

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 Appropriations

BILL: CS/SB 7054

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Children, Families, and Elder Affairs Committee

SUBJECT: Agency for Persons with Disabilities

DATE: March 4, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Crosier	Hendon		CF Submitted as Committee Bill
1.	Brown	Pigott	AHS	Recommend: Fav/CS
2.	Brown	Kynoch	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7054 creates and amends certain statutes to provide the Agency for Persons with Disabilities (APD) with the ability to assign priority to clients on the waiting list for receiving services from the home and community-based services Medicaid waiver and conduct utilization reviews; to allow family members of active duty service members to receive waiver services; to allow contractors to use APD data management systems; to allow annual reviews of persons involuntarily admitted to residential services; and to create the Arc Dental Program. The bill also allows APD to contract with more than one provider for specialized residential services. Additionally, the bill requires new specialized residential programs to be limited to 15 beds or less.

The bill's fiscal impact is indeterminate.

Except as otherwise expressly provided, the bill takes effect July 1, 2016.

II. 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

Individuals who meet Medicaid eligibility requirements, including individuals who have Down syndrome,² may choose to receive services in the community through the state's Medicaid home and community-based services (HCBS) waiver for individuals with developmental disabilities administered by the APD or in an intermediate care facility for the developmentally disabled (ICF/DD).

The HCBS waiver, known as iBudget Florida, offers 27 supports and services to assist individuals to live in their community. Such services are not covered under the regular Medicaid program. Examples of HCBS waiver services include residential habilitation, behavioral services, companion, adult day training, employment services, and physical therapy.³ 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.

While the majority of individuals served by the APD live in the community, a small number live in ICF/DDs, which are defined in s. 393.063(22), F.S., as residential facilities licensed and certified by the Agency for Health Care Administration (AHCA). ICF/DDs are considered institutional placements and provide intermediate nursing care. There are approximately 2,866 private and public ICF/DD beds in Florida.⁴

Because ICF/DDs are considered institutional placements, the federal government requires routine utilization reviews for individuals in ICF/DDs to ensure that individuals are not inappropriately institutionalized. Utilization reviews must be conducted by a group of professionals referred to as the Utilization Review Committee, which must include at least one physician and one individual knowledgeable in the treatment of intellectual disabilities. The APD performs this utilization review function through an interagency agreement with the AHCA.⁵

Home and Community-Based Services Waiver (iBudget Florida)

The iBudget Florida program was developed in response to legislative direction requiring a plan for an individual budgeting approach for improving the management of the HCBS waiver program.⁶ iBudget Florida involves the use of an algorithm, or formula, to set individuals' funding allocations for waiver services. The law provides for individuals to receive funding in

¹ See s. 393.063(9), F.S.

² See s. 393.0662(1), F.S., provides eligibility for individuals with a diagnosis of Down syndrome.

³ Agency for Persons with Disabilities, Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2015-16, November 2015.

⁴ *Id.*

⁵ *Id.*

⁶ Agency for Persons with Disabilities, Report to the Legislature on the Agency's Plan for Implementing Individual Budgeting "iBudget Florida" (February 1 2010), available at <http://apd.myflorida.com/ibudget/rules-regs.htm> (last accessed Dec. 15, 2015).

addition to that allocated through the algorithm under certain conditions, such as when they have a temporary or permanent change in need or an extraordinary need that the algorithm does not address.⁷ The APD phased-in the implementation of iBudget Florida, which was finalized on July 1, 2013.⁸

However, the iBudget Florida program has been the subject of litigation. In September 2014, in response to a ruling by the 1st District Court of Appeal that that the program's rules were invalid, the APD reset approximately 14,000 individuals' budget allocations to higher amounts.⁹ The APD began rulemaking to adopt new rules to replace the invalid ones.¹⁰ The APD, in conjunction with stakeholders, reviewed the algorithm and has filed for the adoption of rules providing a revised algorithm and related funding calculation methods.¹¹

iBudget statutes were amended in 2015 to allow additional funding beyond that allocated by the algorithm for transportation to a waiver-funded adult day training program or to employment under certain conditions. However, the 2015 amendment sunsets July 1, 2016.

