

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 Children, Families, and Elder Affairs

BILL: SB 1686

INTRODUCER: Senator Torres

SUBJECT: Definition of Developmental Disability

DATE: March 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Favorable
2.			AHS	
3.			AP	

I. Summary:

SB 1686, which may be cited as “Diana’s Law”, replaces the current statutory definition of “developmental disability” with the definition of the term currently used in federal law. Specifically, the bill defines a developmental disability as a severe, chronic disability of an individual that:

- Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- Is manifested before the individual attains age 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - Self-care.
 - Receptive and expressive language.
 - Learning.
 - Mobility.
 - Self-direction.
 - Capacity for independent living.
 - Economic self-sufficiency; and
- Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

The bill also provides that an individual from birth to age 9 who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the above criteria if the individual, without services and supports, has a high probability of meeting such criteria later in life.

The bill may have an indeterminate, negative fiscal impact on the Agency for Person with Disabilities (the APD) by widening the pool of individuals eligible for Medicaid waiver services. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Agency for Persons with Disabilities

The APD is responsible for the provision of services to individuals with developmental disabilities¹ and for administering the Home and Community-Based Services (HCBS) Waiver.² Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.³ The HCBS Waiver provides services to individuals with developmental disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.⁴ Eligible individuals must meet institutional level of care requirements.⁵ The overarching goal for the APD is to prevent or reduce the severity of a developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.⁶

iBudget Florida Program

The APD administers Florida's individual budget-based HCBS waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements. These individuals may choose to receive services in the community through iBudget Florida; alternatively, they may choose to live in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD)⁷ through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).⁸

¹ Section 393.063(12), F.S., defines "developmental disability" to mean "a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid 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."

² See s. 20.197(3), F.S.

³ Rule 59G-13.080(1), F.A.C.

⁴ The Centers for Medicare and Medicaid Services, *Home and Community-Based Services 1915(c)*, available at <https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited March 14, 2021).

⁵ *Id.*; Rule 59G-13.080(1), F.A.C.

⁶ See s. 393.062, F.S.

⁷ Section 393.063(25), F.S., defines "intermediate care facility for the developmentally disabled" to mean "a residential facility licensed and certified under part VIII of chapter 400."

⁸ Section 393.0662, F.S.

The APD initiated implementation of iBudget Florida on May 1, 2011⁹ with the final areas transitioned from the previous tiered waiver system on July 1, 2013.¹⁰ The iBudget Florida program uses an algorithm, or formula, to set individuals' funding allocations for waiver services.¹¹ The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

The APD serves just over 35,100 individuals through iBudget Florida,¹² contracting with service providers to offer 27 supports and services to assist individuals to live in their community.¹³ Examples of waiver services enabling children and adults to live, learn, and work in their communities include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.¹⁴

Eligibility for iBudget Services

The application process for individuals wishing to receive services through the iBudget program are detailed in s. 393.065, F.S. The APD must review applications for eligibility within 45 days for children under 6 years of age and within 60 days for all other applicants.¹⁵ Individuals who are determined to be eligible for the waiver program are either given a slot in the program or placed on a wait list. Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive HCBS services from the APD are placed on a wait list for services in priority categories of need, unless they are in crisis.¹⁶ As of February 2021, approximately 22,700 individuals were on the HCBS Waiver wait list.¹⁷

The needs of the APD clients are classified into seven categories¹⁸ and are prioritized in the following decreasing order of priority:

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Specified children from the child welfare system.¹⁹
- Category 3 – Includes, but is 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;
 - 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

⁹ The APD, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: Second Quarter Fiscal Year 2020-21*, at p. 2, February 1, 2021 (on file with the Senate Children, Families, and Elder Affairs Committee) (hereinafter cited as “The Quarterly Report”).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 393.065(1), F.S.

¹⁶ Section 393.065, F.S.; *See* Rule 65G-1.047, F.A.C. for crisis status criteria.

¹⁷ The Quarterly Report at p. 2.

¹⁸ Section 393.065(5), F.S.

¹⁹ *See* s. 393.065(5)(b), F.S., for specific criteria.

- 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 1-4.²⁰

Definition of Developmental Disability

Florida Definition

The Legislature added “developmental disability” to the Florida Statutes in 1977,²¹ defining the term to mean a disorder or syndrome attributable to, among other things, cerebral palsy, autism, or epilepsy, originating prior to age 18 and which constitutes a substantial handicap that can reasonably be expected to continue indefinitely.²²

Currently, s. 393.063(12), F.S., defines “developmental disability” to mean “[A] disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermind syndrome, 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.”

Federal Definition

Federal law has encompassed a series of legislative definitions of developmental disabilities which have changed over time.²³ The term is currently defined to mean “a severe, chronic disability of an individual that:

- Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- Is manifested before the individual attains age 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - Self-care.
 - Receptive and expressive language.
 - Learning.

²⁰ Section 393.065(5), F.S.

²¹ Ch. 77-335, L.O.F.

²² *Id.*

²³ The Florida Developmental Disabilities Council (FDDC), *First Steps: A Guide to Your Child’s Development*, at p. 26, available at <https://www.fddc.org/sites/default/files/First%20Steps%20Guide%20English%20Print%20%28final%29.pdf> (last visited March 14, 2021).

- Mobility.
- Self-direction.
- Capacity for independent living.
- Economic self-sufficiency; and
- Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.”²⁴

The federal definition encompasses those conditions enumerated in Florida law as well as other disabilities that are apparent during childhood.²⁵

III. Effect of Proposed Changes:

The bill provides that the act may be cited as “Diana’s Law”.

The bill amends s. 393.063, F.S., modifying the definition of “developmental disability” to mean “a severe, chronic disability of an individual that:

- Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- Is manifested before the individual attains age 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - Self-care.
 - Receptive and expressive language.
 - Learning.
 - Mobility.
 - Self-direction.
 - Capacity for independent living.
 - Economic self-sufficiency; and
- Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.”

The bill clarifies eligibility under these criteria by adding that “an individual from birth to age 9 who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the above criteria if the individual, without services and supports, has a high probability of meeting such criteria later in life.”

The bill is effective July 1, 2021.

²⁴ 42 USC 15002 § 102 (8).

²⁵ The FDDC, *Section 2: Launching a Postsecondary Career and Technical Education Program for Students with an Intellectual and Developmental Disability in Florida’s Technical College System: Program Developers Guide*, at p. 48, 2020, available at https://fcsua.org/docs/Project%20TOPS%20Replication%20Guide/ProjectTOPS_Section2-WEB.pdf (last visited March 14, 2021).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The APD states that the fiscal impact of SB 532 of the 2020 Regular Session (substantively identical to SB 1686) to the private sector is unknown.²⁶

C. Government Sector Impact:

The bill is likely to have an indeterminate, negative fiscal impact on state government as the revised definition of “developmental disability” broadens the potential population of enrollees eligible for services from the APD. The APD states that the extent of the fiscal impact of the change is unknown as the additional number of clients eligible for services is not currently known.²⁷ The APD would also need to modify existing technology systems to capture additional diagnoses under the revised definition.²⁸

VI. Technical Deficiencies:

None.

²⁶ The APD, *Agency Analysis of SB 532 (2020)*, p. 4, November 21, 2019 (On file with the Senate Committee on Children, Families, and Elder Affairs).

²⁷ *Id.* at p. 3.

²⁸ *Id.* at p. 4.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 393.063 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
