

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 1271 Individuals with Disabilities

SPONSOR(S): Health & Human Services Committee and Health Care Appropriations Subcommittee and Children, Families & Seniors Subcommittee, Buchanan and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1758

FINAL HOUSE FLOOR ACTION: 114 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/SB 1758 passed the Senate on February 7, 2024, and subsequently passed the House on March 6, 2024.

The Agency for Persons with Disabilities (APD) provides services to eligible individuals with developmental disabilities and administers a Medicaid Home and Community-Based Services (HCBS) "iBudget" waiver, which allows individuals to continue to live in their homes or other home-like settings and avoid institutionalization. APD determines eligibility for this, enrollment capped, program and assigns eligible applicants to a pre-enrollment list prioritized by need. Those assigned to category 1 (individuals in crisis) or category 2 (children transitioning from the child welfare system) are directly enrolled in the waiver. Most eligible individuals are initially placed on a pre-enrollment list; some can wait for years before funding is available for enrollment.

The bill directs APD to enroll all individuals in pre-enrollment categories 3, 4, and 5, in the HCBS waiver, and appropriates \$38.85 million in recurring funds for this purpose. The bill also changes pre-enrollment category 4 by expanding it to those with caregivers age 60 or older, instead of age 70 or older. An estimated 750 individuals are expected to transition from the pre-enrollment list.

The bill requires APD to implement an online waiver application process, maintain a paper application process, and permit applicants to also fax or mail applications. The bill establishes timeframes for confirmation of receipt of an application, and requires the online application system allow clients to review their application status. The bill requires APD to process applications within 15 days of receipt for an applicant in crisis and 60 days for all other applicants.

The bill requires APD to offer waiver applicants care navigation services at the time of application and renewal in the iBudget program, including assessment and identification of the client's needs, plans, goals, and available community resources. The bill requires public schools to integrate care plans for students with individual education plans, and requires APD-contracted support coordinators to include information about the consumer-directed care program option when developing or reviewing a client's care plan.

The bill transfers the Florida Unique Abilities Partner Program (Program), which partners with private businesses to create employment opportunities for persons with disabilities, from the Department of Commerce to APD and requires APD administer the Program.

The bill requires APD and the Agency for Health Care Administration (AHCA) to jointly develop a plan for a comprehensive HCBS waiver focused on Medicaid clients transitioning into adulthood. The bill authorizes AHCA to contract with necessary experts, and directs APD and AHCA to consult with stakeholders to develop the plan which includes specific minimum components. APD must submit the plan to the Legislature and the Governor by December 1, 2024.

The bill provides an appropriation of \$38,852,223 in recurring funds to APD and has no fiscal impact on local government.

The bill was approved by the Governor on March 21, 2024, ch. 2024-14, L.O.F., and will become effective on July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h1271z.DOCX

DATE: 3/26/2024

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) provides services to individuals with developmental disabilities. Chapter 393, F.S., provides the authority and guidance to APD on what programs to develop, who is eligible, and how to manage those programs within available resources. In s. 393.062, F.S., the legislative findings and declaration of intent state:

The greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements.

APD serves more than 60,000 clients and their families and assists with the identification of resources for social, medical, behavioral, residential, and therapeutic services.

Home and Community-Based Services

Having the services necessary to remain at home with a caregiver, or in a home-like setting, reduces or delays an individual's need for institutional-level care. Nationally, the number of individuals and the percentage of individuals with developmental disabilities in state-run institutional care has dropped significantly from a high count of 194,650 individuals in 1975 to 18,807 in 2017.¹ Only a quarter of individuals with developmental disabilities in 2017 who also received some kind of supports lived in a group setting of any kind, meaning an individual not living on their own, with a family member, or a host or foster family.² With more individuals with developmental disabilities living almost independently or living on their own with the significant assistance of a caregiver, recognizing the importance of an aging parent, family member, or caregiver may be the individual's key to independence.

The Medicaid program, administered by the Agency for Health Care Administration (AHCA) provides medical assistance to low-income individuals in partnership with the federal government. Federal Medicaid laws do not allow Medicaid to pay for room and board, and other non-medical home and community based services.

iBudget Home and Community-Based Services (HCBS) Waiver Program

The Agency for Health Care (AHCA) oversees the Medicaid home and community-based services (HCBS) program for individuals with specified developmental disabilities through a federal waiver administered by APD. Known as iBudget, the purpose of the waiver is to:

- Promote and maintain the health and welfare of individuals with developmental disabilities.
- Provide medically necessary supports and services to delay or prevent institutionalization.
- Foster the principles of self determination as a foundation for services and supports.³

¹ Administration for Community Living, *30 Years of Community Living for Individuals with Intellectual and/or Developmental Disabilities (1987-2017)*, pg. 8, available at <file:///Z:/2024%20Session%20Bills/HB%201271%20APD%20Updates/30%20Years%207-13-21.pdf> (last visited March 25, 2024).

