

Notice of Proposed Rule

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Agency for Persons with Disabilities

RULE NO.: RULE TITLE:

65G-4.0210: Definitions

65G-4.0211: General Provisions

65G-4.0212: Transition of Individuals to iBudget Florida

65G-4.022: iBudget Cost Plan Development and Approval

65G-4.024: Cost Plan Changes

65G-4.027: Cost Plan Funding and Review

PURPOSE AND EFFECT: The purpose is to implement iBudget Florida as required by Section 393.0662, F.S.

SUMMARY: APD Medicaid Waiver clients are currently served through the Tier Waivers. This Rule provides for the transition of APD clients to a new waiver, iBudget Florida. This Rule provides for definitions, transition to iBudget, iBudget cost plan development, cost plan changes and cost plan funding.

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 not been prepared by the agency.

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:

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: 393.0662 and 393.501

LAW IMPLEMENTED: 393.0662

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: Wednesday, August 29, 2012 9:00AM

PLACE: Betty Easley Conference Center

4075 Esplanade Way, Room 152

Tallahassee, Florida 32399

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 7 days before the workshop/meeting by contacting: Edith Washington

Agency for Persons with Disabilities

4030 Esplanade Way, Suite 380

Tallahassee, Florida 32399

850-488-4257

edith_washington@apd.state.fl.us. 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: Denise Arnold
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399
850-488-4257

THE FULL TEXT OF THE PROPOSED RULE IS:

65G-4.0210. Definitions

- (1) ABC: The Allocation, Budgeting, and Contracts information technology system used by the agency to maintain demographic, services, budget, and other data.
- (2) Approved cost plan: The document that lists all waiver services that have been authorized by the agency for the individual, including the anticipated cost of each approved waiver service, the provider of the approved service, and information regarding the provision of the approved service. Cost Plan is defined in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, in 59G-13.070, F.A.C., incorporated by reference.
- (3) Budget allocation: The amount of funds that has been approved by the agency for an individual to expend for waiver services during a fiscal year.
- (4) Budget allocation formula (hereby incorporated by reference as Form APD IB-1): The mathematical equation used as one element of determining an individual's budget allocation. The formula shall include the following information regarding an individual:
 - (a) Age and living setting based on the current information in ABC for that individual as of the date of commencing calculation of the budget allocation formula.
 - (b) The individual's Questionnaire for Situational Information (QSI) results from its most recent administration as of the date of beginning calculation of budget allocations.
- (5) Current annualized cost plan: The annualized total amount of funding for the approved cost plan immediately prior to the new period for which a budget allocation is being developed.
- (6) Draft cost plan: A draft cost plan is a cost plan that is not yet approved by the agency; an approved cost plan is a cost plan that has been approved by the agency.
- (7) iBudget Florida: The waiver system under which the Agency for Persons with Disabilities operates the Developmental Disabilities Individual Budgeting Waiver.
- (8) Individual: a person with a developmental disability enrolled in iBudget Florida.
- (9) Initial budget allocation: The first budget allocation for an individual after his or her enrollment in iBudget Florida.
- (10) iBudget Florida web system: The information technology system that specifically supports iBudget Florida and works with the ABC system to process and store information related to iBudget Florida.
- (11) Proposed cost plan: The document that lists all waiver services being requested by the individual, the anticipated cost of each waiver service, the proposed provider of the service, and proposed information regarding the provision of the service.
- (12) Questionnaire for Situational Information (QSI): An assessment instrument used by APD to determine an individual's needs in the areas of functional, behavioral, and physical status.
- (13) Service families: Eight categories that group services related to: Life Skills Development, Supplies and Equipment, Personal Supports, Residential Services, Support Coordination, Therapeutic Supports and Wellness, Transportation and Dental Services.

- (14) Significant change: A change of considerable magnitude or considerable effect.
- (15) Supplemental funding: Funding granted after the beginning of the fiscal year or the date of the individual's initial budget allocation. Such funding shall be for temporary or permanent changes in service needs or one-time needs.
- (16) Support plan: An individualized plan of supports and services designed to meet the needs of an individual enrolled in the waiver. The plan is based on the preferences, interests, talents, attributes and needs of an individual.
- (17) Temporary basis: A time period of less than 12 months.
- (18) Support coordinator: This term has the same definition as the term "support coordinator" defined in s. 393.063(37), F.S.

