

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB HCA 10-03 Agency for Persons with Disabilities  
**SPONSOR(S):** Health Care Appropriations Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1468

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Health Care Appropriations Committee	12 Y, 1 N	Perkins	Massengale
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

The bill makes statutory changes to conform to the funding decisions included in the House proposed General Appropriations Act (GAA) for Fiscal Year 2010-2011. Specifically, the bill makes the following changes:

- Amends section 393.065, Florida Statutes, to implement waitlist prioritization for the first two categories of the Agency for Persons with Disabilities (APD) Medicaid waiver waitlist. The bill delays prioritization of categories 3 through 7 until July 1, 2012.
- Amends section 393.0661, Florida Statutes, to specify the use of an assessment instrument to be either the Individual Cost Guidelines or the Questionnaire for Situational Information for determining the tier to which the client should be assigned.
  - Specifies that age is a client characteristic in assigning clients to a tier.
  - Specifies an annual client expenditure cap under the tier one waiver services to not exceed \$120,000.
  - Specifies that individuals enrolled in tier four on July 1, 2007, are assigned to the tier without needing an assessment.
  - Directs APD to eliminate behavior assistance services.
  - Specifies certain rate reductions to the geographic differential for Miami-Dade, Broward, Palm Beach, and Monroe Counties for residential habilitation services.
- Creates section 393.0662, Florida Statutes, relating to individual budgets or iBudgets to improve the financial management of waiver services.
- Amends section 393.125, Florida Statutes, to specify conditions for requesting APD Medicaid fair hearings and requires these hearings to be provided by the Department of Children and Families (DCF).

The House proposed GAA for FY 2010-11 reduces recurring general revenue expenditures by approximately \$4.1 million as a result of an annual client expenditure cap under the tier one waiver services to not exceed \$120,000, the elimination behavior assistance services, and reducing geographic differential residential rehabilitation rates.

While the fiscal impact on the implementation of the iBudget system is indeterminate, it is anticipated that clients and the agency will be able to operate within annual appropriated amounts once fully implemented, and thus, eliminate recurring deficits that the agency has faced in past years.

The fiscal impact associated with moving APD Medicaid fair hearings to DCF is anticipated to be an overall net savings of approximately \$4.4 million. This is primarily achieved through cost avoidance by moving the APD Medicaid fair hearings from the Division of Administrative Hearings (DOAH) to the DCF, Office of Appeal Hearings and APD providing legal representation. The House GAA appropriates 7 positions and \$301,500 in general revenue funds for APD and 19 positions and \$672,712 in general revenue funds for DCF. APD estimates that \$50 million in cost savings would be realized to the program when the hearings are completed (assuming the hearings uphold APD's tier placement decisions).

The bill provides an effective date of July 1, 2010.

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

**STORAGE NAME:** pcb03a.HCA.doc  
**DATE:** 3/17/2010

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities.<sup>1</sup> A developmental disability is defined in chapter 393, Florida Statutes, as “a disorder or syndrome that is attributable to retardation, 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.”<sup>2</sup> Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.<sup>3</sup>

##### *Services to Persons with Developmental Disabilities*

APD provides an array of home and community based services through contract providers, as well as services in Developmental Disabilities Centers and forensic program services. APD administers home and community based services through 14 area offices that are responsible for day-to-day operations. As of January 2010, APD was serving 53,216 persons in all programs relating to developmental disabilities.

##### *Four-Tier Medicaid Waiver System*

The 2007 Legislature directed APD to establish a four-tier waiver system to replace the previous waiver program. APD currently serves 29,903 people in the Medicaid waiver tier system and has a waitlist of more than 18,800 people for the program. The agency assigns all clients receiving services through the developmental disabilities waiver to a tier based on a valid assessment instrument, client characteristics, and other appropriate assessment methods.<sup>4</sup> Each of the tier waivers targets a specific group of people with certain needs.

- Tier one is for clients who have intensive medical or adaptive needs or who possess behavioral problems that are exceptional in intensity, duration, or frequency and present a substantial risk of harm to themselves or others. Total annual expenditures are not capped.

