

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 33, No. 50, December 14, 2007 issue of the Florida Administrative Weekly.

Relating to Rule 64E-15.010 Permits and Fees. The previously published Notice of Proposed Rulemaking omitted language to offer a hearing if requested. The correct language reads:

IF REQUESTED IN WRITING WITHIN 21 DAYS 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: February 4, 2008, 9:00 a.m.

PLACE: 4042 Bald Cypress Way, Conference Room 301, Tallahassee, FL 32399

DEPARTMENT OF FINANCIAL SERVICES**Division of State Fire Marshal**

RULE NO.:	RULE TITLE:
69A-64.005	Adjustments to Reflect Consumer Price Index

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 34, No. 1, January 4, 2008 issue of the Florida Administrative Weekly.

Notice is hereby given that the hearing (if requested) on the above referenced rules (published in the January 4, 2008 issue of the Florida Administrative Weekly) has been changed to:

DATE AND TIME: Thursday, January 31, 2008, 10:00 a.m.

PLACE: The Atrium Building, Third Floor Conference Room, 325 John Knox Road, Tallahassee, Florida

Section IV Emergency Rules

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

AGENCY FOR HEALTH CARE ADMINISTRATION**Medicaid**

RULE NO.:	RULE TITLE:
59GER07-5	Developmental Disabilities Residential Habilitation Services in a Licensed Facility Provider Rate Table

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: This rule establishes the rates paid developmental disabilities waiver services providers of residential habilitation services for clients of the Agency for Persons with Disabilities.

The Agency for Persons with Disabilities faces a severe and growing budget deficit that creates an immediate danger to the public health, safety, or welfare. The Agency for Persons with Disabilities determined that there was an emergency as defined in Rule 120.54, F.S., that supported adoption of an Emergency Rule.

Adoption of the emergency rule is necessary to assure appropriated dollars are available for the provision of basic services to persons with developmental disabilities, one of Florida's most vulnerable communities. The emergency rule is necessary to conserve legislatively appropriated dollars necessary for the protection of the public health, safety and welfare.

The Agency for Persons with Disabilities (APD) administers the State of Florida's Medicaid waiver programs for persons with developmental disabilities and establishes the rates for residential habilitation services. The Agency for Health Care Administration (AHCA) is designated as the "single state agency" for Medicaid with legislatively delegated authority to adopt the rates for residential habilitation services as administrative rules.

The individuals served are people diagnosed with mental retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome that manifest before the age of 18. They often suffer from complex medical problems as well. Many require assistance with eating, supervision during waking hours, enteral nutrition, and multiple medications. The Agency for Persons with Disabilities' (APD) Medicaid waiver programs serve over 30,000 developmentally disabled persons. The Developmental Disabilities Home and Community Based Services Medicaid waiver has a waiting list of over 15,000 developmentally disabled persons who seek services that cannot be provided as the result of APD's severe budget deficit.

No one will be removed from the Developmental Disabilities Home and Community Based Services Medicaid waiver program as a result of the Emergency Rule. Instead, effective January 1, 2008, the Emergency Rule will immediately reduce the rates paid to providers of residential habilitation services by an average of approximately 3% from the rates that were in effect until November 30, 2007. APD determined that this rate reduction will combine with the effect of other actions to reduce the projected deficit enough to permit continued funding of services. The rate reduction is a critical component of a total deficit reduction of approximately 31 million dollars. APD's other actions in response to the legislature's mandate to reduce the deficit include imposing a 180 hours per month limit on personal care services for adult clients, and eliminating therapeutic massage, homemaker, chore, non-residential support services, and psychological assessment services. The combined savings from those actions are projected to reduce the deficit by \$24.6 million dollars.

Without the savings achieved by the immediate implementation of these residential habilitation rate reductions required by the Florida Legislature, the Agency for Persons

with Disabilities' budget deficit will continue to increase by approximately \$1 million per month. In addition, the State of Florida's latest official revenue estimate was revised downward by \$1 billion for the current budget year. This estimate comes after a special session in which the Legislature reduced the current year budget by approximately \$1.1 billion due to a previously projected revenue shortfall. Every dollar not saved now is a dollar that cannot be used to make needed services available to persons with developmental disabilities.