² *Id.* at 18.

³ Agency for Health Care Administration, *Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook (May 2023)*, available at

The iBudget provides HCBS to eligible persons with developmental disabilities living at home or in a home-like setting. Available services include:

- Life skills development;
- Medical supplies;
- Durable medical equipment and supplies;
- Equipment accessibility adaptations;
- Personal emergency response systems;
- Personal supports for individuals at least age 18 who live in own home or a family home;
- Respite care;
- Residential services, such residential rehabilitation, specialized medical home care, or supported living coaching;
- Support coordination;
- Therapeutic supports which include levels of nursing care services, dietician services, and respiratory, speech, occupational and physical therapy;
- Specialized mental health counseling;
- Behavioral analysis and behavior assistant services;
- Adult dental services; and
- Transportation to home and community-based waiver services.⁴

The iBudget program allocates available funding to clients through an algorithm, providing each one an established budget with the flexibility to choose from the authorized array of services that best meet their individual needs within their community. Waiver support coordinators assist each client with determination of his or her unique needs and the coordination of necessary service providers.

Program Eligibility and Application Process

To receive iBudget services, an individual must apply through a paper application submission process. Information from the paper application is received at regional offices and is manually keyed into an electronic client data management system. APD staff reviews the submitted application and documentation for eligibility and identify if additional information or an assessment is needed.⁵

APD determines eligibility based on Florida statutes and rules. To be eligible, an individual must be a Florida resident over age three who can demonstrate that one of the following developmental diagnoses manifested itself before age 18 and can reasonably be expected to continue indefinitely:

- Intellectual disability;
- Spina Bifida;
- Cerebral palsy;
- Autism;
- Down syndrome;
- Phelan McDermid syndrome; or
- Prader-Willi syndrome.⁶

APD must review an application within 60 days depending on the applicant's individual circumstances and the documentation received.⁷ Additional time to work with the applicant may be needed, for example, to conduct a comprehensive assessment to determine if the individual meets clinical eligibility

<https://apd.myflorida.com/ibudget/docs/iBudget%20Handbook%20with%20ADT%20Redesign%20Final.pdf> (last visited March 25, 2024).

⁴ Agency for Persons with Disabilities, *iBudget Florida Services*, available at <https://apd.myflorida.com/ibudget/docs/services.pdf> (last visited March 19, 2024).

⁵ Agency for Persons with Disabilities, *2024 Agency Bill Analysis – HB 1271 (January 8, 2024)(on file with Children, Families & Seniors Subcommittee)*.

⁶ Sections 393.063, F.S. and 393.065, F.S.

⁷ S. 393.065(1), F.S.

requirements. For an applicant APD determines to be in crisis, APD must expedite completion of the application review to 45 days.⁸ If additional documentation is needed, APD may pend the application until that information is provided, which would toll the clock until the applicant provides the information.

To receive services under the iBudget program, an individual must also meet the level of care necessary for placement in an intermediate care facility for individuals with intellectual disabilities and must be eligible for Medicaid. APD administers iBudget to financially support home and community-based services so the individual can live at home or in a home-like setting, with the costs shared with the federal government.

Pre-Enrollment List

iBudget enrollment is not an entitlement; under the terms of the waiver, Florida limits the number of individuals served, determine by the level of legislative appropriation. APD places the eligible applicants for whom an iBudget slot is not available on a pre-enrollment list.

Currently, there is a higher demand for iBudget services than funding available, which means individuals who require services are put on the pre-enrollment list based on the categorization of their needs. APD assigns each individual to a pre-enrollment category based on their needs and prioritized in decreasing order of priority, as follows.⁹

- Category 1 - Clients deemed to be in crisis.
- Category 2 - Children in the child welfare system at the time of permanency or turning 18.
- Category 3 - Intensive Needs.
- Category 4 - Caregiver over the age of 70.
- Category 5 - Transition from School.
- Category 6 - Age 21 and Over.
- Category 7 - Age under 21.

