

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

Division: Agency for Persons with Disabilities
Board:
Rule Numbers: 65G-2.001, .0018, F.A.C.
Rule Description: Personal Allowance
Contact Person: Brett Taylor

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to reduce personal income? Yes No
2. Is the rule likely to reduce total non-farm employment? Yes No
3. Is the rule likely to reduce private housing starts? Yes No
4. Is the rule likely to reduce visitors to Florida? Yes No
5. Is the rule likely to reduce wages or salaries? Yes No
6. Is the rule likely to reduce property income? Yes No

Explanation: These rules do not directly or indirectly have any adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.

The purpose of these rules is to implement mandatory rules pursuant to section 402.33, Florida Statutes (“F.S.”). which requires the Agency to, “either charge, assess, or collect, or cause to be charged, assessed, or collected, fees for any service it provides to its clients either directly or through its agencies or contractors” and that such fees can only be collected from Agency clients’ third-party benefits and benefit payments.

Section 393.066, F.S., tasks the Agency with providing services to eligible individuals as determined in accordance with 393.065, F.S. Among those services is residential facility services which includes room and board. See 393.063, F.S.

It is also anticipated that that the General Appropriation Act 2023 will establish the room and board rate and the personal needs allowance as a proviso attached to the annual special appropriation for room and board funds for Agency clients.

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

These rules will implement the maximum reimbursement rate the Agency for Persons with Disabilities (Agency) will pay to residential facilities, licensed pursuant to s. 393.067, F.S., that provide room and board to Agency clients.

The reimbursement rate has been included in the operating procedure, APD OP 3-0001, which has been in place since 2004, last updated in 2014. The operating procedure calculated the maximum reimbursement rate as being up to \$583.42 (after taking into consideration client financial responsibility being paid out of third-party benefits and setting aside a personal allowance for the benefit of the client pursuant to s. 402.33, F.S.).

Personal Allowance

The personal needs allowance deduction from the SSI payment. The rule specifies that Agency clients receive eighteen (18%) percent of the federal benefit rate.

This personal allowance calculation has two consequences itself. It will ensure that Agency clients receive 1) a minimum personal needs allowance; and 2) will keep any proportional cost-of-living increase.

The figure of \$133.58 has been in use since 2014. The rule does specify a percentage, which is new. The percentage serves to allow the client to keep any cost-of-living increase proportionally and automatically, instead of having it applied wholly to room and board. This increases regulatory certitude and obviates the need for updates due to cost-of-living increases. Furthermore, the Personal Needs Allowance amount is anticipated to be specifically included in proviso with the room and board appropriation, which is likely to follow year-after-year consistent with the formula in the rule.

Section 393.067(1) provides the Agency shall by rule set facility and client care standards.

Section 393.066(1), F.S. requires that “[t]he agency shall plan, develop, organize, and implement its programs of services and treatment 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.” The personal needs allowance is part of that planning, development, and organization because the personal needs allowance contributes to both current maintenance and the material needs to live in the community. Indeed, the personal needs allowance aids in residents’ pursuit of happiness and autonomy of leisure and discretionary activities, hallmarks of community living. *Accord* §393.13(2)(e), (3)(c), (4)(b).

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

Section 393.066(1), F.S., also allows the Agency to purchase necessary services in lieu of providing services, directly, to clients when it is more cost-effective. The policy also describes how room and board payments would be paid out of client third-party benefits, after a personal allowance is deducted from said benefits.

In accordance with s. 402.33(2), F.S., the Agency, is required to establish, by rule, a process for the collection of fees from clients for services provided by contractors. Moreover, pursuant to 402.33(3) the Agency can set requirements and standards for designation of representative payees. These fees are collected from the clients' third-party benefits and benefit payments. The licensed facility is to set aside the personal allowance for the clients' sole benefit.

Through this lens, the personal needs allowance could be viewed as a fee charged by the Agency that is directly given back to the client by the provider.

However, the fee is not an "adverse impact" or "regulatory cost" under s. 120.54 or 120.541. Providers have been voluntarily following this calculation since its inception in 2004, and the current rates since 2014. Nothing in this rule charges an additional regulatory or adverse fee that has not been previously assented to.

