

# Capitol Update



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## *Florida Developmental Disabilities Council, Inc.*

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### **Medicaid Reform and Individuals with Developmental Disabilities**

The House and the Senate have come out with their versions of Medicaid reform. The biggest difference in the two proposals is that the Senate version completely carves out those with developmental disabilities from Medicaid Managed Care and the House version does not.

#### **The House Medicaid proposal consists of two proposed committee bills:**

- a. **PCB HHSC 11-01** <http://www.fddc.org/about/2011-bills> creates a new part and numerous new sections of law in Chapter 409 that will be phased in over a 5-year period.
- b. **PCB HHSC 11-02** <http://www.fddc.org/about/2011-bills> makes date-specific, conforming changes to current law ( set expiration dates for certain sections of existing law). The bill also authorizes some immediate changes in the Medicaid program to prepare for the transition to managed care.

#### **In general;**

a. **All Medicaid recipients are enrolled in managed care unless explicitly exempt. Exempt populations include those who receive limited benefits (women only eligible for family planning or breast and cervical cancer services and aliens eligible for emergency services).**

#### **b. Plans eligible to participate include;**

- provider service networks (PSN),
- exclusive provider organizations,
- health maintenance organizations (HMO),
- health insurers

c. **Plans may target special populations based on age, medical condition or diagnosis, but all plans must cover or arrange for all services for enrollees. The bill eliminates the existence of “carve-out” plans.**

#### **Specific provisions that apply to developmental disabilities -**

a. **Implementation** will begin January 1, 2015, and be complete in all regions by October 1, 2016.

b. **Two types of plans**

- Comprehensive plans that combine medical and home- and community- based services
- Long-term care plans that only provide home- and community- based services

c. **Eligibility**

- Criteria are the same as the current Medicaid waiver program and the program providing intermediate care for the developmentally disabled.
- All recipients of these services on the date the plans become available in their region will be eligible to enroll in the plans.
- New enrollees may be added when funds become available.

d. The **benefits** that will be required of participating plans are substantially the same as those currently offered.

e. To be **eligible**, a managed care plan must meet certain criteria:

- Plans must have staff with experience serving persons with developmental disabilities.
- Provider service networks must include certain licensed residential providers with 10 years of experience in developmental disabilities.
- Plans must involve consumers and families in design and oversight of plans.
- Plans must offer a consumer-directed care program option to enrollees.
- Plans must contract with all applicable residential providers upon implementation of the new program to ensure no disruption in living situations.
- The Children's Medical Services (CMS) Network Plan for children is an eligible plan and not subject to competitive procurement or regional plan limits, but must meet all other plan requirements

f. **Payment**

- The Agency for Health Care Administration (AHCA) will pay plans based on five specific levels of care for enrolled individuals.
- The Agency for Persons with Disabilities (APD) will perform the initial assessment and assignment of persons into levels of care.
- Rates paid to intermediate care facilities and intensive behavior residential habilitation facilities will be determined by AHCA.
- Residents of Sunland Marianna and Tacachale are exempt from mandatory enrollment in the new program, but may voluntarily enroll if they so choose.

**The Senate version**

The Senate Draft bill is a 202-page bill that covers everything from lawsuit limitations to shifting patients into managed care. The bill would set a deadline for the federal government to sign off on the overhaul. Florida will walk away from the Medicaid program by December 31, 2011 and set up its own safety-net program if the federal government doesn't approve, within four months, Florida's requests to have more flexibility.

The bill directs the Agency for Health Care Administration to submit necessary waiver requests to the federal government by July 1. AHCA is directed to move ahead with changes effective December 31, 2011 regardless whether it has received approval from the federal government.

If the federal Centers for Medicare and Medicaid Services refuse to contribute to the program, the state will move ahead with the plan and first priority will be given to funding nursing home care, medical services for the developmentally disabled, and health care to pregnant women.

