Health and Rehabilitative Services prior to the reorganization effected by chapter 75-48, L.O.F., need not be conducted by an administrative law judge assigned by the division."

¹⁵ *Id.*; family or individual support plans are required for agency clients pursuant to s. 393.0651, F.S.

programs to be held within the department's Office of Appeal Hearings as they were for APD prior to 2006, while individuals participating in non-Medicaid programs administered by the agency retain their administrative fair hearing rights through traditional chapter 120, F.S., processes.

C. SECTION DIRECTORY:

- Section 1. Amends s. 393.0661, F.S., relating to home and community-based services delivery system.
- Section 2. Amends s. 393.071, F.S., relating to client fees.
- Section 3. Amends s. 393.125, F.S., relating to hearing rights.
- Section 4. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

FY 2008-09

FY 2009-10

Community Dental Service Pilot Project

Operations and Maintenance Trust Fund

\$581,000

-\$0-

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The agency has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES