PETITION FOR EMERGENCY VARIANCE FROM RULE 65G-2.007(6)(i)5, F.A.C.

Petitioner: [redacted]ne, as guardian of [redacted] **Submitted to:** Agency Clerk, Agency for Persons with Disabilities, apd.agencyclerk@apdcares.org **Copy to:** Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1400 **Filed pursuant to:** Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, including its emergency variance provisions **Date:** July 22, 2026

Petitioner contact information: [redacted]

Petitioner is not represented by an attorney or qualified representative in this proceeding.

Variance requested is PERMANENT.

This petition requests an EMERGENCY variance, as stated in the caption above, pursuant to Rule 28-104.004, F.A.C. The specific facts that make the situation an emergency, and the specific facts showing that Petitioner will suffer an immediate adverse effect unless the variance is issued more expeditiously than the timeframes provided in Section 120.542, F.S., are stated in Section C.6. Under Rule 28-104.005(2), F.A.C., the Agency must grant or deny this petition, or determine that the request is not an emergency, within 30 days of its receipt.

Petitioner also requests a permanent variance. Rule 28-104.005(4), F.A.C., provides that the duration of an emergency variance is determined by the Agency. Because [redacted] medical need is permanent, Petitioner requests permanent relief in addition to emergency relief, as set out in Section B and in the Relief Requested.

[redacted] date of birth [redacted], is Petitioner's son and ward. He is a client of the Agency for Persons with Disabilities and resides at The [redacted] operated by [redacted]. [redacted] is subject to regulation by Rule 65G-2.007(6)(i)5, F.A.C.: the rule governs the bed in which he may sleep in his licensed home, and its sole exception turns on his own approved behavioral plan. Petitioner files on his behalf as his court-appointed guardian, exercising the authority Chapter 744, F.S., vests in her.

A. Applicable Rule and Implemented Statute

Rule from which a variance is requested: Rule 65G-2.007(6)(i)5, Florida Administrative Code.

Statute implemented: Section 393.067, Florida Statutes.

B. Action Requested

Petitioner requests an emergency variance, and a permanent variance, from Rule 65G-2.007(6)(i)5, F.A.C., which states in pertinent part: "Enclosure bed system shall not be permitted

unless it is required within a resident's approved behavioral plan under Chapter 65G-8, F.A.C., and is used in conformity therewith."

The variance is requested to allow [redacted] to use the enclosure bed system his physician prescribed for him, specifically the KayserBetten Ida I Special Needs Medical Bed with high sides, doors, and interior padding, as medically necessary protective equipment. In order to comply with the Agency's direction that use of the enclosure bed be discontinued, the doors have been removed from [redacted] bed so that it no longer encloses him. Petitioner requests a variance permitting the doors to be reinstalled and the bed restored to the configuration his physician prescribed. The variance is requested on the basis of [redacted] medical need, to stand independent of and to survive any behavior plan that may later be approved for him.

C. Facts and Justification

1. [redacted] medical history

[redacted] is [redacted] years old. He has cerebral palsy and an intellectual disability. He is non-ambulatory and uses a wheelchair, and he depends on caregivers for all transfers, which are performed with a mechanical lift.

[redacted] is nonetheless mobile on the surface of a bed. He moves himself by scooting on his knees and by rolling, and he moves frequently while he sleeps. He also has constant involuntary movement. What he cannot do is make that movement safe. He cannot orient himself to the edge of the bed, and he cannot arrest a roll, break a fall, or protect his head when he lands. His intellectual disability means he does not recognize danger and cannot be taught to avoid it. He is non-verbal. He cannot call for help, and he cannot tell anyone that he is hurt.

[redacted] used enclosure beds through his childhood. Petitioner recalls that the arrangement was recommended when he was young, and records from that period are no longer available. As a young adult, at a group home operated by a prior provider, [redacted] was placed in a standard hospital bed with side rails. That arrangement failed, and its failure is documented: with the rails secured at their highest setting, [redacted] rolled or climbed over them, and he was found on the floor on three separate occasions. He frequently sustained bruises moving about in that bed, and he wore a protective helmet for much of the day. On [redacted] 2019, on the evaluation of his physical therapist, a physician ordered a KayserBetten Ida I Special Needs Medical Bed for [redacted] with high rails, doors, and interior padding, selected specifically because he could go over standard rails. His Medicaid managed care plan at the time, Staywell, reviewed the order under its own medical necessity criteria and authorized the bed in [redacted] 2019.

[redacted] brought that bed with him when he moved into The Garden at Bennett GH on [redacted] 1, 2023. In [redacted] 2024, his treating practitioner documented that [redacted] "requires an enclosed fully electric bed with padded sides," noting both his fall risk and his self-injurious striking, and a replacement of the same model was ordered in [redacted] 2025 with a stated length of need of lifetime. A [redacted] 2025 physical therapy equipment evaluation supporting that order scored [redacted] 7 of 10 on the MAHC-10 fall risk assessment, indicating high risk for falls. The replacement was approved in April 2025 on review by a physician reviewer for the Florida Medicaid program's contracted review organization. Two clinical teams, six years apart and in different settings,

reached the same conclusion about the same device, and each authorization reflects an independent determination of medical necessity by a reviewer other than the Agency.

[redacted] also strikes his head and body against nearby surfaces. Some of that contact occurs as part of the involuntary movements caused by his cerebral palsy, and some of it is behavioral. The padding of the enclosure bed absorbs that impact and is what protects him from injury when it happens. While he has used the padded bed, this contact has resulted in occasional bruising to his forehead and has not required emergency treatment. Without the padded enclosure, he strikes hard surfaces. [redacted] does not currently have a behavior plan. Petitioner is pursuing a behavior analysis assessment and plan for him, as described in Section C.5.

A Letter of Medical Necessity from [redacted] treating physician, Andre Marques, MD, Florida license number ME121125, is attached. It sets out [redacted] diagnoses and confirms that the enclosure bed remains medically necessary for him.

2. How [redacted] uses the bed, his safety record, and the alternatives that failed

For the entire period [redacted] has lived at the facility, until the doors were removed, the enclosure was closed only while he slept. He sleeps overnight from approximately 10:00 p.m. until he wakes, at approximately 8:00 a.m., and he is in the bed at other times only if he naps. He is not in the bed when he is awake. [redacted] prefers to be up and in his wheelchair, and he is up whenever he is awake, apart from brief periods for personal care. Staff checked on him every two hours while he was in the bed overnight.

In that entire period, from his move to the facility on [redacted], 2023 until the doors were removed, [redacted] did not fall from bed once. In his lifetime of using an enclosure bed, he has never fallen from one, has never sustained an injury in one requiring medical treatment, and has never been able to exit one on his own. No physician, therapist, nurse, or agency has ever raised a concern about his use of the bed or advised against it.

Less restrictive arrangements have failed in practice or have been ruled out as unsafe for him. A standard open bed was not workable: [redacted] moves constantly and lacks the safety awareness and physical control to remain within the boundaries of an open surface. A padded mattress on the floor was tried in order to assess whether he could transition to a standard setup, and he repeatedly rolled entirely off the mattress, leaving him exposed to walls, furniture, and hard flooring. Frequent caregiver checks were not workable on their own, because [redacted] shifts and rolls continuously, so preventing a fall by observation alone would require uninterrupted line of sight every minute of the day and night. Standard rigid bed rails were tried at his prior residence and failed: secured at their highest setting, [redacted] went over them, and he was found on the floor on three separate occasions, which is why an enclosure bed was ordered for him in 2019. Rigid rails also present an ongoing risk to him: because of his involuntary movements, they create a risk of limb entrapment and of impact injury, making them a source of harm rather than a protection. A [redacted] 2025 clinical equipment evaluation documented the same conclusion, finding that multiple less restrictive alternatives, including a standard bed, a floor mattress, commercially available canopy and net beds, protective equipment, and environmental modifications, had been explored and that none provided a safe sleeping environment for him.

3. The rule provides an exception for behavioral need and overlooks medical need

Rule 65G-2.007(6)(i)5 prohibits enclosure bed systems with a single exception: where the bed is required within a resident's approved behavioral plan under Chapter 65G-8, F.A.C. The rule provides no pathway for a resident whose need for the same device is medical.