APD immediately enrolls eligible applicants in Categories 1 and 2.

⁸ *Id.*

⁹ S. 363.065(5), F.S.

As of December 2023, as indicated by the table below, over 21,000 individuals were waiting for services, with approximately 50 percent of those ages 25-59.¹⁰

iBudget Pre-Enrollment List (December 2023)¹¹		
Category	Description	Clients
1	Crisis	0
2	In child welfare system at time of permanency or at age 18	0
3	Intensive needs	210
4	Caregiver over age 70	83
5	Transition from school	20
6	Age 21 and over	12,809
7	Age under 21	8,464
Total		21,587

Waiver Support Coordinators

When APD deems an individual eligible for services, APD consults with the client, if the client is competent; or if not, then the client’s parent or guardian to devise a support plan.¹² For children ages three to 18, the support plan must include the most appropriate, the least restrictive, and most cost beneficial environment for the individual’s progress, and have the appropriate specification for the services authorized.

The waiver support coordinator must contact the client regularly to ensure the individual’s health, safety, and welfare. The waiver support coordinator must conduct person-centered planning at least annually, or more frequently, if the needed, and amend the support plan, as appropriate. The waiver support coordinator must also maintain the client’s cost plan in the iBudget system and ensure accurate documentation of services for submitted claims against the service plan.¹³

APD must provide, directly or through contract, individual support plans to individuals served by the current iBudget waiver within 60 days of an eligibility determination. The family or individual support plan developed for an iBudget client who is a public school student must be integrated with the student’s individual education plan (IEP) under the Individuals with Disabilities Act, I.D.E.A., as amended. The family or individual support plan and the IEP must be implemented to maximize the individual’s chances of attainment of educational and habilitation goals.¹⁴

A waiver support coordinator must work with the iBudget client and, if not competent, the client’s family or other caregivers, to discuss the client’s needs, how the client want those needs to be addressed, any changes the client wants to current arrangements, and how those needs and services can be met under the client’s budget and as part of this existing support plan, or if modifications need to be considered. The waiver support coordinator can assist with the identification of resources, work with the client and the client’s family to create cost plans, and to select the services that iBudget could cover

¹⁰ Agency for Persons with Disabilities, *2024 Agency Bill Analysis – HB 1271 (January 8, 2024)* (on file with Children, Families & Seniors Subcommittee).

¹¹ *Id.*
¹² See 42 CFR 441.301; Agency for Health Care Administration, Florida Medicaid, Developmental Disabilities Individual Budgeting Waiver Services Coverages and Limitations Handbook, *Requirements for Support Coordinators*, available at <https://apd.myflorida.com/ibudget/docs/iBudget%20Handbook%20with%20ADT%20Redesign%20Final.pdf> (last visited March 25, 2024),

¹³ *Id.*
¹⁴ S. 393.0651(2), F.S.

and identify resources or services that might be available from the community or other family members.¹⁵

A waiver support coordinator's role is to assist the client and the client's family or caregivers with the identification, development, coordination, and access to supports and services on the individual's behalf, regardless of the funding source, and in the most cost effective manner possible. APD authorizes three different types of support coordination: limited support, full support, and enhanced support.¹⁶ A waiver support coordinator reviews an individual's progress and can annually revise a family or individual support plan upon consultation with the client, the client's parent, the client's guardian, or the client's advocate.¹⁷

Consumer Directed Care Plus Program

An individual who is enrolled in the iBudget waiver may elect to receive services through the Consumer Directed Care Plus Program (CDC+ Program). The CDC+ Program allows individuals greater flexibility in the selection of providers and types of services and supports that may be purchased using the individual's budget. For instance, under CDC+, an individual and his or her family can directly hire personal caregivers instead of using a Medicaid-enrolled provider. Like the iBudget waiver, a support coordinator assists the client and his or her family with the identification and selection of appropriate services and supports through the system. However, under CDC+, this support individual is known as a consultant and has a more limited role.¹⁸

Florida Unique Abilities Partner Program

The Florida Unique Abilities Partner Program (Program) within the Department of Commerce (DOC) recognizes businesses that employ individuals who have disabilities, and businesses that establish organizations that support independence for individuals with disabilities. The Program was designed to prioritize the employment of individuals with disabilities and to change the employment system to better integrate these individuals into the workforce.¹⁹ The Program's duties include:

- Developing a logo in consultation with members of the disability community for use by those entities which identify as a Partner.
- Maintaining a website which provides a list of business entities, by county, with the designation, and provide information on how to achieve the Partner designation.
- Consulting with the Division of Vocational Rehabilitation of the Department of Education, the Division of Blind Services of the Department of Education, and CareerSource, Florida, Inc. in the creation of the Program.

