

AGENCY FOR PERSONS WITH DISABILITIES
Statement Of Estimated Regulatory Costs (SERC)

Division: Agency for Persons with Disabilities
Board:
Rule Number: 14.001, .002, F.A.C.¹
Rule Description: Qualified Organizations and Waiver Support Coordination
Contact Person: Danielle Thompson

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

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

- | | | |
|--|------------------------------|--|
| 1. Is the rule likely to reduce personal income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the rule likely to reduce total non-farm employment? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the rule likely to reduce private housing starts? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the rule likely to reduce visitors to Florida? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the rule likely to reduce wages or salaries? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Is the rule likely to reduce property income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Explanation:

Pursuant to the adoption of chapter 2020-71, Laws of Florida, the Florida Legislature requires all support coordinators (“WSCs”) to be employees of a qualified organization effective July 1, 2021. The legislative intent, as codified in section 393.0663(1), Florida Statutes (2020), was to create a systematic approach, by requiring all WSCs to be employees, to service oversight of WSCs providing services to Agency for Persons with Disabilities (“Agency”) clients. This approach will ensure WSCs have the necessary knowledge, skills, and abilities to competently provide services to Agency clients.

¹ Rules 65G-14.001, 14.002, 14.003, 14.004, 14.0041, 14.0042, 14.0043, 14.005, *Florida Administrative Code*, were proposed on January 6, 2021 along with a published Statement of Estimated Regulatory Cost (“SERC”). On February 1, 2021, a Notice of Change was published relating specifically to Rules 65G-14.001 and 14.002. On February 15, 2021, the Agency received a Lower Cost Regulatory Alternative (“LCRA”) relating to the Notice of Change. The other rules in Chapter 65G-14 have been adopted and only Rules 65G-14.001 and 14.002 remain in proposed rule status. Pursuant to section 120.541(1)(a), Florida Statutes, the Agency is now revising the SERC for Chapter 65G-14 and rejecting the alternative in favor of the proposed rules. Rules 65G-14.001 and 14.002 are foundational to Chapter 65G-14 in that the other rules rely on 65G-14.001 and 14.002 to be implemented.

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Section 393.0663(2)(a) requires the Agency determine whether an organization meets the necessary requirements established within section 393.0663 and the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook. Section 393.0663(2)(b) lists the requirements to be a qualified organization. Section 393.0663(3) lists the obligations of the Agency in regulating the qualified organizations. These rules implement the above statutory requirements in a manner that is clear and consistent statewide.

The rules will not directly or indirectly have an adverse impact on economic growth, private-sector job creation, or employment on private-sector investment, as the changes in these rules are directly attributable to the adoption of chapter 2020-71. These rules do not impact provider rates or income. Provider rates are established by the Provider Rate Table in Rule 59G-13.081, *Florida Administrative Code* ("F.A.C."). The Agency is proposing these new rules to conform with the statutory changes.

Notice of Change

On February 1, 2021, the Agency published a Notice of Change in Volume 47, Number 20 of the Florida Administrative Register ("FAR") in response to public comments that all WSCs must be employees, not independent contractors, of a qualified organization pursuant to chapter 2020-71. These comments are consistent with sections 393.063(42) and 393.0663(1) and (2)(b)1. Pursuant to the Notice of Change, the Agency clarified that a qualified organization may only hire a WSC as an employee and defined employee, which specifically excludes independent contractors, in Rules 65G-14.001 and 14.002.

Any and all changes related to this notice in the rule are attributable to the statutes which the rules implement. For instance, the definition of support coordinator ("WSC") is "an **employee** of a qualified organization as provided in s. 393.0663. . ." Section 393.063(42).

Even if one should disagree and consider this change a regulatory cost, many of the costs would be neutral under the principle of internal transference, and potentially even a savings. Such loss (i.e. reduction in salary) is balanced by the benefits that the employer provides to the employee from the employment relationship. Conversely the employer is benefitted by factoring the benefits vis-a-vis salary rates. Employer and employees both benefit because of the business certitude of how these employees are recorded to the Internal Revenue Service, and other such benefits such as lowering the cost of purchasing insurance and reducing overhead.

This change provides clarity to qualified organizations by specifically stating independent contractors are excluded from the meaning of employee, which is explicitly stated and necessarily implied in statute. The clarification in rule will assist qualified organizations to be compliant with both Florida and federal tax filing requirements, thereby reducing the risk and potential liability of these businesses. The penalties and costs associated with incorrectly filing a tax status are discussed below.