That omission is conspicuous within the rule's own text. Two subparagraphs later, in the same subsection, the Agency expressly accommodated medical necessity. Rule 65G-2.007(6)(j)5 permits a resident to depart from the standard bedding requirement "when it is determined by a licensed physician to be medically necessary to address a diagnosed medical condition." The same subsection requires at Rule 65G-2.007(6)(i)3 that the bed and bedding "accommodate the physical needs and requirements of the individual resident," and Rule 65G-2.007(6)(f) requires bedroom arrangements "compatible with the physical needs of the residents."

The Agency therefore knew how to write a physician-driven medical exception, wrote one for bedding, and required accommodation of residents' physical needs throughout the same subsection. Only the enclosure bed provision omits any medical pathway. The result is that a resident who needs an enclosure bed because of a behavior may have it, while a resident who needs the identical bed because of a medical condition may not. [redacted] need arises from cerebral palsy and intellectual disability. His physician prescribed the bed for medical reasons. Under a literal reading of the rule, the medical nature of his need is what disqualifies him from relief that a behavioral need would secure.

The chapter through which the rule's sole exception runs confirms the same distinction. Chapter 65G-8, F.A.C., defines a "behavioral protective device" as "a device used as a means of interfering with or preventing specific results of a targeted behavior as part of a behavior program approved by the Local Review Committee." Rule 65G-8.001(4), F.A.C. It separately defines "medical protective equipment" as "health-related protective devices prescribed by a physician or dentist for use during specific medical or surgical procedures, or for use as client protection in response to an existing medical condition." Rule 65G-8.001(14), F.A.C. And it excludes from the definition of mechanical restraint both medical protective equipment and "[d]evices used to support functional body position or proper balance, or to prevent a person from falling out of bed, falling out of a wheelchair." Rule 65G-8.001(13)(a), (c), F.A.C.

[redacted] use of his bed is medical protective equipment in the chapter's own vocabulary: a physician-prescribed protective device, used for his protection in response to existing medical conditions, to prevent him from falling out of bed. Rule 65G-2.007(6)(i)5 provides an authorization pathway for behavioral protective use, through a Local Review Committee approved behavior program, and provides none for medical protective use, even though the Agency's own reactive strategies chapter recognizes both categories and distinguishes them precisely as this petition does. Petitioner does not contend that the prohibition fails to reach [redacted] bed; the facility has complied with the Agency's direction. The point is that the Agency's own definitions acknowledge the medical protective use the rule failed to accommodate. That is the gap this variance asks the Agency to fill.

The omission also puts the rule in conflict with rights the same chapter guarantees [redacted] Rule 65G-2.007(6)(i)5 implements Section 393.067, F.S., and Section 393.067(13), F.S., requires facilities licensed under that section to adhere to all rights specified in Section 393.13, F.S. Section

393.13(4), F.S., extends the client rights in that subsection to any person served in a facility licensed under Section 393.067, which includes [redacted]. Among those rights, Section 393.13(4)(c), F.S., provides that each client "shall receive prompt and appropriate medical treatment and care for physical and mental ailments and for the prevention of any illness or disability."

The enclosure bed is prescribed medical care for the prevention of injury. The rule forbids it. The Legislature has directed that [redacted] receive appropriate preventive medical care, and has directed that his licensed home adhere to that right, while the rule adopted under that same statute prohibits the device his physician prescribed to deliver it. Section 393.13(3)(c), F.S., further provides that persons with developmental disabilities shall receive services provided in the least restrictive conditions necessary to achieve the purpose of treatment, and Section 393.13(3)(g), F.S., provides a right to be free from harm, including unnecessary physical or mechanical restraint. The bed is not unnecessary. It is the least restrictive measure that meets [redacted] medical need, and its absence is what exposes him to harm.

There is a further difficulty with the rule's sole exception as applied to [redacted]. Section 393.13(4)(g), F.S., provides that a client "may not be subjected to a treatment program to eliminate problematic or unusual behaviors without first being examined by a physician who in his or her best judgment determines that such behaviors are not organically caused." [redacted] contact with surfaces is, at least in part, a manifestation of the involuntary movement caused by his cerebral palsy. To the extent it is organically caused, a behavior program directed at eliminating it is not available to him under the statute. The pathway the rule offers is therefore not merely unsuited to [redacted] need. It may be foreclosed to him by the very chapter the rule implements.

For [redacted] the enclosure bed is not furniture. It is a medical device. He uses a wheelchair because he cannot walk. He uses an enclosure bed because he cannot sleep safely on an open surface. Both were prescribed by a physician, both compensate for the same underlying impairment, and both have been authorized and funded as medical equipment through the Florida Medicaid program following its own reviews of medical necessity. The manufacturer registers the Ida I with the United States Food and Drug Administration as a medical device. No rule requires the removal of [redacted] wheelchair, or of the positioning belt that holds him safely in it, on the ground that the belt limits his movement and his need for it is not behavioral. Chapter 65G-8 itself places such devices outside the definition of restraint. Rule 65G-8.001(13)(c), F.A.C. Rule 65G-2.007(6)(i)5 does precisely that with the device he requires when he sleeps.

4. Substantial hardship

Section 120.542(2), F.S., provides that variances shall be granted where the purpose of the underlying statute will be or has been achieved by other means and the application of a rule would create a substantial hardship or would violate principles of fairness. Substantial hardship means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. Applying Rule 65G-2.007(6)(i)5 to [redacted] creates a hardship of exactly that kind, and it falls on [redacted] himself.

Without the doors, [redacted] sleeps without the protection his physician prescribed and Medicaid approved. He moves constantly on the bed, he cannot recognize its edge, he cannot break his own fall or protect himself when he lands, and being non-verbal, he cannot call for help once he is on

the floor. The rule's alternative, a bed without an enclosure, does not simply offer him less protection. It exposes him to a fall he has no capacity to prevent, and to injury against the frame and rails of whatever bed replaces it.

The harm is not limited to the risk of falling. Since the doors were removed, [redacted] has spent much of his nights awake and in motion, rolling toward the open side of the bed for hours at a time, where in the enclosed bed he slept through the night. The bed his physician prescribed did not only protect him. It was the condition under which he could sleep, and the rule has taken both.

If [redacted] does end up on the floor, he cannot be safely retrieved. He is dependent on caregivers for all transfers, which are performed with a mechanical lift, and he cannot be lifted from the floor by hand without risk. His cerebral palsy, with its associated spasticity and dystonia, makes manual handling hazardous for him, and manual lifting would also risk injuring the staff attempting it.

After [redacted] fell twice on the night of [redacted] 2026, the facility assigned a staff member to sit in his room and watch him continuously while he sleeps. Observation is not a substitute for the equipment. It does not prevent a fall; it shortens the time before a fall is discovered, and keeping [redacted] on the bed has since required staff to physically intercept him repeatedly, as set out in Section C.6. [redacted] is not authorized at a residential habilitation level that includes one to one staffing, and no service authorization provides for continuous supervision. His home serves six other residents whose care requires that staff. The arrangement is being provided at the facility's own expense to compensate for the loss of the device his physician prescribed, and it cannot continue indefinitely. It is neither adequate nor sustainable.

5. Principles of fairness

Section 120.542(2), F.S., provides that principles of fairness are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

[redacted] is similarly situated to a resident who uses an enclosure bed under an approved behavior plan. The device is the same. The protective purpose is the same. The risk of injury without it is the same. The rule affords relief to one and denies it to the other based only on the origin of the need.

Petitioner is pursuing a behavior analysis assessment and a behavior plan for [redacted] and intends to seek Local Review Committee approval of a plan that addresses his head and body banging. That is a separate and independent authorization, and it is being pursued in addition to this petition, not instead of it. Petitioner does not ask the Agency to disregard the rule's exception. She asks the Agency to recognize that the exception does not reach [redacted] underlying need.

[redacted] need for the bed is medical. It arises from cerebral palsy and an intellectual disability. He is non-ambulatory, he moves constantly on the bed without the ability to recognize its edge or protect himself, and being non-verbal, he cannot call for help. Those conditions are permanent. They will not resolve, and they will not be treated away. His head and body banging is not the reason he cannot be left in an unenclosed bed. He could not be left in one if he never banged his head at all.

That is what makes the literal application of the rule unfair to him. A behavior plan is not a durable authorization. It is contingent on the continued presence of a targeted behavior, it is subject to

periodic review, and it is designed to reduce and fade the behavior it addresses. If [redacted] plan succeeds, or if his banging diminishes on its own, the behavioral basis for his bed falls away. His cerebral palsy will not. Under a literal reading of the rule, the improvement of his behavior would strip him of the only authorization for a bed his physician prescribed for a medical condition that never changed. A rule that withdraws safety equipment from a man with cerebral palsy as a consequence of successful behavioral treatment produces the unreasonable and unintended result that Section 120.542 exists to correct. The rule denies [redacted] a physician-prescribed device for a need created by the very disability that qualifies him for the Agency's services.

