

Notice of Proposed Rule

DEPARTMENT OF CHILDREN AND FAMILIES

Agency for Persons with Disabilities

RULE NOS.:RULE TITLES:

65G-13.001 Definitions

65G-13.002 Individual and Family Supports (IFS) Determination Procedure

65G-13.003 Individual and Family Supports Prioritization Criteria

PURPOSE AND EFFECT: The purpose of these new rules is to establish guidelines and eligibility requirements for the agency's administration of individual and family supports utilizing community based services authorized under Section 393.066, F.S.

SUMMARY: These rules implement the provisions of s. 393.066, F.S., which authorize the Agency to adopt rules providing definitions, eligibility criteria, and procedures for the purchase of services provided pursuant to this section for persons with developmental disabilities to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Specifically, the Agency relied upon the nature of the rules and the agency's analysis of factors determining that a SERC was not required.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 393.501 FS.

LAW IMPLEMENTED: 393.066 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kent Carroll, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)414-8501, kent.carroll@apdcares.org

THE FULL TEXT OF THE PROPOSED RULE IS:

65G-13.001Definitions.

(1) Client: means an individual served by the Agency for Persons with Disabilities who meets eligibility criteria as defined in 393.063(9), F.S.

(2) iBudget Amount: total amount of funds that have been approved by the agency, pursuant to the iBudget Rules, for an individual to expend for waiver services during a fiscal year.

(3) iBudget: The home and community-based services Medicaid waiver program under Section 409.906, F.S., that consists of the waiver service delivery system utilizing individual budgets required pursuant to Section 393.0662, F.S. and under which the Agency for Persons with Disabilities operates the Developmental Disabilities Individual Budgeting Waiver.

(4) Individuals and Family Supports (IFS): means assistance the Agency provides in meeting critical services needs of individuals served by the Agency funded by Social Services Block Grant dollars and General Revenue.

(5) Individual representative: The individual's parent (for a minor), guardian, guardian advocate, a designated person holding a power of attorney for decisions regarding health care or public benefits, designated attorney or a healthcare surrogate, or in the absence of any of the above, a medical proxy as determined under s. 765.401, F.S. (7) In-Home Subsidy: means financial assistance the Agency provides for individuals receiving Supported Living

services when funds are available that the Agency reassesses quarterly to supplement the individuals income, based on his or her individual need.

(6) Regional office: Agency for Persons with Disabilities office serving a designated local geographical area.

(7) Social Services Block Grant (SSBG): federal funds that enable states to furnish social services to meet the needs of individuals residing within a state.

(8) Waiting List: is the prioritized list maintained by the APD Central Office of Persons with Disabilities that have been determined eligible for APD services and eligible to receive waiver services when funding is available. Rulemaking Authority 393.501(1), F.S. Law Implemented 393.066, F.S. History–New

65G-13.002-Individual and Family Supports (IFS) Determination Procedure.

(1) Subject to available funding, the Agency will accept oral or written requests for IFS funding by a client or the client's individual representative, or support coordinator.

(2) The client or client's individual representative shall request IFS funds through the Regional office located in the service area where the client resides. IFS funding can also be initiated by Agency recommendation. The Agency shall not provide IFS to a client unless the Agency has determined that the client has a developmental disability, as defined in Section 393.063(9), F.S

(3) IFS funds can only be obligated for the current fiscal year either as non-recurring services or services that recur but are only committed for the current fiscal year.

(4) Prior to authorizing the use of IFS funds the Regional office shall explore all available funding options for which the individual is eligible. The individual must utilize all available State Plan Medicaid services, school-based services, private insurance, natural supports, and any other resources which may be available to the individual before approval of IFS funds. As an example, State Plan Medicaid services for children under the age of 21 typically include, personal care assistance, therapies, consumable medical supplies, medical services, and nursing.

(5) The Regional office shall collect pertinent information and supporting documentation relevant to an IFS request and conduct a preliminary assessment based on the IFS status criteria specified in Rule 65G-13.003, F.A.C.

(a) DENIAL OR TERMINATION: If the Regional office concludes that the client does not meet IFS criteria or that the services needed are available from other agencies or programs, or covered by other third-party payers, the Regional office will deny the IFS request and provide written notification of the denial to the client or client's individual representative. Individuals denied IFS funding requests have the right to request an administrative hearing pursuant to ss. 120.569 and 120.57.

(b) APPROVAL: If the Regional office concludes that the client meets IFS status and does not have access to insurance, other agencies or programs for needed services, or concludes that programs in which the applicant is participating cannot meet the applicant's service needs, the Regional office will approve the IFS request. After the Agency determines the IFS funding amount the Regional office will provide written notice of the IFS funding amount to the client or client's individual representative.

(c) Within 30 days of receipt of a request for IFS funding, the Agency shall approve, deny (in whole or in part), or request additional documentation concerning the request. If the request does not include all necessary documentation, the Agency shall provide the client with a written notice of what additional documentation is required. The client shall provide the documentation within 10 days, or notify the Agency in writing that the client wishes the Agency to render its decision based upon the documentation provided. If additional documentation is requested, the deadline for the Agency's response shall be extended to 60 days following the receipt of the original request. Nothing in this section prohibits the authorization of emergency services on a temporary basis through the Agency's Regional offices.