Waiver Enrollment Prioritization

As of December 14, 2015, 31,665 individuals were enrolled on the iBudget Florida waiver.¹² The majority of waiver enrollees live in a family home with a parent, relative, or guardian. The Legislature appropriated \$994,793,906 for Fiscal Year 2015-2016 to provide services through the HCBS waiver program, including federal match of \$601,153,957¹³. However, this funding is insufficient to serve all persons seeking waiver services. To enable the APD to remain within legislative appropriations, waiver enrollment is limited. Accordingly, the APD maintains a waiting list for waiver services. Prioritization for the wait list is provided in s. 393.065(5), F.S. Medicaid-eligible persons on the waiting list continue to receive Medicaid services not offered through iBudget Florida.

Waiting list prioritization statutory language has been changed, notwithstanding s. 393.065(5), F.S., in the past two legislative sessions. For example, s. 20 of ch. 2015-222, Laws of Florida, provides that:

- Youth with developmental disabilities who are in extended foster care may be served by both the waiver and the child welfare system;¹⁴ and

⁷ See s. 393.0662, F.S.

⁸ *Supra*, note 3.

⁹ Agency for Persons with Disabilities, iBudget Florida, <http://apd.myflorida.com/ibudget/> (last visited December 15, 2015).

¹⁰ Department of State, Florida Administrative Register, Vol. 40, No. 207, Oct. 23, 2014, pg. 4703-4706.

¹¹ These rules have been challenged as well. See DOAH Case No. 15-005803RP.

¹² E-mail from Caleb Hawkes, Deputy Legislative Affairs Director, Agency for Persons with Disabilities. RE: Requested information for bill analysis for APD agency bill (Dec. 14, 2015). On file with the Senate Committee on Children, Families and Seniors.

¹³ See Specific Appropriation 251, ch. 2015-232, Laws of Florida.

¹⁴ This provision also specifies the services that APD and the child welfare system must provide such enrollees. Since July 1, 2015, 30 individuals in extended foster care have been enrolled for HCBS waiver services.

- An individual who has been receiving HCBS waiver services in other states may receive Florida HCBS waiver services if his or her parent or guardian is on active military duty and transfers to Florida.¹⁵

The provisions of s. 20 of ch. 2015-222, Laws of Florida, sunset on July 1, 2016.

Client Data Management System

In 2015, the Legislature appropriated a total of \$2.86 million¹⁶ for Fiscal Year 2015-2016 for the development of a client data management system to provide electronic verification of service delivery to recipients by providers, electronic billings for waiver services, and electronic processing of claims.¹⁷ The APD must also meet federal requirements for administering the iBudget HCBS waiver, such as tracking, measuring, reporting, and providing quality improvement processes for 32 specific program performance measures in order to ensure the program funding can continue. The federal Centers for Medicaid & Medicare Services further requires the state maintain a quality improvement system that includes data collection, data analysis, and reporting. However, the APD currently relies heavily on manual processes and disparate systems to collect, analyze, and report data consistently.

The APD anticipates providers will begin using the system during Fiscal Year 2016-2017. Providers will need standard software and technology in order to log into the system.¹⁸

Direct Service Provider Staff Training and Professional Development

Under the waiver agreement with the federal government, the APD must coordinate, develop, and provide specialized training for providers and their employees to promote health and well-being of individuals served.¹⁹ These requirements are currently included in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook. For example, the handbook outlines required basic training and required in-service training and continuing education for direct service providers on topics such as person-centered planning, maintaining health and safety, reporting to the abuse hotline, and first aid. Providers of certain services, such as supported employment or supported living, are required to take additional pre-service certification training. Training is typically offered several ways, such as through the Internet, DVD, and live classroom training.²⁰

¹⁵ This provision has been in effect since July 1, 2014, and since that time, 10 such individuals have been enrolled in the HCBS waiver. *Supra*, note 12.

¹⁶ See Specific Appropriation 265 and section 41, ch. 2015-232, Laws of Florida.

¹⁷ See Specific Appropriation 265, ch. 2015-232, Laws of Florida.