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<sup>1</sup> s. 20.197(3), F.S.

<sup>2</sup> s. 393.063(9), F.S.

<sup>3</sup> “High-risk child” is defined in s. 393.063(19), F.S.

<sup>4</sup> s. 393.0661(3), F.S.

- Tier two is for clients whose service needs include a licensed residential facility and who are authorized to receive a moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitation services or clients in supported living who receive greater than six hours a day of in-home support services. Total annual expenditures may not exceed \$55,000.
- Tier three is for clients requiring residential placements, clients in independent or supported living situations, and clients who live in their family home. Total annual expenditures may not exceed \$35,000 per client.
- Tier four services include adult day training, coaching, personal care assistance, environmental modifications, behavioral services, respite, transportation, supported employment, and in-home supports. Total annual expenditures are capped at \$14,792.

The purpose of the tier system is to create a predictable spending model for the program and help control over-utilization of services, which has led to significant program deficits in recent years. APD has had some success in controlling spending through the implementation of the Medicaid waiver tier legislation. When the tier legislation was passed, APD was projecting a deficit of more than \$150 million for Fiscal Year (FY) 2007-2008. This deficit was reduced to \$12 million for FY 2007-2008, in part by the implementing tier caps and other legislative actions. Delays have occurred in fully implementing the tiers as a result of approximately 5,500 people in the waiver program requesting a hearing on their tier assignment. This in affect freezes their current services and costs to the program until their hearing outcome is decided. This delay in assigning people to tiers has partially resulted in continued deficits in the waiver program, including a \$26.7 million deficit for FY 2008-2009 and projected deficit of \$36 million for the current year.

Recent litigation has challenged elements of APD's implementation of the Medicaid waiver tier program as directed in statute. In August 2009, the First District Court of Appeal (DCA) disagreed with a previous ruling by an administrative law judge at the Division of Administrative Hearings and found the APD rules for implementing the tier waivers invalid on three points.<sup>5</sup> The ruling cited that APD failed to demonstrate adoption of a valid and reliable assessment instrument, improperly placed an age limit on client eligibility for tier three and improperly placed people in tier four without an assessment.

#### *Service Rates for Residential Habilitation*

Residential habilitation provides supervision and specific training activities that assist the person to acquire, maintain or improve skills related to activities of daily living. APD is required to implement a consolidated residential habilitation rate structure to increase savings to the state through a more cost-effective payment method and establish uniform rates for intensive behavioral residential habilitation services. Currently, a geographic differential rate in Miami-Dade, Broward, and Palm Beach Counties for residential habilitation services is 7.5 percent.<sup>6</sup> Monroe County has a geographic differential rate of 20 percent.<sup>7</sup>

#### *Waitlist Prioritization*

The Medicaid waiver waitlist is organized by the individual's date of eligibility for the waiver program. However, individuals experiencing a crisis or children from the child welfare system receive priority consideration. As a result of funding constraints in the program, no other individuals from the waitlist were offered Medicaid waiver services during the last two years.

The 2009 Legislature directed APD to organize individuals on the waitlist into seven priority categories based on their level of need and medical necessity. Within each priority category, the individuals are to

<sup>5</sup> Washington v. DeBeaugrine, US District Court, N. District of Florida, Case no. 4:09cv189-RH/WCS, Order Granting Preliminary Injunction and Order Clarifying Preliminary Injunction.

<sup>6</sup> s. 393.0661(4), F.S.

<sup>7</sup> s. 393.0661(5), F.S.

be numbered in accordance with the date in which they were determined eligible for services. APD was directed by the legislation to implement this priority order, effective July 1, 2010.

### *Individual Budget or "iBudget"*

In an effort to control funding deficits and reduce the growing waitlist, the Florida Legislature included proviso language in the 2009 GAA requiring the APD in consultation with the Agency for Health Care Administration to develop a plan to establish individual budgets for individuals enrolled in the home and community based services waivers. On February 1, 2010,<sup>8</sup> the plan was submitted to the Governor and Legislature.

