

# Agency for Persons with Disabilities

Update on Litigation and Regulations

Senate Appropriations Subcommittee on Health and Human Services

January 7, 2015



## **iBudget Court Decision**

- In July 2014, the First District Court of Appeal invalidated the Agency for Persons with Disabilities' (APD or agency) rules allowing customer iBudget amounts to be set below their algorithm amounts.
- In September 2014, the agency filed an emergency iBudget rule to conform to the court's decision.
- In September 2014, the agency increased the iBudget amounts of roughly 14,000 customers by over \$120 million to their algorithm amounts.
- In order for customers to access the additional amounts provided in their iBudgets they must request and be approved for increased services which are deemed medically necessary.
- The agency is tracking the requests for additional services and is monitoring expenditures to determine the potential fiscal impact of the increased iBudget amounts.
- As of December 1, 2014, service plans for this group of customers have increased by \$8.8 million. However, there has not yet been a significant increase in expenditures and more time is needed to develop a more accurate utilization projection.
- Section 29 of the 2014 General Appropriations Act reappropriated last fiscal year's unspent waiver funds to address the impacts of such litigation and the U.S. Department of Labor rule.

## **iBudget Rulemaking**

- The emergency iBudget rule expired in December 2014.
- The agency held a public workshop in November 2014 and filed a Notice of Proposed Rule to begin the rulemaking process in December for the permanent rule.
- The public hearing for the permanent rule is scheduled for January 8, 2015.

## **Moreland Court Decision**

- In November 2013, the First District Court of Appeal ruled that the agency did not provide sufficient notice to customers of the reduction in their allocations during the conversion to the iBudget system.
- In January 2014, the agency increased the iBudgets of roughly 6,500 customers by over \$30 million due to this ruling.
- Through June 2014, there was very little change in expenditures for this group of customers.
- For the first quarter of the current fiscal year the expenditures for this group of customers were \$1.7 million higher than for the same period last fiscal year.

**U.S. Department of Labor Fair Labor Standards Act to Domestic Service Rule**

- On October 1, 2013, the U.S. Department of Labor (DOL) issued a final rule (78 Fed. Reg. 60454) which altered the application of the Fair Labor Standards Act (FLSA) to domestic service effective January 1, 2015.
- The new rule requires that some agency services previously exempted from wage and overtime laws to now comply with these laws.
- The agency has engaged an actuarial firm to analyze current service rates to determine which, if any, rates are insufficient to compensate direct care workers at the minimum wage level and in those cases to recommend new actuarially sound rates.
- Budget authority was provided to the agency for the actuarial study.
- The actuary's final report is due early February, 2015.
- A credible estimate of the fiscal impact of this change would not be possible until the actuary's final report is received.
- Section 29 of the 2014 General Appropriations Act reappropriated last fiscal year's unspent waiver funds to address the impacts of the U.S. DOL rule and litigation against the agency.