(6) If the Agency denied the IFS based on lack of documentation and additional documentation becomes available, or a change in the applicant's situation may affect the applicant's status for IFS determination, the applicant may reapply to the Regional Office for IFS consideration.

(7) Allowable IFS Services: The following services are allowable under IFS funding:

(a) Life Skills Development, which includes Adult Day Training, Supported Employment, and Companion Services

(b) Family care services, which includes Respite care, Guardian Advocate Referrals, and Recreation used to provide temporary relief for a brief planned absence of the caregiver.

(c) Medical and Dental services, which includes nursing services, consumable medical supplies, medical evaluations, and dental services

(d) Personal Supports, including personal care assistance

(e) Residential Habilitation and facility services

(f) Social Services, which includes Support Coordination, Support Planning, Psychological Evaluations, and Interpreter Services,

(g) Specialized Therapies, which include Physical Therapy, Speech Therapy, Occupational Therapy, Respiratory Therapy, Specialized Mental Health Counseling, Behavior Analysis, Behavior Assistant, and Dietician services

(h) Supporting Living services, including Supported Living Coaching and In-Home Subsidies

(i) Training, which includes parent and caregiver training as part of Behavior Analysis and Behavior Assistant services, and self advocacy training

(j) Transportation to treatment and services

(k) Other facilitative and rehabilitative services, which include Environmental Accessibility Adaptations, Durable Medical Equipment, Vehicle Modifications, Competency Training, and Personal Emergency Response Systems

(8) Non-Allowable IFS services: Services and items that are not medically necessary or not intended for the direct benefit of the client may not be purchased with IFS funds. IFS funds may not to be used for experimental therapies, home repairs, spas, pools, fences, or restraint devices.

Rulemaking Authority 393.501(1), F.S. Law Implemented 393.066, F.S. History—New

65G-13.003 Individual and Family Supports Prioritization Criteria.

(1) Individuals determined to need IFS funding will be prioritized for available funds based on criteria set forth in subsections (5) through (9).

(2) If multiple IFS requests fall within the same prioritization category, they will be prioritized within that category by consideration of the intensity of services needed.

(3) The majority of IFS funds are provided to the state through federal Social Services Block Grant (SSBG), authorized under Title XX of the Social Security Act. These funds provide for a variety of services. However, federal interpretation specifically prohibits the use of SSBG funds for providing medical services, dental services, and for providing direct stipends to individuals or their families. Instead, the General Revenue funding category may be used for medical and dental services, and for in-home subsidies.

(4) The Agency will not authorize IFS funds that exceed the availability of funds.

(5) First Priority Criteria: In Home Subsidies IFS funds are to be used for individuals who are in supported living and who require stipends as provided in s. 393.0695, F.S. In-home subsidy expenditures for either a startup or ongoing subsidy can be paid only with General Revenue funds from the IFS Category. These funds cannot be used to provide a cash payment or reimbursement to an individual or family member. The payment must be made directly to the vendors.

(6) Second Priority Criteria: Emergency Services are services that are critical for health and safety and for which no other resource is available to meet the need. These include the following:

(a) Services needed to address critical needs of individuals who are not eligible for the waiver services or individuals who are on the Waiting List.

(b) Services to alleviate a potential crisis referral if the services needed are short-term and time-limited, (such as short-term respite until a caregiver recuperates from surgery) and services to assist individuals who did not meet crisis criteria but who have emergency needs.

(c) Individuals who have requested Significant Additional Needs funding above their current annual iBudget Algorithm Amount who need emergency services while waiting for final approval of the Significant Additional Needs funds. In these circumstances IFS funds may be used if there are not funds within the client's existing iBudget to provide temporary services while the Significant Additional Needs determination is made.

(d) Individuals turning 21 who will lose some Medicaid State Plan benefits and who have a continued need for services.

(e) Individuals transitioning out of the school system at age 22 and who are in need of services for employment or other meaningful day activities.

(f) Children ages 3-5 who are in transition and are in need of early intervention services not provided by Children's Medical Services (CMS) or the school system

(7) Third Priority Criteria: Supported Employment IFS are to be used for individuals who have previously received follow along supported employment services and continue to need these supports to maintain employment. Individuals who obtain a job through the non-recurring legislative appropriation, and continue their jobs into the next fiscal year yet need ongoing supports, may use IFS to maintain employment.

(8) Fourth Priority Criteria: Current Contracts - IFS are to be used to reimburse providers contracted to assist individuals on the Waiting List for services such as Life Skills Development 1, 2, or 3, etc. or Residential Habilitation. Contracts are required for any provider that exceeds the \$35,000 annual threshold for payment of all services provided to all individuals within a fiscal year. IFS are to be used to assist individuals who are already receiving ongoing services through IFS funds but have not reached the contracted expenditure threshold of \$35,000, and therefore do not require a contract.

(9) Fifth Priority Criteria: Non-Emergency Services – Services for individuals on the Waiting List who have needs for services that are not emergency in nature can be approved on a short term basis. These funds are only to be authorized if all other priorities described above have been met.

Rulemaking Authority 393.501(1), F.S. Law Implemented 393.066, F.S. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: David De La Paz

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbara Palmer

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 9, 2016

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: June 3, 2015