Indeed, this proceeding to codify is being done based on feedback received from providers and stakeholders that the lack of cost-of-living updates and plain rule language was placing providers and clients in an uncertain position. Placing the percentage in the personal needs allowance section ensures that the client will keep any proportional cost of living increase, while allowing the provider and client to negotiate the difference.

Rate calculation

This rate has been historically implemented and assented to by providers. However, an objective basis exists for this rate.

Code of Federal Regulations 20 C.F.R. §416.640 states: (a) Current maintenance. We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items."

In addition, Florida Statutes also contemplate such a use.

"Persons with developmental disabilities shall receive services, within available sources, which protect the personal liberty of the individual and which are provided in the least restrictive conditions necessary to achieve the purpose of treatment."
393.13(3)(c)

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

“It is the clear, unequivocal intent of this act to guarantee individual dignity, liberty, pursuit of happiness, and protection of the civil and legal rights of persons with developmental disabilities.” §393.13(2)(e), Fla. Stat.

Each client has the right to the possession and use of his or her own clothing and personal effects . . .” §393.13(4)(b), Fla. Stat.

As a guide, the Social Security Administration uses Program Operations Manual System. The POMS is a primary source of information used by Social Security employees to process claims for Social Security benefits. The public version of POMS is identical to the version used by Social Security employees except that it does not include internal data entry and sensitive content instructions.

While only guidance, the POMS give insight to what is an appropriate category of use for personal needs expenditures. POMS GN 00602.010 lists nine categories of expenditures as examples:

a. Clothing

Disability-related adaptive clothing, bathing suits and caps, boots, gloves, hats, scarves, seasonal garments, shoes, slippers, etc.

b. Convenience Items

Music players, e-readers, computers, phones, clocks, clothes hamper, stationery, televisions, wristwatches, etc.

c. Health and Hygiene Items

Bath scale, brushes, combs, nail clippers, cosmetics, cosmetic surgery, dermatology treatments, elective or cosmetic dental treatments, hairdresser or barber costs, soaps, toilet articles, etc.

d. Hobby and Craft Items

Art supplies, cameras, photo albums, games, athletic equipment, etc.

e. Living Area Furnishings

Bedspreads, blankets, carpets, curtains, lockable chest or trunk, mirrors, pictures, pillows, posters, quilts, recliner, rocking chair, etc.

f. Miscellaneous Items

Magazine subscriptions, reasonably priced holiday presents for family or friends, restaurant meals, gift cards for movies or music, etc.

g. Staff Travel Items

Using the beneficiary's funds to pay the expenses incurred by staff accompanying the beneficiary on an outing or vacation may be an acceptable use, provided:

a correlation exists between the expense incurred and a direct benefit to the beneficiary;

the beneficiary does not have unmet current or foreseeable needs;

the expense is reasonable in relation to the beneficiary's conserved funds; and

Agency for Persons with Disabilities Statement Of Estimated Regulatory Costs (SERC)

the staff member's travel expense (e.g., food, transportation, lodging, admission ticket) is not paid for by the payee organization or from another source. The payee should never use beneficiary funds to pay for a staff member's salary or hourly wage or to compensate the payee for these costs.

NOTE: A payee must obtain SSA approval prior to using benefits for staff travel items. Add a relationship note in eRPS to document the approval, see MS 07415.002 Make Note.

h. Therapeutic Equipment

If recommended by a doctor or appropriate therapist, and not covered by any other source: book holders, crawlers, electric wheelchairs, feeding aids, hearing aids, orthopedic shoes, shower and bathroom chairs, toilet aids, walkers, etc.

i. Transportation Expenses

Beneficiary's cost of travel to visit family or for relatives to visit patient in special cases, travel to amusement parks, State fairs, summer camps, etc. Payees should never use beneficiary funds for transportation costs that are normally covered by the payee organization or another source.

Often times, these items will already be provided as basic services through the waiver or existing rules. The following estimates and above examples are given in the context of an approximation of what an average resident would spend on typical personal needs expenses over and above what the facility was required to provide.

