

Notice of Proposed Rule

DEPARTMENT OF CHILDREN AND FAMILIES

Agency for Persons with Disabilities

RULE NOS.:RULE TITLES:

- 65G-2.001 Definitions
- 65G-2.002 License Application and Renewal Procedures
- 65G-2.003 Length of Licenses
- 65G-2.0032 Agency Monitoring and Oversight
- 65G-2.004 License Violations
- 65G-2.0041 License Violations - Disciplinary Actions
- 65G-2.005 License Denial, Suspension or Revocation
- 65G-2.0074 Adult Day Training Program Standards

PURPOSE AND EFFECT: The purpose and effect of these new rules and amendment to rules is to ensure compliance with Chapter 2023-273, Laws of Florida, mandating the licensure of Adult Day Training (“ADT”) Programs which includes license application procedures, provider qualifications, facility and client care standards, requirements for client records, requirements for staff qualifications and training, and requirements for monitoring.

SUMMARY: The new Rule, 65G-2.0074, F.A.C. established the physical plant and supervision standards. A new application form is incorporated into 65G-2.002, replacing the previous form. The new application form now includes ADTs. The other rules listed above are being amended to add terms and definitions to include adult day training programs.

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 been prepared by the Agency.

The SERC can be summarized by: rulemaking is necessary to implement sections 393.067 and 393.0673; without these rules the Agency would be acting pursuant to an unadopted rule; and given the statutory requirements, the Agency determined the rules do not have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation, nor do they increase regulatory costs, including transactional costs, in excess of \$200,000 in the aggregate within one year or in excess of \$1 million in the aggregate within five years after the implementation of these rules.

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: The amended Rules and the new Rule are being promulgated in accordance with Chapter 2023-273, Laws of Florida, which amended section 393.067, Florida Statutes to require the Agency to provide through its licensing authority and by rule license application procedures, provider qualifications, facility and client care standards, requirements for client records, requirements for staff qualifications and training, and requirements for monitoring of adult day training programs that serve agency clients. The Agency is also required by statute to conduct annual inspections and reviews of facilities and adult day training programs licensed under this section. The regulatory costs are a direct consequence of the changes made to the statute.

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: 393.066, 393.0662, 393.067, 393.0673, 393.501, 402.33, F.S.

LAW IMPLEMENTED: 393.066, 393.0662, 393.067, 393.0673, 393.13, 402.33, FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: Tuesday, October 9, 2024, at 11:00 a.m.

PLACE: PLACE: GoToWebinar: <https://attendee.gotowebinar.com/register/4749202379853171031>

Webinar ID: 922-312-499

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: Brett Taylor, Deputy General Counsel, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 335, Tallahassee, FL 32399, (850)410-1309, Brett.Taylor@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 IS: Brett Taylor, Deputy General Counsel, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 335, Tallahassee, FL 32399, (850)410-1309, Brett.Taylor@apdcares.org.

THE FULL TEXT OF THE PROPOSED RULE IS:

65G-2.001 Definitions.

For the purposes of this chapter, the term:

(1) “Adult Day Training Program” means the same as in section 393.063, F.S.

~~(2)(1)~~ No Change.

~~(3)(2)~~ “Applicant” means a person or entity that has submitted a written application to the Agency for the purposes of obtaining an initial ~~residential facility~~ license or renewing an existing ~~residential facility~~ license in accordance with section 393.067, F.S.

~~(3) “Authorized representative” means any person lawfully authorized to make a decision on behalf of a resident.~~

(4) No change.

(5) “Benefit payments” has the same meaning as set forth in section 402.33, Florida Statutes (F.S.).

(6) “Change of ownership” means the process set forth in Rule 65G-2.0021, F.A.C., further defined as an event in which the controlling interest licensee changes to a different person or legal entity through sale, lease, contract, gift, etc., or in which 45 percent or more of the ownership, controlling interest, or voting shares in a corporation whose shares are not publicly traded on a recognized stock exchange are is transferred or assigned, including the final transfer or assignment of multiple transfers or assignments taking place over a 2-year period that cumulatively total 45 percent or greater. A change solely in the management company or board of directors is not a change of ownership.

(7) “Client” has the same meaning is as defined in section 393.063, F.S.

~~(8) “Community Based Service Location” means for purposes of the incident reporting requirements under Section 393.067, F.S., any location within the community where the resident or client may be located while the individual is under the supervision of a covered person.~~

~~(8)(9)~~ “Controlling interest entity” means:

(a) through (c) No change.

(d) This term does not include a voluntary board member or the ownership or legal authority of the property on which the facility is located.

(9) “Corrective Action Plan” is a mutually agreed upon plan prepared by the licensee and approved by the Agency by which the corrective action will be accomplished. Corrective Action Plans may be issued as a part of a Notice of Noncompliance.

(10) “Covered person” is as defined in section 393.135, F.S. means any owner, employee, paid staff member, volunteer, or intern of the licensee, any person under contract with the Agency, and any person providing care or support to a client on behalf of the Agency or its providers.

(11) “Direct Care Core Competency Training” means the training described and mandated by the Florida Medicaid Developmental Disabilities Individual Budget Waiver Services Coverage and Limitations Handbook (“iBudget Handbook”), which is incorporated by reference in Rule 59G-13.070, F.A.C.

(12) No change.

~~(13) “Emotional harm” means an inferred negative emotional state indicated by agitation, withdrawal, crying, screaming, or other behavioral indicators.~~

~~(13)(14)~~ “Entity” means a an individual partnership, association, joint venture, company, sole proprietorship, corporation, limited liability corporation, professional limited liability corporation, or any other form of business.

(14) “Essential care” means care and follow-up measures that are medically necessary and directed by the resident’s treating physician, health care practitioner, behavior analyst, or mental health professional for the purpose

of continuing an ongoing course of treatment or therapy for an illness, injury, medical condition, or diagnosis until such time as such care and follow-up measures are no longer directed or recommended by the treating practitioner.

~~(15) “Facility” means a foster care facility, group home facility, residential habilitation center, or comprehensive transitional education program as defined in Section 393.063, F.S. The individual centers and units that comprise a comprehensive transitional education program collectively constitute a single “facility.”~~

~~(15)(16) No change.~~

(16) “Governing Authority” shall mean the organization, person, or persons designated to assume full legal responsibility for the determination of policy, management, operation, and financial viability of the ADT program. This includes the licensee.

~~(17) “Foster care facility” has the same meaning as set forth in section 393.063, F.S.~~

~~(18) “Group home facility” has the same meaning as set forth in section 393.063, F.S.~~

~~(17)(19) No change.~~

(18) “Legal representative” means:

(a) for a resident or participant under the age of 18 years, to include the parents of a minor child whose rights have not been terminated, health care surrogate appointed by a Florida court to represent the child or anyone designated by the parent(s) of the child to act on the parent(s)’ behalf (e.g., due to military absence), or anyone appointed by a Florida court as a guardian or guardian advocate under Chapter 393 or 744, F.S.

(b) for resident or participant age 18 years or older, anyone designated by the resident or participant through a Power of Attorney or Durable Power of Attorney, a medical proxy under Chapter 765, F.S., health care surrogate, or anyone appointed by a Florida court as a guardian or guardian advocate under Chapter 393 or 744, F.S.

~~(19)(20) “Licensee” means a person or entity which that has been issued and currently holds maintains a valid non-expired residential facility license from the Agency.~~

(20)(21) “Live-in staff” means a direct service provider(s) providers whose primary residence is the same as that of the residents for whom they are providing supports and services.

~~(21)(22) No change.~~

(22) “Monitor” or “monitoring” means an on-site inspection conducted by Agency staff for the purpose of determining compliance with chapter 393 and rules adopted thereunder.

(23) “Notice of Noncompliance” means a notification issued by the Agency to a licensee in response to a minor violation of a rule and prior to imposing an administrative disciplinary action, as described in section 120.695, F.S.

~~(23) through (25) renumber as (24) through (26) No change.~~

(27) “Participant” means any person, regardless of whether such person is a client of the Agency, who participates in services provided by the Adult Day Training Program.

