

Notice of Development of Rulemaking

DEPARTMENT OF CHILDREN AND FAMILIES

Agency for Persons with Disabilities

RULE NOS.:RULE TITLES:

65G-4.014 Eligibility for Agency Services - Definitions

65G-4.0161 Emergency Eligibility Determination

PURPOSE AND EFFECT: The purpose and effect of these rules is to ensure that the Agency for Persons with Disabilities (“Agency”) have clear procedures and eligibility criteria for making emergency eligibility determinations for Agency applicants.

SUBJECT AREA TO BE ADDRESSED: These rules address the process and criteria used by the Agency to make an emergency eligibility determination.

RULEMAKING AUTHORITY: 393.065, 393.501, F.S.

LAW IMPLEMENTED: 393.063, 393.065, F.S.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: Monday, May 2, 2022 2:00 PM - 3:30 PM EDT

PLACE: Attendees may register for the hearing at: <https://attendee.gotowebinar.com/register/6896042793446406668>. After registering, a confirmation email will be received containing information about joining the webinar, and opportunities to offer comments and questions will be available. This workshop will address rule developments for both chapter 65G-11 and sections 65G-4.014 and 4.0161, Florida Administrative Code.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Nathan Koch at (850)922-9512 or Nathan.Koch@apdcares.org. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Nathan Koch, Deputy General Counsel, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 335, Tallahassee, FL 32399, (850)922-9512, Nathan.Koch@apdcares.org.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

65G-4.014 Eligibility for Agency Services – Definitions

(1)(9) “Agency Services” – means the home and community based supports and services to eligible persons funded through general revenue allocations or sources other than the DD Waiver.

(2) “Applicant” means an individual who has submitted an application for services (“application”) pursuant to Rule 65G-4.016, F.A.C., and an eligibility decision has not yet been made by the Agency.

(3)(1) “Autism” means a condition which meets the requirements of section 393.063, F.S., that the condition is:

(a) through (e) No change.

(4)(2) “Cerebral Palsy” – means a group of disabling symptoms of extended duration that result from damage to the developing brain during the prenatal period and characterized by paralysis, spasticity, or abnormal control of movement or posture, such as poor coordination or lack of balance, which is manifest prior to three years of age. For purposes of the rule, cerebral palsy also means the presence of other significant motor dysfunction appearing prior to age 18 due to perinatal or external events such as anoxia, oxygen deprivation, or traumatic brain injury. Excluded from this definition is motor dysfunction caused by medical events, including stroke or progressive diseases such as muscular dystrophy. The impairment from cerebral palsy must constitute a substantial handicap which is reasonably expected to continue indefinitely.

(5) “Domicile” has the same meaning as in section 393.063, F.S.

(6) “Down Syndrome” – means a condition caused by the presence of extra chromosomal material on

chromosome 21. This disorder is often associated with impairment in cognitive ability, characteristic physical growth and features, and congenital medical conditions.

(7) “Eligibility rules Rules” – means Rules rules 65G-4.014 through 65G-4.017, F.A.C., inclusive, which apply to eligibility determinations for services provided through the Agency for Persons with Disabilities for individuals with developmental disabilities.

(8) “Emergency eligibility criteria” means the applicant:

(a) is at least three years of age;

(b) is a resident of and domiciled in the state of Florida; and

(c) has provided documentation of a diagnosis of:

1. cerebral palsy, spina bifida cystica or myelomeningocele, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome, which has been established by:

a. a medical doctor;

b. a doctor of osteopathy; or

c. medical records documenting a diagnosis of before the age of 18.

2. intellectual disability with a full-scale intelligence quotient of 70 or below, which has been established by a Florida-licensed psychologist under chapter 490, F.S.; or

3. autism:

a. which is established by:

I. a Florida-licensed psychiatrist;

II. a Florida-licensed psychologist;

III. a board-certified pediatric neurologist who is qualified by training and experience to make a diagnosis of autism;

IV. a board-certified developmental pediatrician; or

V. collateral information received from another state may be accepted if the evaluator is licensed through the same credentials required for licensure in Florida for the professions listed in this subparagraph.

b. and meets one of the following conditions:

I. pervasive, neurologically based, onset during infancy or childhood, reasonably expected to continue indefinitely, and results in severe communication and behavioral disorders; or

II. at least a severity level of 3 per the Diagnostic and Statistical Manual of Mental of Mental Disorders, Version Five (“DSM-5”).

(9) “Emergency eligibility determination” means a determination made by the Agency under subsection 393.065(2), F.S., for an applicant who requests assignment to Category 1 due to crisis pursuant to Rule 65G-11.004, F.A.C. This determination is different from an eligibility decision the Agency makes pursuant to subsections 393.065(1) and (3), F.S.

