

New income and asset rules for working disabled persons

by Heidi M. Brown

Did you know that your working disabled clients who are on a Medicaid waiver program, such as iBudget, Long-Term Care, Familial Dysautonomia, or Model programs, can now own more than \$2,000 in countable assets and have more than \$2,523 in countable gross monthly income? Under the Working People with Disabilities program, an individual on a Home and Community-Based Services (HCBS) waiver who is disabled and working can have up to 550% of the federal benefit rate (FBR) or \$4,626 in countable gross monthly income and up to \$13,000 in countable assets.¹ An eligible couple can have up to \$9,252 in countable gross monthly income and up to \$24,000 in countable assets.² Also, according to 1640.0205 of the DCF ACCESS Policy Manual, the asset limits exclude “a retirement account recognized by the Internal Revenue Service.”³ According to the Florida Agency for Health Care Administration’s (AHCA) frequently asked questions (FAQs), to qualify the individual or couple:

1. must be enrolled in the iBudget Waiver (Developmental Disabilities Individual Budgeting Waiver), the Long-Term Care Waiver, the Familial Dysautonomia (FD) Waiver, or Model Waiver⁴;
2. be 21 years of age or older; and
3. have their increased assets and income be due to earned income through paid employment.⁵

How to apply or remain eligible for the Working People with Disabilities program and take advantage of the increased income and asset limits depends on whether the individual receives Supplemental Security Income (SSI). If the individual or couple receives SSI, they should report changes in employment and/or increased earnings or

assets to the Social Security Administration (SSA) through the standard reporting process.⁶ If the individual or couples does not receive SSI but is enrolled in a waiver program or is applying for a waiver program, then they should report changes in employment or increases in income or assets to the Florida Department of Children and Families (DCF) through the standard reporting process.⁷

By way of history, in 2019 the Florida Legislature in its General Appropriations Act bill passed the Working People with Disabilities legislation.⁸ According to the bill, AHCA was directed to seek federal approval for a waiver, state plan amendment, or other federal authority for a program called Working People with Disabilities, which would allow “an increase to the monthly income limit up to 550 percent of the [FBR] for individuals with earned income through paid employment.”⁹ Additionally, the bill stated that single individuals could have “cash assets ... up to the amount of \$13,000” and couples could have up to \$24,000.¹⁰ Finally, the bill stated that the “participants [can] have a retirement account recognized by the Internal Revenue Service.”¹¹ The original language seemed to indicate that this program would be for adults with “developmental disabilities”;¹² however, later versions of the program rules in the proposed amendment to the Florida Administrative Code and the DCF ACCESS policy manual do not mention the requirement that the individual have a developmental disability.¹³

The first iteration of this legislation was found in the 2018 General Appropriations Act bill, which ordered AHCA to seek federal approval for the program after providing a report on the estimated costs to the Medicaid program and the status of the federal approval.¹⁴ In response, AHCA

issued a report entitled “Working People with Disabilities” (dated November 30, 2008).¹⁵ In Section I of the report, AHCA noted that the intent of the request from the Florida Legislature was to “explore potential options to enable certain groups of individuals to work and maintain access to Florida Medicaid coverage.”¹⁶ Another interesting element of the report is that AHCA acknowledged that “[m]aintaining gainful employment is considered an important aspect of adult life,” but yet “many people with disabilities are unemployed or underemployed.”¹⁷ The report quoted statistics from the United States Department of Labor that in 2017, “only 19% of people with disabilities were employed”¹⁸ and in Florida, 33% of people with disabilities were employed.¹⁹ Moreover, the report noted that people with disabilities earn less than those without disabilities.²⁰

In its report to discharge its mandate, AHCA evaluated the following three options and issued recommendations:

1. “submit a state plan amendment to ‘disregard’ certain specified income sources determining Medicaid eligibility” whereby it would “waive certain income and resource rules for individuals receiving services through home and community-based services waivers and allow it to increase the monthly income limit above 300% of the [FBR];”
2. “increase utilization of Miller Trusts/Qualified Income Trusts” for those in HCBS programs; or
3. “implement a Medicaid Buy-In program” and allow individuals to pay a premium and have it be enacted either through the Federal Balanced Budget Act or the Federal Ticket to Work Incentives Improvement Act.²¹

When evaluating Option 1, to submit a state plan amendment to apply income disregards, AHCA analyzed two different proposed income increases, 400% of the FBR and 500% of the FBR, which in 2018 equaled \$3,000 per month and \$3,750 per month, respectively.²² AHCA noted that setting the rate at 500% of FBR “would provide the ability for an individual to work more hours and/or at a higher paying position than the first approach.”²³ To implement this option, AHCA reasoned that the State of Florida can “apply income disregards in several different ways”; however, to effectuate the intent of the Working People with Disabilities program, DCF would only allow these earned income disregards for people applying for waivers and those “who have increased income due to employment, as opposed to other sources, such as Social Security, unemployment benefits, gifts, etc.”²⁴ AHCA estimated that this method would affect approximately 13,397 people who are enrolled in HCBS programs, including approximately 2,200 people on the iBudget program and 11,197 who are receiving services through the Long-Term Care waiver.²⁵ At the time of the report, AHCA noted that the total maximum number of people who could enroll in iBudget was 40,818, in the Long-Term Care program was 70,702, and in the Familial Dysautonomia waiver or Model waiver was 35.²⁶ Finally, AHCA opined that the costs to the State of Florida to implement this specific change would be about \$160,000 and would take about one year to obtain the necessary federal approval.²⁷