~~(28)(26) No change.~~

(29)(27) “Physical harm” means a bodily injury or illness requiring first aid or any other medical procedures.

(30) “Plan of Remediation” means the plan established by the Agency to be followed by the licensee in order to correct a violation of rule as part of an administrative complaint. Failure to timely complete a Plan of Remediation will constitute an additional rule violation.

~~(28) through (29) renumbered as (31) through (32) No change.~~

~~(30) “Repeat violation” means the re-occurrence of a violation of the same standard that occurs within 12 months.~~

(33)(31) “Resident” means any person with a developmental disability whose primary place of residence is a facility, as defined in subsection 65G-2.001(14), F.A.C., and section 393.063, F.S., whether or not such person is a client of the Agency.

(34)(32) “Residential facility” or “Facility” is as defined has the same meaning as in section 393.063, F.S. A facility includes all buildings and grounds included in the physical address of the license. The following are facilities: foster care facility, group home facility, or residential habilitation center as defined in section 393.063, F.S.

~~(33) through (35) is renumbered as (35) through (37) No change.~~

(38) “Routine or preventive” means physical or mental health care other than essential care, such as routine examinations, annual check-ups, or preventive screenings and dental care and cleanings.

~~(36) through (38) are renumbered as (39) through (41) No change.~~

~~(42)~~⁽³⁹⁾ “Sexually aggressive resident” means a minor who is an alleged juvenile sexual offender, as defined in section ~~985.475~~ ³⁹⁻⁰¹, F.S., or an adult who is documented to have committed an act of sexual abuse as that term is defined in section 415.102, F.S.

~~(40)~~ “Survey” means an on site inspection conducted by Agency staff for the purpose of determining compliance with facility standards.

~~(43)~~⁽⁴¹⁾ No change.

~~(44)~~⁽⁴²⁾ “Voluntary board member” means a board member of a not-for-profit corporation or organization who serves solely in a voluntary capacity, does not receive any remuneration for their service ~~services~~ to the corporation or organization, and has no financial interest in the corporation or organization.

~~(45)~~⁽⁴³⁾ No change.

~~(46)~~⁽⁴⁴⁾ “Zero Tolerance” means Agency initiated activities, such as education and training, which are intended to prevent occurrences of abuse, neglect, exploitation, and abandonment involving persons with developmental disabilities and to facilitate quicker identification and reporting of potentially harmful situations and environments in which abuse, neglect, exploitation, or abandonment may arise.

~~(47)~~⁽⁴⁵⁾ No change.

Rulemaking Authority 393.066, 393.0662, 393.067, 393.0673, 393.501~~(4)~~, 402.33 FS. Law Implemented 393.066, 393.0662, 393.067, 393.0673, 393.13, 402.33 FS. History—New 7-1-14, Amended 7-1-18, 8-17-23, _____.

65G-2.002 License Application and Renewal Procedures.

(1) Providers required to be licensed under section 393.067, F.S. to provide services must maintain a ~~All facilities in which clients reside must operate under~~ valid license issued by the Agency.

(2) Application. All applications for initial licensure as well licensure renewal must be submitted using Facility Application form 65G-2.002-A ~~APD~~ ~~2014 01~~ ~~http://www.flrules.org/Gateway/reference.asp?No-Ref 04405, (April 1, 2014),~~ which is incorporated herein by reference. A copy of this form may be obtained by contacting the ~~r~~Regional office. The Agency shall review license applications in compliance with the requirements of section 120.60, F.S.

(3) License renewals. The licensee shall submit an application for license renewal to the Regional Office at least 45 days prior to the expiration of the prior license. ~~The~~ ~~F~~failure to submit a complete application at least 45 days prior to the expiration of the prior license shall be considered a Class III violation. No fine shall be imposed if the renewal application is received between 30 and 45 days prior to expiration.

(4) No change.

(5) If the applicant has not provided sufficient supporting information with the application, the Agency shall require the applicant to provide additional information regarding the applicant’s qualifications for the types of residents or participants or the level of services the applicant wishes to serve.

(6) No change.

(7) A license to operate a facility or program is not assignable and is valid only for the applicant identified on the application, and for the premises and purposes specified on the license.

(8) The licensee must give at least 30 days’ notice to the Regional Office in writing prior to the licensee’s intent to close a licensed facility or program, intent to discontinue responsibility for the management of a licensed facility or program, or intent to sell or lease the facility or program to another owner or operator. The applicant’s failure to provide adequate and timely notice of a facility’s or program’s intent to close or the applicant’s intent to sell or lease a facility or program shall be considered during the review of future license applications by the applicant.

(a) Notice of a licensee’s facility’s intent to close that is delivered to the Agency between 20 and 30 days prior to the closure of the facility or program shall be considered a Class III violation for each resident or participant.

(b) Notice of a licensee’s facility’s intent to close that is delivered to the Agency between 10 and 19 days prior to the closure of the facility or program shall be considered a Class II violation for each facility resident or participant.

(c) Notice of a facility’s or program’s intent to close that is provided less than 10 days prior to the closure of the facility or program shall be considered a Class I violation for each facility resident or participant.

(9) Each facility or program owned and managed under a single corporation, firm, partnership or association must operate under a separate and distinct license.

~~(10) Agency staff shall review applications for licensure using the following forms: Foster Care Facility Checklist, APD 2014 03, <http://www.flrules.org/Gateway/reference.asp?No=Ref 04406>, (effective April 1, 2014), Group Home Facility Checklist, APD 2014 04, <http://www.flrules.org/Gateway/reference.asp?No=Ref 04407>, (effective April 1, 2014), Residential Habilitation Center Checklist, APD 2014 05, <http://www.flrules.org/Gateway/reference.asp?No=Ref 04408>, (effective April 1, 2014), Comprehensive Transitional Education Program Checklist, APD 2014 06, <http://www.flrules.org/Gateway/reference.asp?No=Ref 04409>, (effective April 1, 2014), and General Facility Checklist, APD 2014 07, <http://www.flrules.org/Gateway/reference.asp?No=Ref 04410>, (effective April 1, 2014), which are hereby incorporated by reference. These forms may be obtained from the Regional Office.~~

~~(10)(11) If applicant fails to submit a complete application prior to the expiration of the facility's or program's existing license, the application shall be considered an initial application rather than a renewal application.~~

~~(11) This Rule shall be reviewed, and if necessary, renewed through the rulemaking process five years from the effective date.~~

~~Rulemaking Authority 393.066, 393.0662, 393.067, 393.501 FS. Law Implemented 393.0655, 393.067, 393.0673, 393.13 FS. History--New 7-23-14, Amended.~~

65G-2.003 Length of Licenses.

The Agency shall determine the length of a program or facility's license based on the following:

(1) A one year license shall be issued to residential facilities and a three-year license shall be issued to adult day training programs which meet all applicable licensing criteria.

(2) Residential facilities with no current residents but which meet all applicable licensing standards shall be granted a one year license. However, such facilities shall have an on-site licensure review by the Regional Office within 30 days following the admission of their first resident to ensure that they are in compliance with the requirements of Chapter 393, F.S., and with the requirements of this rule chapter which could not be previously monitored.

(3) A one month license shall be issued to facilities or programs that are awaiting administrative actions by the Agency or another state agency in order to complete requirements for Agency licensing. This shall include facilities or programs that are pursuing administrative or judicial appeals of Agency action and facilities or programs which are pending a fire inspection. Subsequent and consecutive one month licenses shall be issued if the matter has not been resolved within the initial one month licensure period.

(4) A three month license shall be issued to an existing facility or program which does not have any ongoing Class I violations, but fails to meet all requirements necessary for license renewal, for which no waiver has been approved by the Agency. A three month license shall be accompanied by an approved plan of correction. Failure to complete the actions specified in the plan of correction within the time limit specified in the plan shall result in the denial of the facility's or program's application for license renewal.

(a) through (b) no change.

(c) A third consecutive three month license shall only be granted at the approval Agency's Director or the Director's designee and shall only be granted if the licensee has made substantial progress to correct the facility's or program's remaining deficiencies. If the facility or program is not in full compliance with all licensing standards prior to the expiration of their third consecutive three month license, the licensee's facility's application for license renewal shall be denied.

