

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 550

INTRODUCER: Senator Rouson

SUBJECT: Transparency for Autism-related Services

DATE: December 11, 2023 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hall	Tuszynski	CF	Pre-meeting
2.			AHS	
3.			FP	

I. Summary:

SB 550 adds the new definition of “manifests” and “onset” to ch. 393, F.S. This effects the definitions of “autism,” “developmental disability,” and “intellectual disability.”

The bill also requires the Agency for Persons with Disability to provide each applicant an individualized eligibility determination that includes the specific criteria the applicant has not met when denied.

The bill is expected to have an indeterminate negative fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective beginning July 1, 2024.

II. Present Situation:

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for the provision of services to individuals with developmental disabilities and for administering the Home and Community-Based Services (HCBS) Waiver.¹ Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.² The HCBS Waiver provides services to individuals with developmental

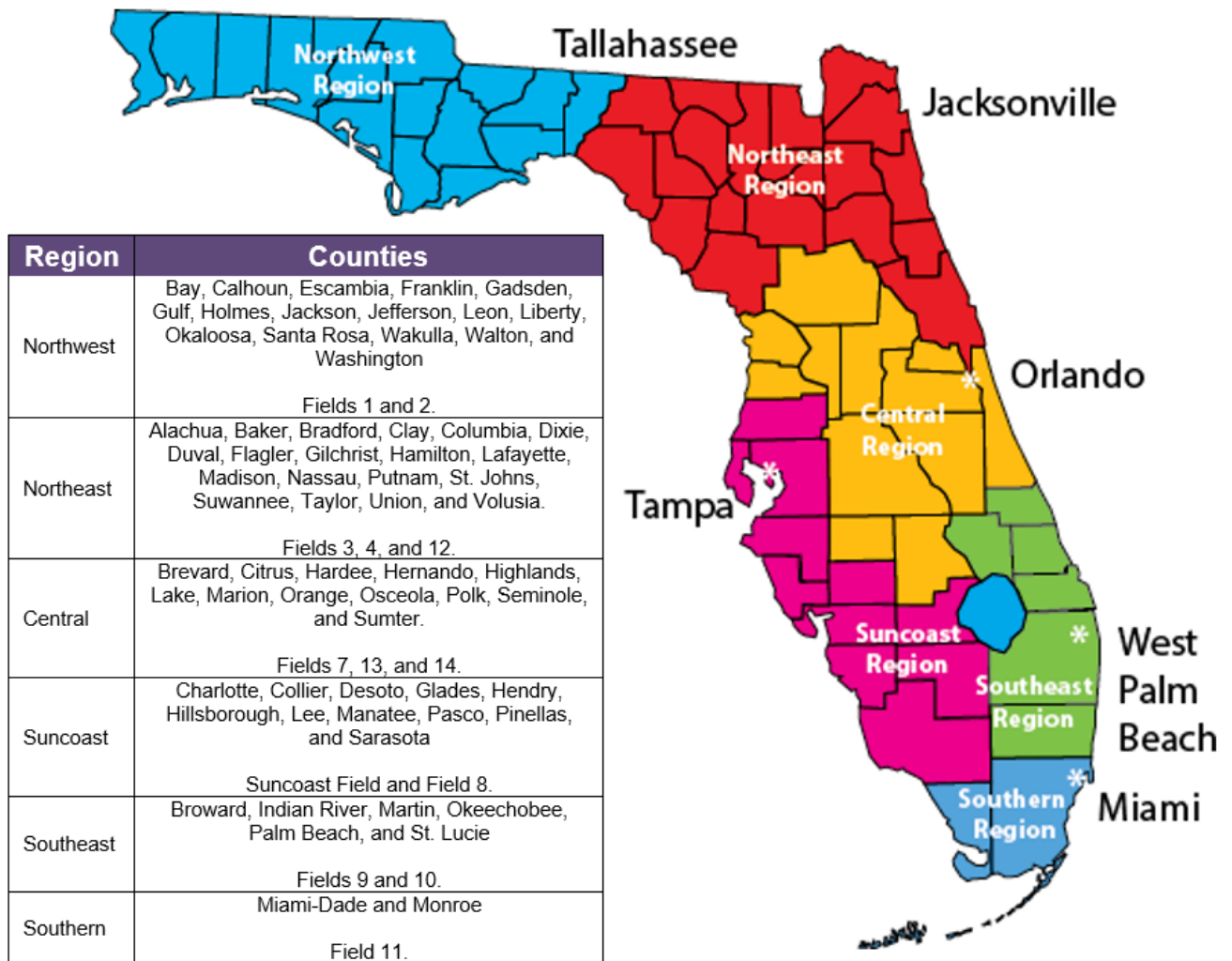
¹ See Section 20.197(3), F.S.