Petitioner therefore requests that the variance be granted on the medical basis, independent of any behavior plan, and that it continue for the duration of [redacted] medical need regardless of whether a behavior plan is approved, modified, or discontinued.

6. Facts making the situation an emergency, and the immediate adverse effect

By email dated [redacted] 2026, sent as a follow-up to a telephone discussion, the Agency's Licensing and Monitoring Supervisor advised that an enclosure bed system is not permitted under Rule 65G-2.007(6)(i)5 absent an approved behavioral plan requiring it, and directed that a non-enclosure bed be provided. The facility asked whether the bed could remain in use while a variance was sought or while a behavior plan was pursued. The Agency advised that it could not. On [redacted], 2026, the Agency requested confirmation that the bed was no longer in use.

The direction was followed. The doors have been removed from [redacted] bed so that it no longer encloses him. On [redacted] 2026, the facility provided the Agency with photographs confirming that the bed no longer encloses him.

[redacted] now sleeps on an open surface, and what has happened since is documented in staff observation reports and nursing notes.

On the first night after the modification, [redacted] did not fall. On the night of [redacted] 2026, he fell from the bed twice. In response, the facility assigned a staff member to sit in his room and watch him continuously while he sleeps. Through the overnight hours of [redacted] into [redacted], with that measure in place, he engaged in repeated episodes of vigorous rolling toward the open side of the bed, beginning at approximately 10:12 p.m. and recurring until nearly 4:00 a.m., and he was awake for most of the night, in contrast to the full nights of sleep he had when the bed was enclosed. On the night of [redacted] staff physically intervened four times to stop him from going over the open side.

That is the pattern his history predicted. In a standard hospital bed with rails secured at their highest setting, [redacted] was found on the floor three separate times, and an enclosure bed was prescribed for him. In the enclosure bed, from 2019 until the doors were removed, he never fell once. Within a day of the doors coming off, he fell twice. Nothing about [redacted] changed. The equipment changed, and the falls followed the equipment, exactly as they did before 2019.

The observation measure was put in place because [redacted] had already fallen. It does not remove the risk; it interrupts what a staff member can physically reach in time and records the rest. On the night of [redacted] alone, keeping [redacted] on the bed required four physical interventions. What began as observation has become continuous physical guarding, and it confirms in practice what the

supporting records state: observation shortens the interval before a fall is discovered; it does not prevent the fall. A fall carries a risk of serious injury for a man with cerebral palsy who cannot break it, and he cannot be safely lifted from the floor by hand when it happens.

The harm is not speculative. It has occurred, it recurs nightly in episode after episode, and it will continue every night until relief is granted.

These are the specific facts that make the situation an emergency for purposes of Rule 28-104.004(2)(a), F.A.C. As to Rule 28-104.004(2)(b), F.A.C., [redacted] will suffer an immediate adverse effect unless the variance is issued more expeditiously than the timeframes provided in Section 120.542, F.S. He sleeps every night, and every night without the enclosure he is exposed to a fall he cannot prevent, cannot arrest, and against which he cannot protect himself, from which he cannot be safely retrieved and about which he cannot call for help, as the events of [redacted] through [redacted] 2026 demonstrate. The measure now standing between him and that outcome is unfunded, unauthorized, and cannot be maintained. A ninety day review period would leave him exposed for approximately ninety nights.

Petitioner therefore requests that the Agency act within the 30 day period provided by Rule 28-104.005(2), F.A.C., and permit the doors to be reinstalled without further delay.

D. Variance Request and Purpose of Underlying Statute

The purpose of Section 393.067, Florida Statutes, is to mandate the licensing and regulation of community-based residential facilities and to give the Agency for Persons with Disabilities the authority to set client care standards that prevent the exploitation, abuse, and abandonment of clients residing in those facilities.