(5) A license shall not be issued to any facility or program whose license has been suspended on an emergency basis.

(6) The issuance of a license does not constitute a waiver of any statutory or rule violations by the licensee and does not prevent the Agency from seeking administrative sanctions against the licensee for violations that occurred during the term of previous licenses, up to a period of two years, for the same facility or program.

~~(7) This Rule shall be reviewed, and if necessary, renewed through the rulemaking process five years from the effective date.~~

~~Rulemaking Authority 393.067, 393.0673, 393.501(4), 393.067 FS. Law Implemented 393.067, 393.0673 FS. History--New 8-13-78, Formerly 10F-6.05, 10F-6.005, 65B-6.005, Amended 7-1-14,_____.~~

65G-2.0032 Agency Monitoring and Oversight.

(1) The Agency shall monitor ~~conduct a survey of~~ each facility or program prior to the issuance of an initial license or the renewal of an existing license. In addition, the Agency shall conduct ongoing monitoring surveys of each facility or program, either unannounced or announced, in order to ensure the facility or program is in full compliance with the applicable requirements of Chapter 393, F.S., and the administrative rules adopted pursuant to Chapter 393, F.S. ~~For ongoing surveys, Agency staff shall utilize the Facility Inspection Form APD 2014 02, (effective April 1, 2014) <https://www.flrules.org/Gateway/reference.asp?No=Ref 04210>, which is incorporated herein by reference. A copy of this form may be obtained from the Regional Office.~~ The Agency may temporarily suspend monitoring surveys for a specific time or location if the Agency determines that:

(a) A recent, impending, or ongoing disaster or emergency situation has made the monitoring surveys unsafe or impossible;

(b) The residential facilities identified have no current residents, and may be monitored surveyed on a less frequent basis, or

(c) Monitoring Surveys should be suspended within a designated area or timeframe to promote the health, safety, or welfare of the public.

(2) Each licensee shall be monitored prior to initial licensure, renewal licensure, and on an ongoing basis thereafter. ~~Frequency of Surveys. Each facility shall be surveyed by Agency staff on at least a monthly basis. The Agency may survey facilities on a more frequent basis in order to investigate complaints, in situations where it is known or suspected that the facility is not in full compliance with Chapter 393, F.S., or any administrative rules adopted pursuant to Chapter 393, F.S., or in situations where the Agency has reason to believe that the health, safety, or welfare of residents may be at risk.~~

(3) Follow-up monitoring may be conducted to verify correction of deficiencies at any time on an unannounced basis.

~~(4)(3)~~ Licensees and facility employees of the licensee must permit any Agency staff or designated agent of the State of Florida, who presents proper State of Florida-issued identification, to enter and inspect any part of any facility or program building or to inspect records relating to the operation of the facility or program or the provision of client care at any time that ~~facility~~ staff, management, owners, directors, ~~or~~ residents, or participants are present ~~in the facility~~. A violation of this subsection shall constitute a Class II violation.

(5) This Rule shall be reviewed, and if necessary, renewed through the rulemaking process five years from the effective date.

Rulemaking Authority ~~393.501(4), 393.067, 393.0673, 393.501~~ FS. Laws Implemented 393.067, 393.0673 FS. History--New 7-1-14, Amended.

65G-2.004 License Violations.

(1) Notice of noncompliance. The Agency shall issue a notice of noncompliance as provided under Section 120.695, F.S., in response to the first occurrence of a Class II or III violation that is not corrected prior to being monitored ~~the completion of the survey~~ which revealed the aforementioned violation. Within 15 days following receipt of a Notice of Noncompliance, the licensee must submit a written corrective action plan, to the regional office. Failure to submit a corrective action plan within the required timeframe or repeat occurrences of Class II or III violations shall result in the imposition of disciplinary action as described in paragraph 65G-2.0041(4)(b) or (c), F.A.C. For the purposes of this subsection, a first occurrence of a Class II or III violation refers to those violations which have not been previously observed and cited by Agency staff within the past 12 months.

(2) Corrective action plans. The licensee must develop and submit to the Agency a corrective action plan within 15 days following the receipt of a Notice of Noncompliance. The corrective action plan shall specify the actions the facility or program will take to correct each of the violations identified and to comply with the applicable licensing requirements, the name of the staff person(s) responsible for completing each action, and a timeframe for accomplishing each action. All action taken to correct a violation shall be documented in writing by the licensee. Failure to comply with the corrective action plan shall result in the imposition of disciplinary action as described in paragraph 65G-2.0041(4)(b) or (c), F.A.C. The Agency shall reject any corrective action plan that fails to identify all of the information described above. If the Agency rejects a corrective action plan, the Agency shall notify the licensee in writing of the reasons for rejection and shall state that the licensee has 10 days from receipt of the

notification to submit an amended corrective action plan.

(3) Moratoriums. A moratorium on the admission of new clients into a facility or program may be imposed pursuant to the criteria stated in Section 393.0673(6), F.S.

(4) Relinquishment and license expiration. The expiration or relinquishment of a license that is pending administrative sanctions does not render the administrative sanctions moot. The Agency may continue to seek administrative sanctions against a licensee for violations that occurred during a licensee's management or oversight of a facility even if the licensee ceases to own or lease the facility or program, operate the facility or program, or provide services in the facility or program after the violations have occurred.

Rulemaking Authority ~~393.501(4)~~, 393.067, 393.0673, 393.501 FS. Laws Implemented 393.067, 393.0673 FS. History--New 7-1-14, Amended.

65G-2.0041 License Violations – Disciplinary Actions.

(1) No change.

(2) Factors considered when determining sanctions to be imposed for a violation. The Agency shall consider the following factors when determining the sanctions for a violation:

(a) The gravity of the violation, including whether the incident involved the abuse, neglect, exploitation, abandonment, death, or serious physical or mental injury of a resident or participant, whether death or serious physical or mental injury could have resulted from the violation, and whether the violation has resulted in permanent or irrevocable injuries, damage to property, or loss of property or client funds;

(b) through (c) no change.

(d) The number of residents or participants served by the facility or program and the number of residents or participants affected or put at risk by the violation;

(e) through (h) no change.

(3) Additional considerations for Class I violations, repeated violations or for violations that have not been corrected.

(a) through (c) No change.

(d) Failure to complete corrective action within the designated timeframes may result in revocation or non-renewal of the facility's or program's license.

(4) Sanctions. Fines shall be imposed, pursuant to a final order of the Agency, according to the following three-tiered classification system for the violation of facility standards as provided by law or administrative rule. Each day a violation occurs or continues to occur constitutes a separate violation and is subject to a separate and additional sanction. Violations shall be classified according to the following criteria:

(a) No change.

(b) Class II violations are violations that do not pose an immediate threat to the health, safety or welfare of a resident, but could reasonably be expected to cause harm if not corrected. Class II violations include statutory or rule violations related to the operation and maintenance of a facility or to the personal care of residents which the Agency determines directly threaten the physical or emotional health, safety, or security of facility residents, other than Class I violations.

1. No change.

2. A fine may be levied notwithstanding the correction of the violation during the monitoring visit survey-if the violation is a repeat Class II violation.

(c) Class III violations are statutory or rule violations related to the operation and maintenance of the facility or to the personal care of residents, other than Class I or Class II violations.

1. No change.

2. A repeat Class III violation previously cited in a notice of noncompliance may incur a fine even if the violation is corrected before the Agency completes its monotoring survey of the facility or program.

3. If twenty or more Class III violations occur within a one year time period, the Agency may seek the suspension or revocation of the facility's or program's license, nonrenewal of licensure, or moratorium on admissions to the facility or program.

(d) No change.

Rulemaking Authority ~~393.501(4)~~, 393.067, 393.0673, 393.501 FS. Laws Implemented 393.067, 393.0673, FS. History--New 7-1-

14, Amended _____.

65G-2.005 License Denial, Suspension or Revocation.

(1) A license to operate a residential facility or program is not assignable and is valid only for the entity, premises, and purposes specified in the license.

(2) A change of licensee or a move of the facility or program to another location shall result in the revocation of the license.

