

Fla. Stat. § 393.0662

Current through 2023 regular session effective July 5, 2023, and the 2023 B special session.

LexisNexis® Florida Annotated Statutes > Title XXIX. Public health (Chs. 381 — 408) > Chapter 393.

Developmental disabilities (§§ 393.002 — 393.506)

§ 393.0662. Individual budgets for delivery of home and community-based services; iBudget system established.

The Legislature finds that improved financial management of the existing home and community-based Medicaid waiver program is necessary to avoid deficits that impede the provision of services to individuals who are on the waiting list for enrollment in the program. The Legislature further finds that clients and their families should have greater flexibility to choose the services that best allow them to live in their community within the limits of an established budget. Therefore, the Legislature intends that the agency, in consultation with the Agency for Health Care Administration, shall manage the service delivery system using individual budgets as the basis for allocating the funds appropriated for the home and community-based services Medicaid waiver program among eligible enrolled clients. The service delivery system that uses individual budgets shall be called the iBudget system.

(1) The agency shall administer an individual budget, referred to as an iBudget, for each individual served by the home and community-based services Medicaid waiver program. The funds appropriated to the agency shall be allocated through the iBudget system to eligible, Medicaid-enrolled clients. For the iBudget system, eligible clients shall include individuals with a developmental disability as defined in s. 393.063. The iBudget system shall provide for: enhanced client choice within a specified service package; appropriate assessment strategies; an efficient consumer budgeting and billing process that includes reconciliation and monitoring components; a role for support coordinators that avoids potential conflicts of interest; a flexible and streamlined service review process; and the equitable allocation of

available funds based on the client's level of need, as determined by the allocation methodology.

(a) In developing each client's iBudget, the agency shall use the allocation methodology as defined in s. 393.063(4), in conjunction with an assessment instrument that the agency deems to be reliable and valid, including, but not limited to, the agency's Questionnaire for Situational Information. The allocation methodology shall determine the amount of funds allocated to a client's iBudget.

(b) The agency may authorize additional funding based on a client having one or more significant additional needs that cannot be accommodated within the funding determined by the algorithm and having no other resources, supports, or services available to meet the needs. Such additional funding may be provided only after the determination of a client's initial allocation amount and after the qualified organization has documented the availability of all nonwaiver resources. Upon receipt of an incomplete request for services to meet significant additional needs, the agency shall close the request.

(c) The agency shall centralize, within its headquarters, medical necessity determinations for requested services made through the significant additional needs process. The process must ensure consistent application of medical necessity criteria. This process must provide opportunities for targeted training, quality assurance, and inter-rater reliability.

(d) A client's annual expenditures for home and community-based Medicaid waiver services may not exceed the limits of his or her iBudget. The total of all clients' projected annual iBudget expenditures may not exceed the agency's appropriation for waiver services.

(2) The Agency for Health Care Administration, in consultation with the agency, shall:

(a) ~~s~~ Seek federal approval to amend current waivers, request a new waiver, and amend contracts as necessary to manage the iBudget system, improve services for eligible and enrolled clients, and improve the delivery of services through the home and community-based services Medicaid waiver program and the Consumer-Directed

Care Plus Program, including, but not limited to, enrollees with a dual diagnosis of a developmental disability and a mental health disorder.

(b) At the time applicant's iBudget is established, the Agency for Health Care Administration shall:

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1. Educate the applicant and/or applicant's guardian(s) regarding the Consumer-Directed community-based services program; and,

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2. At the time of establishing applicant's iBudget, provide each applicant the opportunity to apply for the Consumer-Directed community-based services program.

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(c) The agency shall, within fourteen (14) calendar days from the time of applicant's submission for Consumer-Directed care community-based services program, ensure that applicant begins Consumer-Directed care community-based services begin and the applicant is no longer required to go through iBudget.

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(3) The agency must certify and document within each client's cost plan that the client has used all available services authorized under the state Medicaid plan, school-based services, private insurance and other benefits, and any other resources that may be available to the client before using funds from his or her iBudget to pay for support and services.

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(4) Rates for any or all services established under rules of the Agency for Health Care Administration must be designated as the maximum rather than a fixed amount for individuals who receive an iBudget, except for services specifically identified in those rules that the agency determines are not appropriate for negotiation, which may include, but are not limited to, residential habilitation services.

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(5) The agency shall ensure that clients and caregivers have access to training and education that inform them about the iBudget system and enhance their ability for self-direction. Such training and education must be offered in a variety of formats and, at a minimum, must address the policies and processes of the iBudget system and the roles and responsibilities of consumers, caregivers, waiver support coordinators, providers, and the agency, and must

provide information to help the client make decisions regarding the iBudget system and examples of support and resources available in the community.