If this rate reduction and the other savings measures mandated by the Legislature are not implemented, the Developmental Disabilities Home and Community Based Services Medicaid waiver program service expenses are projected to exceed the legislative appropriation by \$84,006,018.

This deficit of over \$84 million dollars creates an immediate and continuing danger to the developmentally disabled people APD serves. Thousands of needy go unserved because of it. The consequence of the deficit is that APD will not have a sufficient amount of appropriated funds in the 2007-2008 Fiscal Year to cover the projected expenditures as the budget year ends.

Without the immediate implementation of the rate structure, the Developmental Disabilities Home and Community Based Services Medicaid waiver will not have a sufficient amount of appropriated funds in the 2007-2008 Fiscal Year to cover the projected expenditures as the budget year ends. Consequently, there is an immediate danger to the public health, safety and welfare. There is insufficient time to promulgate a rule through the regular rulemaking process as the rate structure assumes the start date of January 1, 2008 to accomplish the minimum saving necessary for protection of the public health, safety and welfare. Each month the new rate is not in effect, the budget deficit will continue to grow which means the effect of the deficit will be increased.

The Florida Legislature has emphasized curing the financial problems by any means in statute and General Appropriations Act proviso requirements. Section 393.0661(4), F.S. (2007) states:

Nothing in this section or in any administrative rule shall be construed to prevent or limit the Agency for Health Care Administration, in consultation with the Agency for Persons with Disabilities, from adjusting fees, reimbursement rates, lengths of stay, number of visits or number of services, or from limiting enrollment, or making any other adjustment necessary to comply with the availability of moneys and any limitations or direction provided for in the General Appropriations Act.

The budget proviso to the 2007 General Appropriations Act provides:

The agency [for Persons with Disabilities] shall work with the Agency for Health Care Administration to implement the plan to remain within appropriation.

From the funds in Specific Appropriation 270, the agency [for Persons with Disabilities] shall only serve additional clients on the Developmental Disabilities Home and Community Based Services Medicaid waiver if they are in crisis and sufficient funding is made available through attrition.

If the projected deficit is not reduced by at least the amount projected to be saved by the rate reductions of the emergency rule, APD will have to stop enrollment of clients in crisis for waiver service. Clients in crisis are the most vulnerable of the developmentally disabled. Rules 65G-1.046 and 65G-1.047, Florida Administrative Code, establish the process and criteria for determining crisis eligibility and prioritizing those in crisis. The criteria included, in the first priority classification are individuals who are currently homeless, living in a homeless shelter, or living with relatives in an unsafe environment whose health and safety are at risk without immediate provision of waiver services.

Payment for residential habilitation services is a major part of the APD's expenditures. For FY 2006-2007, APD spent \$312,366,441 on residential habitation services. That is approximately 30% of total Developmental Disabilities Home and Community Based Services Medicaid waiver budget and nearly 400% more than any other waiver service. Approximately 6,000 persons receive residential habilitation services. That is 20% of the total number of people receiving Developmental Disabilities Home and Community Based Services Medicaid waiver services. In addition to Developmental Disabilities Home and Community Based Services Medicaid waiver costs, APD spends \$2 million on room and board for children in group homes. APD also pays the difference if an adult's Supplemental Security Income (SSI) payment is less than the standard monthly amount.

The proposed changes will reduce the expenditure for residential habilitation services for the remainder of FY 2007-2008 by about \$6 million dollars. These savings are necessary to help reduce APD's deficit, to comply with Legislative mandates, and to continue to serve the needy at the current level and expand the number APD can help. The Legislature has also required the APD to do all things necessary to cure the deficit. Section 393.0061, F.S. (2007) commands APD to reduce the deficit by all means including limiting services, reducing rates or even limiting the number of people provided services.

No reasonable rate reduction for any other provider group can generate the savings that will be generated by the residential habilitation rate reduction of the emergency rule.