Rulemaking Authority 393.501(4), 393.067, 393.0673 FS. Law Implemented 393.067, 393.673 FS. History—New 8-13-78, Formerly 10F-6.03, 10F-6.003, 65B-6.003, Amended 7-1-14, _____.

65G-2.0074 Adult Day Training Program Standards.

(1) Right to use and occupy.

(a) The licensee must have the legal right to use and occupy the property.

(b) If the licensee is not the owner of the property, they must have a fully executed lease.

1. The lease must be current at the time of initial licensure and renewal.

2. The lease must not lapse during the term of the license.

3. The terms of the lease must not preclude the program from being able to operate as an Adult Day Training Program (“ADT”) in accordance with Chapter 65G-2, F.A.C.

(c) A violation of this section is a Class II violation.

(2) Physical site standards.

(a) The program is responsible for providing a healthy, safe, and caring environment. The program must have and maintain the minimum physical site standards as established by this Rule. The only exception to the physical site standards is in the event of an emergency, such as a natural disaster or loss of power outside of the control of licensee.

(b) An occupied dwelling, storage units, or garage may not be used for ADT services.

(c) The physical site must be free of dangerous conditions and hazards. Interior and exterior building surfaces must be free of hazardous conditions. Violation of this paragraph constitutes a Class II violation. hazardous conditions include:

1. cracks, holes, tears, uneven projections, protruding nails, splinters;

2. broken, warped, or loose: boards, tile, linoleum, handrails, railings, plaster, lath, windowpanes, hanging fixtures;

3. exposed pipes, ducts, or electrical wiring within human reach;

4. water leaks or damage;

5. tripping hazards; and

6. hazardous chemicals or materials that are not safely stored.

(d) All areas of the physical site occupied by participants, including rooms, common areas, hallways, bathrooms, and dining areas shall have natural or mechanical ventilation.

(e) Each program must have documentation showing that the licensee has successfully passed and maintains compliance with fire safety inspections that reflects the maximum occupancy.

(f) Ramps, doors, corridors, bathrooms, changing areas, furnishings, and equipment shall be accessible and designed to accommodate participants’ needs and disabilities.

(g) The physical site must not have architectural barriers that prevent participation in everyday program activities or limits care.

(h) Each program that serves participants who require medically essential services requiring a power source or equipment that requires electricity is solely responsible for ensuring there is backup equipment or power supply and a planned course of action in the event of a power outage or interruption of service in accordance with section 366.15, F.S.

(i) The program shall provide a safe, clean, hygienic and sanitary setting. Floors, walls, ceilings, windows, doors, and all parts of the structures shall be of sound construction, properly maintained, in working order, and kept clean as necessary to ensure the health and safety of the facility’s/program’s participants.

(j) All interior doors with locks must be openable from the inside of the room.

(k) Exterior doors must not prevent individuals from exiting the building.

(l) Each physical site must have a designated drop off and pick up area that is free from hazards and roadway traffic.

(m) A violation of this section shall be a Class II violation.

(3) Activity area and dining area.

(a) The number of occupants in the building shall not exceed the maximum occupancy as directed by the Fire Marshall.

(b) The classroom and activity area shall be provided with an adequate number of appropriate furnishings for the usual functions. These furnishings shall be sturdily constructed, in working condition, and be designed to meet the daily needs of participants.

(c) The dining area furnishings shall be adequate in number, sturdily constructed and be designed to meet the daily needs of participants.

(4) Food preparation, storage, and service:

(a) All surfaces, preparation equipment, utensils, cutlery, and dishes must be maintained in a clean and sanitized manner, free of any damage, and safe for intended use.

(b) All participant's food plans must be maintained in participant file and followed, if applicable.

(c) Food must be free from cross-contamination.

(d) All food must be stored at appropriate temperature and location to maintain safety.

(e) Hotplates, grills, propane stoves, and similar equipment must be operated in a well-ventilated area and free from hazard(s).

(f) All food received or used in a licensed program shall be clean, hygienic and sanitary, and safe for human consumption, and free from spoilage, adulteration, and misbranding.

(g) Food, while being transported, stored, prepared, displayed, or served within licensed program, shall be protected from dust, flies, rodents or other vermin, toxic materials, unclean equipment and utensils, flooding, sewage, overhead leakage, and any other source of contamination.

(h) Food shall be stored a minimum of 6 inches above the floor, on clean shelves, racks, or other clean surfaces in such a manner as to be protected from splashing and other contamination. Food must be stored in a manner which permits free air circulation in and around food.

(i) Food not subject to further washing or cooking (ready to eat) before being served shall be stored in a manner that protects it from cross-contamination with food requiring washing or cooking. Packaged food shall not be stored in contact with water or undrained ice.

(j) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean, covered, and labeled container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent.

(k) Prior to the food being placed into the freezer, the container must be clearly marked to indicate the date of freezing. Food must be dated if not consumed upon initial preparation.

(l) Hot food shall be cooled within 4 hours to 41 degrees Fahrenheit or below.

(m) Potentially hazardous food. For purposes of this rule, "potentially hazardous food" means food that requires refrigeration or freezing to prevent spoilage while it is in storage. The following requirements apply to potentially hazardous food:

1. Different types of raw animal products such as beef, fish, lamb, pork, or poultry shall be separated during storage and processing by use of different containers, partitions, shelves, or by cleaning and sanitizing the equipment between product use. Raw food products shall be physically separated from ready-to-eat food products during display or storage by storing the raw products below all ready-to-eat food products.

2. Upon receipt, potentially hazardous food shall be stored in a refrigerator or freezer, as appropriate, at temperatures that will protect it from spoilage. All potentially hazardous food shall be kept at safe temperatures, either below 41 degrees Fahrenheit or above 135 degrees Fahrenheit after cooking.

3. Potentially hazardous foods that are to be served without further cooking (ready to eat foods) and will require refrigeration shall not be allowed to remain between 41 degrees and 135 degrees Fahrenheit for a period in excess of four hours.

4. Frozen potentially hazardous food shall be thawed in refrigerated units at a temperature not to exceed 41

degrees Fahrenheit, or under cold potable running water, or in a microwave. Frozen potentially hazardous food shall be cooked immediately after thawing.

5. Potentially hazardous foods shall be kept for no more than seven days after its initial cooking.

(n) When meal services are served or prepared by the program, the following standards shall apply:

1. The program shall identify each participants' nutritional needs and dietary orders at the time of admission. A copy of current dietary plans, if applicable, shall be maintained on file.

2. Food and beverages shall be of adequate quantity and variety, served at appropriate temperatures, prepared by methods which conserve nutritional value, and served in a form easy for participants to manage and, within reason, in keeping with participant preferences. Within reason, dietary practices in keeping with the religious requirements of the participant's faith group shall be observed at the request of the participant or the participant's legal representative.

3. Menus shall be planned and written and dated at least two days in advance of consumption. Menus, as served, shall be kept on file for a minimum of one month.

4. Meals shall be prepared and served in accordance with the facility or program's menu.

5. Meals shall be served in accordance with participants' applicable dietary plan.

6. A dietician must be consulted at least annually. Documentation of such consultation and a summary of the dietician's recommendation shall be kept on file for three years.

(o) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(5) Bathrooms and Changing Areas.

(a) The physical site shall have bathrooms, equipped with functioning toilets and sinks, accessible and available for participant use, follow ADA Standards and be in a good working condition that is clean, hygienic and sanitary.

(b) Bathrooms and changing areas used by participants shall provide individual privacy. A violation of this paragraph shall constitute a Class II violation.

(c) Bathrooms and changing areas shall be sanitary and well-ventilated.

(d) Bathrooms and changing areas shall have sufficient supplies of toiletry items such as soap and toilet paper to accommodate participants' needs.

(e) Bathrooms and changing areas must be indoors.

(f) For ADTs licensed prior to 60 days after the effective date of the rule and for only as long as there is no lapse in licensure from the date of the original license, the physical site shall have a minimum of two (2) toilets and (2) sinks for every thirty-five (35) individuals, including participants and staff. For all ADTs newly licensed after 60 days from the effective date of the rule, the physical site shall have at minimum two (2) toilets and (2) sinks for every twenty-five (25) individuals, including participants and staff.