Rule 65G-2.007(6)(i)5, F.A.C., serves that purpose by preventing operators of community-based residential facilities from subjecting residents to unauthorized physical confinement. The rule's reference to Chapter 65G-8, F.A.C., identifies the mischief at which the prohibition is aimed. That chapter governs reactive strategies, defined as restraint and seclusion techniques "utilized for control of behaviors," Rule 65G-8.001(15), F.A.C., and it expressly excludes from the definition of mechanical restraint the physician-prescribed medical protective equipment and fall-prevention bed devices described in Section C.3. Rule 65G-8.001(13)(a), (c), (14), F.A.C. The prohibition is aimed at the use of an enclosure to control a resident, imposed by a facility, without clinical authorization or oversight.

Granting this variance serves that purpose rather than defeating it, for the following reasons.

The use is authorized, not unauthorized. The bed was prescribed by a physician and is supported by the attached Letter of Medical Necessity from [redacted] treating physician. It has been independently reviewed twice: authorized by his Medicaid managed care plan in 2019 on a physician's order, and approved again in 2025, on physician review, by the Florida Medicaid program's contracted review organization. It is not a measure a facility devised on its own initiative, which is the conduct the rule guards against.

The use is protective, not controlling. The bed is not used to manage [redacted] conduct or for the convenience of staff. It is used to keep him from falling and to cushion him during sleep. It is never used as punishment, and it is not part of any behavior plan.

The pattern of use is inconsistent with confinement. The enclosure closed only while [redacted] slept, whether overnight or during a nap. He is not in the bed when he is awake. He is up and in his wheelchair throughout his waking hours, by his own preference. A man who is out of bed and upright whenever he is awake, by his own choice, is not being subjected to the confinement this rule was written to prevent.

The bed's use is subject to oversight. Staff checked on [redacted] every two hours while he was in the bed overnight. His use of the bed is documented and is subject to the Agency's ongoing monitoring of his home.

Denying the variance overrides a decision the Legislature reserved to [redacted] guardian. As set out in Section C.3, Section 393.067(13), F.S., requires facilities licensed under the statute this rule implements to adhere to all rights specified in Section 393.13, F.S., titled "The Bill of Rights of Persons with Developmental Disabilities." Section 393.13(1), F.S. In it, the Legislature declared its clear and unequivocal intent to guarantee individual dignity, liberty, pursuit of happiness, and protection of the civil and legal rights of persons with developmental disabilities. Section 393.13(2)(e), F.S. It provided that such persons have a right to dignity, privacy, and humane care. Section 393.13(3)(a), F.S. And it provided that such persons have a right to consent to or refuse treatment, subject to the powers of a guardian advocate appointed under Section 393.12, F.S., or a guardian appointed under Chapter 744, F.S. Section 393.13(3)(h), F.S.

That last right is directly at issue. [redacted] cannot exercise it himself. The Legislature anticipated that and vested it in his guardian. Petitioner is [redacted] court-appointed guardian. She exercised his right to consent to treatment when she chose this device for him, on a physician's order, and obtained it through his Medicaid managed care plan after that plan's own review. Rule 65G-2.007(6)(i)5 nullifies her decision. It does not do so because a physician found the device inappropriate, or because his guardian withdrew consent, or because anyone concluded the bed was unsafe for him. It does so solely because the need the device addresses is medical rather than behavioral. Granting the variance restores a choice the Legislature placed with the guardian; denying it leaves that choice foreclosed by a rule that never considered him.

Denying the variance is also inconsistent with the person-centered approach the Agency requires. The Agency requires a person-centered support plan for every individual it serves, and the federal home and community-based services requirements governing [redacted] waiver services direct that a setting ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint, 42 C.F.R. Section 441.301(c)(4)(iii), and optimize, but not regiment, individual initiative, autonomy, and independence in making life choices, including as to the physical environment, 42 C.F.R. Section 441.301(c)(4)(iv). Those qualities are required of a setting based on the needs of the individual as indicated in that individual's person-centered service plan. 42 C.F.R. Section 441.301(c)(4). The federal framework further requires that the person-centered service plan reflect the individual's clinical and support needs as identified through an assessment of functional need, and reflect risk factors and the measures in place to minimize them. 42 C.F.R. Section 441.301(c)(2)(iii) and (vi).

[redacted] enclosure bed is precisely such a measure. It exists to minimize an identified risk arising from an assessed clinical need. The alternatives available to him without it do not serve the principles the federal framework protects. Sleeping on the floor, or sleeping on a surface that does

not protect him, does not promote his autonomy, his choice, or his dignity. It diminishes all three. The bed is what allows [redacted] to sleep safely in his own bedroom, in his own home, and to spend his waking hours up and out of bed as he prefers. Removing it does not liberate him. It exposes him.