Specific Authority 393.501(1), 393.0662 FS. Law Implemented 393.0662 FS. History-New

65G-4.0211. General Provisions

- (1) Services. The services available in iBudget Florida are described in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, in 59G-13.070, F.A.C., incorporated by reference.
- (2) The agency will request and review documentation and information necessary to evaluate individuals' service requests. The requested documentation will vary according to the service request and will include the following as applicable: support plans, results from the Questionnaire for Situational Information, documentation from reviews by contracted prior service authorization vendors, cost plans, expenditure history, interviews with the individual and his or her providers and caregivers, prescriptions, data regarding the results of previous therapies and interventions, assessments, and provider documentation required by the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, in 59G-13.070, F.A.C., incorporated by reference. If the agency pends action on a request due to missing documentation, the deadline for that agency action shall be extended until the documentation is received or the request is denied, whichever is later. Support coordinators shall either cite their efforts to obtain the documentation, or provide the requested documentation, within five (5) calendar days after the date of the agency request for additional documentation. The support coordinator shall respond to a request for documents within fourteen (14) calendar days. If the requested documentation is not submitted to the agency within thirty (30) calendar days the request will be denied.
- (3) The iBudget Florida web system screens requests for changes to the approved cost plan to ensure the requirements of these rules and the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, in 59G-13.070, F.A.C., incorporated by reference, are met. Plans which do not meet the requirements for approval by the web system are reviewed by the agency. Changes failing to meet requirements will be denied.

Specific Authority 393.501(1), 393.0662 FS. Law Implemented 393.0662 FS. History-New

65G-4.0212: Transition of Individuals to iBudget Florida.

- (1) An initial budget allocation for each individual transitioning to iBudget Florida is calculated using the budget allocation formula, statutory geographic differentials, current year appropriation, and subsections (2) and (3) of this rule.

(2) During an individual's transition to iBudget Florida from a tier waiver, services that appear on an individual's current authorized cost plan shall be pre-approved by type and intensity to the extent of an individual's budget allocation. The agency will pre-approve those service types which are comparable to those service types previously approved for the individual on the cost plan in place immediately prior to transition to iBudget Florida unless the individual's situation has changed such that he or she no longer qualifies for the service types. The frequency, scope, or duration of such service types is not subject to pre-approval but is determined through the cost plan approval process. Pre-approval of types and intensities of services permits an individual to choose such pre-approved services at the frequency, scope, and duration that can be accommodated within his or her budget allocation on a proposed cost plan for review by the agency. Pre-approval of a service type or intensity does not guarantee that an individual's proposed cost plan containing those services will be approved, nor does it guarantee that the frequency, scope, or duration of pre-approved services listed on the individual's proposed cost plan will be approved. The agency will build a cost plan for any individual who fails to cooperate in developing an iBudget cost plan.

(3) Individuals' initial budget allocations shall be adjusted, if necessary, as provided in this subsection.

(a) No budget allocation will exceed an individual's current annualized cost plan.

(b) In determining the amount of funding for each individual's initial budget allocation, the following will be considered: characteristics based on a needs assessment, age, living setting, availability of natural supports, availability of other state services, third party payors and family circumstances.

(c) In determining an initial amount for extraordinary needs, pursuant to the requirements of 393.0662, the agency will use the sum of the following services: Adult Day Training, Behavior Services, Consumable Medical Supplies, Durable Medical Equipment, In-Home Supports, Nursing Services, Occupational Therapy, Personal Care Assistance, Physical Therapy, Residential Habilitation, Respiratory Therapy, Special Medical Home Care, Supported Employment, Supported Living Coaching, and Waiver Support Coordination.

(d) If, after adjusting for (2)(a)-(c), the initial budget allocation is less than the individual's annualized cost plan, and is within \$1,000 of the current cost plan, the budget allocation will be adjusted to equal the existing cost plan amount.

