

## Notice of Proposed Rule

### **DEPARTMENT OF CHILDREN AND FAMILIES Agency for Persons with Disabilities**

#### **RULE NOS.:RULE TITLES:**

65G-2.001 Definitions

65G-2.018 Personal Needs Allowance

**PURPOSE AND EFFECT:** The purpose and effect of this new rules is to implement section 402.33(3), Florida Statutes and ensure that, for a client residing in an Agency for Persons with Disabilities licensed residential facility, a portion of his or her third-party benefits and benefit payments is set aside for the client's incidental personal expenses. New definitions are added to clarify the meaning of certain terminology within the new rule.

**SUMMARY:** 65G-2.001: Amended to add definitions for new terms that will be included in the new rule 65G-2.018. 65G-2.018: Requires Agency licensed facilities to set aside a personal needs allowance, out of a client's third-party benefit payment; clarifies that this set aside is only for that client's benefit; and establishes the amount that is to be set aside, and how it will be adjusted over time.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:** The Agency has determined that this Rule 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 establish the personal needs allowance for the Agency's licensed facilities; 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: A SERC Checklist and SERC were prepared by the Agency to determine the need for legislative ratification. Based on this information at the time of the analysis, summarized above, and pursuant to section 120.541, Florida Statutes, the rules will not require legislative ratification because costs will not be in excess of \$1 million in the aggregate within 5 years after the implementation of the rules.

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, 393.501, 402.33, F.S.

**LAW IMPLEMENTED:** 393.066, 393.0662, 393.067, 402.33, F.S.

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

**DATE AND TIME:** June 21, 2023, 1:00 p.m. to 2:00 p.m. EST

**PLACE:** Attendees may register for the hearing at:

<https://attendee.gotowebinar.com/register/2412855608736240989>. After registering, a confirmation email will be received containing information about joining the webinar, and opportunities to offer comments and questions will be available.

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 at (850)410-1309 or [brett.taylor@apdcare.org](mailto:brett.taylor@apdcare.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). 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, Senior Attorney, 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

(1) through (4) No change.

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

(5) through (14) renumbered as (6) through (15) No change.

(16) “Federal benefit rate” means the amount of money the Federal government provides to recipients of the Supplemental Security Income (“SSI”) program for a particular calendar year.

(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.

(15) through (21) renumbered as (19) through (25) No change.

(26) “Personal needs allowance” means funds set aside from benefit payments and third-party payments to provide for the client's current maintenance and incidental personal expenses.

(22) through (26) renumbered as (27) through (31) No change.

(32) “Residential facility” has the same meaning as in 393.063, F.S.

(33) “Representative payee” has the same meaning as set forth in section 402.33, F.S.

(34) “Residential habilitation” has the same meaning as set forth in section 393.063, F.S.

(35) “Room and board payment” means a limited reimbursement by the Agency to a residential facility providing residential habilitation and room and board to a client, to cover the cost of providing food and shelter to a client in accordance with chapter 393, F.S., and chapter 65G-2, F.A.C.

(27) through (31) renumber as (36) through (40) No change.

(41) “Third-party benefits” has the same meaning as set forth in section 402.33, F.S.

(32) through (34) renumbered as (42) through (44) No change.

(45) 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(1), 402.33, ~~393.067~~ F.S. Law Implemented 393.066, 393.0662, 393.067, 393.13, 402.33, F.S. History–New 7-1-14, Amended 7-1-18, \_\_\_\_\_.*

65G-2.018 Personal Needs Allowance

(1) A residential facility, that serves as the representative payee for a client, must set aside a personal needs allowance from the benefit payments or third-party benefits, or both, of the client. The facility is responsible for maintaining and administering the personal needs allowance, in accordance with the wishes of the client or the client's legal representative. The client's personal needs allowance is for the benefit of only that client.

(2) The personal needs allowance shall be at least eighteen (18) percent of the maximum federal benefit rate for Social Security Income payments to an individual.

(3) 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, 402.33, F.S. Law Implemented 393.066, 393.0662, 393.067, 402.33, F.S. History–New \_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Lorena Fulcher

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: 05/19/2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: 05/25/2023