For Option 2, ACHA described how Miller Trusts or qualified income trusts (QITs) typically work for applicants who have too much income to qualify for the Institutional Care program, Institutional Hospice, Program of All-Inclusive Care for the Elderly, or HCBS.²⁸ AHCA acknowledged that applicants whose income is too high may already use QITs to obtain eligibility.²⁹ Then AHCA listed certain considerations, such as, it

would not be expensive for the State to implement this program; however, that applicants who use a QIT do not enjoy the benefits of the additional income and would thus not be able to effectuate the purpose of the program, which is to allow working people with disabilities to increase their income yet still be eligible for Medicaid.³⁰ Additionally, AHCA stated that applicants who use a QIT undergo a burden due to the legal and technical requirements of establishing the QIT and providing proper trust administration and funding.³¹ AHCA noted that this option would not require federal approval and the cost to implement would be low as they could use existing resources.³² For evaluating the impact on the targeted population, AHCA once again observed that this option may affect approximately 13,397 applicants that are currently employed and on the iBudget waiver or are ages 18 to 64 and on the Long-Term Care waiver.³³ The report then stated that in June 2018, there were 6,752 QITs being used for eligibility purposes of which only 1,553 or 23% were for recipients of HCBS programs.

Regarding Option 3, where eligible individuals could buy-in to Medicaid, AHCA remarked that if the buy-in is promulgated, then not only working disabled people who are on HCBS waivers could participate, but “all working people with disabilities would be eligible to buy-in” because in order to increase limits for working people with disabilities, Florida would have to add a Medicaid eligibility group to the State Medicaid plan or to its HBCS waivers, which would increase the number of people eligible for Florida Medicaid.³⁴ AHCA was unable to calculate the fiscal impact; however, AHCA was able to state that there would be increased costs to update the ACCESS Florida computer system, train staff, hold fair hearings, and

pay for medical care for the new recipients.³⁵ Finally, AHCA noted that it would require at least two years to implement a Medicaid buy-in.³⁶

Ultimately, AHCA recommended submitting a state plan amendment with income disregards as the most effective method to implement the Working People with Disabilities program.³⁷ AHCA “determined this to be the most direct path to implement the program” while at the same time having a low fiscal impact on the State and the least administrative burden on the individuals receiving HCBS services.³⁸

In terms of proper rule-making authority, DCF issued a Notice of Development of Rulemaking on April 30, 2021, where it proposed to “amend rule 65A-1.712, F.A.C. to codify federal requirements, codify a waiver group’s resource limits, and clarify federal guidance regarding SSI-Related Medicaid Resource Eligibility criteria.”³⁹ Along with amending rules regarding the use of pooled trusts for those over age 64, the amendments would have amended 65A-1.712(1)(g) regarding HCBS programs, to add a new subsection (1)(g) 2, which stated “[i]ndividuals qualifying under Working People with Disabilities cannot have countable resources exceeding \$13,000 [and] [i]ndividuals can exclude one Individual Retirement Account (IRA) recognized by the Internal Revenue Service.” Also, the amendment would have added new subsection (1)(g)3, which stated “[c]ouples qualifying under Working People with Disabilities cannot have countable resources exceeding \$24,000 [and] [c]ouples can exclude one Individual Retirement Account (IRA) recognized by the Internal Revenue Service for each eligible spouse.”⁴⁰ As of February 11, 2022, Rule 65A-1.712 has not been

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amended and implemented; however, Rule 65A-1.716 (5)(b) regarding Income and Resource Criteria has been amended to reflect the new income limits and asset limits.⁴¹ In addition, the definitions in Rule 65A-1.701 have been amended to define the term *Working People with Disabilities (WPwD) eligibility* as “[t]he increased income and resource limits allowed to individuals aged 21 and older with earned income and who are enrolled in a HCBS waiver.”⁴²

As a result of the implementation of the Working People with Disabilities program, income and asset levels have been increased for those who work and are on an HCBS waiver program such as iBudget, Long-Term Care, FD, or Model. Instead of asset limits of \$2,000 for individuals and \$3,000 for a couple, the asset limits are \$13,000 for individuals and \$24,000 for couples. Also, the individual is allowed to have one retirement account that is not counted, and spouses may each have one retirement account that is not counted. These welcome changes should allow applicants and recipients to earn more money from work and be more productive. It should also allow more working disabled people to qualify for Medicaid, who otherwise would not have met the income limit.