**Here are some key elements of the bill:**

-The legislation requires all Medicaid patients to enroll in "managed care" **except for those who were in nursing homes before July 2011 and who are developmentally disabled or who are eligible for Medicaid only because of a catastrophic illness.**

-Plans must provide transportation but they aren't required to purchase the services through the **Commission for the Transportation Disadvantaged.**

-The bill precludes operating at a deficit, or exceeding Medicaid spending that is set in the state budget. If an agency determines that a deficit is looming it is required to notify state economists who are directed to determine the potential costs. If the economist determines that costs exceed what's been appropriated, AHCA must submit a plan to cut costs to the Legislative Budget Commission **for** approval.

-There are lawsuit protections for nursing homes, physicians and hospitals.

-Plans will be required to spend 90 percent of the premium they receive for treating patients on health care.

-Medicaid patients must pay a \$10 monthly premium to cover anyone in the family who is Medicaid eligible except for those patients who are SSI eligible and institutionalized.

- **A sliding scale parental fee will be levied on all parents with children served by a home and community based waiver.**

-**Down syndrome would be included as a developmental disability in the state of Florida.**

-A state plan amendment for the provision of occupational therapy, speech therapy, physical therapy, behavior analysis, and behavior assistant services to individuals who are 5 years of age and under and have a diagnosed developmental disability as defined in s. 393.063, or autism spectrum disorder as defined in s. 627.6686, or Down syndrome, a genetic disorder caused by the presence of extra chromosomal material on chromosome 21. Causes of the syndrome may include Trisomy 21, Mosaicism, Robertson and Translocation, and other duplications of a portion of chromosome 21. Coverage for such services shall be limited to \$36,000 annually and may not exceed \$108,000 in total lifetime benefits.

-Patients who are smokers, obese or diagnosed substance abusers must "in good faith" participate in recovery programs.

-Medicaid patients can opt out of the program and into employer- sponsored health insurance. The state would pay for the coverage using a risk adjusted rate.

- Doctors will be paid 100 percent of Medicare rates for treating patients.

**The Council is supporting the iBudget system for managing care for those with developmental disabilities. The Senate bill is more in line with the Council's position <http://www.fddc.org/about/ibudget> although the budget restrictions for services could be harmful. The House and the Senate have not published their budget recommendations but the Governor has made his recommendations.**

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## **Budget**

Here are the **major budget cuts from the Governor's Budget Recommendations** for those receiving services from the Agency for Persons with Disabilities. The total comes to over **\$173,000,000 in reductions for the entire agency**. Thanks to Florida ARF for some of the information used here.

### **Behavior Assistance Services in Standard and Behavior Focus Group Homes - \$3,521,172**

The issue deletes the use of behavior assistant services in a licensed group or foster home and directs behavior analysts to train direct care staff (Res Hab) to perform these services. Currently, it is the behavior analysts' responsibility to train available caregivers to correctly and appropriately implement behavioral interventions. Projected savings are based on an implementation date of January 1, 2012. The requirement will require expedited support from AHCA to promulgate rule changes as of January 1, 2012.

### **Privatize Developmental Disabilities Centers (DDC) - \$8,217,443**

This was not an Agency for Persons with Disabilities (APD) recommendation. Represents about a 7% cut. NOTE: DDC expenditures per person are about 15% higher than community ICF/DD rates. APD offered a reduction of \$6,136,804 to close 138 beds in two DDCs and would require a multi-year transition of clients to community ICF/DDs.

### **Cap Tier 1 at \$120,000- \$9,813,710**

This was not an APD suggestion. This reduction is a repeat from last year and affects approximately 350 individuals. The numbers represent implementation as of January 1, 2012. Annualized reductions would be 19.6 million.