The Legislature also specifically commanded the Agency for Persons with Disabilities to reduce residential habilitation rates and implement a consolidated residential habilitation rate structure to increase savings to the state through a more cost-effective payment method and establish uniform rates for intensive behavioral residential habilitation services. The emergency rule fulfills that requirement.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The procedure for adoption of this emergency rule is "fair under the circumstances" as required by Section 120.54(4), F.S. and provides the procedural protection required for adoption of an emergency rule. Section 393.0661(4), F.S. (2007) mandated APD to reduce the deficit by all means including limiting services, reducing rates, or limiting the number of people provided services. Chapter 2007-64, Laws of Florida specifically mandated APD to reduce residential habilitation rates by implementing a consolidated residential habilitation rate structure to increase savings to the state through a more cost-effective payment method and establish uniform rates for intensive behavioral residential habilitation services.

The provider community received timely advance notice that the Agency for Persons with Disabilities was considering rate adjustments to meet the legislature's mandate to increase savings and establish uniform rates for providers. APD hosted a series of Systems Review Workgroups for the purpose of identifying means of dealing with the projected deficit for APD, improving the accountability of the Developmental Disabilities Home and Community Based Services Medicaid waiver system, and restructuring the residential habilitation rate structure. In addition to the 12 meetings held between APD and various interest groups, there was also a specific sub-workgroup developed to exclusively address the residential habilitation rates. Along with staff from APD and AHCA, participants in the process included self-advocates (clients), family members, providers and provider associations, waiver support coordinators, representatives from advocacy groups including Florida Association for Rehabilitation Facilities (FARF), the Family Care Council, Arc of Florida, Florida Association of Support Coordinators, Sunrise (a provider agency) and Mentor (a provider agency). After the initial introduction of the APD Residential Habilitation rate structure, additional input was obtained from the various affected groups. The Agency for Persons with Disabilities received, considered and incorporated comments from the provider community regarding its position on the proposed rate adjustments.

Also the Agency for Health Care Administration previously adopted an emergency rule establishing reduced residential habilitation rates, effective December 1, 2007. As a result of an agreement reached in a challenge to the rule the Agency agreed to make changes incorporated in this emergency rule to further assure that the agency is taking only that action necessary to protect the public interest. This emergency rule supersedes the December 1, 2007 emergency rule.

Constitutional and statutory due process requirements are met as an opportunity for judicial review of the emergency rule is provided by Section 120.54(4)(a)3., F.S., and an opportunity to contest the emergency rule is provided by Section 120.5615, F.S.

SUMMARY: The emergency rule implements the mandate of the Florida Legislature in Chapter 2007-64 of the Laws of Florida amending Sections 393.0661(3)(f)4. and 393.0661(3)(f)8., F.S. (2007) and the budget proviso requirements of the 2007 General Appropriations Act. It supersedes Rule 59GER07-2. Chapter 2007-64, Laws of Florida required:

Section 393.0661(3)(f)8., F.S. The agency [for Persons with Disabilities] shall implement a consolidated residential habilitation rate structure to increase savings to the state through a more cost-effective payment method and establish uniform rates for intensive behavioral residential habilitation services.

The budget proviso to the 2007 General Appropriations Act provides:

The agency [for Persons with Disabilities] shall implement a consolidated Residential Habilitation rate structure to increase savings to the state through a more cost effective payment method and establish uniform rates for the Intensive Behavior Residential Habilitation services.

The Emergency Rule establishes the rates paid providers of residential habilitation services provided to developmentally disabled individuals enrolled in the Developmental Disabilities Home and Community Based Services Medicaid waiver. Residential habilitation provides supervision and specific training activities that assist the recipient to acquire, maintain or improve skills related to activities of daily living.

The purpose of Rule 59GER07-5, is to incorporate by reference in rule the Developmental Disabilities Home and Community-Based Services Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table, January 1, 2008. The effect will be to incorporate by reference in rule the Developmental Disabilities Home and Community-Based Services Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table, January 1, 2008.

