CHAPTER 2007-64

Committee Substitute for Senate Bill No. 1124

An act relating to home and community-based services for persons with developmental disabilities; amending s. 393.0661, F.S.; requiring the Agency for Health Care Administration, in consultation with the Agency for Persons with Disabilities, to seek federal approval and implement a four-tiered waiver system for the purpose of serving clients with developmental disabilities; providing requirements and limitations with respect to each tier; authorizing the Agency for Health Care Administration and the Agency for Persons with Disabilities to adopt rules; requiring the Agency for Persons with Disabilities to seek federal waivers and amend contracts in order to implement the waiver system; providing requirements for changes to various services; deleting authorization for the Agency for Health Care Administration to adopt certain emergency rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 393.0661, Florida Statutes, is amended to read:

393.0661 Home and community-based services delivery system; comprehensive redesign.—The Legislature finds that the home and community-based services delivery system for persons with developmental disabilities and the availability of appropriated funds are two of the critical elements in making services available. Therefore, it is the intent of the Legislature that the Agency for Persons with Disabilities shall develop and implement a comprehensive redesign of the system.

(1) The redesign of the home and community-based services system shall include, at a minimum, all actions necessary to achieve an appropriate rate structure, client choice within a specified service package, appropriate assessment strategies, an efficient billing process that contains reconciliation and monitoring components, a redefined role for support coordinators that avoids potential conflicts of interest, and ensures that family/client budgets are linked to levels of need.

(a) The agency shall use an assessment instrument that is reliable and valid. The agency may contract with an external vendor or may use support coordinators to complete client assessments if it develops sufficient safeguards and training to ensure ongoing inter-rater reliability.

(b) The agency, with the concurrence of the Agency for Health Care Administration, may contract for the determination of medical necessity and establishment of individual budgets.

(2) A provider of services rendered to persons with developmental disabilities pursuant to a federally approved waiver shall be reimbursed according to a rate methodology based upon an analysis of the expenditure history and prospective costs of providers participating in the waiver program, or under any other methodology developed by the Agency for Health

Care Administration, in consultation with the Agency for Persons with Disabilities, and approved by the Federal Government in accordance with the waiver.

(3) The Agency for Health Care Administration, in consultation with the agency, shall seek federal approval and implement a four-tiered waiver system to serve clients with developmental disabilities in the developmental disabilities and family and supported living waivers. The agency shall assign 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. All services covered under the current developmental disabilities waiver shall be available to all clients in all tiers where appropriate, except as otherwise provided in this subsection or in the General Appropriations Act.

(a) Tier one shall be limited to clients who have service needs that cannot be met in Tier two, three, or four for intensive medical or adaptive needs and that are essential for avoiding institutionalization, or who possess behavioral problems that are exceptional in intensity, duration, or frequency and present a substantial risk of harm to themselves or others.

(b) Tier two shall be limited to clients whose service needs include a licensed residential facility and greater than 5 hours per day in residential habilitation services or clients in supported living who receive greater than 6 hours a day of in-home support services. Total annual expenditures under tier two may not exceed $55,000 per client each year.

(c) Tier three shall include, but is not limited to, clients requiring residential placements, clients in independent or supported living situations, and clients who live in their family home. Total annual expenditures under tier three may not exceed $35,000 per client each year.

(d) Tier four is the family and supported living waiver. Tier four shall include, but is not limited to, clients in independent or supported living situations and clients who live in their family home. An increase to the number of services available to clients in this tier shall not take effect prior to July 1, 2008. Total annual expenditures under tier four may not exceed $14,792 per client each year.

(e) The Agency for Health Care Administration shall also seek federal approval to provide a consumer-directed option for persons with developmental disabilities which corresponds to the funding levels in each of the waiver tiers. The agency shall implement the four-tiered waiver system beginning with tiers one, three, and four and followed by tier two. The agency and the Agency for Health Care Administration may adopt any rules necessary to administer this subsection.

(f) The agency shall seek federal waivers and amend contracts as necessary to make changes to services defined in federal waiver programs administered by the agency as follows:

1. Supported living coaching services shall not exceed 20 hours per month for persons who also receive in-home support services.

2. Limited support coordination services shall be the only type of support coordination service provided to persons under the age of 18 who live in the family home.

3. Personal care assistance services shall be limited to no more than 180 hours per calendar month and shall not include rate modifiers. Additional hours may be authorized only if a substantial change in circumstances occurs for the individual.

4. Residential habilitation services shall be limited to 8 hours per day. Additional hours may be authorized for persons who have intensive medical or adaptive needs and if such hours are essential for avoiding institutionalization, or for persons who possess behavioral problems that are exceptional in intensity, duration, or frequency and present a substantial risk of harming themselves or others. This restriction shall be in effect until the four-tiered waiver system is fully implemented.

5. Chore, nonresidential support services and homemaker services shall be eliminated. The agency shall expand the definition of in-home support services to enable the provider of the service to include activities previously provided in these eliminated services.

6. Massage therapy and psychological assessment services shall be eliminated.

7. The agency shall conduct supplemental cost plan reviews to verify the medical necessity of authorized services for plans that have increased by more than 8 percent during either of the two preceding fiscal years.

8. The agency shall 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.

9. Pending federal approval, the agency is authorized to extend current support plans for clients receiving services under Medicaid waivers for 1 year beginning July 1, 2007, or from the date approved, whichever is later. Clients who have a substantial change in circumstances which threatens their health and safety may be reassessed during this year in order to determine the necessity for a change in their support plan.

~~(3) Pending the adoption of rate methodologies pursuant to nonemergency rulemaking under s. 120.54, the Agency for Health Care Administration may, at any time, adopt emergency rules under s. 120.54(4) in order to comply with subsection (4). In adopting such emergency rules, the agency need not make the findings required by s. 120.54(4)(a), and such rules shall be exempt from time limitations provided in s. 120.54(4)(c) and shall remain in effect until replaced by another emergency rule or the nonemergency adoption of the rate methodology.~~

(4) Nothing in this section or in any administrative rule shall be construed to prevent or limit the Agency for Health Care Administration, in consultation with the Agency for Persons with Disabilities, from adjusting

fees, reimbursement rates, lengths of stay, number of visits, or number of services, or from limiting enrollment, or making any other adjustment necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act.

(5) The Agency for Persons with Disabilities shall submit quarterly status reports to the Executive Office of the Governor, the chair of the Senate Ways and Means Committee or its successor, and the chair of the House Fiscal Council or its successor regarding the financial status of home and community-based services, including the number of enrolled individuals who are receiving services through one or more programs; the number of individuals who have requested services who are not enrolled but who are receiving services through one or more programs, with a description indicating the programs from which the individual is receiving services; the number of individuals who have refused an offer of services but who choose to remain on the list of individuals waiting for services; the number of individuals who have requested services but who are receiving no services; a frequency distribution indicating the length of time individuals have been waiting for services; and information concerning the actual and projected costs compared to the amount of the appropriation available to the program and any projected surpluses or deficits. If at any time an analysis by the agency, in consultation with the Agency for Health Care Administration, indicates that the cost of services is expected to exceed the amount appropriated, the agency shall submit a plan in accordance with subsection (4) to the Executive Office of the Governor, the chair of Senate Ways and Means Committee or its successor, and the chair of the House Fiscal Council or its successor to remain within the amount appropriated. <u>The agency shall work with the Agency for Health Care Administration to implement the plan so as to remain within the appropriation.</u>

Section 2. This act shall take effect July 1, 2007.

Approved by the Governor May 24, 2007.

Filed in Office Secretary of State May 24, 2007.