

Paolo Annino  
J.D., PhD  
Glass Professor of  
Public Interest Law  
Florida State University  
College of Law  
[pannino@law.fsu.edu](mailto:pannino@law.fsu.edu)

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## **Video Training on the Florida Developmental Disability**

### **Medicaid Waiver**

#### **Four Part Training:**

1. What is a DD Waiver?
2. How does a Child or Adult become Eligible for the DD Waiver?
3. How does a Child or Adult get off the 20,000-Plus-Person Wait List?
4. How does a Child or Adult receive DD Waiver Services?
  - a. Part 4 includes Q & A.

#### **Part 1: What is a DD Waiver?**

The goal of Part 1 is to understand the purpose of a DD Waiver and to distinguish a DD Waiver from another Medicaid program, which covers almost all poor children, E.P.S.D.T.

A) Great Opportunity for all persons on the DD Waiver waitlist! The Florida Legislature has provided funding to take over 2,000 persons off the wait list. This will directly help the DCF children on the waitlist. *See* Chapter 2015-222, Section 20, Laws of Florida.

B) The point of the DD Waiver is to prevent institutionalization. *See* Rule 59-G-13.080(1), FAC.

1. Florida has a history of institutionalization of persons with developmental disabilities.

a. Farm Colony for the Epileptic and Feeble Minded in Gainesville, FL. 1921-1961.

b. Sunland Training Centers 1961-1980.

C) DD Waiver: a special Medicaid program, which provides services for people to live in the community. Habilitation Services. *See*, Florida Medicaid, Developmental Disabilities Waiver Services Coverage and Limitations Handbook, Nov. 2010; 59G-13.083 FAC.

D) What is Medicaid? A federal and state cooperative program to help certain groups of poor, needy persons by providing them a comprehensive health coverage plan. *See* The Advocate's Guide to the Medicaid Program, The National Health Law Program, May 2011.

E) How Medicaid works?

1. Managed Medical Assistance (MMA).

2. Almost all Florida Medicaid recipients are on MMA, managed care.

3. DD Waiver recipients have a choice to be on MMA.

*See* "Medicaid Managed Care in Florida: Federal Waiver Approval and Implementation", Jesse Ball DuPont Fund, October 2013.

F) Medicaid State Plan, Mandatory Service, Early Periodic Screening Diagnostic Treatment (EPSDT) 42 USC 1396(a)(43); Section 409.905(2), Fla. Stat.

1. Almost all poor children are covered by EPSDT. (Major exception: undocumented children).
2. Mandatory Medicaid Program, not optional.
3. The purpose of EPSDT is to “correct or ameliorate” physical and mental illnesses and conditions. 42 U.S.C. §1396d(a).

G) DD Waiver versus EPSDT:

1. Different Medicaid programs.
2. DD Waiver covers adults and children; EPSDT covers only children under the age of 21.
3. DD Waiver (Habilitation) versus EPSDT (Rehabilitation).
4. *See Garrido v. Dudek*, 731 F.3d 1152 (11<sup>th</sup> Cir. 2013) for discussion of EPSDT program and the right to receive behavioral services under EPSDT
5. Children can receive both EPSDT and DD waiver services. *See Russell v. APD*, 929 So. 2d 601 (Fla. 1st DCA 2006).

H) DD Waiver is one of the several Florida’s Home and Community Based Services Waivers (HCBS); HBCS waiver is also called a 1915(c) Waiver. 42 U.S.C. 1396 n (c)(1). See also, FAC 59-13.080(9) (Fla. list of HCBS Waivers).

1. Purpose of all HCBS waivers is to prevent institutionalization. FAC 59G-13.080.
2. It is for persons who require level of care of hospital, nursing facility or intermediate care facility (ICF). 42 CFR 441.301.
3. In addition to the DD waiver, Florida also has a Traumatic Brain Injury/Spinal Cord Injury Waiver. *See Cruz v. Dudek*, 2010 WL 4284955 (S.D. Fla. Oct.

12, 2010) for a discussion of this waiver limited to Traumatic Brain Injury/  
Spinal Cord Injury.

4. Florida's DD Waiver applies only to persons who are developmentally delayed as defined by Section 393 Fla. Stat.

**Part 2: How does a Child or Adult become Eligible for a DD Waiver?**

- a) Application stage: application submitted to local APD office. Section 393.065(1), Fla.Stat.
- b) APD reviews application; 45 days for children under 6 years of age; 60 days for persons over 6 years of age. F.S. 393.065(1)
- c) Evaluations, Evaluations, Evaluations. Attach to application to establish a DD under F.S. 393
- d) Collect and Construct Evaluations:
  - a. Collect: School records, especially IEPs.
  - b. Foster care/DCF evaluations.
  - c. Social security evaluations for foster children who are on SSI.
  - d. Juvenile delinquency evaluations- competency evaluations.
  - e. Construct: Request the foster care court to order a DD evaluation.
  - f. Request the Community Based Care organization and the local Guardian ad Litem office for funding to cover the cost of DD evaluation.
- e) Section 393, Fla. Stat. lists and defines the requirements for six developmental disabilities:

- a. Autism, cerebral palsy, intellectual disability, prader-willi, spina bifida, and down syndrome.
  - b. Example: Intellectual Disability: two standard deviations below the mean and deficits in adaptive behavior. Section 393(21), Fla. Stat.
- f) Administrative Hearing Stage:
- a. 30 days to appeal to APD.
  - b. De novo.
  - c. Preponderance of evidence.
  - d. Burden of proof. *See Balino v. HRS*, 348 So2d 349 (Fla. 1<sup>st</sup> DCA 1977).
- g) Discovery: request for production of documents: want to know exactly why APD denied eligibility at the application stage. Interrogatories- witness list.
- h) Notice of appearance/motion for qualified representative. FAC 65-2.058.
- i) Fair hearing; DCF hearing officers. DCA fair hearing rules apply. FAC 65-2.042 - 65-2.066.
- j) Telephonic.
- k) Exhibit notebook: send to hearing officer, APD, and your witness before the hearing.
- l) Do not waive opening statement: need to frame the specific issue.
- m) Two witnesses: expert and fact witnesses.
- a. You will lose if you do not have an expert witness.