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Endnotes

1 See FLA. DEP’T of Children & Families ACCESS FLA. Policy Manual Appendix A-9 available at https://www.myflfamilies.com/service-programs/access/docs/esspolicymanual/a_09.pdf.

2 *Id.*

3 See FLA. DEP’T of Children & Families ACCESS FLA. Policy Manual, Ch. 1640.0205 available at <file:///C:/Users/12399/Documents/Work/ELS/Medicaid%20Committee/Articles/Increase%20in%20Income%20and%20Assets%20Limits%20for%20Working%20Disabled%20Persons/1630%20DCF%20policy%20manual.pdf>.

4 FLA. Agency for Health Care Administration Florida “Did You Know You Can Work and Also Receive Home and Community-Based Waiver Services?” available at https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/wpwd_Handout.pdf.

5 See FLA. Agency for Health Care Administration Florida Medicaid Working People with Disability Frequently Asked Questions, at question 2, available at https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/wpwd_FAQ.pdf and FLA. Agency for Health Care Administration Florida “Did You Know You Can Work and Also Receive Home and Community-Based Waiver Services?” available at https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/wpwd_Handout.pdf.

6 See FLA. Agency for Health Care Administration Florida Medicaid Working People with Disability Frequently Asked Questions, at question 2, available at https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/wpwd_FAQ.pdf.

7 *Id.* NB., it may be a good idea to state in the Notes text box on the ACCESS application/Changes report form or cover letter that the individual or couple qualifies for Working People with Disabilities and list the policy manual cite and increased asset and income limits.

8 2019 FL. ALS 115, 2019 Fla. Laws ch. 115, 2019 Fla. SB 2500, 2019 FL. ALS 115, 2019 Fla. Laws ch. 115, 2019 Fla. SB 2500, at page 64 line 218, available at <http://laws.flrules.org/2019/115>.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.* The bill also directed AHCA to enact the program after federal approval and provide a report by June 20, 2020, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives. *Id.*

13 See *supra* note 2 and *infra* notes 38-41.

14 2018 FL. ALS 9, 2018 Fla. Laws ch. 9, 2018 Fla. HB 5001, 2018 FL. ALS 9, 2018 Fla. Laws ch. 9, 2018 Fla. HB 5001, at Page 61, line 214, available at <http://laws.flrules.org/2018/9>.

15 FLA. Agency for Health Care Administration, Working People with Disabilities Report to the Florida Legislature, November 30, 2018, available at https://ahca.myflorida.com/medicaid/recent_presentations/Working_People_with_Disabilities_Report_Final.pdf.

16 *Id.* at page 4.

17 *Id.*

18 *Id.* quoting U.S. Dep’t of Labor, Bureau of Labor Statistics (2018). Persons with a Disability: Labor Force Characteristics Summary.

19 *Id.* quoting Erickson, W. Lee, C., & von

Schrader, S. (2018). 2016 Disability Status Report: Florida.

20 *Id.* quoting U.S. Census Bureau (2017). Median Earnings in the Past 12 Months (in 2016 inflation-adjusted dollars) by Disability Status by Sex for the Civilian Noninstitutionalized Population 16 Years and Over with Earnings: Civilian noninstitutionalized population 16 years and over with earnings in the past 12 months.

21 *Id.*

22 *Id.* at page 15. For a couple, the amounts would be \$6,000 and \$7,500, respectively. *Id.*

23 *Id.* at page 16. Also, AHCA notes that “there is no specific federal limit on the income disregards” that the Florida Legislature could choose. *Id.*

24 *Id.*

25 *Id.* at page 17. To arrive at the estimated person affected in the Long-Term Care waiver, AHCA counted the individuals in the program who are ages 18 to 64, but AHCA believed the actual number of people with disabilities who are employed or willing to be employed is significantly lower. *Id.*

26 *Id.* In the report, AHCA acknowledged that enrollees in the FD waiver and Model waiver are unlikely to be able or willing to work given their young age and spinocerebellar disease. *Id.*

27 *Id.* at page 17-18.

28 *Id.* at page 19-20.

29 *Id.* at page 20.

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.* at page 22.

35 *Id.* at page 28.

36 *Id.*

37 *Id.* at page 3.

38 *Id.* at page 30.

39 See Florida Administrative Code and Florida Administrative Registrar at <https://www.flrules.org/gateway/ruleno.asp?id=65A-1.712&PDate=4/30/2021&Section=1>. This Notice was published in Vol. 47/84.

40 Unadopted Proposed Rule (1)(g)2 – 3, Fla. Admin. Code Ann. R. 65A-1.712 (1)(g)2 – 3, which was given to author.

41 Fla. Admin. Code Ann. R. 65A-1.716 (5) (6) available at <https://www.flrules.org/gateway/RuleNo.asp?title=PUBLIC%20ASSISTANCE%20PROGRAMS&ID=65A-1.716>.

42 Fla. Admin. Code Ann. R. 65A-1.701 (75) available at <https://www.flrules.org/gateway/RuleNo.asp?title=PUBLIC%20ASSISTANCE%20PROGRAMS&ID=65A-1.701>.

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