For instance, Rule 65G-2.009(4)(a), *Florida Administrative Code*, allows for expenditures under \$25 to not need a receipt or accounting. Most providers give residents \$20 - \$25 a week as part of this rule. Assuming a four-week month, this would leave \$33.58 to save or otherwise use as discretionary spending.

However, the \$25/week allowance can and should be used for the above categories. The following is APD's objective calculation based on its training and daily experience interacting with and regulating providers.

a. Clothing
\$15/month

b. Convenience Items

Assuming this would be an electronic device or a larger expenditure, \$25/month could be saved or applied toward this.

c. Health and Hygiene Items

\$15 toward haircuts, grooming supplies, etc.

d. Hobby and Craft Items

\$15 for hobbies, board or video games, puzzles, DVD movies.

e. Living Area Furnishings

65G-2 requires much of this, a dresser, bedding, linens. The typical discretionary expenses are thus lower, around \$10. This would be used for more individualized decorations: posters, framed prints, throw pillows, etc.

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

f. Miscellaneous Items

\$50 for restaurants, movies, recreation.

g. Staff Travel Items

In Florida, these travel expenses are largely covered by the waiver.

h. Therapeutic Equipment

In Florida, this equipment is largely covered by the waiver.

i. Transportation Expenses

This expense is highly variable due to individual conditions. This would likely be part of the savings under the conserved funds. Examples of expenses are holiday or special event travel, like fuel or airfare.

The personal needs allowance serves to ensure that clients with developmental intellectual disabilities can live as independently as possible in the community, consistent with sections 402.033(3) and 393.066(1).

The money that is being set aside is not the property of the Agency licensed facilities but is an entitlement of the Agency client that resides at such facility vis a vis Florida statute.

Additionally, should the personal needs allowance set-aside reduce the remaining third-party benefit amount to less than the set rate for room and board owed to a licensed facility, the Agency will make up the difference up to the maximum rate, ensuring the provider is fully compensated using money appropriated for such purpose. The rule will serve to give regulatory certitude to providers, who will have a calculation in the rule, and clients, who will be certain they will continue to proportionally keep any cost-of-living increase to their personal needs allowance from a benefit source.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? **No**

1. Is the rule likely to raise the price of goods or services provided by Florida business?

Yes No

2. Is the rule likely to add regulation that is not present in other states or markets?

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

Yes No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e., will goods or services become too expensive to produce?

Yes No

4. Is the rule likely to cause Florida businesses to reduce workforces?

Yes No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

Yes No

6. Is the rule likely to make illegal any product or service that is currently legal?

Yes No

Explanation: This Rule does not directly or indirectly have an adverse impact on business competitiveness, productivity, or innovation as listed above. See explanation above in section A.

If any of these questions are answered “Yes,” presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

1. Current one-time costs	\$0.00
2. New one-time costs	\$0.00
3. Subtract 1 from 2	\$0.00
4. Current recurring costs	\$0.00
5. New recurring costs	\$0.00
6. Subtract 4 from 5	\$0.00
7. Number of times costs will recur in 5 years	\$0.00
8. Multiply 6 times 7	\$0.00

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

9. Add 3 to 8 \$0.00

If 9. is greater than \$1 million, there is likely an increase of regulatory costs in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule.
(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).

The number of entities that are potentially impacted is estimated to be under 2,129—which is the number of Agency licensed facilities as of May 1, 2022. The actual number is unknown, but is likely less, as it would only include such facilities that act as a representative payee of a third-party benefits or benefit payments for any resident(s) whom is an Agency client. However, all 2,129 facilities could potentially fall under the requirements of these rules.

2. A general description of the types of individuals likely to be affected by the rule.

Agency clients residing at Agency licensed residential facilities who also receive third-party benefits and/or benefit payments for whom the facility is the representative payee.

