

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 177 Persons with Developmental Disabilities

SPONSOR(S): Children, Families & Seniors Subcommittee; Hill

TIED BILLS: **IDEN./SIM. BILLS:** SB 380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 0 N, As CS	Tuszynski	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Medicaid Home and Community-Based Services (HCBS) waiver operated by the Agency for Persons with Disabilities provides supports and services that allow individuals with developmental disabilities to live in the community rather than in an institution.

Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive HCBS waiver services are placed on a wait list for services in priority of need, unless they are in a crisis. As of March 5, 2015, 20,911 individuals were on the waiting list for developmental disability waiver services.

The bill amends s. 393.065(5), F.S., creating a new category 3, which includes clients whose parent or legal guardian is:

- An active-duty servicemember and, at the time of the servicemember's transfer to this state, the applicant was receiving home and community-based services in another state; or
- A member of the Florida National Guard and resides in this state.

The number of individuals who would be placed in Category 3 is unknown.

The bill also adds Down syndrome to the definition of "developmental disability."

The bill does not appear to have a fiscal impact on state or local government. See fiscal comments.

The bill provides for an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. 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.¹

APD manages the Medicaid Home and Community-Based Services (HCBS) Waiver, which provides services and supports to eligible persons with developmental disabilities. The waiver offers 28 supports and services to assist individuals to live in their community. Some of the most common services provided include residential habilitation, behavioral services, companion, consumable medical supplies, day training, supported employment and support coordination. Services provided through the HCBS waiver enable children and adults to live in the community in their own home, a family home, or in a licensed residential setting, thereby avoiding institutionalization.

Individuals three years of age and older are eligible for services under the HCBS waiver program if they have a Florida domicile and a qualifying developmental disability. Children between the ages of three and five who are at high risk of having a developmental disability are also eligible for services.

Florida's waiver program for individuals with developmental disabilities is known as "iBudget Florida". As of March 5, 2015, 30,991² individuals were enrolled on the waiver. The majority of waiver enrollees live in a family home with a parent, relative or guardian.

The Legislature appropriated \$941,032,259 for Fiscal Year 2014-2015³ to provide services through the HCBS waiver program, including federal match of \$560,478,813.⁴ However, this funding is insufficient to serve all persons desiring waiver services. To enable the agency to remain within legislative appropriations, waiver enrollment is limited. Accordingly, APD maintains a wait list for waiver services. Prioritization for the waiting list is provided in statute,⁵ and also in the FY 14-15 Implementing Bill.⁶

Clients who are determined to be eligible for the waiver program are either given a slot in the program or placed on a wait list. As part of the wait list prioritization process, clients are assigned to a category as prescribed by section 393.065(5), F.S., and further refined in Section 9 of Chapter 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 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;

¹ S. 393.063(9), F.S.

² E-mail from Robert Brown, Legislative Affairs Director, Agency for Persons with Disabilities. On file with Children, Families and Seniors Subcommittee. (March 5, 2015)

³ Chapter 2014-51, Laws of Fla. (line 268)

⁴ Id.

⁵ S. 393.065, F.S

⁶ Section 9, Chapter 2014-53, Laws of Florida

- 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 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 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.

As of March 5, 2015, there were 20,911⁷ people on the waiting list for HCBS waiver program services. A majority of people on the wait list have been on the list for 5+ years.

APD HCBS Length of Wait ⁸		
Length of Wait	#	%
1 year or less	1,771	8.5
1+ to 2 years	1,249	6.0
2+ to 3 years	1,493	7.2
3+ to 4 years	1,449	7.0
4+ to 5 years	1,695	8.2
5+ to 6 years	1,771	8.5
6+ to 7 years	1,695	8.2
7+ to 8 years	1,826	8.8
8+ to 9 years	1,915	9.2
9+ to 10 years	1,487	7.2
10+ years	4,413	21.3

For several years, while the agency experienced significant deficits, APD was limited to newly enrolling on the waiver only individuals determined to be in crisis. Only since FY 2013-14, when the agency has remained within budget, has the Legislature provided funding to APD to serve individuals from the waiting list who were not in crisis but had a high priority for service needs. Since July 1, 2013, APD has offered enrollment to 2,870 such individuals, and estimates that all individuals with critical needs have been offered enrollment as of July 1, 2014.

Military Family Relocations

Florida is home to 20 major military bases and three of the nation's seven unified combatant commands.^{9,10}

Active-duty military servicemembers with children or dependents with developmental disabilities who receive military orders to move may need to reestablish care for their family member with a disability in their new location. Since waivers are operated by states, servicemembers generally must start the enrollment process over again in the new state of residence even if their child or dependent was

⁷ Supra. at FN 2.

