



September 20, 2019

Director Barbara Palmer  
c/o Francis Carbone  
Agency for Persons with Disabilities  
4030 Esplanade Way  
Tallahassee, FL 32399  
Via email to: [francis.carbone@apdcares.org](mailto:francis.carbone@apdcares.org) and [apd.info@apdcares.org](mailto:apd.info@apdcares.org)

RE: Comments on the iBudget Redesign

Dear Director Palmer,

As Florida's Protection and Advocacy (P&A) System for individuals with disabilities, Disability Rights Florida (DRF) has federal authority to advocate for the protection of the rights of individuals with disabilities in the State of Florida including, but not limited to, individuals with intellectual and developmental disabilities. We have concerns regarding the Agency's lack of transparency during this Legislatively Mandated Redesign Process and the lackluster efforts the Agency has taken to elicit meaningful public comment during this process. Although not elicited, Disability Rights Florida is providing the following comments to the Draft Waiver Redesign Plan, a copy of which has been included with this letter. Although Disability Rights Florida acknowledges that this document is in Draft Form, the Final Report will be out shortly, and Disability Rights Florida has seen no indication from the Agency that anything other than this version is available for review.

These comments are written to follow the sequence of the Draft Waiver Redesign Plan and do not indicate any priority.

**Section II. D. Explanation of the Algorithm Process and E. Explanation of the Significant Additional Need (SAN) Process**

The Agency has provided a brief, but informative overview regarding the SAN and Algorithm Process, however, Disability Rights Florida would comment that the Agency should take the opportunity to educate the Legislature regarding the accuracy of the Algorithm Process and the vital nature of the SAN request in formulating an individual's budget. This information should include the total number of recipients receiving SAN dollars<sup>1</sup> and that on average

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<sup>1</sup> Per the Agency's document titled "040419\_Additional\_SAN\_analysis\_042019", 8,276 recipients received SAN funding in 2017 and 6,863 recipients received SAN funding in 2018. A copy of this document has been provided with these comments.

individuals receiving SAN dollars are increasing their budgets by 60 to 70%. Without this process, those individuals would be at risk of institutionalization because of shortfalls within the algorithm which doesn't accurately predict the needs of all individuals on the Waiver.

#### **Section IV. Budget Predictability C. Overview of Highest Cost Drivers Based on Data Analysis**

Disability Rights Florida would like to highlight that by the Agency's own review of their data that individuals served in the Family Home are spending \$40,000 less on average than individuals in Licensed Facilities. Disability Rights Florida would encourage the Agency to explore what actions can be taken to promote and incentivize the serving of individuals in their Family Home as a cost savings measure.

Any cost savings measures, such as provider rate adjustments, services limitations, services eliminations, or caps to cost plans, that will limit provider availability or services to individuals living in the Family Home or Supported Living setting will increase costs if those individuals are required to transition to Group Homes or institutional placements. The Agency mentions that, by service, Residential Habilitation is the costliest services. If an individual's services shift from lower cost services to Residential Habilitation, the Agency will spend more per recipient than they are now. Further, Florida does not have the Group Home provider capacity to serve those recipients who would lose their Family Home/Supported Living placements.

#### **Section C. 3. APD Analysis of SAN Increases**

Disability Rights Florida is in agreement that data regarding the reasons for SAN Requests should be included. However, we would again recommend that the Agency explain that SAN requests are made because the algorithm does not accurately predict the need for services for all individuals on the Waiver.

#### **Section IV. "D. Options to Control Cost in Current Design Including: 1. Institute Individual Cost Limit 2. Enforce iBudget Algorithm"**

Up to this point in its Draft Report, the Agency has provided information and data in order to educate the Legislature regarding the program and its history. This is the first instance in the report that Disability Rights Florida noted an option to "Control Cost". The inclusion of this information in this section of the Report could be easily overlooked and is not flushed out with any analysis of those options. If the Agency intends to include an "Individual Cost Limit or Enforce the iBudget Algorithm" proposal, the Agency should move this information to "Section VI. Approaches" and do an analysis of the negative effect those measures will have on recipients. That analysis of these two approaches should include the determinantal effect on more than 6,000 recipients who rely on SANs funding for their budget and the potential for litigation these proposals would have.