(e) If an individual experiences a reduction to the individual's own current cost plan, the agency will give the individual an opportunity to discuss the initial budget allocation. Following discussions, if any, the budget allocation shall be finalized and notice of the budget allocation provided to the individual.

(f) Budget allocations are pro-rated as appropriate based on the length of time remaining in the fiscal year at the time of transition.

(g) Once the iBudget cost plan is authorized, an individual may use his or her budget for any services for which he or she meets the criteria in the iBudget Florida handbook and these rules as long as the individual's health and safety needs are met.

Specific Authority 393.501(1), 393.0662 FS. Law Implemented 393.0662 FS. History-New

65G-4.022 iBudget Cost Plan Development and Approval

- (1) Individuals' draft cost plans shall be entered in the iBudget Florida web system by the individual's support coordinator.
- (2) Each individual's initial iBudget Florida cost plan shall be reviewed by the agency. Subsequently, the iBudget Florida web system shall screen requests for changes to the approved cost plan to ensure the requirements of these rules and the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, in 59G-13.070, F.A.C., incorporated by reference, are met. Plans which do not meet the criteria for approval by the web system shall be reviewed by the agency.
- (3) For an individual to begin receiving a specific waiver service, that service must have been listed in a cost plan that has been reviewed and approved by the agency, and the service authorization must have been issued to the provider.
- (4) Proposed cost plans must detail funding for services essential for health and safety through the entire fiscal year or portion of year the individual is enrolled in iBudget Florida, regardless of when the cost plan is submitted. The total amount of services requested to be authorized for the fiscal year may not exceed the individual's current budget allocation for that fiscal year.
- (5) Individuals shall use all available services authorized under the state Medicaid plan, school-based services, private insurance and other benefits, and any other resources that may be available to them before using funds from their budget allocations to pay for support and services. Failure to comply with this subsection shall result in denial of the service request.
- (6) Individuals must budget their funds so that their needs are met throughout the plan year. All individuals shall allocate funding each month for waiver support coordination services, which is a required service under the waiver.
- (7) No additional funding for individuals' services shall be provided if the need for the additional funding is created by the individual's use of previously approved funds for alternative services rather than those previously-approved services in the individual's initial budget allocation.

Specific Authority 393.501(1), 393.0662 FS. Law Implemented 393.0662 FS. History-New

65G-4.024 Cost Plan Changes

- (1) Cost Plan changes by the individual:
 - (a) After the individual's initial cost plan is approved, he or she may change his or her approved cost plan provided that such change does not jeopardize the health and safety of the individual.
 - (b) When changing the approved cost plan, the individual and his or her support coordinator shall ensure that sufficient funding remains allocated for unpaid services that were authorized and rendered prior to the effective date of this change.
 - (c) Retroactive application of changes to service authorizations is prohibited.
- (2) Cost Plan Reductions to Budget Allocations by the agency
 - (a) The agency will terminate, reduce, or modify a service when the criteria for receiving the service are no longer met. The agency may review cost plans for compliance with the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, in 59G-13.070, F.A.C., incorporated by reference, at any time.
 - (b) The support coordinator shall notify the APD area office within ten (10) calendar days of becoming aware that an individual may no longer meet the criteria in the Developmental

Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook, in 59G-13.070, F.A.C., incorporated by reference, for an approved service.

(c) When an individual's situation changes during the fiscal year such that the budget allocation formula would generate a lesser amount of funding (for example, if the individual moves from a licensed residential facility to a family home), the individual's budget allocation will be recalculated as provided in these rules and adjusted on a pro-rata basis to reflect his or her new situation.

(d) If an individual's budget allocation includes additional funding beyond what was determined by the budget allocation formula and the agency determines that the additional funding is no longer necessary, according to this rule, the agency will reduce the individual's budget allocation on a pro-rata basis to the amount actually needed to ensure health and safety.