(10) “Emergency intervention coordination” means a service for applicants whereby the Agency will:

(a) make appropriate referrals and mandatory reporting pursuant to sections 39.201 and 415.1034, F.S., on behalf of the applicant to access resources from other community, private, state, and federal programs and follow up with those referrals as necessary to address the applicant’s immediate needs;

(b) assist the applicant in obtaining the documentation necessary to complete a full eligibility review; and

(c) if appropriate pursuant to subsection 65G-4.016(3), F.A.C., be responsible for scheduling a comprehensive assessment to establish eligibility.

(11) “Immediate services or crisis intervention” means emergency intervention coordination.

(12)(3) “Mental Retardation or Intellectual Disability” – is evidenced by the concurrent existence of:

(a) through (d) No change.

(13) “Need for immediate services or crisis intervention” means a situation in which an applicant requires immediate assistance in order to protect themselves or others from imminent: abuse, neglect, serious bodily harm, and/or a life-threatening situation.

(14)(4) “Prader-Willi Syndrome” – means a genetic disorder which is most often associated with a random deletion of chromosome 15. Commonly associated characteristics include insatiable appetite, chronic overeating, hypotonia, short stature, obesity, and behavioral issues. Individuals diagnosed with Prader-Willi syndrome generally have mental retardation; however, an individual with Prader-Willi syndrome can be determined as eligible for

services without an accompanying diagnosis of mental retardation.

(15) “Preponderance of the evidence” means the party bearing the burden of proof must present evidence which shows that the fact to be proven is more probable than not.

(16)(5) “Spina Bifida” — For for the purposes of agency eligibility, spina bifida refers to a confirmed diagnosis of spina bifida cystica or myelomeningocele.

(17)(8) “Waiver” or “DD Waiver” — means the Home and Community-Based Services (HCBS) waiver authorized by 42 U.S.C. 1396n(c)(1) of the federal Social Security Act and section 409.906, F.S., that provides a package of Medicaid-funded home and community-based supports and services to eligible persons with developmental disabilities who live at home or in a home-like setting.

Rulemaking Authority 393.065, 393.501 F.S. Law Implemented 393.065, 393.066, F.S. History—New 5-16-12 Amended _____.

65G-4.0161 Emergency Eligibility Determination

(1) When an applicant requests assignment to Category 1 due to crisis pursuant to subsection 65G-11.004(1), F.A.C., the Agency will either:

(a) if the Agency has all the necessary information and documentation, complete a full eligibility determination pursuant to 65G-4.016, F.A.C.; or

(b) if the Agency does not have all the necessary information and documentation for a full eligibility review, complete an emergency eligibility determination. To complete an emergency eligibility determination, the Agency will review the information and documentation received from the applicant for eligibility and crisis. The Agency will, within 15 calendar days from receiving the crisis request, determine whether the applicant has established by a preponderance of the evidence that he or she meets:

1. emergency eligibility criteria, as defined in subsection 65G-4.014(8), F.A.C.; and

2. has a need for immediate services or crisis intervention, as defined in subsection 65G-4.014(13), F.A.C.

(2) If the Agency completes an emergency eligibility determination and finds the applicant does not meet the criteria for an emergency eligibility determination, the Agency will:

(a) notify the applicant, and if applicable, the applicant’s legal representative of the denial of the emergency eligibility determination along with the right to appeal the decision in accordance with paragraph 393.125(1)(a), F.S.;

(b) provide a list of documentation that is necessary for the applicant to provide to the Agency within 7 calendar days of the date of the list for a full eligibility review; and

(c) complete a full eligibility review within 45 calendar days of receiving the necessary information in paragraph (3)(b). If the necessary documentation is not received within 60 calendar days from the receipt of both the application and crisis request the Agency will make an eligibility determination based on the available documentation.

(3) If the Agency completes an emergency eligibility determination and finds the applicant meets the criteria for an emergency eligibility determination, the Agency will:

(a) notify the applicant, and if applicable, the applicant’s legal representative of the approval of the emergency eligibility determination;

(b) provide a list of documentation that is necessary for the applicant to provide to the Agency within 5 business days of the date of the list for a full eligibility review;

(c) provide emergency intervention coordination to the applicant until a full eligibility review is complete; and

(d) complete a full eligibility review within 45 calendar days of receiving the necessary information in paragraph (3)(b). If the necessary documentation is not received within 60 calendar days from the receipt of both the application and crisis request the Agency will make an eligibility determination based on the available documentation.

(4) An applicant meeting emergency eligibility determination criteria does not:

(a) mean the applicant is a client of the Agency;

(b) establish a presumption of full eligibility under the eligibility rules, Rules 65G-4.014 through .017, F.A.C.;

(c) entitle the applicant to any Agency benefit other than the emergency intervention coordination; nor
(d) establish a presumption that the applicant has met the criteria for Category 1 crisis per subsection 65G-
11.002(2), F.A.C.

(5) If the applicant is approved for full eligibility, then the Agency will conduct a crisis review for the
client pursuant to chapter 65G-11, F.A.C.

Rulemaking Authority 393.065, 393.501, F.S. Law Implemented 393.065, F.S. History–New _____.