### **Companion Care Rate Revisions- \$22,089,476**

This was not an APD suggestion. Last year's expenditures were at \$46 million. **This recommendation represents almost a 50% cut.**

### **Consolidate Meaningful Day Activity Services- \$72,641,886**

The issue consolidates ADT, SE, in-home supports, companion, and respite care services. Flexibility will be needed for families and clients to be able to direct funds to those services most important to them. This flexibility would partially mitigate the negative impact of the funding reduction. This option could result in increased utilization of institutional or other congregate care settings. Projected savings rely on a January 1, 2012, implementation date. The cut would require expedited support from AHCA to obtain waiver approval. **The suggested cut would reduce the services by 30%.**

### **Reduce Provider Rates by 5.9% - \$22,052,950**

Conforming language calls for 8% cut to reinstate rate cuts from last year. Two provider rates exist and are referred to as agency rates and independent rates. The agency rate is for those providers that have

employees that are providing services, and the independent rate is for solo providers. The agency rates are currently substantially higher than the independent rates. This issue would reduce the agency rate closer to the independent rate. Services where the two rates exist include behavior analysis, companion, dietician services, in-home support, private duty nursing, residential habilitation, residential nursing, as well as several additional services. The projected savings is based on projected expenditures of \$373.8 million and an implementation date of July 1, 2012.

**Establish Life Skills Coach-\$18,998,948**

The issue creates a new service that combines respite, personal care, supported living, in-home supports and companion into one service. The objective is to reduce redundancies and duplication. The projections are based on a July 1, 2011, implementation date and will require expedited support from AHCA to obtain Medicaid approval and promulgate rule changes.

**Revise Adult Day Training Customer Ratio-\$2,682,196**

Current service rates are based on ratios of staffing to clients of 1:1, 1:3, 1:5, and 1:10. This issue would create a new staff to client ratio of 1:15 and a new rate that is lower than the existing rates. The new 1:15 ratio would be for clients who need to attend ADT for purposes of socialization and activities and would only affect clients over the age of 50.

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**Early Steps/ Florida’s Part C Program**

The Senate HHS Appropriations Committee met on February 24, 2011 to take public comment of the proposed Medicaid Reform legislation released last week by the same committee. Developmental disability advocate Kristy Turner presented to the committee to relay the success of the Early Steps program in treating disabilities from an early age to facilitate positive outcomes. The chair of the committee, Senator Joe Negron, stated he and Senator Gardiner have been supporters of the program from the beginning during their tenure in the House and would make the funding of Early Steps a priority this Session. **The Council supports Protecting Early Steps by funding the program with \$12.6 million more dollars to keep the program eligible for the Federal grant <http://www.fddc.org/about/protect-early-steps> . Please contact the members of the House and Senate Appropriations Committees and share your opinions with them.**

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**SB 0912 <http://www.flsenate.gov/Session/Bill/2011/0912> - Relating to Affordable Housing- Bennett**

The Florida Supportive Housing Coalition and the Florida Housing Coalition are promoting this legislation that addresses a broad range of housing issues. S.B. 912 has exactly the same language as the legislation from last session that nearly passed.

The measure would remove the current cap on the Sadowski Trust Fund, and require that housing funding over the next year be used to assist in the sale or rehabilitation of existing homes and preservation and rehabilitation of older rental apartments.

The bill also establishes statutory language written by the Florida Supportive Housing Coalition that defines ‘disabling condition’ and ‘special needs.’

“Disabling condition” means a diagnosable substance abuse disorder, serious mental illness, developmental disability, or chronic physical illness or disability, or the co-occurrence of two or more of these conditions, and a determination that the condition is:

- (a) Expected to be of long-continued and indefinite duration; and

(b) Not expected to impair the ability of the person with special needs to live independently with appropriate supports.

The proposed legislation also: includes persons with special needs in the housing strategy's periodic review and report; requires certain rates of interest to be available to sponsors of projects for persons with special needs; limits the reservation of funds within each notice of fund availability to the persons with special needs tenants; includes persons with special needs as a tenant group for specified purposes of the State Apartment Incentive Loan program; requires a specified review committee to include projects that reserve units for persons with special needs in its evaluation and competitive ranking of applications.