## **Section V. Services C. Options for Elimination of Coverage for Services that are not Affordable Based on Available Resources in Current Design**

The draft table of cost-containment initiatives is alarming in its simplistic approach. Disability Rights Florida would caution the Agency against presenting cost-containment initiatives without including a section regarding the negative impact to individuals receiving services from the Waiver.

To specially address a few of the initiatives presented; a rate adjustment to pay Behavior Analysts with higher qualifications at the same rate as those with lower qualifications will lead to driving the most qualified Behavior Analysts to stop providing services through the Waiver. This service is already underutilized because the provider network is not adequate to serve all the individuals who have this service authorized on their cost plans. Any measure which will further deplete this provider network will lead to individuals with behavioral concerns being transitioned from Family Homes or lower cost Group Homes to more restrictive behavioral focused settings or Institutional Care Facilities.

Further, reductions in services limitations, limiting the Waiver to “core” services, or limiting an individual’s cost plan to a maximum amount, will have the same effect as described above. Although there may be a perceived cost savings, ultimately, the Agency will have to spend more on higher cost placements and many individuals will lose their ability to live independently in the community.

## **Section VI. Approach:**

Disability Rights Florida would encourage the Agency to elaborate on the information contained in this section. The Five Approaches discussed include “Rate adjustment, Service Elimination or Limitation, Utilization Management, Service Restructuring, and Capping an Individuals’ Cost Plan and/or Expenditure”. With regard to “Rate Adjustment”, the Agency should add that a rate adjustment, although it does not reduce the quantity of service an individual is authorized to receive, can reduce the quantity of services an individual receives if there are no longer providers willing to work for the new rate. Although the Agency does include this information later in the Draft Plan, we would urge them to also include that statement in this section.

## **Section VII. Presentation of Options:**

**B.1. Rate Adjustments:** Disability Rights Florida would renew the comment above regarding the practical effect of a singular rate for all Behavior Analyst providers.

**B.2. Limitations of Services:** As a general comment the Agency has not provided any information on the cost savings that could be realized by each of these options. Further, a few of these initiatives such as limiting Life Skills Development and Behavioral Assistants in Behavior

Focused Group Homes will have a practical effect of increasing the needs of individuals to use higher cost services. Without Behavioral Assistant services allowable in Behavioral Focused Group Homes, individuals who have needed this service in order to be successfully placed in a Behavioral Focused Group Home will have to be transitioned back to a higher cost level of Residential Habilitation to ensure appropriate supports are provided. Further without the additional support coming in, Providers will be discharging those individuals whose level of care cannot be met without those additional supports. As recommended throughout our comments, the Agency should not include this measure without providing the additional information regarding how the services are used currently, the proposed cost savings, and the practical effect of the proposed measure.

To continue, the limitation on Life Skills Development Levels 1-3 that the Agency proposed will negatively impact individuals because there will be two days per week that are no longer covered by a Life Skills Development service. So, instead of utilizing a lower cost companion service (Life Skills Development Level 1) for a weekend activity, individuals will need to seek a higher cost personal support service to provide for their health and safety with the added issue of limiting an individual's ability to engage in a preferred social activity or work.

Disability Rights Florida also has serious concerns for limitations of Respite services for children without the expansion of Medicaid funded Personal Care Assistance. Medicaid Personal Care Assistance does not provide care that is supervisory in nature, which occurs often for children who exhibit behavioral concerns, and restricts care to instances when the parent is working, in school, or medically limited in providing care. Although not historically classified by the Agency as a critical need services, the service is a critical need for children ages 3-20. If the Agency is going to recommend this as an option of limiting services, there should be additional information provided to the legislature regarding the estimated cost savings of this proposal and information on the practical effect on families that this limitation would have including number of families who became enrolled in the waiver in order to access Respite as a crisis services and how many families will be put back in crisis if their Respite funding is reduced to conform with the proposed limitations.