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Lower Cost Regulatory Alternative

The Agency held a rule hearing on February 15, 2021 to provide the public with an opportunity to comment on the Notice of Change described above. Concerns were expressed relating to the Agency requiring WSCs to be employees as opposed to independent contractors of a qualified organization. Several commenters requested the Agency repeal the provisions of Rules 65G-14.001 and 14.002 that were added by the Notice of Change. One person submitted a Lower Cost Regulatory Alternative (“LCRA”) as follows:

Qualified Organizations with 15 or fewer WSCs may hire subcontractors as WSCs. Additional regulatory cost: None. How it meets legislative intent: The Agency maintains that legislative intent is to ensure WSCs have the Knowledge, Skills and Abilities to competently serve individuals on the Waiver. A small agency (now QO) is able to do that without requiring that WSCs be W2 employees because the agency is so small that supervision and communication are much easier and more effective than in a large agency. The Agency maintains that the Qualified Organization cannot require specific actions by the WSCs unless they are employees. In fact, 1099 subcontracts can be as detailed as needed to effect the same result. Finally, there are other ways that APD supervises and reviews the work of WSCs including, but not limited to, Quality Reviews by Qlarant, Annual Customer Satisfaction Surveys, Reviews of documentation through the centralized iConnect system, quarterly reviews of WSC performance by the Qualified Organization. Surely for a few WSCs this is more than adequate supervision and accountability.

The Agency rejects this LCRA pursuant to section 120.541(1)(a) because it is contrary to the statutory language and therefore does not substantially accomplish the objectives of the law being implemented.

First, the Legislature instructed that all WSCs must be employees. There are no provisions in statute for granting exceptions based on the number of WSCs employed by a qualified organization. To the contrary, the statutes require all WSCs to be employees. The definition does not use the general term “worker.” Adopting this LCRA would violate the plain language of the statute, which the Agency reiterated in rule. The Agency cannot expand this language.

Indeed, this concept appears to be axiomatic to the meaning of the statute as the LCRA itself proposes that the Agency allow some WSCs “not be W2 employees.” It is difficult to envisage how the Agency could comply with the statute when the LCRA is asking to directly contradict it.

The LCRA also admits, contrary to its position, that it will place an enhanced level of detail in the contracts. The more detail is placed in a contract, the more indicative that such

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worker is an employee. This could lead to potential tax penalties for misclassifying an employee as an independent contractor.

The LCRA does not and cannot point to any source that describes “independent contractors” as employees. The plain meaning of both words suggests they are closer to antonyms than synonyms. An employee is “(1822) [s]omeone who works in the service of another person (the employer) under an express or implied contract for hire, under which the employer has the right to control the details of work performance . . .” *Black’s Law Dictionary*, 11th Ed. (2019). *Black’s* goes on to define independent contractor as “(1841) [s]omeone who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it.” *Id.*

A brief survey of section 393.0663 reveals there is a tremendous amount of control exercised by a qualified organization on WSCs. Among others, the qualified organization has to have a code of ethics and disciplinary procedure that their WSCs must follow. The qualified organization has to report violations to APD and explain what the qualified organization did to address the violations with the WSCs.

The statute is clear that WSCs must be employees of a qualified organization. There is no ambiguity. However, should someone find that there is a degree of ambiguity from the use of the verb “employ,”² this too is illuminated by the sub-section titled, “Legislative Intent.”

Section 393.0663(1) states in part:

To enable the state to provide a systematic approach to service oversight for persons providing care to individuals with developmental disabilities, it is the intent of the Legislature that the agency work in collaboration with relevant stakeholders to ensure that waiver support coordinators have the knowledge, skills, and abilities necessary to competently provide services to individuals with developmental disabilities **by requiring all support coordinators to be employees of a qualified organization.** (Emphasis added).

Indeed, the LCRA cannot accomplish the objectives of the law implemented as contemplated by the Legislature because a “systematic approach” necessitates a uniform and statewide system regarding the employment relationship between the qualified organization and the WSC. A patchwork system of allowing some WSCs to be independent contractors and at least four to be employees would defeat the purpose of this approach. Having the qualified organization have legal control over some workers

² Employ, vb (1522) 1. to make use of. 2. To hire. 3. To use as an agent or substitute in transacting business. 4. to commission and entrust with the performance of certain acts or functions or with the management of one’s affairs. *Black’s Law Dictionary* 11th Ed. (2019).

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and not others is likely going to impact the uniformity of services provided to the Agency's clients.