(g) Except for paragraph (b), a violation of this subsection shall constitute a Class III violation.

(6) Water Temperature.

(a) The program must have an adequate supply of clean water. Hot water, if available in changing facilities or sinks, used by participants must not exceed 120 degrees Fahrenheit (48.9 degrees Celsius) at the outlet.

(b) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(7) Heating and cooling.

(a) Indoor temperature shall be maintained within a range of 62 degrees to 80 degrees, as appropriate for the climate. The facility or program shall not provide services to participants when temperatures fall outside of this range. An alternative location meeting these temperature ranges, commensurate with the facility's emergency operation plan, must be immediately utilized until the temperature in the original licensed location falls within the ranges outlined herein.

(b) All heating equipment shall be maintained to ensure that there is no burn hazard to the participants.

(c) Portable heaters, such as space heaters, must utilize an automatic safety switch that turns the unit off if it is tipped over, and a thermostatic control which ensures that the unit will turn itself off and prevent overheating or creating an electrical hazard.

(d) There shall be no discernible differences between the temperature and humidity of areas within the physical site that are used by staff and those areas used by the participants unless such differences are based on documented participant need or preference.

(e) The physical site must maintain a thermometer which accurately identifies the temperature.

(f) The licensee must notify the Agency when repairs to the heating or cooling systems are needed, when it is reasonably expected to cause the temperature to fail to meet the requirements of this section, the timeline for those repairs, and must keep the Agency updated as repairs are made.

(g) Programs that operate outdoors must have alternate settings in place in the event of inclement weather, including extreme heat, humidity, or cold, and respite for participants when needed.

(h) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(8) Lighting.

(a) All areas of the physical site shall be suitably lit in accordance with area usage.

(b) A violation of this subsection shall constitute a Class III violation.

(9) Housekeeping and Maintenance.

(a) The interior and exterior of the physical site shall be maintained by the licensee to ensure the health and safety of participants. The physical site must have a written plan for housekeeping, including staff, equipment, and supplies. As part of the licensee's housekeeping plan, the licensee must:

(b) Keep the buildings in a clean, safe, and orderly condition. This includes all rooms, bathrooms, corridors, storage areas, entry ways and ramps;

(c) Keep floors clean and non-slip to ensure participant safety;

(d) Keep stairways and similar areas free of accumulations of refuse, discarded furniture, discarded equipment, newspapers, magazines, boxes, and other similar items;

(e) The physical site shall be free of unpleasant or noxious odors.

(f) To ensure the health and safety of participants, the grounds and any additional buildings on the grounds, under the control and custody of the ADT, shall be free of unkempt vegetation and debris and maintained in a safe, clean, and sanitary condition.

(g) All outdoor garbage and other waste materials shall be kept in covered containers until removed. Containers shall be emptied as often as necessary to prevent public nuisance and health hazards in accordance with municipal and county requirements of the jurisdiction within which the facility or program is located.

(h) All indoor garbage and other waste materials shall be stored in a manner that would maintain a sanitary condition. Trashcans or other such waste containers must be emptied as often as necessary to prevent attracting pest or vermin and prevent unpleasant or noxious odors.

(i) Except when restitution is a component of a client's Local Review Committee-approved or participant's behavior plan, licensees are solely responsible for any costs associated with the repair or replacement of any facility or program equipment or property which is owned or leased by the licensee when such equipment or property is lost, damaged, or destroyed by a participant. Any necessary repairs must be made in a timely fashion to keep all requirements described in this rule in good working condition.

(j) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(10) Firearms and weapons.

(a) Only certified security guards or law enforcement may be permitted to carry firearms, ammunition, and any other weapon in the course of their duty.

(b) If an armed security guard is used, the program must maintain policies to ensure participants remain safe and do not have access to weapons.

(c) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(11) Hazardous and toxic compounds.

(a) All poisonous and toxic compounds and potentially hazardous instruments shall be used with extreme caution. Compounds harmless to human consumption shall be used whenever reasonably appropriate.

(b) All poisonous, toxic, and hazardous compounds and materials shall be stored in an appropriate container which identifies the material it contains, and locked in a storage space to restrict participant access.

(c) Such items shall be safeguarded and not co-mingled with food items in storage areas or elsewhere.

(d) In all cases, such products shall be stored in their original containers or, if transferred to other containers for dispensing purposes, clearly labeled as to the contents and locked in a storage area.

(e) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(12) Swimming pools and other bodies of water.

(a) Access to bodies of water or other water hazards must be restricted when supervision is not available. Supervision must be provided by an adult staff member of the program who is responsible for the participant who is certified in first aid and CPR.

(b) All water-related recreational activities in which participants are partaking, such as boating or water sports, must be directly supervised by an adult staff member of the facility or program who is certified in first aid and CPR with the means to contact Emergency Response Services.

(c) Participants who are not proficient swimmers:

1. Must be supervised by sight and sound at all times when they are within 50 feet of any body of water or water hazard such as pools, hot tubs, canals, creeks, holding ponds, rivers, lakes, swamps or areas subject to flooding.

2. Must not be allowed in pools or other bodies of water without wearing a life jacket or other U.S. Coast Guard approved flotation device, unless engaged in swimming lessons or while under the direct supervision of staff capable of assisting with swimming-related emergencies and who is certified in first aid and CPR.

(d) Any swimming pool maintained by the facility must be kept in a clean, hygienic and sanitary condition.

(e) A violation of this subsection shall constitute a Class II violation.

(13) Smoking.

(a) Smoking, vaping, or use of other tobacco products shall not be permitted indoors.

(b) A violation of this subsection shall constitute a Class III violation.

(14) Alarms. Alarms that are activated when an exterior door or window is opened are permitted for use within licensed facilities/programs.

(15) Smoke and carbon monoxide detectors.

(a) Facilities shall be equipped with smoke and carbon monoxide detectors in good working condition. Battery activated detectors must be tested at least every 6 months.

(b) Battery activated detectors testing must be documented and maintained by the physical site. Documentation must include:

1. First and last name of staff completing the test;

2. Date of the test;

3. Time of the test; and

4. Result of the test.

(c) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(16) Insect, Rodent, and Vermin Control.

(a) Measures shall be utilized to minimize the presence of rodents, flies, cockroaches, bedbugs, lice, and other insects on the premises, which include maintaining a clean environment in the physical site.

(b) All buildings shall be maintained rodent-proof and free from rodents.

(c) All outside openings shall be effectively sealed or screened to prevent entry of insects, rodents, and vermin.

(d) For persistent pest control problems, a licensed pest control operator must be used.

(e) Violations of paragraphs (a) through (d) shall constitute a Class II violation.

(f) In the event of an infestation, all measures taken must be documented by the licensee and provided to the Agency. A Violation of this paragraph shall constitute a Class III violation.

(17) Animal Health and Safety.

(a) Animals must be kept free from disease or under treatment by a licensed veterinarian.

(b) Animals kept indoors or having access to the indoors must be treated for flea and tick control in accordance with the recommendations of a licensed veterinarian to prevent infestations.

(c) Animals requiring rabies vaccination must be vaccinated for rabies and their vaccinations must be current at the time of inspection. Proof of rabies vaccination or veterinary certification of vaccination exemption shall be kept on the premises at all times.

(d) Violations of this subsection shall constitute a Class III violation.

(18) Response to Participant Sickness.

(a) Program staff must carefully clean any areas contaminated with vomit, stool, or other bodily fluid.

(b) Vomit, stool, and bodily fluid shall be cleaned up before disinfecting. Responsible staff shall wear disposable gloves to clean and disinfect whenever possible. Cleaning shall be done with disposable towels and used towels shall be disposed of in a non-absorbent plastic bag.

(c) Program staff must disinfect the affected area after cleaning. Staff shall allow the area to air-dry and discard all materials used to clean the area, including placing used towels and gloves in a non-absorbent plastic bag. Staff must wash their hands with soap and water immediately after removing gloves.

(d) Soiled linens, soiled clothes, or other soiled items shall be carefully removed and kept separate from uncontaminated items.