Lastly, Disability Rights Florida has concerns regarding the Agency's inclusion of proposed limitations on Occupational Therapy (OT), Physical Therapy (PT), and Speech Therapy (ST) based on the amount of weekly Nursing services that an individual receives. Our concern is derived from the shifting of the provision of therapy services provided by licensed OT, PT, and ST providers to a nurse who may or may not have the training necessary to provide the therapy. Although a nurse does often work with the therapist to complete an in-home therapy plan, a nurse cannot be expected to completely replace the services provided by PT, OT, and ST. The Agency should carefully review all proposals to ensure they meet Medically necessity standards, including, being "consistent with generally accepted professional medical standards as determined by the Medicaid Program". Per the iBudget Handbook, providers of PT, OT, and ST must be licensed per the guidelines laid out in Florida Statutes.

### **C. Initiatives Requiring Federal Approval**

Disability Rights Florida would comment that the same concerns that have been already written throughout these comments would apply to this section. The Agency does include in this

draft the statement that the proposed initiatives will have a major impact on individuals and providers. Disability Rights Florida would urge the Agency to expand upon the information and include the negative impact that each proposed measure will have on individuals receiving Waiver services. Specifically, the Agency should inform the Legislature regarding what issues occurred and continue to be experienced following the transition of Dental Services to Medicaid Managed Care. The Agency needs to be thoughtful regarding what services could be shifted to Medicaid Managed Care and how the Agency will work with AHCA to avoid the problems that occurred with the transition of Dental to Managed Care including an inadequate provider network and lack of understanding regarding the needs of the individuals receiving services through the Waiver.

Further, with regard to C. 2. Services Restructuring, cutting all CDC+ services to only include the solo rate would do nothing but penalize those CDC+ individuals who have been fortunate enough to locate an agency to provide services. Any proposals that will affect enrollment or use of the CDC+ program is going to reduce the flexibility of the Waiver. The Agency should be taking measures or restructuring the CDC+ program to make it useable by more individuals instead of restricting it to only those individuals who can obtain services through direct hires acting as a solo provider.

## **Section VIII. Flexibility**

The Agency should also include information on the flexibility offered by the CDC+ program in this section and a proposal related to how they plan to promote additional flexibility within both the iBudget and CDC+ programs.

Disability Rights Florida renews our previous public comments and would ask the Agency to take a critical look at how their current approval process promotes high utilization of services for individuals with fluctuating needs. To explain, under the current system an individual must seek authorization for the maximum amount of services they will require on their worst day and the individual must use those services on a consistent basis or risk having the services reduced or terminated. This perceived risk of reduction or termination promotes high utilization of services that may only be necessary on occasion. If the Agency changed its practices to allow more flexibility for an individual who has occasional high need days to have those services in reserve to be used as needed and did not threaten to reduce those services, individuals could utilize their services in a more efficient manner which would reflect cost savings in the long-run.

## **Section IX. Support Coordination Services**

Disability Rights Florida would caution the Agency against any measures that would make Waiver Support Coordinators (WSC) a less effective advocate for the individuals they serve. The ability of an individual to switch WSCs may be inhibited by the WSCs all working for a singular organization. Further, there will always be a concern that a WSC working for APD as an employee will not be an independent advocate for the individual and there could be potential

conflicts of interest during a Fair Hearing if the WSC is asked to testify against APD (their employer) or the individual they serve.

In summation, Disability Rights Florida would renew their previous comment that any proposal to cut services will not lead to long-term savings as it will only further higher cost placements in institutional settings. This Draft Document has been enlightening to the extent that the public can have some indication regarding what the Agency has considered bringing to the Legislature in their Final Report due September 30<sup>th</sup>, 2019. APD and AHCA should have approached this process with the transparency contemplated by Florida's Sunshine Law instead of hosting private meetings to discuss a redesign that will affect the current or future services of Florida's most vulnerable citizens. The Agency should host another Public Meeting to share the most current Draft of the Redesign Plan and allow for meaningful public comment prior to the September 30<sup>th</sup> deadline.

If you have any questions regarding these comments, please feel free to contact us.

Sincerely,

/s/

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*and*

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On Behalf of Disability Rights Florida