Additionally, several commenters requested the Agency allow WSCs to be employed as independent contractors instead of employees, indicating that disallowing WSCs from being independent contractors would have a substantial negative impact on their pay. This could be interpreted as a request to repeal the language included in the Notice of Change as a LCRA.

Rules 65G-14.001 and 14.002 implement the statutes described above. There are no statutory provisions allowing exceptions to all WSCs being employees of a qualified organization. Further, the Legislature used the term "employee" when it could have used a broader term, such as "worker," "independent contractor," or "staff." Not only do the statutes state plainly WSCs are employees of a qualified organization, but the numerous duties and responsibilities that a qualified organization has with respect to its WSCs are also consistent with how the Internal Revenue Service ("IRS") classifies the employer-employee relationship. These duties and responsibilities are described in section 393.0663(2)(b), the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook ("iBudget Handbook"), and throughout Chapter 65G-14, *Fla. Admin. Code*.

To name a few, the requirements include maintaining and enforcing a professional code of ethics as well as a set of internal policies and procedures with which its WSCs must abide; implementing a disciplinary process applicable to all WSCs providing services under that qualified organization; ensuring that WSCs comply with all requirements described in statute, the iBudget Handbook, and in APD Rules; prohibiting its WSCs from pursuing dual employment that could adversely impact their availability to clients; ensuring all requests for significant additional needs are submitted with all required documentation; requiring all WSCs to timely complete training and pass a competency-based assessment; and requiring new and inexperienced WSCs to complete a mentoring program provided by that qualified organization. This level of control and oversight is consistent with the plain language meaning of employee, as is clear from the legislative intent stated in section 393.0663(1).

Because the Agency has received several comments prior to the most recent rule hearing from WSC providers regarding whether or not they could hire contractors to perform WSC duties, the changes made to Proposed Rules 65G-14.001 and 14.002 resolve perceived ambiguity relating to whether a qualified organization can operate with WSCs as independent contractors as opposed to employees. After consulting with a tax expert, the Agency ascertained that erroneously classifying (form W-2) employees as (form 1099) independent contractors can result in substantial state and federal taxes and associated penalties including:

Federal Employment Taxes

- All taxes not remitted on wages paid to employee

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- Federal Insurance Contributions Act (FICA) liability, which includes both the Employer and Employee portion for Social Security/Medicare
 - 6.20% on wages paid up to cap to Social Security, 2021 “cap” is \$142,800 (IRC 3111(a))
 - 20% or 40% of employee’s portion of Social Security tax, which is 6.20% on wages paid (IRC 3101(a) and 3509(a)-(b))
 - 1.45% on wages paid relating to Medicare (IRC 3111(b)(1))
 - 20% or 40% of Employee’s portion of Medicare tax, which is 1.45% on wages paid, and an additional 0.90% on wages paid above income thresholds (IRC 3509(a)-(b) and 3509(a)-(b))
- Federal Unemployment Tax (FUTA)
 - 6.0% on wages paid in excess of \$7,000 in a calendar year (IRC 3301 and 3306(b)(1))
- Federal Withholding
 - 1.5% or 3% on wages paid (IRC 3509(a)-(b))

Federal Employment Tax Civil Penalties

- Failure to Deposit Penalty
 - 2% to 15% on the amount required to be deposited which was not ((IRC 6656(a)-(b))
- Failure to File Penalty
 - 5% to 25% of the tax due (IRC 6651(a))
- Accuracy Related Penalty on Underpayments
 - 20% on the underpayment amount (IRC 6662(a))
- Failure to File Correct Information Returns / Correct Payee Statements
 - Penalty on failure to file correction information returns
 - Information Returns: \$250 for each failure / max of \$3 million per year (IRC 6721(a))
 - Payee Statements: \$250 for each failure / max of \$3 million per year (IRC 6722(a))
- Other penalties not mentioned, such as fraud and willful failure to pay over tax

Florida Reemployment Tax

- Liability for wages paid to employee in excess of \$7,000.00 in a calendar year, rates vary – max is 5.4% (§ 443.131, Fla. Stat.)
- Interest on unpaid employment tax contributions, 1% per month (§ 443.131(1)(a), Fla. Stat.)
- Penalty for delinquent filings, \$50 or 10% of the tax due, up to \$300 max per quarterly report (§ 443.141(1)(b)2.a., Fla. Stat.)