(e) Participants who become ill while receiving services must be separated from other participants to prevent possible spread of infectious diseases.

(f) Program staff and direct service providers must seek and obtain emergency medical treatment when necessary.

(g) Program staff must maintain and adhere to policies and procedures outlining the program's response to participants becoming sick while receiving services.

(h) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(19) Foreclosures, Evictions and Bankruptcies.

(a) Licensees must notify the Agency within 24 hours upon the receipt of a notice of eviction or foreclosure involving the property at which the license is maintained.

(b) Licensees who file for bankruptcy protection must notify the Agency within 24 hours of filing for bankruptcy.

(c) A violation of this subsection shall constitute a Class II violation.

(20) Optional in-service training.

(a) The licensee may develop in-service training for family members, guardians, or guardian advocates of participants. This training may address topics such as appropriate behavioral interventions, guardianship, social security benefit issues, or other topics of relevance. Under no circumstances may the licensee, or its contracted trainer or presenter, charge a participant a fee for the provision of such training.

(b) A violation of this subsection is a Class III violation.

(21) Emergency Management Plans.

(a) Emergency Plan Components. Under section 393.067(8), F.S., each physical site shall prepare and maintain a written comprehensive emergency management plan. The emergency management plan must address the following:

1. Provisions for all hazards. Each plan shall describe the potential hazards to which the physical site is vulnerable such as hurricanes, tornadoes, flooding, fires, hazardous materials, transportation accidents, physical site damage, and power outages during severe cold or hot weather.

2. Provisions and plans for the care of participants remaining in the physical site during an emergency, including pre-disaster or emergency preparation, protecting the physical site program, ensuring participants and staff have adequate supplies, medications, emergency power, ensuring participants have adequate food and water, maintaining adequate staffing, and emergency equipment.

3. Identification of participants with mobility limitations who may need specialized assistance while at the

physical site.

4. Identification of, coordination with, and compliance with the local emergency management agency orders.

5. Arrangement and coordination of post-disaster activities including responding to family inquiries, obtaining medical intervention for participants, transportation, etc.

6. The identification of staff responsible for implementing each part of the plan.

(b) Emergency management plans shall be reviewed and updated at least annually and may be developed with the assistance of appropriate resource persons from the local fire marshal, Regional Office, or local emergency management agency.

(c) Emergency Management Plan Implementation. In the event of an internal or external disaster, the program shall implement the emergency management plan in accordance with sections 252.355 and 252.356, F.S.

1. All staff must be knowledgeable of physical site procedures for handling emergencies and implementing the emergency management plan. All staff must be trained in the physical site emergency management plan within 30 days of hire. Staff shall be trained in the emergency management plan annually, after the plan's annual update. Documentation of staff training must be maintained in the staff's personnel file.

2. All staff are responsible for implementing the emergency management plan and must be able to implement the emergency management plan.

3. If telephone service is not available during an emergency, the program shall request assistance from local law enforcement or emergency management personnel in maintaining communication.

(d) Evacuation. The physical site must evacuate the premises during or after an emergency if so directed by the local emergency management agency.

1. The licensee shall report the evacuation to the designated Agency regional office contact within six hours of the evacuation order.

2. The physical site shall not be re-occupied until (1) the area is cleared for reentry by the local emergency management agency, local fire marshal, or any other agency or entity having authority and (2) the physical site meets the immediate needs of the participants.

(e) In the event a state of emergency has been declared and the physical site is not required to evacuate the premises, the physical site may provide emergency shelter above the physical site's licensed capacity provided the following conditions are met:

1. No one's life, health, well-being and overall safety would be put at risk;

2. The immediate needs of all participants and other individuals sheltered at the physical site can be met by the program;

3. Within forty-eight (48) hours following the physical site exceeding its capacity, the licensee must report to the Agency that the physical site is overcapacity and describe the conditions that have caused it to be overcapacity. If the physical site continues to be overcapacity after the declared emergency ends, the Agency shall review such ongoing requests on a case-by-case basis; and

4. The program maintains a log of the additional persons housed in the physical site. The log shall include each additional individual's name, address, and the dates of arrival and departure. The log shall be available for review by representatives of the Agency and the local emergency management agency or its designee. The admissions and discharge log maintained by the physical site may not be used to satisfy this requirement.

(f) Emergency management plans, documents regarding staff training, and any logs must be made available to the Agency within 3 days of the request.

(g) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(22) Program standards

(a) Programs of Adult Day Training services must support full access and integration into the outside community.

(b) The program must provide a variety of physically and mentally stimulating activities.

(c) Activities provided by the program must be age-appropriate.

(d) Participants should be able to choose the activities in which they participate.

(e) All program services shall be provided in a person-centered approach, in accordance with a participant's

goals and choices and ensure the participant's rights to privacy, dignity, and respect.

(f) All program services shall include training and assistance with skill acquisition and retention in activities of daily living, personal care, social skills, self-help, socialization, adaptive skills, recreation, and encourage independence as outlined in the Florida Medicaid Developmental Disabilities Individual Budget Waiver Services Coverage and Limitations Handbook ("iBudget Handbook"), which is incorporated by reference in Rule 59G-13.070, F.A.C.

(g) Provisions of services shall be maintained in accordance with all applicable rules, including but not limited to the iBudget Handbook, Rule 59G-13.070, F.A.C.

(h) Documentation storage must be maintained in accordance with HIPAA to prevent any unauthorized access or disclosures.

(23) Transportation.

(a) When the ADT is providing transportation for participants during the course of program's activities, a log must be maintained for each participant transported in a vehicle. The licensee must maintain the log for a minimum of 12 months.

(b) All transportation logs must be available for review by the Agency during monitoring visits and upon request.

(c) The transportation log must include, at minimum:

1. Name of each participant;

2. The date of transportation was provided;

3. Mode of Transportation;

4. Destination; and

5. Name of all staff involved in the transportation and the staff member responsible for keeping the log to verify that all participants have arrived safely at the destination.

(e) Prior to each departure, the transportation log must be recorded with each participant's name, date and time of departure, and initialed by the direct service provider verifying each participant is accounted for.

(f) Upon arrival at the destination, the driver must complete the transportation log and mark each participant off the log as the participant departs the vehicle.

(g) The driver must complete a physical inspection and visual sweep of the vehicle at the arrival of the destination to ensure that no participant is left inside the vehicle.

(h) If the licensee contracts with an outside entity to provide transportation, the licensee must assign a direct care staff to perform the duties described in paragraphs (a) through (f).

(i) The maximum number of individuals transported must not exceed the manufacturer's designated seating capacity or the number of factory installed seatbelts.

(j) When transporting participants, the staff to participant ratio must be maintained.

(k) Participants must use seatbelts or other safety restraints during transportation.

(l) Staff providing transportation must meet all training requirements set forth in this rule.

(m) All vehicles used to transport participants must be maintained in a clean condition and pursuant to the vehicle or manufacturers' requirements or instructions to ensure that they are in proper working order. Documentation of the maintenance must be maintained on file for a minimum of 12 months, and available to Agency staff during monitoring visits and upon request.

(n) Smoking and vaping shall be prohibited in vehicles.

(o) The interior of the vehicle, when being used to transport participants must be maintained at a temperature between 65 to 78 degrees Fahrenheit. The vehicle can be ventilated either by mechanical or natural means to maintain the temperature. This is only during the operational transportation of the vehicle and does not include the loading or unloading of the vehicle.

(p) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(24) Administration

(a) The program shall have a Governing Authority which shall establish policies in compliance with this rule and all other applicable rules.

(b) The Governing Authority shall establish that the owner, operator, or a designated Program director is on-site during the program's hours of operation and is responsible for the daily and ongoing operation of the program and for ensuring compliance with all rules and regulations, including Chapter 65G-2, F.A.C., iBudget Handbook and Chapter 393, F.S., whenever one or more participants are present.

(c) The Program director shall possess at a minimum an associate's degree from an accredited college or university, and two years verifiable experience working directly with individuals receiving services or related experience.

(d) The licensee must designate a staff member to serve as the back-up Program director when the Program director is unavailable. The designee shall meet the same qualifications as the Program director. Related experience will substitute on a year-for-year basis for the required college education.