⁸ Agency for Persons with Disabilities, *Quarterly Report on Agency Services to Floridian with Developmental Disabilities and Their Costs: Second Quarter Fiscal Year 2014-15*, February 2015

⁹ Florida Defense Alliance, http://www.enterpriseflorida.com/wp-content/uploads/Military_Install_Map.pdf (last visited March 4, 2015).

¹⁰ Florida Defense Alliance, <http://www.enterpriseflorida.com/floridadefense/> (last visited March 5, 2015).

receiving waiver services in another state.¹¹ Depending on the nature of the individual's need, the wait for waiver services in Florida can be significant, lasting years.

The Legislature passed HB 5003 in 2014 to allow an individual who meets 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 servicemember and, at the time of the servicemember's transfer to Florida, the individual was receiving home and community-based services in another state. Since the provision was part of the appropriations implementing bill, this statutory change is in place for one year and expires July 1, 2015. As of March 5, 2015, APD has processed six requests for 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

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. Florida is also home to approximately 12,000 members of the Florida National Guard.¹³

Effect of Proposed Changes

The bill amends s. 393.065(5), F.S., creating a new category 3 within the wait list (and renumbers the remaining categories) for the developmental disabilities Home and Community-Based Waiver. This category includes clients whose parent or legal guardian is:

- An active-duty servicemember and, at the time of the servicemember's transfer to this state, the applicant was receiving home and community-based services in another state; or
- A member of the Florida National Guard and resides in this state.

Placing these dependents in category 3 prioritizes them above others within the wait list (some of whom may potentially have higher need for services), but does not guarantee waiver enrollment.

The bill also adds Down syndrome to the definition of "developmental disability."

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

B. SECTION DIRECTORY:

Section 1: Amends s. 393.065, F.S., relating to application and eligibility determination.

Section 2: Provides an effective date of July 1, 2015.

¹¹ USA4Military Families, *Issue 6: Allow servicemembers 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 March 5, 2015).

¹² E-mail from Robert Brown, Legislative Affairs Director, Agency for Persons with Disabilities. On file with Children, Families and Seniors Subcommittee. (March 5, 2015)

¹³ Department of Military Affairs, <http://dma.myflorida.com/about-us/> (last visited March 4, 2015).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Legislature determines the funding available for HCBS waiver services for individuals with developmental disabilities through the appropriations process. APD then serves individuals previously enrolled on the waiver and newly enrolls additional individuals to the extent that funding permits.

By creating a new category within the current wait list prioritization system, HB 177 does not require the state to serve additional individuals. Thus the bill does not have a fiscal impact on the state. However, this bill may reprioritize certain servicemembers' dependents who were in lower categories (for example, who have lower levels of need) to a higher category, increasing the likelihood that these dependents will receive funding when it is available. Conversely, this may mean that individuals who have more significant needs for services (for instance, those individuals whose caregivers may be unable to provide care in the near future due to a medical condition, or whose documented behaviors or physical needs place them or their caregivers at risk of serious harm, who would now be in Category 4) may be waiting longer for services if available funding is used for dependents of servicemembers.

APD estimates that the servicemembers addressed by this bill would have 169 dependents with developmental disabilities (using a 2 percent prevalence rate from the National Institutes of Health for persons with developmental disabilities requiring long term care), and that the total cost allocation for waiver services to serve this group would be approximately \$3,346,025. APD projects expenditures to be \$2,509,519 using a 75 percent historical utilization rate. However, APD acknowledges that the estimate of dependents is likely high because APD's eligibility criteria are narrower than the criteria for determining the prevalence rate. Additionally, it is unknown if all persons eligible will request enrollment immediately, or wait to request to enroll in subsequent years, or choose not to apply.

If the Legislature were to provide funding for the individuals newly placed in or reprioritized to this group, fiscal impacts based on alternative scenarios include:

Number of Eligible Dependents Requesting Enrollment	Percentage of Eligible Dependents Requesting Enrollment	Estimated Funding for Services
169	100 percent	\$2,509,519
127	75 percent	\$1,882,139
85	50 percent	\$1,254,760
43	25 percent	\$625,380

The increase in cost for subsequent years would also be affected by the number of military families that moved into and out of the state based on transfer orders and those who join National Guard annually.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, the Children, Families and Seniors Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment made the following changes:

- Creates a new category 3 within the Home and Community-Based Services waiver wait list priority categories. The new category includes dependents of:
 - Active-duty servicemembers who transfer to Florida, and whose dependents were receiving Home and Community-Based Services in another state; or
 - A member of the Florida National Guard residing in Florida.
- Renumbers subsequent wait list categories.
- Adds Down syndrome to the definition of “developmental disability”.

The analysis is drafted to the committee substitute as passed by the Children, Families & Seniors Subcommittee.