As described above, the new regulatory scheme contemplates each qualified organization fulfilling duties and obligations that would render the IRS more likely than not to consider the relationship between the qualified organization and each WSC to be that of an employer and employee rather than independent contractor.

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Although WSCs have historically been allowed to operate as independent contractors, chapter 2020-71 changed that regulatory scheme. The iBudget Handbook allowed WSCs to be either a solo provider or associated with a WSC agency. WSC agencies had substantially fewer duties and obligations than qualified organizations. See pages 2-7 and 2-85 of the iBudget Handbook (2020) describing agency requirements. As a result, it was possible for agencies to employ WSCs as independent contractors in compliance with the IRS and Department of Revenue.

As a result of the statutory change, qualified organizations will replace solo WSCs and WSC agencies effective July 1, 2021. Section 393.0663 requires qualified organizations to closely oversee day-to-day operations, behavior, and professional development of its WSCs as described above. By clarifying that WSCs are employees of a qualified organization, these providers are on notice that there is a potential for tax liability and associated penalties from the IRS and Department of Revenue if they were to classify their employees as contractors for tax purposes. Therefore, the potential for liability that may be incurred, such as back taxes and penalties that must be paid due to mischaracterizing employees as contractors, is mitigated. Instead, qualified organizations have a clear directive that complies with chapter 2020-71 and will prevent such problems.

Similarly, the costs described in the LCRA are not regulatory costs attributed to these rules. Instead, these costs are solely attributed to the statutes described above.

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

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

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

Yes No

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

Yes No

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

Yes No

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4. Is the rule likely to cause Florida businesses to reduce workforces?
 Yes No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?
 Yes No

6. Is the rule likely to make illegal any product or service that is currently legal?
 Yes No

Explanation: The rules do not have a direct or indirect adverse impact on business competitiveness. The proposed rules clarify the procedures and criteria used by the Agency to determine the eligibility of an organization to become a qualified organization and regulate such organizations as established by section 393.0663. These rules are solely attributable to the statutes created by chapter 2020-71. These rules implement the above statutory requirements in a manner that is clear and consistent statewide.

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

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

1. Current one-time costs	\$0
2. New one-time costs	\$10,820
3. Subtract 1 from 2	\$10,820
4. Current recurring costs	\$8,785
5. New recurring costs	\$54,112
6. Subtract 4 from 5	\$45,327
7. Number of times costs will recur in 5 years	5
8. Multiply 6 times 7	\$226,635
9. Add 3 to 8	\$237,455

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

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D. Good faith estimates (numbers/types):

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

As of September 1, 2020, there were 661 WSC entities (agency and solo) that will be required to comply with these rules. These rules are attributable to the statutes created by chapter 2020-71. The Agency is proposing these rules to conform with section 393.0663 to clarify the procedures and criteria used by the Agency to implement this statute in a manner that is clear and consistent statewide.

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

WSCs, as defined in section 393.063(42), are likely to be affected by these rules as they will be required be employed by a qualified organization effective July 1, 2021 pursuant to section 393.0663. The main WSC duties and responsibilities are established separately through the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook (“iBudget Handbook”), incorporated by reference in Rule 59G-13.070, and various Agency rules cited therein. Each WSC also has “a statutorily authorized, bi-lateral, and voluntary contract” with the Agency that reiterates their duties and responsibilities. See *Diaz v. State, Agency for Health Care Admin.*, 65 So.3d 78, 83 (Fla. 3d DCA 2011).

E. Good faith estimates (costs)

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

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

Minimal. *(Provide a brief explanation).*

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

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

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

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

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

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

Minimal. *(Provide a brief explanation).*

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

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

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

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

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

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

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

Please see attached "Chapter 65G-14, F.A.C., SERC Cost Analysis" comparing existing costs to new costs and concluding that, over the next five years, \$237,455 in the aggregate will be attributed to these rules.

As described in the attachment, several costs are attributed to either section 393.0663, the iBudget Handbook, or Rule 65G-4.0215. Costs attributed to these rules are associated with submitting a complete application to become a qualified organization, qualified organization leadership who aren't WSC being required to take Level 1 WSC training described in chapter 65G-10, providing each client with the Client Satisfaction Survey at the annual support plan meeting, reporting specific information to the

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appropriate Agency Regional Office regarding a WSC's unavailability in excess of 30 days, and filling out a form to validate a mentee's successful completion of the mentoring program required by section 393.0663(2)12. Each of these minor costs are necessary to ensure that chapter 2020-71 is implemented in a consistent and unambiguous way that meets the needs of Agency clients.