Licensees of Agency licensed group homes, whenever they serve as representative payees of third-party benefits and benefit payments on behalf of any resident of the licensed residential facility. The benefits received by the facilities go towards payment of the clients' room and board. Section 402.33, F.S., requires that a portion of those benefits be set aside for the benefit of the client, which the client may then use to pay for personal items or services.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

None. The department intends to implement the proposed rule within its current workload, with existing staff.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

2. Cost to any other state and local government entities of implementing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

3. Cost to the department of enforcing the proposed rule:

None. The department intends to enforce the proposed rule within its current workload with existing staff.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. *(Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).*

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

Agency for Persons with Disabilities Statement Of Estimated Regulatory Costs (SERC)

- *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
- *The type of small businesses that would be subject to the rule;*
- *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
- *The likely per-firm regulatory cost increase, if any).*

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

- | | | |
|---|--|---|
| <input type="checkbox"/> 1-99 | <input type="checkbox"/> 100-499 | <input checked="" type="checkbox"/> 500-999 |
| <input checked="" type="checkbox"/> 1,000-4,999 | <input type="checkbox"/> More than 5,000 | |
| <input type="checkbox"/> Unknown, please explain: | | |

Analysis of the impact on small business:

Why the regulation is needed

The set-aside and the collection of room and boards fee from third-party benefits and benefit payments is required by s. 402.33, F.S., and Agency licensed facilities have otherwise been voluntarily following the current policy as to a minimum amount, which these rules seek to codify. The rules are required to establish a minimum amount that must be set aside by an Agency licensed facility whenever it serves as representative payee for third-party benefits and/or benefit payments of an Agency client who resides within that facility. Furthermore, the standard is necessary to ensure a greater level of independence for Agency clients living in the community, i.e., the ability to use a portion of their funds for purposes that is not covered by room and board pursuant to sections 393.066(1) and 402.33(3).

The type of small businesses that would be subject to the rule

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

Agency licensed residential facilities that serve as a representative payee of certain third-party benefits and/or benefit payments of Agency clients that reside within the licensed residential facility.

**The probable impact on affected small businesses
and
The likely per-firm regulatory cost increase**

Agency-licensed facilities are eligible for room and board compensation from the Agency at a rate initially set by appropriation proviso that was placed in policy, which shall now be codified in rule. Thus, should the personal needs allowance rule reduce a reduce third-party benefits or benefit payments amount to less than the set rate for room and board, the Agency will make up the difference, ensuring the provider is fully compensated. Therefore, Agency-licensed facilities required to comply with this Rule will not be financially impacted.

Accordingly, with respect to these proposed rules, there is no financial impact on small business and no per-firm regulatory cost increase.

**Establishing less stringent compliance or reporting requirements in the rule
Section 120.54(3)(b)2.a.(I), Florida Statutes**

Establishing less stringent compliance and reporting requirements in the rules would undermine the purpose and requirements of chapters 393 and 402. The Agency is required to implement the collection of fees and that a set-aside be deducted from said fees to ensure the “development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements.” Fla. Stat. § 393.062.

**Establishing less stringent schedules or deadlines in the rule for compliance
or reporting requirements
S. 120.54(3)(b)2.a.(II), F.S.**

This Rule does not establish any particular time frames for compliance.

**Consolidating or simplifying the rule’s compliance or reporting requirements
S. 120.54(3)(b)2.a.(III), F.S.**

The Rule cannot be further simplified. It establishes a minimum personal needs allowance based upon a simple calculation for future adjustment which is linked to the maximum federal benefits rate, which is also consistent with the legislative intent set in a proviso as part of the General Appropriations Act 2023. The maximum federal

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

benefit rate is publicly available and can be found through a simple internet search, which the Agency will also make available on its website.

**Establishing performance standards or best management practices to replace
design or operational standards in the rule
S. 120.54(3)(b)2.a.(IV), F.S.**

To allow this minimum standard to be set as merely a best practice would allow for potential inconsistency in its application and enforcement. This Rule is to allow for greater consistency and predictability by licensees as to what is expected of them.

**Exempting small businesses, small counties, or small cities from any or all
requirements of the rule
S. 120.54(3)(b)2.a.(V), F.S.**

Exempting small businesses from any or all requirements of the rules would undermine the purpose of these rules as it relates to chapters 393 and 402. The small businesses that work with the Agency, and its clients, must be bound by the deadlines and standards in the rule otherwise the rule would cease to function. There is no disproportionate impact on small businesses compared to large businesses the Agency works with.

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

None.

Additional.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "B".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "C".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "D".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "E".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

#