### *Medicaid Fair Hearings*

State agencies administering the Medicaid program are required by federal and state law to grant an opportunity for a hearing to persons in the program under certain circumstances. This includes, but is not limited to, applicants whose claim for services is denied or not acted upon promptly. Individuals may also request a hearing if they believe the state has taken erroneous action that affects them.<sup>9</sup>

The Department of Children and Families (DCF) is directed by statute to conduct fair hearings for public assistance programs, including state Medicaid administered by the Agency for Health Care Administration.<sup>10</sup> Prior to August 2006, Medicaid fair hearings for participants in the APD Medicaid waiver programs were also conducted by DCF. Fair hearings conducted by DCF for the Medicaid program are presided over by hearing officers who are impartial arbiters of the case. As a result of a First District Court of Appeals ruling in 2006,<sup>11</sup> the APD hearings were moved to the Division of Administrative Hearings (DOAH). The DOAH hearings are more expensive and include a formal process that is not required by federal law.<sup>12</sup> The cost of APD hearings at DOAH performed during FY 2006-2007 was \$686,070 and the budgeted cost for hearings performed in FY 2007-2008 is \$728,683.<sup>13</sup> APD estimates that hearing costs at DOAH for handling the more than 4,200 pending cases for hearing would be \$2.3 million. In addition, APD costs for representation by the Office of the Attorney General could reach \$4 million. This is a total cost for APD hearings of approximately \$6.3 million.

### **Effect of Proposed Changes**

The bill implements the waitlist prioritization required in section 393.065(5), Florida Statutes, for the clients in crisis (category 1) and children in child welfare system (category 2) effective July 1, 2010. Categories 1 and 2 were existing priorities in law prior to the changes to section 393.065(5), Florida Statutes, in 2009. The bill also moves the implementation date for waitlist categories 3 through 7 to July 1, 2012. The July 1, 2010, implementation date would have adversely affected an estimated 63 percent of the people on the waitlist who would see their place on the waitlist drop to a lower position by the new categorization.

The bill makes changes to section 393.0661, Florida Statutes:

- The bill specifies the two assessment instruments that shall be used by APD in the process of assigning individuals in the four-tier waiver system.
- The bill specifies that age is a client characteristic that shall be used in the process of assigning clients to a tier.
- The bill specifies an annual expenditure cap of \$120,000 per client for tier one waiver services. APD reports that approximately 354 clients would be impacted by this financial cap.
- The bill specifies that individuals enrolled in the Family and Supported Living waiver on July 1, 2007, are to be included in tier four of the Medicaid waiver system without further assessment.

<sup>8</sup> Report to the Legislature on the Agency's Plan for Implementing Individual Budgeting "iBudget," February 1, 2010.

<sup>9</sup> 42CFR431.220, s. 409.285, F.S.

<sup>10</sup> s. 409.285, F.S.

<sup>11</sup> *J.M. v. Florida Agency for Persons with Disabilities*, 938 So.2d 535 (Fla.1<sup>st</sup> DCA 2006).

<sup>12</sup> *Washington v. DeBeaugrine*, US District Court, N. District of Florida, Case no. 4:09cv189-RH/WCS, Order Granting Preliminary Injunction and Order Clarifying Preliminary Injunction.

<sup>13</sup> APD report attached to email from Karen Fisher, APD, dated 2-5-10, on file with committee.

- The bill eliminates behavior assistance services. Behavior analysts will train direct care staff to correctly and appropriately implement behavioral interventions.
- Effective July 1, 2010, the bill revises the geographic differential for Miami-Dade, Broward, and Palm beach Counties for residential habilitation services from 7.5 percent to 4.5 percent. Effective July 1, 2010, the bill revises the geographic differential for Monroe County for residential habilitation services from 20 percent to 15 percent. Effective July 1, 2011, the bill further revises the geographic differential for Monroe County from 15 percent to 10 percent.