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

(Includes:

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

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

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

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

- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

Analysis of the impact on small business:

Why the regulation is needed

The regulation is needed to comply with chapter 2020-71, and ensure its implementation is consistent, efficient, and clearly understood statewide. The Agency is codifying specific requirements that are necessary to ensure qualified organizations have the means and structure to provide competent oversight of WSCs as required by section 393.0663(1). These rules also establish processes that will enable the Agency to meet its duties under section 393.0663(3) as they pertain to qualified organizations and their

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WSCs. In each instance, the Agency narrowly tailored each requirement to minimize any potential impact on business.

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

Current solo and agency providers of WSC services will be subject to these rules, many of which are small businesses. The prohibition against solo and agency providers (as currently defined in the iBudget Handbook) is attributed to section 393.0663.

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

Sections 393.063 and 393.0663, effective July 1, 2021, require WSC entities (solo and agency), many of which are small businesses, to become or join a qualified organization in order to provide WSC services. Section 393.0663 requires WSC entities to form or join an organization with a minimum of four WSCs and meet various statutory and rule requirements so that the Agency can make a determination that the organization is qualified to provide WSC services to Agency clients.

These rules clearly delineate the process by which an organization can apply and be approved by the Agency to become a qualified organization, as well as describe other professional responsibilities and reporting requirements pertaining to each qualified organization. Small businesses that become qualified organizations will be required to develop and implement minimum standards, policies, and procedures delineated in these rules to ensure WSC have the knowledge, skills, and abilities necessary to competently provide services to individuals with developmental disabilities.

The Agency estimates that the likely per-firm regulatory cost increase will vary depending on individual circumstances, such as whether existing WSCs intend to create or join a qualified organization and whether they intend to use the sample policies and procedures the Agency intends to make available or develop their own. The aggregate cost is estimated to be about \$237,455 over the course of the next five years, so the likely per-firm regulatory cost is about \$1,443.50 over five years.

The Agency has streamlined and made efficiencies on forms and processes throughout the rulemaking process to save small businesses time and effort. This includes developing and providing templates that applicant organizations can adopt or expand upon as their mentoring program, disciplinary process, code of ethics, and policies and procedures. These templates meet the minimum requirements required by statute and rule. The Agency also developed a web page that includes frequently asked questions, checklists, help guides, and other tools to help applicant organizations understand and comply with the new requirements.

The Agency also made improvements to the rules based on the public feedback received at the workshops and hearings. These improvements include adding definitions, simplifying and clarifying the qualified organization application, clarifying reporting requirements, adding a complaint process, and easing the requirements of the mentoring

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program by reducing the minimum mentor requirements, allowing mentees to carry a caseload while participating in the mentoring program, and allowing existing WSCs with less than the required 12 months of experience to receive credit for tasks completed prior to joining the qualified organization.

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

The Agency modified the rules based on the public feedback received at the workshops and hearings to establish less stringent compliance requirements. This includes easing the requirements of the mentoring program. However, establishing less stringent compliance and reporting requirements in the rules would undermine the purpose of chapter 2020-71, which is for the Agency, in collaboration with relevant stakeholders, to ensure WSCs have the knowledge, skills, and abilities necessary to provide services to individuals with developmental disabilities. The compliance requirements are outlined in statute and delineated in rule to ensure consistent interpretation and implementation.

Reporting requirements are intended to ensure that, where there are problems associated with a qualified organization or its WSCs' performance, the Agency is apprised of the situation and can follow up as appropriate. Every reporting requirement is based on the statutory directive and the Agency's experience in addressing WSC issues, particularly those that have a direct impact on the lives of persons with developmental disabilities. The Agency also wants to ensure the organizations it deems "qualified" have sufficient knowledge, experience, and infrastructure (i.e. code of ethics, disciplinary process, and mentoring program required by section 393.0663(2), and policies and procedures required by the iBudget Handbook), to provide competent oversight of WSCs.

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

The timeframes delineated in these rules are reasonable based on the type of information that must be reported and its probable impact on Agency clients. Less stringent deadlines could pose a risk to individuals with developmental disabilities who may require Agency intervention. For example, any violation that could cause a client's physical, mental, or emotional health to be significantly impaired must be reported to the Agency within 24 hours of discovering the violation. Any violation involving abuse, neglect, exploitation, or abandonment of a client must also be immediately reported to the Florida Abuse Hotline in compliance with sections 415.1034 and 39.201 and the Agency Regional Office. Because a WSC's unavailability could result in a client not having access to a WSC, the Agency requires qualified organizations to provide pertinent information within five days of any WSC vacancy in excess of 30 days.