(e) The licensee shall ensure that each staff member:

1. Maintains personal cleanliness and hygiene;
2. Refrains from abusive, neglectful, exploitative, and other unacceptable conduct such as the use of alcohol, illegal use of narcotics or other impairing drugs, and behavior or language which may be injurious to participants;
3. Who is diagnosed as having a communicable disease, infection, or infestation after beginning work in the physical site shall be excluded from working until deemed non-infectious in the work setting.
4. If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(f) An area of the physical site shall be designated as office space where files, desk(s), telephone(s), and other administrative tools and equipment are located. Provisions shall be made for ensuring the security of confidential files and other types of records, such as account books, inventories, audits, and client/participant records. These records may be kept electronically. A violation of this paragraph shall constitute a Class II violation.

(g) All documentation must be completed in English. A violation of this paragraph shall constitute a Class III violation.

(25) Financial Standards

(a) The licensee shall maintain fiscal records pertaining to the cost of providing care to the Agency's clients in accordance with generally accepted accounting principles.

(b) Upon request by the Agency, the licensee shall provide to the Agency evidence of financial ability to operate the program in accordance with the requirements of Chapter 65G-2, F.A.C., for up to 60 days without dependence upon payment from the state or other third-party fees from clients. Such evidence shall include bank account statements, pay stubs, documentation of a line of credit, or any other documents which would demonstrate the expected ability of the licensee to continue operations for that period and under those conditions.

(c) If a program receives funds for developmental training programs, evidence of 12.5% match from local sources of in-kind services must be provided upon request by the Agency.

(d) The Agency may audit the records of a program to ensure compliance with Chapter 65G-2, F.A.C., and Chapter 393, F.S., provided that financial audits shall be limited to the records of the Agency's clients. Failure to maintain records shall constitute a Class III violation. Failure to allow the Agency access to records for an audit shall constitute a Class II violation.

(e) Upon request by the Agency, the program shall make available copies of any internal or external audit reports pertaining to funding received on behalf of the Agency's clients. Failure to allow the Agency access to client records shall constitute a Class II violation.

(f) The licensee, the program staff, direct service providers, and any family members thereof are prohibited from:

1. Being the named beneficiary of a client's life insurance policy unless related to the client by blood or marriage;
2. Receiving any indirect financial benefit from a client's life insurance policy unless related to the client or client by blood or marriage; or
3. Borrowing or otherwise using a client's personal funds for any purpose other than the client's or client's benefit.
4. Violation of paragraph (f) shall constitute a Class II violation.

(26) Staffing requirements

(a) Staffing Ratios.

1. The licensee shall employ and schedule adequate staff to maintain the program in a manner that promotes and ensures the health, safety, and welfare of all participants, and protects participants and the public from any known dangerous behaviors. At a minimum, the licensee shall maintain the staffing pattern delineated and described on the participants' support plan(s), approved service authorizations, or agreed contract of care. Every participant, regardless of the funding source, must be included in the staffing ratio calculations.

2. If the Agency determines that the program does not have adequate staff, the Agency will send the program a Notice of Noncompliance for the first occurrence. Such notice will provide a timeline and a Corrective Action Plan to ensure that the program has an adequate number of qualified personnel. Additional occurrences shall be addressed in accordance with the disciplinary chart in Rule 65G-2.0041, F.A.C.

(27) Required Skills for All Direct Service Providers.

(a) A direct service provider must be capable of effective communication with the participants of the program as well as other individuals, such as support coordinators, Agency staff, family members of participants, and others who routinely interact with facility or program staff.

(b) A direct service provider must demonstrate the ability to comprehend, comply with, and implement all requirements provided by law and Agency rules and statutes for the provision of services rendered to participants of their facilities or programs.

(c) A direct service provider must be physically capable of performing the duties for which they are responsible.

(d) A direct service provider responsible for transporting participants shall not possess driving violations, committed within the past three years, which relate to driving under the influence of alcohol or drugs or any other moving violation(s) that resulted in the suspension or revocation of his or her license.

1. Licensees must update their staff's driving history on an annual basis.

2. A direct service provider must obey all traffic laws while transporting participants.

3. There must be a current and appropriate auto insurance policy that covers the vehicle and staff.

(e) Violations of this paragraph shall constitute a Class II violation. If a violation of this paragraph results in, or poses a serious immediate threat of, death or serious harm to the health, safety or welfare of a resident to a participant, the violation shall constitute a Class I violation, instead.

(28) Safety Standards.

(a) A direct service provider shall not be under the influence of alcoholic beverages, medicine, or other substances to the extent their normal faculties are impaired. For the purpose of this paragraph "normal faculties" include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgements, act in emergencies and, in general, to perform the ordinary mental and physical acts of daily life and employment duties.

(b) Licensees are responsible for ensuring that a direct service provider who transports participants has a valid driver's license.

(c) Licensees are required to ensure that all direct service providers continue to meet all staffing requirements in accordance with all applicable rules and Florida Statutes.

(d) On at least an annual basis, all licensees must access the Florida Department of Law Enforcement's Sex Offender and Predator System database for the purposes of identifying database registrants who reside within a one-mile radius of the physical site. The licensee shall notify all direct service providers of the location of sexual offenders or predators who live within one mile of the physical site and document such notification.

(e) The physical site shall have on the premises a first aid kit. The first aid kit shall be maintained in places known and readily available to all direct service providers.

1. The first aid kit must be adequately stocked with no expired items.

2. Potentially toxic materials contained within first aid kits shall be stored in a manner that does not pose a risk to participants.

(f) The program staff must call 911 immediately upon any emergency, injury, or illness that cannot be addressed effectively on site or any event that can be considered life threatening.

(g) The physical site shall conduct at minimum quarterly fire drills or more frequently if required by the fire authority having jurisdiction when participants are on site. Subject to fire authority having jurisdiction approval,

evacuation of the premises shall not be required; however, the physical site shall ensure that the participants are taken at least to the point of exit. A current attendance record must accompany program staff during a drill or actual evacuation and be used to account for all participants.

1. Dates and results of each fire drill shall be recorded and maintained for three years following the date of the drill.

2. The record must include the time of drill, point(s) of exit(s) used, evacuation time, number of participants at the time of the drill, the length of time taken to evacuate the premises, and the signature of the person conducting the drill.

(h) The program shall provide supervision to each participant during an evacuation between the physical site and the transportation.

(i) The program shall ensure the use of the designated drop off and pick up areas during transitions from the physical site and transportation.

(j) The program will ensure that all participants are accounted for at all times during and upon completion of any program activity, whether on-site or in the outside community.

(k) If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(29) Behavioral Interventions and Responses to Behavioral Issues.

(a) The program shall have a written statement of policies and procedures describing actions that may be taken by a direct service provider to help prevent or respond to behavioral problems exhibited by participants, including emergency procedures and reporting requirements. Such policies and procedures, as well as any actions taken by a direct service provider involving participants of the program, shall be consistent with the provisions of section 393.13, F.S., as well as Chapters 65G-4 and 65G-8, F.A.C.

(b) A direct service provider must be trained to appropriately respond to serious and spontaneous behavioral incidents requiring emergency intervention procedures.

(c) A direct service provider shall not implement emergency intervention procedures that use restraint or seclusion, or cause physical discomfort, unless they have been certified through an Agency-approved emergency procedure curriculum in accordance with Chapter 65G-8, F.A.C.

(d) The following responses are strictly forbidden:

1. Physical or corporal punishment that includes, but is not limited to hitting, slapping, smacking, pinching, paddling, pulling hair, pushing, or shoving participants;

2. The use of noxious substances or devices which induce pain or other adverse stimulus to control behavior, including but not limited to pepper on tongue, squirt of lemon juice, ammonia inhalants, or electric shock;

3. Verbal abuse, including but not limited to cursing at participants, using slurs or derogatory names, or screaming;

4. Humiliation or psychological abuse, including but not limited to keeping a participant in wet or soiled clothing or diapers, making a participant stand in front of others to be ridiculed, preventing the client from wearing clothing, making a resident wear a sign, or placing a participant in a dark or locked time-out room.