The Agency for Health Care Administration published a Notice of Rule Development for proposed changes to residential rehabilitation rates paid by the Agency for Persons with Disabilities to providers in the November 16, 2007 Florida Administrative Weekly. The Agency conducted a rule development hearing on Monday, December 3, 2007, from 3:00 to 4:30.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Pamela Kyllonen, Medicaid Services, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308-5407, (850)414-9756, Kyllonep@ahca.myflorida.com

THE FULL TEXT OF THE EMERGENCY RULE IS:

59GER07-5 Developmental Disabilities Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table.

(1) This rule applies to all developmental disabilities waiver services providers enrolled in the Medicaid program.

(2) All developmental disabilities waiver services providers enrolled in the Medicaid program must be in compliance with the Developmental Disabilities Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table, January 1, 2008, which is incorporated by reference. The Developmental Disabilities Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table is available from the Medicaid fiscal agent website at <http://floridamedicaid.acs-inc.com>. Click on Provider Support, and then on Fees.

Specific Authority 409.919 FS, Law Implemented 393.066, 393.0661, 409.906, 409.908 FS., Chapter 2007-64, L.O.F. History—New 1-1-08.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: January 1, 2008

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

Section V

Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF COMMUNITY AFFAIRS

NOTICE IS HEREBY GIVEN that on December 28, 2007, the Department of Community Affairs has issued an order Granting a Petition for Waiver or Variance.

NAME OF PETITIONER: Town of Welaka, Florida

DATE PETITION WAS FILED: September 24, 2007

RULE NUMBER AND NATURE OF THE RULE FROM WHICH THE WAIVER OR VARIANCE IS SOUGHT: Rule 9B-43.006, F.A.C. and Form CDBG-N-4, which is incorporated by reference. The rule sets forth the basis on which the applications for Neighborhood Revitalization subgrants are scored, and the form details the leverage to be provided by the applicant for the project.

REFERENCE TO THE PLACE AND DATE OF THE PUBLICATION OF THE NOTICE OF PETITION: F.A.W., October 12, 2007, Vol. 33, No. 41.

THE DATE THE SECRETARY APPROVED THE VARIANCE OR WAIVER: December 26, 2007

THE GENERAL BASIS FOR THE DECISION: The Petition for Waiver of Rule 9B-43.006, Fla. Admin. Code and Form CDBG-N-4 is granted and the Department waives the requirement that only the leverage identified in the application for a CDBG subgrant may be used in the CDBG project, on the basis that the same benefit and program impact result from the

use by Welaka of its general revenue funds as leverage for its project in lieu of the DEP subgrant award identified in its application..

A copy of the Order may be obtained by contacting: Paula P. Ford, Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

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WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN that on November 14, 2007, the St. Johns River Water Management District's Governing Board has issued an order.

The District granted a variance under Section 120.542, F.S. (SJRWMD FOR# 2007-43), to The Haven at Riviera, LLC (Petitioner). The Petition for Variance was received by SJRWMD on May 4, 2007. Notice of receipt of the petition requesting the variance was published in the Florida Administrative Weekly, Vol. 33, No. 40 on October 5, 2007. No public comment was received. This order provides a temporary variance from subparagraph 40C-41.063(1)(c)1. of the Florida Administrative Code and Section 11.1.3 of the Applicant's Handbook: Management and Storage of Surface Waters (February 1, 2005). These rules provide in pertinent part that a surface water management system may not result in an increase in the amount of water being diverted from the Upper St. Johns River Hydrologic Basin to intercoastal receiving waters. Generally, the Order sets forth the basis of the Governing Board's decision to grant the variance as follows: 1) requiring Petitioner to comply with these rules onsite would create a technological hardship, and 2) Petitioner's financial contribution to the C-1 Rediversion Project or an Alternative Rediversion Project will accomplish the purpose of Chapter 373 of the Florida Statutes to prevent harm to the water resources, by facilitating the project's implementation. The C-1 Rediversion Project is a restoration project designed to allow water that would be diverted from the St. Johns River to coastal receiving waters by the Melbourne-Tillman Water Control District canal system to drain once again to the St. Johns River.

A copy of the Order may be obtained by contacting: Timothy A. Smith, Senior Assistant General Counsel, at the Office of General Counsel, St. Johns River Water Management District, 4049 Reid Street, Palatka, Florida 32177-2529, or by telephone at (386)312-2347.