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

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The Agency clarified and simplified the qualified organization application based on the public feedback received at the workshops and hearings. The Agency's compliance and reporting requirements are as simplified as possible while still providing necessary input to the Agency. Each reporting requirement is distinct based on its type and purpose, so consolidating them would likely add confusion rather than clarification.

The Agency also developed a web page that includes frequently asked questions, checklists, help guides, and other tools to help applicant organizations understand and comply with the new requirements.

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

To promote consistent, high quality WSC services across the state, the Agency intends to adopt these standards and management practices as rules rather than making them optional.

As part of this partnership and in furtherance of these goals, the Agency has elected to create and provide templates or examples of each required standard, including performance standards and best management practices to assist WSCs and applicants who wish to become a qualified organization during this transition. These templates/examples will meet the requirements stated in rule, so applicants will not have to develop their own standards but can instead implement those.

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

Exempting small businesses from any or all requirements of the rules would undermine the purpose of these rules as it relates to chapter 2020-71, as well as contravene the plain language of section 393.0663(1). The statutory directive in section 393.0663(1) clearly requires all WSCs to be employees of a qualified organization and meet the requirements delineated in that statute and the iBudget Handbook. The Agency's position is that making exceptions by rule would be improper.

However, the Agency has streamlined and made efficiencies on forms and processes throughout this process to save small businesses time and effort in compliance. The Agency developed and provided templates that applicant organizations can adopt to meet the statutory and rule requirements. The Agency also developed a web page that includes frequently asked questions, checklists, help guides, and other tools to help qualified organizations and applicants understand and comply with the new requirements. The rules were improved based on feedback received from the public at the workshops and hearings. These changes assist the small business comply with the requirements while implementing the legislative intent.

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

AGENCY FOR PERSONS WITH DISABILITIES
Statement Of Estimated Regulatory Costs (SERC)

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

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

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

None.

Additional.

As described in F., please see attached “Chapter 65G-14, F.A.C., SERC Cost Analysis.”

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

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

See attachment “A”.

Adopted in entirety.

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

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

The Agency rejects this LCRA pursuant to section 120.541(1)(a) because it is contrary to the statutory language and therefore does not substantially accomplish the objectives of the law being implemented. See “Lower Cost Regulatory Alternative” in A. above for a detailed explanation.

See attachment “B”.

Adopted in entirety.

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

AGENCY FOR PERSONS WITH DISABILITIES
Statement Of Estimated Regulatory Costs (SERC)

- Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "C".
 - Adopted in entirety.
 - Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
 - Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "D".
 - Adopted in entirety.
 - Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
 - Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*
- See attachment "E".
 - Adopted in entirety.
 - Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*
 - Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

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Chapter 65G-14, F.A.C., SERC Cost Analysis

Under the new regulatory environment		Under the current regulatory environment
To become a Qualified Organization (QO)	Rule	<p>A completed Qualified Organization (“QO”) Application</p> <p>A copy of the proposed code of ethics</p> <p>A copy of the proposed disciplinary process</p> <p>A copy of the proposed mentoring program</p> <p>A copy of the proposed policies and procedures</p> <p>A copy of each Waiver Support Coordinator’s (“WSC”) provider application or Medicaid Waiver Services Agreement (“MWSA”)</p> <p>A table of organization</p> <p>Sign the MWSA agreement</p>
	Cost Estimation	<p>The cost driver is the number of QOs. During the most recent fiscal year, there are 172 Provider Agencies (PAs) and 518 solo providers. Out of the 172 PAs, about 40% (16%, 44%) of them have 2 (3, 4 or more) WSCs. We expect the PAs with 4 or more WSCs (76 of them) will apply to become QOs. The 96 PAs with less than 4 WSCs will either merge with larger PAs or merge with each other, forming an additional 48 QOs at most (assuming every two of them form one QO). The 518 solo WSCs will either join existing PAs or form new QOs, resulting in the maximum possible number of newly formed QOs of 129 (518/4). Therefore, the high estimate of the number of QOs is $76+48+129=253$ and the low estimate is 76. It will take an existing PA (a newly formed QO) about 1 (2) hour(s) to prepare the application and all documents, so the high estimate of cost is $(124*1 + 129*2)*\\$20 = \\$7,640$ and the low estimate of cost is $(76*1)*\\$20 = \\$1,520$, assuming a \$20/hour labor cost rate. The mean of the high and low estimated opportunity costs may be a good faith estimate of an initial one time cost of \$4,580. Annually thereafter, it is estimated that 30 new QOs would apply, with an opportunity cost of $(30*2)*\\$20 = \\$1,200$. For years 2 through 5, the application one time opportunity cost would be $\\$1,200*4=\\$4,800$.</p>
		Not applicable.