² Rule 59G-13.080(1), F.A.C.

disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.³ Eligible individuals must meet institutional level of care requirements.⁴

The overarching goal for the APD is to prevent or reduce the severity of developmental disabilities 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.⁵

In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:



³ The Centers for Medicare and Medicaid Services, <https://www.medicare.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited Dec. 11, 2023).

⁴ Id.; Rule 59G-13.080(1), F.A.C.

⁵ See Section 393.062, F.S.

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 Intermediate Care Facility for the Developmentally Disabled (ICF/DD)⁶ through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).⁷

The APD initiated implementation of iBudget Florida on May 1, 2011 with the final areas transitioned from the previous teared waiver system on July 1, 2013.⁸ The iBudget Florida program uses an algorithm, or formula, to set individuals' funding allocations for waiver services.⁹ The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

The APD serves just over 34,900 individuals through iBudget Florida, contracting with service providers to offer 27 supports and services to assist individuals to live in their community.¹⁰ 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.¹¹

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 individuals with developmental disabilities deemed to be in crisis¹² and within 60 days for all other applicants.¹³ 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. In fiscal year 2022-2023 APD reports iBudget plans for 36,672 individuals. 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. As of January 15, 2024, there were 21,587 individuals on the HCBS Waiver wait list.¹⁴

⁶ Section 393.063(24), F.S., defines "intermediate care facility for the developmentally disabled" to mean a residential facility licensed and certified under part VIII of ch. 400, F.S.

⁷ Section 393.0662, F.S.

⁸ The APD, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2022-23*, p. 2, November 15, 2022, <https://apd.myflorida.com/publications/reports/docs/FY%202023%20Quarterly%20Report%201st%20Quarter%20report.pdf> (last visited Dec. 11, 2023).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Rule 65G-1.047, F.A.C.

¹³ Section 393.065(1), F.S.

¹⁴ Email from Kendall Kelley, Legislative Affairs Director, Florida Agency for Persons with Disabilities, *RE: Waitlist number*, Monday, January 15, 2024 11:16 AM (on file with the Senate Children, Families, and Elder Affairs Committee).

The needs of APD clients are classified into seven categories and are prioritized in the following decreasing order of priority:¹⁵

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Specified children from the child welfare system.¹⁶
- 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 alternative 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
 - 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 is not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternative caregiver is available;
- Category 5 – Includes, but is not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain a meaningful day activity, 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 criteria for categories 1-5.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.¹⁷

Because APD requires extensive documentation to verify identity, domicile, and documentation of clinical eligibility, most applications are incomplete upon receipt and require additional time to process. The APD also provides for a comprehensive assessment when needed to confirm eligibility for an applicant.

Section 393.066, F.S. requires the APD to plan, develop, organize, and implement its programs and services and treatment for persons with developmental disabilities to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.¹⁸ All elements of community-based services must be made available, and eligibility for these services must be consistent across the state.¹⁹

¹⁵ Section 393.065(5), F.S.

¹⁶ See s. 393.065(5)(b), F.S., for specific criteria.

¹⁷ Section 393.065(5), F.S.

¹⁸ Section 393.066(1), F.S.

¹⁹ *Id.*

Eligibility Criteria

Pursuant to 65G-4.017, F.A.C., there are eligibility criteria for each disability as follows:

Disability	Eligibility Criteria
Autism	<p>A diagnosis may only be made by one of the following:</p> <ul style="list-style-type: none"> • A Florida-licensed psychiatrist; • A Florida-licensed psychologist; • A board-certified pediatric neurologist who is qualified by training and experience to make a diagnosis of autism; • A board-certified developmental pediatrician; or • Collateral information received from another state may be accepted if the evaluator is licensed through the same credentials required for licensure in Florida for the professions listed above.
Cerebral Palsy	<p>Diagnosis is confirmed by written documentation from:</p> <ul style="list-style-type: none"> • A medical doctor; • A doctor of osteopathy; or • Medical records documenting a diagnosis of cerebral palsy before the age of 18.
Intellectual Disability	<p>To establish that an individual has intellectual disability, the following criteria shall be applied:</p> <ul style="list-style-type: none"> • A single test should not be used alone to determine eligibility. If a person has a great deal of variability on different scales or subtest scores of an IQ test, the full-scale score may not indicate intellectual disability and should not be relied on as a valid score. In that instance, closer scrutiny is required to make an appropriate differential diagnosis. This may include a review of school records, school placement, achievement scores, medical records, medication history, behavior during testing, and the psychosocial situation at the time of testing. Closer scrutiny must be required when there is a great deal of variability between IQ scores on different IQ tests or different administrations of the same test. • The performance measures for this category must be validated by the professional judgment of a psychologist who is experienced in working with people who have intellectual disability, who has specific training and validation in the assessment instrument that is used, and who is one of the following: <ul style="list-style-type: none"> ○ A Florida-licensed psychologist; ○ A Florida-licensed school psychologist; ○ A certified school psychologist. • Any standardized test may be submitted as proof, with specific tests presumptively accepted.
Prader-Willi Syndrome	<p>Diagnosis is confirmed by written documentation from:</p> <ul style="list-style-type: none"> • A medical doctor; • A doctor of osteopathy; or • Medical records that document a diagnosis of Prader-Willi syndrome before the age of 18.
Spina Bifida	<p>Diagnosis is confirmed by written documentation from one or more of the following:</p> <ul style="list-style-type: none"> • A medical doctor; • A doctor of osteopathy; or • Medical records that document a diagnosis of spina bifida cystica or myelomeningocele before the age of 18.
Down Syndrome	<p>Evidence requires medical records documenting a chromosome analysis (also referred to as a karyotype) finding the individual has an extra genetic material on their number 21 chromosome.</p>
Phelan-McDermid Syndrome	<p>The diagnosis must be confirmed utilizing genetic testing, with written documentation from:</p> <ul style="list-style-type: none"> • A medical doctor; • A doctor of osteopathy;

Disability	Eligibility Criteria
High Risk Children, ages 3-5	<p>Evidence requires a determination by an APD area office that a medical diagnosis of developmental delay evidenced by the child indicates a high probability that the child is likely to have an eventual diagnosis of a qualifying condition under Rule 65G-4.014, F.A.C., if early intervention services are not provided, or the child has one or more physical or genetic anomalies associated with specific developmental disabilities.</p> <ul style="list-style-type: none"> If a child between three and five years of age already has been determined to have a developmental disability in one of the five categories identified in chapter 393, F.S., that a child shall be eligible for services from the agency under the appropriate diagnosis and shall be added to a preenrollment category.

III. Effect of Proposed Changes:

Section 1 of the bill amends s.393.063, F.S., to include new definitions of “manifest” and “onset” to be “the display or disclosure of characteristic signs or symptoms of an illness.”

This broadens the point in time in which the APD can consider the manifestation of specific disabilities defined in statute. The definitions of “autism,” “developmental disability,” and “intellectual disability” all use the term manifest or onset. . Currently, administrative rule requires diagnosis by specific medical providers and/or specific tests, including intelligence tests and genetic testing. These new definitions could result in individuals becoming eligible for services prior to actual diagnosis as currently required.

Section 2 of the bill amends s. 393.065, F.S., to require the APD to provide any specific criteria the applicant has not met from the APD’s eligibility criteria as described in administrative code in their individual eligibility determination.

This language is a codification of the APD’s existing process of providing individual eligibility determinations, but clarifies that specific eligibility criteria must be provided.

Section 3 provides an effective date for July 1, 2024.

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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The APD reports an indeterminate but potentially significant negative fiscal impact to the state. An increase in the eligible autism population would require an increase in needed funding as follows per eligible individual:

- Currently, the average cost plan for the iBudget Waiver is \$58,356.61 based on service allocations for FY 2022-23 for 36,672 clients.
- The average costs for individuals using Individual and Family Supports (IFS) funding during FY 2022-23 was \$5,114 for approximately 2,548 clients.

For example, if the eligible population were to increase by only 50 individuals there would be a needed increase in funding of:

$$50 \text{ (individuals)} \times \$58,356.61 \text{ (avg. iBudget plan)} = \mathbf{\$2,917,830.50, \text{ recurring}}$$

$$50 \text{ (individuals)} \times \$5,114 \text{ (avg. IFS costs)} = \mathbf{\$255,700, \text{ recurring}}$$

Furthermore, a significant increase in population to the waiver program will require provider development and additional staff. Currently, the APD has 4,863 providers that provide iBudget Waiver services to approximately 36,672 clients.

VI. Technical Deficiencies:

The bill cites a specific rule in Florida's Administrative Code. This should be generalized.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 393.063 and 393.065, 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.
