

Notice of Development of Rulemaking

DEPARTMENT OF CHILDREN AND FAMILIES

Agency for Persons with Disabilities

RULE NOS.:RULE TITLES:

65G-11.001 Definitions

65G-11.002 Waiting List Criteria

65G-11.003 Waiting List Placement Procedure

65G-11.0031 Removal from the Waiting List

65G-11.004 Crisis Determination Procedure

65G-11.005 iBudget Waiver Enrollment

PURPOSE AND EFFECT: The purpose and effect of these rules is to clarify the procedures and criteria that the Agency for Persons with Disabilities utilizes in assigning and prioritizing clients waiting for iBudget Waiver enrollment and services. This includes the criteria and process to request assignment to Category 1 of the Waiting List relating to crisis. These rules also clarify the process by which a client is removed from the Waiting List. These rules will implement and interpret statutory changes pursuant to Chapter 2020-138, Laws of Florida, regarding iBudget Waiting List eligibility and prioritization.

SUBJECT AREA TO BE ADDRESSED: The subject areas to be addressed in these rules include the iBudget Waiver waiting list, which includes crisis. This rule also includes provisions for iBudget Waiver enrollment, and removal and disqualification from the waiting list.

RULEMAKING AUTHORITY: 393.501, 393.065, F.S.

LAW IMPLEMENTED: 393.065, 393.063, 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:

Substantial rewording of Rule 65G-11.001 follows. See Florida Administrative Code for present text.

65G-11.001 Definitions

For the purpose of this rule chapter, the following terms and phrases have the following meanings:

(1) “Abuse:”

(a) of a child, has the same meaning as provided in section 39.01, Florida Statutes (F.S.).

(b) of a vulnerable adult, has the same meaning as provided in section 415.120, F.S.

(2) “Agency” means the Agency for Persons with Disabilities.

(3) “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.

(4) “Caregiver:”

(a) of a child, has the same meaning as provided in section 39.01, F.S.

(b) of a vulnerable adult, has the same meaning as provided in section 415.120, F.S.

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

(6) “Case closure” means a process followed by the Agency when a client is no longer eligible for Agency services under chapter 393, Florida Statutes, or voluntarily requests their case be closed.

(7) “Dependent” means a person who relies on another for support, or one who is not able to exist or sustain oneself without the power or aid of someone else.

(8) “Handbook” means the Florida Medicaid Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, incorporated by reference in Rule 59G-13.070, Florida Administrative Code (“F.A.C.”).

(9) “iBudget Waiver” or “Waiver” is the Agency’s Home and Community-Based Services (HCBS) Waiver authorized by 42 U.S.C. 1396n(c) of the federal Social Security Act and Section 409.906, F.S., that provides Medicaid funding for home and community-based services to eligible persons with developmental disabilities who are eligible for Agency services and who live at home or in a home-like setting.

(10) “Legal representative” means:

(a) for clients under the age of 18 years, the legal representative or 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).

(b) for clients age 18 years or older, the legal representative could be the client, anyone designated by the client through a Power of Attorney or Durable Power of Attorney, a medical proxy under chapter 765, F.S., or anyone appointed by a Florida court as a guardian or guardian advocate under chapter 393 or 744, F.S.

(11) “Life-threatening situation” means any environment or condition from which the likelihood of death is probable unless that environment or condition is interrupted or changed.

(12) “Neglect:”

(a) of a child, has the same meaning as provided in section 39.01, F.S.

(b) of a vulnerable adult, has the same meaning as provided in section 415.120, F.S.

(13) “Protective services:”

(a) of a child, has the same meaning as used in chapter 39, F.S.

(b) of a vulnerable adult, has the same meaning as provided in section 415.120, F.S.

(14) “Region” means one of six designated local geographical areas served by the Agency. There are six regions across the state of Florida: Northwest, Northeast, Central, Suncoast, Southeast, and Southern.

(15) “Regional Office” means one of the Agency’s offices serving a Region. The contact information for each Regional Office is available on the Agency’s website.

(16) “Serious bodily harm” means significant physical harm caused to the human body. It refers to those injuries that create a substantial risk of death or cause serious, permanent disfigurement or prolonged loss or impairment of the function of any body part or organ.

(17) “Waiting List” is the prioritized list, maintained by the Agency, of clients who are seeking enrollment on the iBudget Waiver.