- b. Expert witness-tells two stories: 1) why your client meets the medical requirements of Section 393, Fla. Stat.; 2) why the APD's evaluations are inaccurate.
  - c. Fact witness knows the child: tells "day in the life" story. Foster parent, case worker, etc.
- n) After hearing:
- a. Proposed Recommended Order.
  - b. Recommended Order.
  - c. Exceptions.
  - d. APD final order.

**Part 3: How does a Child or Adult get off the 20,000-Plus-Person Wait List?**

- a. There is more than a 20,000 person wait list for a DD waiver.
- b. Great Opportunity: The 2015 Legislature provided funding to take over 2,000 persons off the waitlist. Many children removed from the waitlist will be DCF children.
- c. There are two ways to get off the waitlist and obtain DD services:
  - a. Waitlist Priority Statute F.S. 393.065(5).
  - b. General Appropriations Act, proviso language, Chapter 2015-222, Section 20.
- d. Section 393.065(5), Fla. Stat. lists seven categories:
  - a. Category 1, Crisis.
  - b. Category 2, DCF kids.
- e. What does "Crisis" mean?

- a. 1st priority: Homeless.
- b. 2nd priority: Danger to oneself or other.
- c. 3d Priority: caregiver can no longer take care of the consumer.

*See* Russell v. APD, 929 So2d 601 (Fla 1st DCA 2006); FAC 65G-1.046; 65G-1.047(4)-(6)

*See also* A.G.Q. v. A.P.D., 105 So.3d 1289 (Fla. 1st DCA 2013)

- f. Crisis Application goes to local APD Office:
  - a. Attach Records, Records, Records, to establish crisis.
  - b. Letters, eviction notices, hospital records, police arrests, Baker Acts, etc.
  - c. Must also show intensity and frequency.
- g. Right to administrative hearing:
  - a. Fair Hearing: FAC-65-2.042 – 65-2.066.
  - b. Witnesses: GAL, CBC case worker, foster parent, etc.
- h. The Second Way: The General Appropriation Act, Chapter 2015-222, Section 20, proviso language.
  - a. “shall be offered a slot.”
  - b. persons in “crisis.”
  - c. DCF kids “transitioning” to “finalization” of
    - i. Adoption.
    - ii. Reunification with relative.
    - iii. Permanent placement with relative.
    - iv. Guardianship with non-relative.

- d. DCF kids in Extended Foster Care, 18-21 years old who need a Medicaid Waiver. Section 39.6251, Fla. Stat.
- e. Former DCF kids, not in Extended Foster Care, 18-21 years old who need a Medicaid Waiver. Section 39.6251(5)(c), Fla. Stat.
- f. Apply with DCF Liaison or APD local office. Submit packet verifying proviso eligibility.

**Part 4: How does a Child or Adult receive DD Waiver Services?**

- a. The 1st step to receiving DD waiver services is choosing a waiver support coordinator. *See*, Florida Medicaid, Developmental Disabilities Waiver Services Coverage and Limitations Handbook, Nov. 2010 1-7. (Note: a draft handbook is pending. Florida Medicaid, Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitation Handbook).
- b. Waiver Support Coordinator:
  - a. Create cost plan- list services, costs, and providers.
  - b. Support plan- needed services.
  - c. Monitor, advocate for DD and non-DD services.
  - d. Evaluate, maintain records and locate services.
  - e. Guide customer through iBudget.
- c. What is iBudget?
  - a. Work in progress: the Goal is to provide the consumer greater flexibility once the consumer's budget has been established.



- b. Proposed Rules held invalid. *See* G.B. v. APD, 143 So.3d 454 (Fla 1<sup>st</sup> DCA 2014).
- c. New proposed rules are in workshop. Florida Administrative Register, Vol. 40, No. 235, Dec. 5, 2014. 65G-4.013 – 65G-4.0218.
- d. iBudget Handbook in draft form. Florida Medicaid, Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook (Draft).
- d. First step of iBudget: QSI: Questionnaire for Situational Information. *See*, Section 393.0661, Fla. Stat.
- e. Based on the answers on the QSI, APD uses an “algorithm” to produce an “algorithm allocation.” *See* G.B. v. APD, 143 So3d 454 (Fla. 1<sup>st</sup> DCA 2014).
- f. “Algorithm allocation” is the floor to produce the consumer’s individual budget (iBudget).
- g. Significant Additional Needs (SAN):
  - a. One time need.
  - b. Extraordinary need.
  - c. New need after iBudget approved.

*See* proposed rule, 65G-4.0213.

- h. What services are available under the DD Waiver?
  - a. Companion Services.
  - b. Supported employment.

- c. Adult day training.
  - d. Environmental accessible adaptations.
  - e. In-house supports.
  - f. Respite.
  - g. Residential habilitation services.
  - h. Support coordination services.
  - i. Therapeutic services.
  - j. Transportation.
  - k. Dental.
  - l. And more...
- i. The DD waiver has unique role in our health care system to prevent institutionalization.