¹⁸ Agency for Persons with Disabilities, *Agency Analysis of SB 7054* (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁹ *Id.*

²⁰ Rule 59G-13.070, F.A.C. Handbook may be accessed at <http://apd.myflorida.com/ibudget/>

Involuntary Admission to Residential Services

Courts have jurisdiction to conduct a hearing and enter an order that a person with a developmental disability requiring involuntary admission to residential services, is provided with care, treatment, habilitation, and rehabilitation services from the APD.²¹ When a court receives a petition for such involuntary admission, the APD and an examining committee (comprising at least three disinterested experts in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities) must examine the person and provide a written report for the court. The report must explicitly document the extent to which the person meets the criteria for involuntary admission.²²

A person charged with a felony and found to be incompetent to proceed due to an intellectual disability is required be committed to the APD. The APD is required to provide appropriate training for the person. The court may order the person into a forensic facility designated by the APD for persons with intellectual disability or autism.

A person who has an intellectual disability must be represented by counsel at all stages of these judicial proceedings, and, if the person is indigent and cannot afford counsel, a public defender must be appointed at least 20 days before a scheduled hearing.²³ The person must be physically present throughout the entire proceeding; however, if the person's attorney believes that the person's presence at the hearing is not in his or her best interest, the requirement may be waived by the court once the court has seen the person and the hearing has commenced.²⁴

The court that enters the initial order for involuntary admission to residential services has continuing jurisdiction to enter orders to ensure the person is receiving adequate care, treatment, habilitation, and rehabilitation services.²⁵ The committing court may order a conditional release of the person based on an approved plan for providing community-based training. If at any time it is determined in a court hearing that the person on conditional release no longer requires court supervision and follow-up care, the court must terminate its jurisdiction and discharge the person.

At any time and without notice, a person involuntarily admitted into residential services, or the person's parent or legal guardian, is entitled to file a petition for a writ of habeas corpus to question the cause, legality, and appropriateness of the involuntary admission.²⁶

Comprehensive Transitional Education Program

A private entity known as AdvoServ currently operates Carlton Palms, the only provider of comprehensive transitional education programs (CTEP) in Florida.²⁷ This program, operating in

²¹ See s. 393.11(1), F.S.

²² See s. 393.11(4),(5), F.S.

²³ See s. 393.11(6), F.S.

²⁴ See s. 393.11(7), F.S.

²⁵ See s. 393.11(11), F.S.

²⁶ See s. 393.11(13), F.S.

²⁷ See AdvoServ: Carlton Palms Educational Center, available at <http://www.advoserv.com/programs/florida-program/carlton-palms-education-center/> (last visited Feb. 4, 2016).

Lake County, is a group of jointly operating centers and provides educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors.²⁸ All services are to be temporary and delivered in a structured residential setting with the primary goal of incorporating the principle of self-determination in establishing permanent residence not associated with the comprehensive transitional education program.²⁹

Carlton Palms is the CTEP provider for the APD as established in s. 393.18, F.S. As of December 31, 2015, the program served 151 APD clients and 40 out-of-state clients. The total number of residents with maladaptive behaviors being provided with services may not exceed the licensed capacity of 120 residents.³⁰ AdvoServ holds two licenses for the provision of these services, allowing it to serve up to 240 individuals.

Under s. 25 of ch. 2015-222, Laws of Florida, the Legislature amended s. 393.18, F.S., to provide that, for CTEPs, each residential unit within a CTEP's component centers may not in any instance exceed 15 residents, except that CTEPs authorized to operate residential units with more than 15 residents before July 1, 2015, may continue to operate such units. The 2015 legislation also deleted provisions authorizing the licensure of CTEPs that met certain criteria on July 1, 1989, and other provisions relating to the maximization of federal funds and providing for children needing special behavioral services. These 2015 amendments to s. 393.18, F.S., will sunset on July 1, 2016, under s. 26 of ch. 2015-222, Laws of Florida.

III. Effect of Proposed Changes:

Section 1 amends s. 393.063, F.S., to update current definitions and add new terms.

Section 2 repeals s. 393.0641, F.S., which currently provides a program for the prevention and treatment of clients exhibiting severe self-injurious behavior. The Agency for Persons with Disabilities (APD) currently serves individuals with self-injurious behaviors in the community in licensed homes that are specifically for intensive behavior issues. These services are funded under the iBudget waiver program.

Section 3 amends s. 393.065, F.S., to provide prioritization in the APD's home and community-based waiver relating to individuals with developmental disabilities in extended foster care and allows such individuals to receive both HCBS waiver services and child welfare services. The bill also provides that if an individual meets eligibility requirements, was receiving home and community-based waiver services in another state, and is the son or daughter or ward of an active duty military service member who is transferred to this state, the individual is eligible to receive such services in this state.