In addition, the Program designates a "Florida Unique Abilities Partner" as an organization which demonstrate achievement in:

- Employment of individuals who have a disability.
- Contributions to local or national disability organizations.
- Contributions to, or the establishment of, a program that encourages the independence of individuals who have a disability.

A business may either apply for designation or be nominated by someone in the community. If designated by DOC, the business receives name recognition on the Florida Unique Abilities Partner

¹⁵ Agency for Persons with Disabilities, *Welcome to iBudget Florida*, available at <https://apd.myflorida.com/brochures/apd-welcome-guide.pdf> (last visited March 18, 2024).

¹⁶ Agency for Persons with Disabilities, *iBudget Florida Services*, available at <https://apd.myflorida.com/ibudget/docs/services.pdf> (last visited March 18, 2024).

¹⁷ S. 393.0651(7), F.S.

¹⁸ A support coordinator is defined in s. 393.063(37), F.S. Further responsibilities are also included in the Agency for Health Care Administration, *Consumer Directed Care Plus Program Coverage, Limitations, and Reimbursement Handbook (October 2015)*, available at <https://apd.myflorida.com/cdcplus/docs/CDC Plus Program Handbook 2015.pdf> (last visited January 22, 2024).

¹⁹ Ch. Law 2016-3, §8; s. 413.801, F.S.

Program website, special designation on the Employ Florida Marketplace authorization to use the Florida Unique Abilities Partner logo, and a window display.²⁰ DOC determines the minimum criteria for the determination of a business entity's eligibility for designation as a Florida Unique Abilities Partner, and re-certifies Partners annually if they continue to meet the Partner qualifications.

The 2023 partners list includes 197 partners throughout Florida, with the majority concentrated in a dozen counties, as indicated by the table below.²¹

	County	# Partners
1	Leon	48
2	Brevard	12
3	Hillsborough	12
4	Orange	11
5	Duval	10
6	Broward	9
7	Miami-Dade	9
8	Palm Beach	9
9	Volusia	7
10	Lee	6
11	Pinellas	6
12	Seminole	5
	TOTAL:	144

Effect of the Bill

iBudget Home and Community-Based Services (HCBS) Waiver Program

Preenrollment List

Enrollment into the iBudget program is not an entitlement. With a preenrollment list of over 20,000, individuals may wait an extended period of time before a slot becomes available.

The bill provides an appropriation of \$38,852,223 to serve the greatest number of individuals possible from preenrollment categories 3, 4, and 5. This is expected to result in an additional enrollment of 300 individuals during the 2024-2025 fiscal year, as further discussed below in the Fiscal Analysis.²²

Category 4 Change - Caregiver Age

The bill changes pre-enrollment category 4 by expanding it to include those preenrollment applicants with caregivers age 60 or older, instead of age 70 or older. The estimated number of impacted applicants affected by the age change in category 4 is an estimated 475 individuals.²³ These individuals will be included in the enrollment expansion funded by the bill.

As APD does not currently require the age of an individual's caregiver to be submitted at the time of application, APD will need to notify current clients in all pre-enrollment categories of the revised eligibility and to update caregiver information, as applicable.

²⁰ *Id.*
²¹ Florida Department of Commerce, *Florida Unique Abilities Partner Program*, available at <https://flcom.my.salesforce-sites.com/uap/partnerList> (last visited February 23, 2024).
²² Agency for Persons with Disabilities, *iBudget Pre-Enrollment Criteria* (September 1, 2023) (on file with the Subcommittee on Children, Families & Seniors).
²³ *Id.*

Program Eligibility and Application Process

Online Application Process

The bill requires APD to develop an electronic application process which provides clients the ability to check an application status online. Paper applications must continue to be available to applicants and applicants must be able to submit paper applications through multiple means.

Application Review Timeframes

The bill requires APD to comply with federal time standards for application and eligibility review, application processing standards, and to communicate with applicants and families in the manner chosen by the applicant. APD must review and process applications from clients based on varying time standards:

- For a client in crisis, the application must be reviewed and processed within 15 days. For a client assigned to preenrollment category 2, a client from the child welfare system, must be reviewed and completed as soon as practicable.
- Applications which do not fall into either of these two categories must be reviewed and completed in 60 days.