Rulemaking Authority 393.065(7), 393.0662, 393.501, F.S. Law Implemented 393.063, 393.065(5), 393.0662, F.S. History–New 10-24-10; Amended _____.

Substantial rewording of Rule 65G-11.002 follows. See Florida Administrative Code for present text.

65G-11.002 Waiting List Criteria

(1) The Agency must assign each client on the Waiting List to a category based on the criteria set forth in section 393.065(5), F.S., and this Rule. The Waiting List is organized into seven (7) prioritized categories of clients waiting for iBudget Waiver enrollment, labeled as categories 1 through 7.

(a) Category 1 includes clients with the highest priority for iBudget Waiver enrollment, and each subsequent category is a successively lower priority, with Category 7 being the lowest priority.

(b) If a client does not meet the requirements of categories 1 through 5, then that client must be assigned to category 6 or 7 based on the client’s age.

(c) If a client meets the requirements of more than one category or no longer meets his or her assigned category, then that client will be assigned to the highest priority category for which the client qualifies.

(2) Category 1, which refers to clients in crisis, includes three subcategories: danger to self or others, homeless, and caregiver(s) unable or unavailable to provide care or no caregiver. The criteria for crisis and each subcategory is described within this subsection and the crisis determination procedure is described in Rule 65G-11.004, F.A.C.

(a) Crisis is a factual determination based on a totality of the client's circumstances. No single circumstance nor any set of circumstances are determinative of whether a client is in crisis or meets the criteria of a subcategory.

(b) In addition to all other criteria in this subsection, crisis requires that abuse, neglect, serious bodily harm, or a life-threatening situation be imminent for the client or another individual without iBudget Waiver services. Before a client can be determined to be in crisis:

1. the client must utilize all other available resources, supports, and/or treatments such as: State Plan Medicaid services; school-based services; private insurance; natural supports, which includes a parent or legal guardian's responsibility to care for the client to the fullest extent possible; personal financial resources; or any other resource available to the client; and

2. such resources, supports and/or treatments are documented to not have alleviated the need for iBudget Waiver services.

(c) In addition to the other criteria in this subsection, a client is in crisis and assigned to Category 1 if one or more of the following conditions apply:

1. Danger to Self or Others. The client exhibits behaviors that, without provision of immediate iBudget Waiver services, will imminently result in:

- a. serious bodily harm to the client or others requiring emergency medical care from a physician, or
- b. a life-threatening situation for the client or others.

2. Homeless. The client is homeless; or the client's housing situation will imminently result in abuse, neglect, serious bodily harm, or a life-threatening situation and cannot obtain alternative long-term housing.

a. For purposes of this rule, homeless means the client has no housing and is unable to obtain or afford housing, or the client's current housing is not expected to last more than 30 calendar days and he or she cannot obtain or afford other housing.

b. A homeless shelter is not considered housing.

c. A child with an open case in the Department of Children and Families' statewide automated child welfare information system is not considered homeless.

3. Caregiver(s) Unable or Unavailable to Provide Care or No Caregiver. For this subcategory, the client must meet the criteria in sub-subparagraph a. through c.

a. The client is dependent on a caregiver to remain living in the community;

b. iBudget Waiver services are necessary for the client to remain living independently or with the caregiver(s), or to relocate to an alternative living arrangement within the community; and

c. Either:

(I) the client's caregiver(s) is no longer able or available to provide for the client's long-term health and safety needs due to extreme duress, and there is no other able or available caregiver; or

(II) there is no caregiver, and the client can no longer live independently in the community.

d. Examples of this subcategory include, but are not limited to:

(I) the caregiver cannot meet the client's health and safety needs because of the caregiver's disability, substance abuse issue, illness, injury, and/or advanced age;

(II) the caregiver lacks the commitment to provide for the necessary health and safety needs of the client that places the client in an imminent situation of abuse and/or neglect that is expected to last indefinitely;

(III) the caregiver is living in an assisted living or long-term care facility or is scheduled to enter such in the next three months;

(IV) the caregiver is deceased, placed in hospice, or at an end of life stage, or has become permanently disabled or terminally ill;

(V) the caregiver's obligation to meet the needs of the client or another dependent(s) prevents the caregiver from providing for the health and safety needs of both the client and/or another dependent(s); or

(VI) the caregiver cannot provide for the client's health and safety needs because of the physical, functional, and/or behavioral demands of the client.