(6) The agency shall collect data to evaluate the implementation and outcomes of the iBudget system.

(7) The Agency for Health Care Administration shall seek federal approval to provide a consumer-directed option for persons with developmental disabilities. The agency and the Agency for Health Care Administration may adopt rules necessary to administer this subsection.

(8) The Agency for Health Care Administration shall seek federal waivers and amend contracts as necessary to make changes to services defined in federal waiver programs, as follows:

(a) Supported living coaching services may not exceed 20 hours per month for persons who also receive in-home support services.

(b) Limited support coordination services are the only support coordination services that may be provided to persons under the age of 18 who live in the family home.

(c) Personal care assistance services are limited to 180 hours per calendar month and may not include rate modifiers. Additional hours may be authorized for persons who have intensive physical, medical, or adaptive needs, if such hours will prevent institutionalization.

(d) Residential habilitation services are limited to 8 hours per day. Additional hours may be authorized for persons who have intensive medical or adaptive needs and if such hours will prevent institutionalization, or for persons who have behavioral problems that are exceptional in intensity, duration, or frequency and who present a substantial risk of harm to themselves or others.

- (e) 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 2 preceding fiscal years.
- (f) 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.
- (g) The geographic differential for Miami-Dade, Broward, and Palm Beach Counties for residential habilitation services is 7.5 percent.
- (h) The geographic differential for Monroe County for residential habilitation services is 20 percent.
- (9) The agency shall collect premiums or cost sharing pursuant to s. 409.906(13)(c).
- (10) This section or any related rule does not prevent or limit the Agency for Health Care Administration, in consultation with the agency, 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 in the General Appropriations Act.
- (11) A provider of services rendered to persons with developmental disabilities pursuant to a federally approved waiver must 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 and approved by the Federal Government in accordance with the waiver.
- (12) The agency shall submit quarterly status reports to the Executive Office of the Governor, the chair of the Senate Appropriations Committee or its successor, and the chair of the House Appropriations Committee or its successor which contain all of the following information:

- (a) The financial status of home and community-based services, including the number of enrolled individuals receiving services through one or more programs.
 - (b) The number of individuals who have requested services and who are not enrolled but who are receiving services through one or more programs, with a description indicating the programs under which the individual is receiving services.
 - (c) The number of individuals who have refused an offer of services but who choose to remain on the list of individuals waiting for services.
 - (d) The number of individuals who have requested services but who are receiving no services.
 - (e) A frequency distribution indicating the length of time individuals have been waiting for services.
 - (f) Information concerning the actual and projected costs compared to the amount of the appropriation available to the program and any projected surpluses or deficits.
- (13) 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 (10) to the Executive Office of the Governor, the chair of the Senate Appropriations Committee or its successor committee, and the chair of the House Appropriations Committee or its successor committee to remain within the amount appropriated. The agency shall work with the Agency for Health Care Administration to implement the plan so as to remain within the appropriation.
- (14) The agency, in consultation with the Agency for Health Care Administration, shall provide a quarterly reconciliation report of all home and community-based services waiver expenditures from the Agency for Health Care Administration's claims management system with service utilization from the Agency for Persons with Disabilities Allocation, Budget, and Contract Control system. The reconciliation report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than 30 days after the close of each quarter.

(15) The agency and the Agency for Health Care Administration:

(1) ~~May~~ adopt rules specifying the allocation algorithm and methodology; criteria and processes for clients to access funds for services to meet significant additional needs; and processes and requirements for selection and review of services, development of support and cost plans, and management of the iBudget system as needed to administer this section: and,

(2) Shall, within ninety (90) days of the section's effective date, adopt rules and thereafter implement policies to come into, and thereafter maintain, compliance with ¶ 2(b) hereof,

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History

S. 2, ch. 2010-157, eff. July 1, 2010; s. 31, ch. 2011-135, eff. July 1, 2011; s. 14, ch. 2016-65, effective July 1, 2016; s. 5, ch. 2016-140, effective July 1, 2016; s. 4, ch. 2020-71, effective July 1, 2021.

Annotations

Notes

Editor's notes.

Section 36, ch. 2011-135 provides: "If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Amendments.

The 2011 amendment added the third sentence of the first paragraph of (1).

The 2016 amendment by s. 14, ch. 2016-65, effective July 1, 2016, added (1)(b)4.