Specific Authority 393.501(1), 393.0662 FS. Law Implemented 393.0662 FS. History-New

65G-4.027 Cost Plan Funding and Review

(1) A support coordinator shall submit any requests for supplemental funds on behalf of an individual through the iBudget Florida web system. To receive supplemental funds, individuals shall meet criteria described below as well as the other requirements provided in these rules.

(2) Supplemental funding shall only be requested if the individual is in one or more of the following situations described in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) of this subsection; has sought other resources to meet his or her needs; has attempted to adjust his or her existing cost plan to meet his or her health and safety needs; and is seeking services essential to avoiding institutionalization; but he or she requires an increase to his or her current budget allocation to meet his or her health and safety needs. Credible evidence is required to support an individual's meeting the relevant indicators of the situation.

(a) The individual is currently homeless, which includes but is not limited to living in a homeless shelter, or living with relatives in an unsafe environment. Relevant indicators include:

1. Without immediate provision of additional waiver services, the health and safety of the individual are in serious jeopardy;
2. The individual has no shelter available and needs emergency placement by the Agency or another state agency;
3. Alternative funding or other federal, state, local, community, and other resources are not available for other placement and services to the individual;
4. The individual temporarily is staying with friends or relatives but residence is not expected to last more than several weeks;
5. The individual's caregiver has no legal obligation to provide shelter to the applicant and the caregiver's commitment to shelter the applicant is low;
6. Factors affecting the individual's safety in the current setting include risk of physical abuse of the individual or risk of insufficient supervision and support;
7. The home has insufficient room to shelter the individual, or the individual must share a room in an inappropriate living arrangement, based on the ages, genders, and conditions of the persons sharing the room;
8. The individual's desire for placement creates a reasonable expectation that the individual will be cooperative with placement;

9. Violence or illegal activities within the individual's current living environment by the individual or others have required the intervention of local or state law enforcement authorities;
10. Complaints of neglect, exploitation, or abuse of the individual to Protective Services, or other adverse environmental conditions affecting the individual, have been investigated and confirmed pursuant to Chapter 39, Part II, or Section 415.104, F.S.;

11. The individual requires services of greater intensity.

(b) The individual has an increase or onset of behaviors that, without provision of immediate waiver services, may create a life-threatening situation for the individual or others, or that may result in bodily harm to the individual or others requiring emergency medical care from a physician. Relevant indicators include:

1. Without an immediate increase in waiver services, the health and safety of the individual or others in the household is in serious jeopardy;

2. The individual's injury to self or others is frequent or intense;

3. The individual or others are at risk for serious injury or permanent damage;

4. There is documentation of medical treatment for the individual's injury to self or others;

5. No other supports are available to address the individual's behaviors;

6. Other attempted behavioral assessments and interventions have proven ineffective;

7. The relative ages, sexes, and sizes of the aggressor and the subjects of aggression place the subjects of aggression at risk of injury;

8. The caregiver has insufficient ability to control the individual;

9. The ages or disabilities of the individual or caregiver exacerbate the problems;

10. Violence or illegal activity within the individual's current living environment by the individual or others has required the intervention of local or state law enforcement authorities;

11. Complaints of neglect, exploitation, or abuse of the individual, or other adverse environmental conditions affecting the individual have been investigated by Protective Services and confirmed pursuant to Chapter 39, Part II, or Section 415.104, F.S.;

12. The individual requires services of greater intensity.

(c) The individual's current caregiver is in extreme duress and is no longer able to provide for the applicant's health and safety because of illness, injury, or advanced age. The individual needs immediate waiver services to remain living with the caregiver or to relocate to an alternative living arrangement. Relevant indicators include:

1. Without immediate provision of additional waiver services, the individual's health and safety are in serious jeopardy;

2. Other potential caregivers, such as another parent, stepparent, brother, sister or other relative or person, are unavailable or are unwilling or unable to provide care;

3. The caregiver's physical or mental condition prevents the provision of adequate care;

4. The caregiver is deceased, facing imminent death, or permanently disabled;

5. The caregiver's age impairs the caregiver's ability to provide sufficient care to the individual;

6. The caregiver cannot provide sufficient care because of the age or size of the individual, or the physical, functional, or behavioral demands of the individual;