(3) Category 2 includes:

(a) a client who is from the child welfare system with an open case in the Department of Children and Families' statewide automated child welfare system and who are either:

1. transitioning out of the child welfare system at the finalization of an adoption, a reunification with family members, a permanent placement with a relative, or a guardianship with a nonrelative;

2. at least 18 years old but not yet 22 years old and who need both iBudget Waiver services and extended foster care services; or

3. at least 18 years old but not yet 22 years old and who withdrew consent pursuant to section 39.6251(5)(c), F.S., to remain in the extended foster care system.

(b) For individuals who are at least 18 years old but not yet 22 years old and are eligible under subparagraph (a)2., the Agency will provide iBudget Waiver services, including residential habilitation. In addition, the community-based care lead agency must fund room and board at the rates established in section 409.145(3), F.S., and provide case management and related services as defined in section 409.986(3)(e), F.S.

(c) Individuals may receive both iBudget Waiver services and services under section 39.6251, F.S. Agency services may not duplicate services available through the Medicaid State Plan.

(4) Category 3 includes:

(a) a client whose caregiver has a documented condition or circumstance which is reasonably expected to render the caregiver unable to provide care within the next twelve (12) months and for whom a caregiver is required but no alternate caregiver is available.

1. The Agency's review of the caregiver's condition or circumstance must consider the level of care needed by the client and the caregiver's ability to provide that level of care.

2. If there is a medical condition or circumstance that is reasonably expected to render the caregiver unable to provide appropriate care for the client, it must be documented by a physician's statement. The physician's statement must explain the reason the current caregiver is reasonably expected not to be able to provide the client's care.

3. If there is a non-medical condition or circumstance that is reasonably expected to render the caregiver unable to provide appropriate care for the client, the reason must be described in detail and signed by the caregiver.

4. The Agency must consider the reliability and long-term commitment of the caregiver, including the caregiver's responsibility for other individuals who also need care, in order to ensure continuity of care.

5. If the expected condition or circumstance does not occur within twelve (12) months, the Agency may require the client, or the client's legal representative, to provide documentation to demonstrate that the client continues to meet this criteria.

(b) A client who is at substantial risk of incarceration or court commitment without supports.

1. This includes a client whose unlawful activity has required the intervention of law enforcement even if the unlawful activity did not result in an arrest or criminal charges.

2. Documentation must establish a history of criminal behavior. This may include involvement with law enforcement, the court system, or the Developmental Disabilities Defendant Program.

(c) A client whose documented behaviors or physical needs place them or their caregiver at risk of serious harm but does not meet the level of Category 1 as defined in (2)(c)1. of this Rule. Additionally, there are no other supports currently available to meet the client's needs. Documentation must be provided showing:

1. behaviors or physical needs that are causing the risk or potential harm;

2. the medical treatment provided to the client or to others because of the client's behaviors or physical needs;

3. the frequency, intensity, and duration of behavioral incidents; and

4. an explanation of behavioral interventions that have been used.

(d) A client who:

1. is identified as ready for discharge within the next year from:

a. a state mental health hospital;

b. skilled nursing facility;

c. intermediate care facility for individuals with intellectual disabilities (ICF/IID);

d. correctional facility; or

e. a secure forensic facility; and

f. require a caregiver but no caregiver is available or whose caregiver is unable to provide the care needed.

2. For a client described in subparagraph (4)(d)1., there must be evidence that without the provision of iBudget Waiver-funded services, this individual will be at risk of readmission to an institution due to a lack of available caregiver or a lack of appropriate or available services. Documentation provided must include:

a. a discharge summary from the facility that indicates the individual is ready for discharge; and

b. a statement that no other resources or services are available other than iBudget Waiver services to meet the client's needs, including a description of attempts made to seek resources or services outside of iBudget Waiver.

(5) Category 4 includes:

(a) a client who(se):

1. primary caregiver is age seventy (70) years of age or older;

2. has no other alternate caregiver available to provide support; and

3. has no other government or community resources available to provide assistance to the client.

(b) documentation of the date of birth of the primary caregiver(s) must be provided as well as documentation that the client needs a caregiver and no other caregiver is available.