The bill requires APD to communicate any delays in application review to the client.

Care Navigators

The bill authorizes APD to offer clients and their caregivers voluntary care navigation services within available resources at the time of application and as part of any eligibility or renewal review. The goals for the care navigation services are to ensure that APD's clients and their caregivers have access to a seamless network of resources which lead to the achievement of the individual goals for daily living, community integration, and well-being of each APD client.

The care navigator must connect individuals to supports and services in a timely manner and address immediate or critical needs to stabilize the individual seeking assistance before the individual reaches a crisis point. At a minimum, a care navigator should assist a client with the development of a care plan which addresses the client's immediate, intermediate, and long-term needs and goals. For an individual who is also a public school student, the bill requires the care navigator ensure the incorporation of the care plan into the student's Individuals with Disabilities Education Act (I.D.E.A.) plan.

Under s. 393.064, F.S., a care navigator would be involved in activities such as assessing client needs, developing care plans, and connecting individuals to resources that address the individual's immediate, intermediate, and long-term needs, goals leading to increased opportunities in education, employment, social engagement, community integration, and caregiver support.

Florida Unique Abilities Partner Program

The bill transitions the Unique Abilities Partner Program (Program) from the Department of Commerce (DOC) to APD. In transferring the program, APD will assume all the powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and any other funds relating to the Program from the DOC.

The bill requires APD to report annually on the progress of the Program beginning January 1, 2025. The Program's report must also the number of applications and nominations received, number of nominations accepted and declined, the number of businesses designated as Partners, the number of annual certifications, and how APD used information from the Program's collaboration with the Department of Commerce and Florida Tourism Industry Marketing Corporation. The bill removed past requirements for annual reporting on the adoption of rules, logo development, and development of application procedures.

The bill authorizes APD to adopt rules to administer the Program.

Adult Transition Waiver Program

The bill directs AHCA, APD, and other stakeholders to develop a comprehensive plan for a new HCBS Medicaid waiver program to focus on the successful transition of young persons with developmental disabilities into adulthood. The purpose of the waiver is to prevent future crisis enrollment in the iBudget waiver by these young people.

The bill requires APD and AHCA to jointly, along with stakeholders, develop a plan which reduces the likelihood of the need for crisis interventions and to specifically address the expected benefits; eligibility criteria; a proposed implementation plan and timeline; the recommended number of clients; a transition plan as appropriate between other available waivers for eligible clients; a five-year fiscal impact, determined on an actuarially sound basis; an analysis of the availability of the offered services; and any recommendations for how to increase access, if necessary.

The bill requires the comprehensive plan to include a list of participating stakeholders, public and private, who were consulted or contacted about the proposed during the program development process.

The bill authorizes AHCA to contract with the necessary experts, in consultation with APD, to develop the plan. APD must submit the plan to the Governor, the Senate President, and Speaker of the House of Representatives by December 1, 2024.

The bill provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates a recurring total of \$38,852,223 (\$16,562,703 from the General Revenue Fund and \$22,289,520 the Operations and Maintenance Trust Fund) to expand HCBS waiver services to over 750 additional clients.

The bill requires APD to implement an electronic application process with the ability to check application status online. APD estimates the cost of an electronic application between \$1,750,000 to \$1,850,000, based upon the level of sophistication desired. Total implementation may take longer than a year.²⁴ Based on a review of historical reversions, the agency has sufficient existing resources to begin system development during FY 2024-25. APD can submit a Legislative Budget Request for the following year to request the additional resources needed to complete the system and for recurring maintenance needs.

The General Appropriations Act for FY 2024-2025 provides \$300,000 (\$150,000 in nonrecurring funds from the General Revenue Fund and \$150,000 from the Operations and Maintenance Trust Fund) to APD for actuarial services to determine appropriate capitation rates for APD to use in developing the plan required by the bill for the new waiver program.

The actuarial analysis is due to the President of the Senate and the Speaker of the House of Representative no later than December 31, 2024.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector based service providers and the waiver support coordinators contracted to serve HCBS waiver clients should experience increased workload and additional revenue related to serving additional iBudget waiver clients.

D. FISCAL COMMENTS:

None.

²⁴ *Supra*, note 15.

²⁵ Conference Report on HB 5001(HB 5001); 2024 Legislative Session, 2024 -2025 Fiscal Year; line item 246.