The bill creates section 393.0662, Florida Statutes, for APD in consultation with the Agency for Health Care Administration, to develop and implement a comprehensive redesign of the service delivery system using individual budgets, or iBudgets, as the basis for allocating funds appropriated for the Home and Community Based Services (HCSB) waiver among eligible enrolled clients pursuant to the following:

- The bill defines the service delivery system using individual budgets as the iBudget.
- The bill requires the agency to establish an iBudget for each individual served by the HCSB waiver. The iBudget system allocates the agency's appropriated funds for waiver services among eligible, enrolled clients pursuant to certain provisions.
- The bill specifies that in developing the clients' iBudget, the agency use an allocation algorithm and methodology. The algorithm and methodology may consider individual characteristics which may include, but not be limited, to a client's age and living setting, information from a formal assessment instrument which has been determined by the agency to be valid and reliable, and information from other assessment processes.
- The bill specifies that the agency has the authority to adjust the algorithm based on the individual having certain extraordinary needs or circumstances. The agency may use the services of an independent actuary in determining the portions to be reserved for certain extraordinary needs or circumstances.
- The bill specifies that the client's annual expenditures for waiver services may not exceed the limits of their iBudget and that the total of the clients' projected annual iBudget expenditures shall not exceed the agency's appropriation for waiver services.
- The bill requires the Agency for Health Care Administration, in consultation with APD, seek federal approval, including amending current waivers and requesting a new waiver, and amending contracts as necessary to implement the iBudget system for waiver services.
- The bill specifies that APD transition all eligible, enrolled clients to the iBudget system in a phased-in process. While the agency is phasing-in the iBudget system, the agency may continue to serve some untransitioned clients under the four-tiered waiver system while they wait transitioning into the iBudget system. APD shall ensure that no client experience more than one-half of any expected overall increase or decrease to their existing annualized cost plan for the first year the client is provided an iBudget.
- The bill requires that clients must use all available State Plan Medicaid services, school-based services, private insurance and other benefits, and any other resources that may be available to the client before using funds from their iBudget to pay for supports and services.
- The bill specifies that rates for services established through the Agency for Health Care Administration rules shall be designated as a maximum rather than fixed amounts for individuals who receive an iBudget, except for services specifically identified in rule which the agency determines are not appropriate for negotiation and may include but not be limited to residential habilitation services.
- The bill requires APD to ensure that clients and caregivers have access to training and education to inform them about the iBudget system and to enhance their ability for self-direction.
- The bill specifies that APD collect data to evaluate the implementation and outcomes of the iBudget system and authorizes APD and the Agency for Health Care Administration to adopt rules for the iBudget system.

The bill amends section 393.125, Florida Statutes, to require that requests for hearings for Medicaid programs administered by APD shall be in accordance with federal Medicaid law and rules and pursuant to specific sections of Florida's Administrative Procedures Act (sections 120.569 and 120.57,

Florida Statutes). The bill also requires that hearings under Medicaid programs administered by APD will be provided by DCF. The effect of this change is to restore a DCF process that existed prior to August 2006, when DCF provided these hearings for APD. This change should provide an overall savings and significant cost avoidance to the state. It is estimated that the savings/cost avoidance would be \$4.4 million if the 4,200 pending Medicaid tier hearings were held at DCF Office of Appeal Hearings (see Fiscal Comments section).

**B. SECTION DIRECTORY:**

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

Section 2. Amends s. 393.0661, F.S., relating to home and community based service system.

Section 3. Creates s. 393.0662, F.S., relating to individual budgets or iBudgets.

Section 4. Amends s. 393.125, F.S., relating to hearing rights.

Section 5. Provides the bill is effective July 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The following issues are included in the House proposed GAA for FY 2010-11:

	<u><b>FY 2010-11</b></u>	<u><b>FY 2011-12</b></u>
<b><u>Agency for Persons with Disabilities</u></b>		
<b><u>Tier 1- \$120,000 Cap Reduction</u></b>		
General Revenue	(\$2,422,980)	(\$2,422,980)
Operations and Maintenance Trust Fund	<u>(\$3,877,020)</u>	<u>(\$3,877,020)</u>
	(\$6,300,000)	(\$6,300,000)
 <b><u>Elimination of Behavior Assistance Services</u></b>		
General Revenue	(\$ 769,200)	(\$ 769,200)
Operations and Maintenance Trust Fund	<u>(\$1,230,800)</u>	<u>(\$1,230,800)</u>
	(\$2,000,000)	(\$2,000,000)
 <b><u>Reduction in Geographic Differential Residential Rehabilitation Rates</u></b>		
General Revenue	(\$ 924,885)	(\$ 23,067)
Operations and Maintenance Trust Fund	<u>(\$1,479,911)</u>	<u>(\$ 36,909)</u>
	(\$2,404,796)	(\$ 59,976)
 <b><u>Medicaid Fair Hearings</u></b>		
7 attorneys		
General Revenue	\$ 301,500	\$ 287,930
Operations and Maintenance Trust Fund	<u>\$ 301,500</u>	<u>\$ 287,930</u>
	\$ 603,000	\$ 575,860

**Department of Children and Families**

Medicaid Fair Hearings

14 hearing officers, 2 supervisors and 3 support staff

General Revenue	\$ 672,712	\$ 632,409
Federal Grants Trust Fund	<u>\$ 672,712</u>	<u>\$ 632,409</u>
	\$1,345,424	\$1,264,818

NET REDUCTION (\$8,756,372) (\$6,519,298)

In addition, see Fiscal Comments below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Clients and providers operating within the APD waiver services may see an increase or decrease in available funds; however, the amount is indeterminate.

**D. FISCAL COMMENTS:**

Individual Budget or iBudget

While the fiscal impact on the implementation of the iBudget system is indeterminate, it is anticipated that clients and the agency will be able to operate within annual appropriated amounts once fully implemented, and thus, eliminate recurring deficits that the agency has faced in past years.

According to APD's report, individual budgets would not change the fundamental reality of the state's budget process. The Legislature will continue to decide how much to appropriate to APD and the agency will have a lawful obligation to operate within this amount. Policymakers will still have the prerogative to reduce or increase the agency's budget. However, in contrast to the current system, individual budgeting would allow any budget adjustments—up or down—to be made more equitably and in a fashion that keeps maximum control about service decisions in the hands of the consumer and his or her family.

APD Medicaid Fair Hearings

The fiscal impact associated with moving APD Medicaid fair hearings to DCF is anticipated to be an overall net savings of approximately \$4.4 million. This is primarily achieved through cost avoidance by moving the APD Medicaid fair hearings from the DOAH to the DCF, Office of Appeal Hearings and APD providing legal representation. In the calculations below, 4,200 hearings were used for comparison since this is the number of hearings pending for Medicaid tier waiver assignments.

Comparison of Cost of Hearings at DOAH and DCF

Hearings at DOAH

APD and DOAH estimates the cost of conducting Medicaid hearings at DOAH and legal representation would be \$6.3 million for 4,200 hearings.

DOAH hearing costs estimate	\$2.3 million
Legal Representation by Attorney General	<u>\$4.0 million</u>
Total Estimated cost at DOAH venue	\$6.3 million

### Hearings at DCF

DCF and APD estimate the cost of conducting hearings at the DCF Office of Appeal Hearings with legal representation by APD would be \$ 1,949,266 for 4,200 hearings.

DCF Office of Appeal Hearing cost estimate (19 FTE)	\$1,345,424
APD estimated cost of legal representation (7 FTE)	<u>\$ 603,000</u>
Total Estimated Cost at DCF venue	\$1,948,626

Also, an indeterminate savings in the APD program will occur by more timely decisions in Medicaid hearings when the pending decision reduces services and cost to the program. Currently, once a hearing request is filed by a consumer, the service reduction is suspended and the current level of service is maintained until the outcome of the hearing is decided. APD estimates that hearings conducted at DOAH require 180 to 240 days to completion. DCF estimates that hearings conducted at the DCF Office of Appeal hearings would require 76 days on average. An example of the importance of timeliness in conducting hearings and the affect on the APD budget is evidenced by the current 4,200 hearings pending at DOAH. APD estimates that \$50 million in cost savings would be realized to the program when the hearings are completed (assuming the hearings uphold APD's tier placement decisions).

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None

#### **B. RULE-MAKING AUTHORITY:**

The agency has sufficient rulemaking authority to implement the provisions of this bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**