Chapter 65G-14, F.A.C., SERC Cost Analysis

Under the new regulatory environment		Under the current regulatory environment
Training-related costs for QO leaders	Rule	<p>QO leaders:</p> <ol style="list-style-type: none"> 1. must complete Level 1 Training 2. attend a minimum of 6 monthly meetings with Agency staff each year and complete required training (each meeting is about 2 hours)
	Cost Estimation	<p>Level 1 Training is online for 9 hours, which existing WSC agency providers are already required to take (statewide pre-service training). This will only be a cost for a QO leader who is not a WSC (estimated to be 4 since only 4 such PA leaders currently exist).</p> <p>Level 1 Training opportunity cost: 4 leaders * 9 hours * \$40 = \$1,440 (one-time)</p> <p>Currently, all supervisors, directors, and managers of WSC agencies must attend a minimum of 24 hours of job-related in-service training per the iBudget Handbook. That requirement is being replaced with these rules, which require only 6 trainings (approx. 2 hours each) annually.</p> <p>6 meetings/trainings: Out-of-pocket cost: 4 leaders * \$50 * 6 = \$1,200 Opportunity cost: 4 leaders * (2 hours meeting + 2 hours commuting) * \$40 * 6 = \$3,840 (recurring)</p>

Out-of-pocket cost: 4 leaders * \$50 * 6 = \$1,200
 4 leaders * 24 in-service credit hours (annual) * \$40 = \$3,840 (recurring)

Chapter 65G-14, F.A.C., SERC Cost Analysis

Under the new regulatory environment		Under the current regulatory environment
QO renewal (every 5 years)	Rule	<ol style="list-style-type: none"> 1. The current signed MWSA; 2. The declaration page of general/professional liability insurance; 3. Proof of level 2 background screening; and 4. Local criminal records check.
	Cost Estimation	<p>This is just a matter of locating the documents and submitting them to APD. The cost driver is the number of QOs that need to apply for renewal. Assuming it takes a QO 1 hour to file for renewal, the high estimate of the cost is $(253 \text{ QOs}) \times (1 \text{ hour}) \times (\\$20/\text{hour}) = \\$5,060$ and the low estimate is $(76 \text{ QOs}) \times (1 \text{ hour}) \times (\\$20/\text{hour}) = \\$1,520$. Therefore, a good faith estimate is the average of \$5,060 and \$1,520, which is \$3,290, for every 5 years. Therefore, the annual recurring cost is $\\$3,290/5 = \\658</p>
		<p>Same requirement for Provider Agencies ("PA") $(172) \times 1 \times \\$20 = \\$3,440$, for every 5 years. Therefore, the annual recurring cost is $\\$3,440/5 = \\688</p>

Chapter 65G-14, F.A.C., SERC Cost Analysis

		Under the new regulatory environment	Under the current regulatory environment
*Service expansion	Rule	A Qualified Organization that wishes to expand service provision geographically must comply with Rule 65G-4.0215, F.A.C.	
	Cost Estimation	(35 expansions) * (1 hour) * (\$20/hr) = \$700 (recurring)	Same requirement for PAs 35 * (1 hour) * \$20 = \$700 (annual)

*This requirement remains unchanged; QOs will need to follow the same process as all other providers.

Chapter 65G-14, F.A.C., SERC Cost Analysis

		Under the new regulatory environment	Under the current regulatory environment
*Reporting of violation(s)	Rule	Each Qualified Organization must report to the Agency any violation of ethical or professional conduct by Support Coordinators employed by that organization within seven (7) calendar days of discovering the violation, unless the violation threatens the health and safety of a client(s). Any violation that could cause a client’s physical, mental, or emotional health to be significantly impaired must be reported to the Agency within 24 hours of discovering the violation.	Not applicable.
	Cost Estimation	(759 reports) * (0.5 hour) * (\$20/hr) = \$7,590 (recurring)	

*Section 393.0663(3), F.S., requires all QOs to report to the agency any violation of ethical or professional conduct by support coordinators employed by the QO. This cost is not attributed to the rules.