(c) the Agency must review the caregiver's ability to provide the level of support the client needs and not just consider the age of the caregiver. The health of the caregiver(s) will be considered.

(6) Category 5 includes:

(a) a client who:

1. is expected to graduate from secondary school within the next twelve (12) months; and

2. needs the supports available through iBudget Waiver funded services to obtain a meaningful day activity, maintain competitive employment, or pursue an accredited program of postsecondary education to which they have been accepted.

3. Documentation of the client's graduation is required as well as documentation that there are no other resources available, other than iBudget Waiver funded services to provide the client with the support to obtain or maintain a job.

(b) a client age 23 and over by the beginning of the school year must be moved to Category 6 unless they graduated from secondary school in the previous school year and show proof that iBudget Waiver funded services are needed to obtain, or maintain, competitive employment or have been accepted to an accredited institution for postsecondary education.

(7) Category 6 includes a client whose age twenty-one (21) years of age older and do not meet the criteria for any other category. Verification of this category is obtained through documentation of the client's date of birth.

(8) Category 7 includes a client who is under the age of twenty-one (21) years and who do not meet the criteria for any other category. Verification of this category is obtained through documentation of the client's date of birth. Rulemaking Authority 393.065(7), 393.501, 393.0662 F.S. Law Implemented 393.063, 393.065(5), 393.0662, F.S. History—New 10-24-10; Amended _____.

Substantial rewording of Rule 65G-11.003 follows. See Florida Administrative Code for present text.

65G-11.003 Waiting List Placement Procedure

(1) Once the Agency determines a client must be placed on the Waiting List, then the Agency will assign a client to a priority category using the procedure established in this Rule and the following:

(a) the client's Application for Services described in Rule 65G-4.016, F.A.C.;

(b) documentation provided by the client;

(c) any assessments completed for the client to determine eligibility for Agency services; and

(d) any additional documentation the Agency obtains independently. Although the Agency is not required to independently obtain documentation on behalf of the client, this does not preclude the Agency from obtaining such.

(2) The client must provide the Agency credible and relevant written documentation to demonstrate the criteria for assignment to a category pursuant to Rule 65G-11.002, F.A.C.

(3) There is no specific type or amount of documentation that the Agency will rely on in making a category and/or subcategory determination. The Agency will review all the documentation in its totality to make a case-by-case determination as to the appropriate category.

(4) If an applicant or client is seeking assignment to Category 1 as a result of crisis, then the applicant or client must also follow the procedure found in Rule 65G-11.004, F.A.C.

(5) When a client is initially assigned to a category, the Agency will notify the client and, if applicable, the client's legal representative in writing of the client's assigned category pursuant to Rule 65G-4.016, F.A.C.

(6) The client or, if applicable, the client's legal representative, may request a category change in writing with the Regional Office where the client resides. If the request relates to crisis, it must be made in accordance with Rule 65G-11.004, F.A.C.

(a) The request for category change must include documentation as specified in subsection (2) of this Rule to demonstrate the criteria for another category in Rule 65G-11.002, F.A.C.

(b) Except for paragraph (6)(c) of this Rule, the Agency will notify the client and, if applicable, the client's legal representative of the decision in writing within 45 calendar days of the request for category change.

(c) If the Agency determines additional documentation is required during the review of the category change, the 45-calendar day limit will be extended to 60 calendar days as follows:

1. the Agency must make the request for additional documentation within 45 calendar days of the request; and
2. if additional documentation is requested from the client, the client will have up to 15 calendar days to provide the additional documentation from the date of the Agency's request.

(7) The Agency will review the Waiting List category at least annually regarding client age and will correct category assignments pursuant to statute.

(8) Anytime a client's category is changed pursuant to subsections (6) or (7), the Agency will notify the client and, if applicable, the client's legal representative in writing.

Rulemaking Authority 393.065(7), 393.501, 393.0662 F.S. Law Implemented 393.063, 393.065(5), 393.0662, F.S. History–New 10-24-10; Amended _____.