**The Council is supporting this bill.** EFFECTIVE DATE: July 1, 2011

2/17/2011 SENATE Referred to Community Affairs; Children, Families, and Elder Affairs; Budget

3/7/2011 SENATE Favorable by Community Affairs; 9 Yeas, 0 Nays

**3/8/2011 SENATE Now in Children, Families, and Elder Affairs**

**Identical**

**HB 0639 Relating to Affordable Housing -Aubuchon**

03/08/11 HOUSE Favorable by Community & Military Affairs Subcommittee; 15 Yeas, 0 Nays

**Now in Transportation and Economic Development Appropriations Subcommittee**

**03/09/11 Bill to Be Discussed During the Office of EDR's Revenue Estimating Impact Conference; 03/11/11, 12:30pm, 117 K (No Votes Will Be Taken)**

**SB 0528 <http://www.flsenate.gov/Session/Bill/2011/0528> -Relating to Creation of the Department of Health and Human Services- Oelrich**

This bill creates the Department of Health and Human Services. It provides for appointment of a Secretary of Health and Human Services by the Governor and establishes regions for the administration of program services. The bill also establishes the Central Office of Investigative Services and repeals provisions relating to the Department of Children and Family Services, Agency for Persons with Disabilities, Agency for Health Care Administration, and Department of Health. **The Council supports an Agency for Persons with Disabilities that is easily recognizable, and as autonomous as possible.**

EFFECTIVE DATE: July 1, 2011

2/9/2011 SENATE Referred to Health Regulation; Children, Families, and Elder Affairs; Governmental Oversight and Accountability; Budget

**Identical**

**HB 0115 Relating to Creation of the Department of Health and Human Services -Adkins**

**01/25/2011 HOUSE -Now in Health & Human Services Quality Subcommittee**

**SB 1192 <http://www.flsenate.gov/Session/Bill/2011/1192> - Relating to Public Records/Regional Autism Centers- Rich**

This bill provides an exemption from public records requirements for all records that relate to a client of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center or participates in center activities. The bill provides for release of specified confidential and exempt information by a center under certain circumstances and generally strengthens and clarifies confidentiality issues for those who use the services of the Regional Autism Centers. **The Council supports this bill.**

EFFECTIVE DATE: July 1, 2011

3/7/2011 SENATE Referred to Children, Families, and Elder Affairs; Health Regulation; Governmental Oversight and Accountability

**Identical**

**HB 0579- Relating to Pub. Rec./Regional Autism Centers -Coley**

**02/16/2011 HOUSE Now in Government Operations Subcommittee**

**SB 0566 <http://www.flsenate.gov/Session/Bill/2011/0566> - Relating to Special Health Care Needs/Adolescents/Young Adults -Wise**

This bill establishes a program within the Division of Children's Medical Services Network in the Department of Health to implement a health care transition program for adolescents and young adults who have special health care needs. The bill specifies duties of the office with respect to the oversight, implementation, and coordination of the program. The bill requires that at least one proposed health and transition services program be associated with each of the regions of the Children's Medical Services Network. The bill provides for education about Health Care Transition. **The Council supports this bill which is in line with the Councils legislative priority on Health Care Transition.**

EFFECTIVE DATE: July 1, 2011

2/9/2011 SENATE Referred to Health Regulation; Children, Families, and Elder Affairs; Budget

**SB 0100** <http://www.flsenate.gov/Session/Bill/2011/0100> - Relating to Autism - Ring

This bill requires that a physician refer a minor to an appropriate specialist for screening for autism spectrum disorder under certain circumstances. It requires that certain insurers and health maintenance organizations provide direct patient access to an appropriate specialist for screening for or evaluations or diagnosis of autism spectrum disorder.

EFFECTIVE DATE: July 1, 2011

11/29/2010 SENATE Referred to Health Regulation; Banking and Insurance; Budget

**Identical Bills**

**HB 1431 - Relating to Autism by Hager**

03/08/11 HOUSE Filed