8. The caregiver's economic situation is unstable and unlikely to improve as a result of the care-giving demands of the individual;

9. The caregiver's obligations to the needs of other dependents prevent the caregiver from providing the individual with adequate care, or the caregiver's obligation of care to the individual places other dependents at risk of insufficient care;

10. Violence or illegal activities within the individual's current living environment by the individual or others has required intervention by local or state law enforcement authorities;

11. Complaints of neglect, exploitation, or abuse of the individual, or other adverse environmental conditions affecting the individual have been investigated by Protective Services and confirmed pursuant to Chapter 39, Part II, or Section 415.104, F.S.;

12. The individual requires services of greater intensity.

(d) A change in age that will result in a loss of services funded or otherwise provided from sources other than the waiver, such as the Medicaid State Plan or the school system.

(e) The individual experiences a documented significant change in medical or functional status that would necessitate increased service utilization or a need for a more costly service. Examples of such changes are:

1. A deterioration in medical condition that requires that the individual receive services at a greater intensity or in a different setting to ensure that individual's health or safety; or

2. Onset of a health, environmental, behavioral, or medical condition that requires that the individual receive services at a greater intensity or in a different setting to ensure the individual's health or safety.

(f) The individual has documented serious, acute dental needs requiring prompt attention.

(g) The durable medical equipment used by the individual has reached the end of its useful life or is damaged, or the individual's functional or physical status has changed enough to require the use of waiver-funded durable medical equipment that had not previously been used; and the individual cannot fund the entire amount of the purchase from his or her budget allocation without jeopardizing health and safety.

(3) To ensure that limited supplemental funding targeted to those individuals most in need:

(a) Whenever an individual requests supplemental funding, a proposed cost plan shall be submitted indicating how the current budget allocation and requested supplemental funds would be used. Documentation of attempts to locate natural or community supports, third-party payers, or other sources of support to meet the individual's health and safety needs must be submitted before the agency may review the request.

(b) The maximum amount of supplemental funds that may be granted to an individual is that amount required beyond the individual's current budget allocation to meet the individual's health and safety needs that are not able to be adequately met through other sources of support.

(c) Supplemental funds may be approved for a specific time period and for specific supports and services and, if so, may not be used outside of this time period or for another purpose without agency approval. If after 90 calendar days supplemental funds have not been used and will not be needed to meet health and safety needs, the unused funds may be removed from the individual's budget allocation.

(d) The services for which the supplemental funding is being specifically requested, as well as all other waiver-paid services on the proposed cost plan, must only be for the purpose of meeting health and safety needs.

(e) To avoid risks to health and safety while allowing budget flexibility, individuals shall not receive supplemental funding in situations when the need could be addressed by rebudgeting funds from services that are funded in excess of their health and safety needs or are not essential for health and safety, to services that would meet the need for which supplemental funding is requested.

(f) Supplemental funding may not be provided for purposes including but not limited to: addressing temporary loss of support from a caregiver due to reasons including but not limited to caregiver vacation, general respite needs, or accommodating caregiver work schedules; accommodating a preference for a more intense level of service when a less intense level of service will meet health and safety needs; when an individual has a single incident or a minor change in circumstance which does not jeopardize health and safety; routine dental procedures; solely for the convenience of the caregiver; or due to provider scheduling issues.

(4) If the individual wishes to move to a more expensive living setting and the individual does not meet the criteria for supplemental funding, the agency shall not increase the individual's budget allocation. The individual may move if he or she first demonstrates to the agency that he or she has sufficient remaining funding in his or her budget allocation to meet his or her health and safety needs based on both his or her current and foreseeable future situation in the new setting for the remainder of the current fiscal year, and that he or she could also meet his or her health and safety needs on an annualized basis thereafter based on the individual's current budget allocation.

Specific Authority 393.501(1), 393.0662 FS. Law Implemented 393.0662 FS. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE: The Agency for Persons with Disabilities

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael P. Hansen

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 17, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 8, 2010