65G-11.0031 Removal from the Waiting List

(1) A client on the Waiting List and, if applicable, the client's legal representative must ensure that the client's contact information with the Regional Office where the client resides is accurate, up-to-date at all times. Contact information includes:

(a) at a minimum, the address where the client resides, mailing address, any temporary address, and phone numbers where the client, and if applicable, the client's legal representative can be contacted and located;

(b) if available, email address of the client, and if applicable, the client's legal representative; and

(c) if applicable, any documentation demonstrating any change in status of the legal representative or name change of the client and/or legal representative.

(2) On an annual basis, the Agency must send an annual letter requesting updated contact information from all clients on the Waiting List, and if applicable, the client's legal representative to ensure the contact information is accurate and up-to-date.

(3) The Agency must remove from the Waiting List any client who:

(a) fails to meet the eligibility requirements pursuant to subsection 65G-4.015(4), F.A.C.; or

(b) requests to be removed.

(4) The Agency will remove from the Waiting List and perform case closure for any client who:

(a) cannot be located or, if applicable, whose legal representative cannot be located using the contact information in the Agency's records;

(b) is deceased; or

(c) no longer meets all the eligibility requirements in section 393.065, F.S.

(5) For any client removed from the Waiting List and/or has his or her case closed pursuant to subsection (3) or paragraphs (4)(a) or (c) of this Rule, the Agency will notify the client and, if applicable, the client's legal representative in writing. A client removed from the Waiting List and/or has his or her case closed has a right to request an administrative hearing pursuant to sections 393.125(1)(a), 120.569, and 120.57, F.S.

(6) An individual may submit a new application for Agency services at any time.

Rulemaking Authority 393.065, 393.501, 393.0662 F.S. Law Implemented 393.063, 393.065, 393.0662, F.S. History–New _____.

Substantial rewording of Rule 65G-11.004 follows. See Florida Administrative Code for present text.

65G-11.004 Crisis Determination Procedure

(1) Should an applicant or client believe he or she is in crisis, pursuant to the criteria found in Rule 65G-11.002(2), the applicant, client or, if applicable, their legal representative may request assignment to Category 1.

The request must:

(a) be submitted orally or in writing to the Regional Office where the applicant or client resides;

(b) describe the reason(s) for the request for crisis enrollment, including which subcategory or subcategories the crisis relates to under Rule 65G-11.002(2), F.A.C.; and

(c) include credible and relevant written documentation to demonstrate the basis for crisis. Failure to submit sufficient documentation to establish crisis constitutes grounds to deny assignment to Category 1. The type of documentation the Agency will consider in determining whether a client is in crisis includes but is not limited to:

1. legal representative statement;

2. caregiver statement;

3. client statement;

4. provider statement;

5. physician statement;

6. medical records;

7. court records;

8. school records;

9. law enforcement records;

10. protective services records;

11. Agency records;

12. formal eviction notice under chapter 83, F.S.;

13. employment dismissal notice;

14. documentation from community organizations or other state agencies; and

15. other documentation relevant to the request of the client.

(2) For an applicant requesting assignment to Category 1 due to crisis, the Agency will treat that as a request for an emergency eligibility determination pursuant to Rule 65G-4.0161, F.A.C. Only a client of the Agency can be deemed to be in crisis, but this does not preclude the Agency from receiving documentation relevant to the applicant's crisis request.

(3) For a client requesting assignment to Category 1 due to crisis, the Agency will consider the crisis request while it conducts the redetermination of the eligibility pursuant to subsection 65G-11.005(4), F.A.C.

(4) The Agency will deny any crisis request for individuals found to be ineligible for the iBudget Waiver for failing to meet the level of care requirement as described in 42 C.F.R. § 435.217(b)(1). Failure to provide sufficient documentation demonstrating that the client meets the level of care required for the iBudget Waiver constitutes grounds to deny crisis enrollment.

(5) The Agency will review the crisis request and all relevant documentation to determine whether the client meets the crisis criteria in Rule 65G-11.002, F.A.C., and will consider whether Individual and Family Supports ("IFS") as described in Rule 65G-13.003, F.A.C., is appropriate to avert or alleviate a potential crisis. After the review, the Agency must either:

(a) approve the crisis request if the client meets the crisis criteria and notify the client and, if applicable, the client's legal representative in writing that the Agency recommends Waiver enrollment; or

(b) deny the crisis request if the client does not meet the crisis criteria and notify the client and, if applicable, the client's legal representative in writing.