(e) A violation of this section shall be a Class I violation.

(30) Investigations

(a) The licensee and program staff must cooperate and comply with any investigation conducted by the Agency or a law enforcement agency or any other agency authorized by law. Violations of this paragraph shall constitute a Class I violation.

(b) Paragraphs (c) and (d) are only applicable in situations where the licensee has been made aware of a verified DCF Abuse investigation.

(c) If a licensee, direct service provider, volunteer, or any other person working in the program has been identified as an alleged perpetrator in an active protective investigation of abuse, neglect, or exploitation of a vulnerable adult under Chapter 415, F.S., or abuse, abandonment, or neglect of a child under part II of Chapter 39, F.S., and the protective services investigator has reasonable suspicion that the abuse, neglect, exploitation, or abandonment has occurred, the alleged perpetrator shall be prohibited from being alone with participants unless he or she is under the constant visual supervision of another staff member who is not under such investigation.

Violations of this paragraphs shall constitute a Class II violation.

(d) If the protective investigation concludes with a verified finding of abuse, neglect, exploitation, or abandonment against the alleged perpetrator, the perpetrator shall be prohibited from being alone with participants unless he or she is under the constant visual supervision of another person working in the facility or program who has not, to the knowledge of the licensee, been named as the alleged perpetrator in an ongoing protective investigation or has a verified finding, until the Corrective Action Plan, below, is accepted. If the perpetrator remains employed by the licensee, the licensee must submit a Corrective Action Plan that contains the following documentation to the Agency within 15 days of notification of the verified finding:

1. Explanation of why the licensee is not terminating the perpetrator;
2. What disciplinary action was taken against the perpetrator;
3. Any training, including dates, that the program staff member or direct service provider received; and
4. How the licensee will protect participants from abuse, neglect, or exploitation by this perpetrator.

(e) Failure to timely create a Corrective Action Plan in (c) shall constitute a Class III violation. Failure to follow a Corrective Action Plan shall constitute a separate Class II violation.

(d) If the protective investigation concludes with no verified finding of abuse, neglect, exploitation, or abandonment against the alleged perpetrator, the licensee, direct service provider, volunteer, or other person working in the facility or program may be permitted to resume unsupervised contact with participants of the facility or program.

(31) Medication and Specialized Equipment

(a) Any program that administers medication must comply with Chapter 65G-7, F.A.C.

(b) All medications must be adequately labeled and stored in a locked location outside of participant access.

(c) Violations of this paragraph shall constitute a Class II violation. If a violation of this paragraph results in the abuse, exploitation or harm to a participant, the violation of this subparagraph shall constitute a Class I violation. If a violation of this section poses an immediate threat of, or causes, death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation.

(32) Requirements for Personnel Policies, Procedures, and Records.

(a) All licensees with staff shall develop and maintain the following:

1. Job descriptions for paid staff;

2. Documentation of all program staff training, including a record of training dates, training content, trainers, and staff in attendance;

3. Separate personnel records for each full and part-time staff member that contain written documentation of each staff member's name, home address, phone number, job assignment, education, qualifications, experience, references, background screening, staff training participation, performance evaluations, emergency management plan training, any disciplinary action taken against the staff member, and dates of employment and termination; and

4. A weekly written schedule indicating staff coverage posted at least one week in advance. Weekly schedules of actual staff coverage shall be maintained for a six-month period.

(b) The licensee shall provide a copy of any or all items discussed in this section to the Agency upon request, within three calendar days.

(c) Violations of this subsection constitutes a Class III violation.

(33) Direct Service Provider Training Requirements.

(a) All direct service providers must comply with all training requirements and training documentation retention requirements set out in the iBudget Handbook.

(b) For those participants with behavior plans, staff must be trained in the participant's current behavioral plans before working with the participant, by a behavioral analyst or behavioral assistant.

(c) For those participants with nutrition plans, staff assisting with meals must be trained in the participant's current plan.

(d) Documentation of the training in paragraphs (b) and (c) must be maintained in the staff member's personnel record.

(e) Violations of paragraphs (a), (b), and (c) shall constitute Class II violations. Violation of paragraph (d) shall constitute a Class III violation.

(34) Sexual Activity and Physical Contact.

(a) The licensee shall develop and enforce a written policy regarding sexual activity involving participants of the program. Violations of this paragraph shall constitute a Class II violation. If a violation of this paragraph results in, or poses a serious immediate threat of, death or serious harm to the health, safety or welfare of a resident to a participant, the violation shall constitute a Class I violation, instead. Such policy shall:

1. explicitly prohibit sexual activity between a participant and a covered person;
2. explicitly prohibit sexual activity that involves participants who are under the age of eighteen;
3. require staff to report sexual activity involving participants under the age of eighteen to Department of Children and families, and law enforcement;
4. not, in any way, abridge or restrict the civil and legal rights of persons with developmental disabilities, including those specified within section 393.13, F.S.; and
5. address appropriate physical boundaries and standards between a direct service provider and participants, including the following elements:
 - a. physical contact between a direct service provider and participants should be brief, age appropriate, and shall not include sexual activity.
 - b. a dress code for both participants and direct service providers shall be established that outlines the type of clothing that is acceptable as well as where and under what circumstances it is acceptable;
 - c. direct service providers and participants must respect personal space, except as may be necessary for participants who require visual supervision due to documented behavioral or medical issues;
 - d. a provision which permits direct service providers to assist or supervise a participant while he or she bathes, showers, or toilets, if the participant requires assistance or supervision, but staff shall never be permitted to bathe, shower, or toilet simultaneously with any participant under any circumstances;
 - e. guidelines concerning the level and type of supervision required for participants, with which all direct service providers shall be familiar; and
 - f. open communication among participants and direct service providers about events occurring in the facility in order to encourage reporting of incidents of abuse or inappropriate sexual behavior.

(b) The licensee shall provide direct service providers with training regarding the licensee's policy regarding sexual activity, involving participants prior to providing direct care services. Violation of this paragraph shall constitute a Class II violation.

(c) The following safeguards shall be implemented in any program that serves one or more sexually aggressive participants, or those who require a Safety Plan under the iBudget Handbook, Chapter 65G-2, F.A.C., or any other similar requirement:

1. All direct service providers shall review all relevant records and complete history related to sexually aggressive participants in order to prevent the occurrence of sexual abuse incidents. When available to the licensee, such information provided to staff must include, but is not limited to, the date of the sexual abuse incident, type of abuse, brief narrative outlining the event, type of treatment the resident received, all remedial measures taken, and the outcome of the treatment. If the participant is currently in treatment, the licensee shall maintain contact information for the treatment provider;

2. Prior to attendance, an individualized Safety Plan shall be developed by a team to assess the risks of serving the sexually aggressive participant and determine the level of support and supervision required. The team shall include the prospective participant's support coordinator, facility operator, behavior analyst, the prospective resident and his or her legal representative, day program manager, companion, job coach, mental health counselor/psychologist, and school representative, as applicable. The staff shall be trained on safety plans before working with sexually aggressive individuals.

3. The prospective participant, if legally competent, or his or her legal representative must sign and agree to the Safety Plan. The Safety Plan shall be reviewed and updated as needed, at least once a year.

4. A sexually aggressive participant shall be provided visual supervision at all times the participant is awake in the program;

5. Known sexually aggressive participants shall never be left alone with other participants.

6. Only one participant may use the bathroom at any time that the bathroom door is closed; and,

7. Participants who are minors are not permitted to possess obscene materials as defined in section 847.001, F.S., on the premises.

8. If a violation of this section causes or poses an immediate threat of death or serious harm to the health, safety or welfare of a resident, it shall be a Class I violation. All other violations of this section shall be a Class II violation.

(35) This Rule shall be reviewed, and if necessary, renewed through the rulemaking process five years from the effective date.

Rulemaking Authority, 393.067, 393.0673, 393.501 FS. Law Implemented 393.067, 393.0673, 393.13 FS. History–New

NAME OF PERSON ORIGINATING PROPOSED RULE: Lynne Daw

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Taylor Hatch

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 23, 2024

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