Additionally, after individuals formerly on the waiting list are enrolled in the waiver, individuals remaining on the waiting list are not substantially affected by APD action and are not entitled to a hearing under s. 393.125, F.S., or administrative proceedings under chapter 120, F.S.

²⁸ See s. 393.18, F.S.

²⁹ *Id.*

³⁰ See s. 393.18(4), Note (4), F.S.

Section 4 amends s. 393.066, F.S., to require persons or entities under contract with the APD to use APD data management systems for documenting service provision to APD clients. Providers need to have the hardware and software necessary to use these systems, as established by the APD. Such contractors must also ensure that any staff directly serving clients must meet APD requirements for training and professional development.

Section 5 amends s. 393.0662, F.S., to provide that the allocation methodology, as opposed to the algorithm, will determine the amount of funds allocated to a client's iBudget. The bill provides that the APD may authorize iBudget funding based on a client having one or more specific needs that cannot be accommodated within the funding determined by the algorithm and having no other resources, supports, or services available to meet the need. The bill adds a significant need for transportation services relating to adult day training or employment services to that list of needs.

Under current law, another specific need that may authorize iBudget funding is an extraordinary need that would place the health and safety of the client, the client's caregiver, or the public in immediate, serious jeopardy unless an iBudget increase is approved. The bill adds the loss of or a change in the client's caregiver arrangement or a documented need based on a medical, behavioral, or psychological assessment, to the current list of extraordinary needs.

Section 6 creates s. 393.0663, F.S., to establish the Arc Dental Program within the APD. The bill provides legislative findings that many individuals with intellectual or developmental disabilities in this state are in need of dental treatment; that such individuals often lack access to such services; that The Arc of Florida, a not-for-profit organization that maintains programs to assist in the delivery of needed services to individuals with intellectual or developmental disabilities, operates the Arc of Florida Dental Program to provide dental services to such individuals; and that it is in the public interest to establish a program to assist The Arc of Florida in providing dental services to individuals with intellectual or developmental disabilities.

The bill requires the APD to enter into a memorandum of agreement (MOA) with and provide assistance to The Arc of Florida in operating and expanding the Arc of Florida Dental Program. The MOA must require quantifiable, measurable, and verifiable units of deliverables and require The Arc of Florida to submit an annual accounting of the funding allocated by the APD.

The bill requires the APD to submit a report on January 1, 2018, and every January 1 thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives, which summarizes contract performance by The Arc of Florida for the previous year.

The bill provides that implementation of the Arc Dental Program is contingent upon appropriation.

Section 7 creates s. 393.0679, F.S., to require the APD to conduct utilization reviews in intermediate care facilities for individuals with developmental disabilities (ICF/DDs), both public and private, and requires ICF/DDs to cooperate with these reviews, including requests for information, documentation, and inspection. This will ensure that Florida continues to meet federal requirements for conducting utilization reviews.

Section 8 amends s. 393.11, F.S. to include a person with autism as a person who may require involuntary admission to residential services provided by the APD.

Section 393.11(14), F.S., is created to provide a framework for an annual review of a court's order for involuntary admission to residential services. Reviews are required annually by a qualified evaluator either in the employ of or under contract with the APD. A qualified evaluator may be a psychiatrist licensed under chapter 458 or chapter 459 or a psychologist licensed under chapter 490. The review must consider whether the person continues to meet the criteria for involuntary admission for residential services. If the person is determined to meet the criteria, the court must determine whether the person is in the most appropriate and least restrictive setting. The court must also determine whether the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting. The bill provides for notice requirements of the hearing to the appropriate state's attorney, if applicable, and the person's attorney and guardian or guardian advocate, if one is appointed.

Section 9 repeals sections 24 and 26 of chapter 2015-222, Laws of Florida, (the 2016-2017 fiscal year Implementing Bill) effective June 30, 2016, or if the bill becomes law after that date, effective upon the bill becoming law and operating retroactively to June 30, 2016.

Section 10 reenacts s. 393.067(15), F.S.

Section 11 reenacts and amends s. 393.18, F.S., to provide that a CTEP serves individuals who have developmental disabilities, severe maladaptive behaviors, and co-occurring complex medical conditions, or a dual diagnosis of developmental disability and mental illness. The bill provides that the primary goal of CTEP services must incorporate the principle of person-centered planning to transition individuals to the most appropriate, least restrictive community living option of a resident's choice which is not operated as a CTEP.