Chapter 65G-14, F.A.C., SERC Cost Analysis

		Under the new regulatory environment		Under the current regulatory environment
Client Satisfaction Survey	Rule	QO must provide each client or, if applicable, his or her legal representative, with the Client Satisfaction Survey during each client's annual support plan meeting in compliance with the iBudget Handbook.		Not applicable.
	Cost Estimation	(35,182 support plan meetings) * (0.05 hour) * (\$20/hr) = \$35,182 (recurring)		

Chapter 65G-14, F.A.C., SERC Cost Analysis

Under the new regulatory environment		Under the current regulatory environment
*Hiring a new support coordinator	Rule	Same requirement. \$7,490 (annual)
	<p>Upon hiring a prospective Support Coordinator who does not have an active MWSA as a Support Coordinator, the Qualified Organization must submit the provider application and, if applicable, the dual employment plan.</p> <p>Upon hiring a Support Coordinator with a Medicaid provider number or upon request by the Agency, the Qualified Organization must submit the following information regarding that Support Coordinator to the appropriate Regional Office that includes:</p> <ol style="list-style-type: none"> 1. The Support Coordinator's first and last name; 2. The Support Coordinator's Medicaid provider number; 3. Validation that the Support Coordinator is compliant with training required by section 393.0663(2)(b)11., F.S.; the iBudget Handbook; and Chapter 65G-10, F.A.C.; and 4. Any disclosures regarding dual employment of the Support Coordinator. 	
Cost Estimation	<p>This is just a matter of gathering the information needed and submitting it to APD. The cost driver is the number of newly hired WSCs in a year. There are 749 WSC-Provider ID combinations in the 2020 list that were not in the 2019 list. Assuming a QO takes 30 minutes to file for a new hire, the cost is (749 new hires)*(0.50 hour)*(\$20/hour) = \$7,490 (recurring)</p>	

*These rules do not change the requirements for hiring new WSCs.

Chapter 65G-14, F.A.C., SERC Cost Analysis

		Under the new regulatory environment	Under the current regulatory environment
Support coordinator vacancy	Rule	<p>Upon request by the Agency or any Support Coordinator vacancy, which means absence or unavailability in excess of 30 calendar days, the Qualified Organization must submit the following information regarding that Support Coordinator to the appropriate Regional Office that includes:</p> <ul style="list-style-type: none"> (a) A list of the clients affected by the absence; (b) The beginning and end dates of the vacancy; (c) The name(s) of a temporary Support Coordinator who will serve the affected clients; (d) If the Support Coordinator involuntarily left the Qualified Organization, the reason for that Support Coordinator leaving. 	<p>Currently when there is a vacancy, a PA must submit (a) and (b). Assuming it takes 15 minutes to file for a vacancy, the cost is (749 vacancies)*(0.25 hour)*(\$20/hour) = \$3,745 per year.</p>
	Cost Estimation	<p>This is just a matter of gathering the information needed and submitting them to APD. The cost driver is the number of WSC vacancies per year. A WSC vacancy may occur when a WSC switches to another QO or leaves the industry. We can again use 749 as the high estimate for the number of WSC vacancies each year. 749 is a high estimate because, in the current regulatory environment a WSC may switch between being a solo provider and being hired by a PA, while in the new regulatory environment a WSC can only switch between QOs. Also, some of the vacancies may be filled within 30 days. Assuming a QO takes 30 minutes to file for a vacancy, the high estimate of the cost is (749 vacancies)*(0.50 hour)*(\$20/hour) = \$7,490 (recurring)</p>	

Chapter 65G-14, F.A.C., SERC Cost Analysis

		Under the new regulatory environment		Under the current regulatory environment
Mentoring	Rule	In addition to completing required training as provided in the iBudget Handbook and Rule 65G-10.004, F.A.C., any person who has worked as a Waiver Support Coordinator for less than 12 months before joining the Qualified Organization must complete an Agency-approved mentoring program offered by his or her Qualified Organization		No current requirement.
	Cost Estimation	# of WSCs with less than 12 months experience (160) * mentoring hours while cannot take a caseload (0) * (\$20/hr) = \$0 Filling out the form: (160 forms) * (1 hour) * (\$40/hr) = \$6,400 (recurring)		

After receiving comments, APD has drafted Rule 65G-14.0043 to permit mentees to carry a caseload prior to completing the mentoring program, with oversight from the mentor. The mentoring program is required by section 393.0663(2)(b)12., but filling out the form reflecting successful completion is attributed to the rule.