The line the rule draws has nothing to do with whether the device is safe. Rule 65G-2.007(6)(i)5 permits an enclosure bed system where a behavior plan requires it and prohibits the identical device where a physician prescribes it. The bed is the same bed. Its design, its risks, and its protective effect do not change according to the reason it was ordered. The rule therefore does not distinguish between a safe device and an unsafe one. It distinguishes between two categories of need, and grants relief to one while withholding it from the other, on a basis that has no bearing on the safety of the equipment or on the wellbeing of the resident using it.

The safeguards that justify the rule's exception are present here. The rule permits an enclosure bed within an approved behavior plan because that pathway carries oversight: professional assessment, documentation, and review before the device may be used. [redacted] use of the bed carries oversight of the same character. It was prescribed by a physician. It has been reviewed and authorized under Medicaid medical necessity criteria twice: by his Medicaid managed care plan in 2019 on that physician's order, and again in 2025, on physician review, for the Florida Medicaid program. It was consented to by his court-appointed guardian, exercising a right the Legislature reserved to her. [redacted] treating physician has confirmed the device remains medically necessary, and has documented the less restrictive alternatives that were tried and found inadequate. Granting the variance does not create an unreviewed use of an enclosure bed. It recognizes one that has been reviewed by a physician, a payer, and a guardian, and is subject to the Agency's continuing oversight of the home.

Denying the variance would defeat the statute's purpose. Section 393.067 exists to protect residents through client care standards. Denying [redacted] the bed his physician prescribed exposes a non-ambulatory man who cannot recognize danger to falls he cannot prevent and injuries he cannot avoid. The rule would then operate to harm the resident it was written to protect. That is not what the statute contemplates.

Conditions Offered

Petitioner offers to condition the variance on any of the following the Agency deems appropriate: maintenance of current physician documentation supporting the medical necessity of the bed; use of the bed solely for [redacted] protection during sleep and never as punishment or for staff convenience; and the Agency's ongoing monitoring of the bed's use and condition.

Relief Requested

Petitioner respectfully requests that the Agency:

1. Grant an emergency variance from Rule 65G-2.007(6)(i)5, F.A.C., permitting the doors of the physician-prescribed KayserBetten Ida I Special Needs Medical Bed to be reinstalled and the bed restored to the configuration his physician prescribed, effective immediately;

2. If the Agency determines that the request is not an emergency, notify Petitioner in writing and review this petition on a non-emergency basis pursuant to Rule 28-104.005(3), F.A.C., and Section 120.542(7), F.S.;
3. Grant a permanent variance of the same rule for the duration of [redacted] documented medical need, to stand independent of and to survive any behavior plan that may later be approved for him. Section 120.542(1), F.S., provides that an agency may limit the duration of a variance or impose conditions on it only to the extent necessary for the purpose of the underlying statute to be achieved. [redacted] cerebral palsy and intellectual disability are permanent, and his need for the bed is permanent. A time limitation would not serve the purpose of the underlying statute; it would only require him to establish the same unchanged facts again; and
4. Refrain from any enforcement action concerning the bed while this petition is pending.

[redacted]

Certificate of Service

I certify that a copy of this petition was furnished to the Agency Clerk of the Agency for Persons with Disabilities at apd.agencyclerk@apdcares.org, and to the Joint Administrative Procedures Committee, on July 22, 2026.

[redacted]

1. Letter of Medical Necessity, Andre Marques, MD, dated July 21, 2026
2. Letter of medical necessity and physician's order for the KayserBetten Ida I, dated January 14, 2019 (Amanda Judges, PT, DPT, C/NDT; Henry P. Dumas, MD), with the Staywell Health Plan authorization dated February 13, 2019
3. Detailed Written Order for the replacement bed, dated February 10, 2025, and approval of eQHealth Solutions, the Florida Medicaid program's contracted review organization, dated April 3, 2025
4. Manufacturer's specification sheet for the KayserBetten Ida I Special Needs Medical Bed
5. Correspondence from the Agency's Licensing and Monitoring Supervisor, dated July 9, 2026