The bill provides that the supervisor of the clinical director of the program licensee must hold a doctoral degree with a primary focus in behavior analysis, be a certified behavior analyst, and have at least one year of experience in providing behavior analysis services for individuals with developmental disabilities.

The bill removes alternative living centers and independent living education centers as components that a CTEP must include. The bill requires that, to the fullest extent possible, educational components of a CTEP, including individual education plans, must be integrated with the referring school district of each school-aged resident.

The bill requires that any CTEP licensee that has executed a settlement agreement with the APD which is enforceable by the court must comply with the terms of the agreement or be subject to grounds for discipline as provided by law and rule.

The bill authorizes the APD, beginning July 1, 2016, to approve the proposed admission or readmission of individuals into a CTEP for up to two years, subject to a specific review process. The APD is authorized to allow an individual to live in a CTEP setting for a longer period if, after a clinical review, it is determined that remaining in the CTEP for a longer period is in the individual's best interest.

Section 12 amends s. 393.501, F.S., to clarify that rules adopted by the APD regarding CTEPs meet certain criteria.

Section 13 amends s. 383.141, F.S., to correct cross-references.

Section 14 amends s. 1002.385, F.S., to correct cross-references.

Section 15 provides that, except as otherwise expressly provided, the bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Under CS/SB 7054, direct care providers may see increased costs to provide data to the new APD client data management system. It is unknown what training and career development requirements or hardware and software requirements the APD will establish, or the extent to which providers will have to acquire hardware and software to meet those requirements.

C. Government Sector Impact:

The APD may experience increased costs of conducting additional involuntary commitment reviews. This cost is indeterminate.

The 2015-2016 General Appropriations Act appropriates \$2 million in recurring general revenue to the ARC of Florida to provide dental services to individuals with

developmental disabilities.³¹ The Senate's budget for 2016-2017, SB 2500, 1st Engrossed, does not appropriate funds specifically for the Arc Dental Program.

VI. Technical Deficiencies:

In section 5, the bill amends s. 393.0662, F.S., to specifically provide that the APD's allocation *methodology* determines the amount of funds allocated to a client's iBudget, as opposed to current law which provides that the *algorithm* determines the amount of funds. However, the bill also provides that the APD may authorize iBudget funding based on a client having one or more specific needs that cannot be accommodated *within the funding determined by the algorithm*. These references to how the funding is determined – i.e. via the methodology or via the algorithm – are inconsistent with each other.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 393.063, 303.065, 393.066, 393.067, 303.0662, 393.11, 393.18, 393.501, 383.141, and 1002.385.

This bill creates the following sections of the Florida Statutes: 393.0663 and 393.0679.

This bill repeals section 393.0641 of the Florida Statutes and ss. 24 and 26 of ch. 2015-222, Laws of Florida.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on March 3, 2016:

The committee substitute:

- Revises parameters for iBudget allocations and the conditions under which a client's iBudget may be funded, based on extenuating circumstances;
- Reenacts s. 393.067, F.S., to allow the APD to contract with more than one provider for specialized residential services;
- Requires new specialized residential programs to be limited to 15 beds or less;
- Repeals ss. 24 and 26 of ch. 2015-222, Laws of Florida;
- Allows a qualified evaluator to be either in the employ or under contract with the APD and requires the qualified evaluator may be a psychiatrist licensed under chapter 458 or chapter 459 or a psychologist licensed under chapter 490;
- Creates the Arc Dental Program;
- Removes from the bill requirements for CTEPs to provide continuous recorded audio and video monitoring in all common areas of the facility, to maintain recordings for at

³¹ See specific appropriation 250, ch. 2015-232, Laws of Florida.

least 60 days, and to provide real-time access to the audio and video for authorized APD staff from an off-site location;

- Provides that if an individual meets eligibility requirements, was receiving home and community-based waiver services in another state, and is the son or daughter or ward of an active duty military service member who is transferred to this state, the individual is eligible to receive such services in this state; and
- Requires individual education plans be developed for each school-aged person in the specialized residential program and also requires that individual education plan for the school-aged person must be integrated with the referring school district.

B. Amendments:

None.