The 2016 amendment by s. 5, ch. 2016-140, effective July 1, 2016, substituted “shall manage” for “develop and implement a comprehensive redesign of” in the third sentence of the first paragraph; in the first paragraph of (1), substituted “administer” for “establish” in the first sentence, deleted “a diagnosis of Down syndrome or” following “individuals with” in the third sentence, and rewrote the last sentence; rewrote (1)(a); rewrote the introductory language of (1)(b); added the second sentence of the introductory language of (1)(b)1.; deleted the former last paragraph of (1)(b)1.; in (1)(b)2., deleted “unless the increase is approved” at the end of the first sentence and rewrote the last sentence; rewrote the last sentence of (1)(b)3.; added (1)(b)4.; deleted “of the portions” following “the amount” in the second paragraph of (1)(b); in (1)(c), deleted the former first sentence and deleted “services” following “community-based” in the first sentence; rewrote (2); deleted former (3); redesignated former (4) and (6) through (9) as (3) and (4) through (7); deleted former (5); rewrote the second sentence of (5); and made related and stylistic changes.

The 2020 amendment by s. 4, ch. 2020-71, added “in conjunction with an assessment instrument that the agency deems to be reliable and valid, including, but not limited to, the agency’s Questionnaire for Situational Information” in the first sentence of (1)(a); rewrote (1)(b); deleted former (1)(b)1. through (1)(b)4.; deleted the former concluding paragraph of (1)(b); added (1)(c); redesignated former (1)(c) as (1)(d); substituted “The agency must certify and document within each client’s cost plan that the client has used all” for “a client must use all” in (3); added (7) through (14); redesignated former (7) as (15); and substituted “access funds for services to meet significant additional needs” for “access reserved funds for extraordinary needs, temporarily or permanently changed needs, and one-time needs” in (15).

Notes to Decisions

Administrative Law: Agency Adjudication: Hearings: Right to Hearing: Waiver

Administrative Law: Agency Rulemaking: Rule Application & Interpretation: Validity

Public Health & Welfare Law: Healthcare: Services for Disabled & Elderly Persons: Costs

Public Health & Welfare Law: Social Security: Medicaid: Coverage: Medical Necessities

Public Health & Welfare Law: Social Security: Medicaid: State Plans: Amount, Duration & Scope of Benefits

Public Health & Welfare Law: Social Security: Medicaid: State Plans: Waivers

Administrative Law: Agency Adjudication: Hearings: Right to Hearing: Waiver

Overview: A decision to reallocate an individual's service hours under the Individual Budgeting Home and Community-Based Services Medicaid Waiver Program was not in error where it was clear that some of Supported Living Coaching hours, including meal preparation, household chores, and personal hygiene, could be recategorized as Personal Support Services.

- The Individual Budgeting Home and Community-Based Services Medicaid Waiver Program permits recipients to hire their own service providers and set the compensation rates. § 393.0662, Fla. Stat. (2020). The Agency for Persons with Disabilities approves the service hours for a recipient and sets out a budget. The recipient then uses the budgeted funds to manage his or her needs. All providers rendering iBudget Waiver services must comply with the provisions of the Florida Medicaid Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, September 2020, as incorporated by Fla. Admin. Code Ann. R. 59G-13.070.

Hughes v. Agency for Persons with Disabilities, 342 So. 3d 832, 2022 Fla. App. LEXIS 4701 (Fla. 1st DCA 2022).

Administrative Law: Agency Rulemaking: Rule Application & Interpretation: Validity

Rules proposed by the Agency for Persons with Disabilities to implement the State's iBudget statute, Fla. Stat. § 393.0662, directly conflicted with and contravened the Legislature's clear language that an algorithm was the sole mechanism to set a disability client's iBudget, save for three exceptions delineated

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in § 393.0662(1)(c). *G.B. v. Agency for Persons with Disabilities*, 143 So. 3d 454, 2014 Fla. App. LEXIS 11117 (Fla. 1st DCA 2014).

Public Health & Welfare Law: Healthcare: Services for Disabled & Elderly Persons: Costs

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Public Health & Welfare Law: Social Security: Medicaid: Coverage: Medical Necessities

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Public Health & Welfare Law: Social Security: Medicaid: State Plans: Amount, Duration & Scope of Benefits

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Public Health & Welfare Law: Social Security: Medicaid: State Plans: Waivers

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Hughes v. Agency for Persons with Disabilities, 342 So. 3d 832, 2022 Fla. App. LEXIS 4701 (Fla. 1st DCA 2022).

Research References & Practice Aids

RESEARCH REFERENCES & PRACTICE AIDS

Florida Statutes references.

Chapter 393. Developmental Disabilities, F.S. § 393.0661. Home and community-based services delivery system; comprehensive redesign.

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