(6) Except as provided in section (7) of this Rule, the Agency must make a crisis determination within 45 calendar days from:

(a) the date the Agency receives the crisis request of a client; or

(b) the date an applicant seeking crisis enrollment is determined eligible for Agency services.

(7) If the Agency determines additional information is required during the review of the crisis request, the 45-calendar day limit will be extended to 60 calendar days as follows:

(a) the Agency must make the request for additional information within 45 calendar days of the crisis request; and

(b) if additional information is requested from the client, the client will have up to 15 calendar days to provide the additional information from the date of the Agency's request.

(8) If a crisis request is denied, the client may submit a new crisis request when additional information becomes available or the client's circumstances have changed.

(9) If the client has not obtained Title XIX of the Social Security Act or Supplemental Security Income (SSI) Florida Medicaid within 180 calendar days from the date of the Notice of Crisis Approval, the Notice of Crisis Approval will be void and the client must submit a new crisis request.

(10) The Agency must refer any crisis requests containing documentation that has been falsified or that contains misrepresentations regarding the client's actual situation to the Florida Department of Financial Services, Division of Public Assistance fraud hotline. Any person that intentionally falsifies or misrepresents the client's actual situation to receive Agency services is guilty of a crime, up to a first-degree felony, pursuant to section 414.39, F.S.

Rulemaking Authority 393.065, 393.501(A), 393.0662 F.S. Law Implemented 393.063, 393.065, 393.0662, F.S. History-Adopted 9-19-07; Transferred from 65G-1.046; Amended _____.

65G-11.005 iBudget Waiver Enrollment

(1) To determine enrollment priority for clients from within a particular category:

(a) if there is insufficient funding to enroll all clients in crisis on the iBudget Waiver, then clients in crisis will be prioritized by consideration of the date each client requested crisis as documented in the agency's data management systems, with the earlier request having the higher priority.

(b) for categories 2 through 7, when multiple clients are assigned to the same category, then those clients will be prioritized by consideration of the length of time each client has been assigned to that category, with the longest having the higher priority.

(2) A client may only be placed on the iBudget Waiver if:

(a) there is available funding pursuant to section 393.0662, F.S., or other Legislative appropriation;

(b) the client meets the Agency's eligibility criteria as set forth in Rules 65G-4.014 through 65G-4.017, F.A.C.;

(c) without iBudget Waiver services, the client would require the level of care furnished in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), as defined in 42 C.F.R. § 440.150;

(d) the client is eligible for Title XIX or SSI Florida Medicaid; and

(e) the client meets one of the following:

1. the Agency has determined the client meets the criteria for a category pursuant to section 393.065(5), F. S., and Rule 65G-11.002, F.A.C.;

2. section 393.065(6), F. S., regarding an individual who meets the eligibility requirements of section 393.065(1), F. S., to receive home and community-based services in this state if the individual's parent or legal guardian is an active-duty military servicemember and if, at the time of the servicemember's transfer to this state, the individual was receiving home and community-based services in another state;

3. section 393.065(7), F. S., regarding an individual with a diagnosis of Phelan-McDermid syndrome who meets the eligibility requirements of section 393.065(1), F. S.; or

4. the Client resides in an ICF/IID who have indicated to the Agency that they wish to transition to a home and community-based setting.

(3) If the client has not been determined eligible for Florida Medicaid under Title XIX or SSI, the Agency will refer the client to the Department of Children and Families for an eligibility determination.

(4) Nothing in this rule prevents the Agency from complying with federal requirements to redetermine eligibility as a condition of enrollment. iBudget Waiver services are only available to persons who meet the requirements of 42 C.F.R. § 435.217(b)(1) for receiving home and community-based services. Therefore:

(a) as part of the enrollment process and before a client can be enrolled onto the iBudget Waiver, the client's eligibility status must be reviewed and verified by the Agency.

(b) if a client does not meet the Waiver eligibility requirements, that client must be removed from the Waiting List pursuant to Rule 65G-11.0031, F.A.C.

(5) Pursuant to section 393.065(8), F.S., Agency action that selects individuals to receive Waiver services does not establish a right to a hearing or administrative proceeding under chapter 120 for individuals remaining on the Waiting List.

Rulemaking Authority 393.065, 393.501, 393.0662 F.S. Law Implemented 393.063, 393.065, 393.0662, F.S. History–New _____.