

**Agency for Persons with Disabilities
Statement Of Estimated Regulatory Costs (SERC)**

Division: Agency for Persons with Disabilities
Board:
Rule Numbers: 65G-13.001, 13.008, F.A.C.
Rule Description: Room and Board
Contact Person: Brett Taylor

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? Yes No
2. Is the rule likely to reduce total non-farm employment? Yes No
3. Is the rule likely to reduce private housing starts? Yes No
4. Is the rule likely to reduce visitors to Florida? Yes No
5. Is the rule likely to reduce wages or salaries? Yes No
6. Is the rule likely to reduce property income? Yes No

Explanation: These rules do not directly or indirectly have any adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.

Section 393.066, F.S., tasks the Agency with providing services to eligible individuals as determined in accordance with 393.065, F.S. Among those services is residential facility services which includes room and board. See 393.063, F.S.

It is also anticipated that that the General Appropriation Act 2023 will establish the room and board rate and the personal needs allowance as a proviso attached to the annual special appropriation for room and board funds for Agency clients.

These rules will implement the maximum reimbursement rate the Agency for Persons with Disabilities (Agency) will pay to residential facilities, licensed pursuant to s. 393.067, F.S., that provide room and board to Agency clients.

The reimbursement rate has been included in the operating procedure, APD OP 3-0001, which has been in place since 2004, last updated in 2014. The operating procedure calculated the maximum reimbursement rate as being up to \$583.42

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(after taking into consideration client financial responsibility being paid out of third-party benefits and setting aside a personal allowance for the benefit of the client pursuant to s. 402.33, F.S.).

Historical Background

The payment, and payment rate, for these services has existed when the Agency was a part of the Department of Health and Human Rehabilitative Services. At that time, the Department served as the representative payee for all recipients. Starting as early as 1979,¹ the Department was given a lump-sum “Room and Board and Personal Care Allowance” appropriation that included funds to pay for such services. Around the time the Agency was separated from the Department of Children and Families, the Agency was still the representative payee, and used the policy as the standard for the payments. During the 2000s the Agency made the policy decision to no longer act as the representative payee, but the policy was never enshrined in rule despite its continued and ongoing operationalization.

The appropriation since 2014 and reimbursement payouts are as follows on the next page:

Fiscal Year	# of Consumers Receiving R & B	# of Consumers Receiving R & B Are Waiver	# of Adults	Total Claims for Adults	# of Kids	Total Claims for Kids	Total Claims
FY14/15	889	713	524	\$657,240.24	365	\$1,680,004.38	\$2,337,244.62
FY15/16	914	744	511	\$647,505.27	403	\$1,983,988.56	\$2,631,493.83
FY16/17	864	723	447	\$682,282.46	399	\$1,931,223.32	\$2,613,505.78
FY17/18	827	714	436	\$701,746.12	391	\$1,844,611.42	\$2,546,357.54
FY18/19	770	673	402	\$642,919.91	368	\$1,798,506.96	\$2,441,426.87
FY19/20	658	593	310	\$524,044.61	348	\$1,763,083.16	\$2,287,127.77
FY20/21	574	516	220	\$409,939.19	354	\$1,883,621.15	\$2,293,560.34
FY21/22	584	532	229	\$443,406.22	355	\$1,800,934.42	\$2,244,340.64

Providers have been voluntarily following this policy since the 2000s as they individually became the representative payee. Providers have been receiving the level of reimbursement described above since 2014.

¹ Ch. 79-212, at 1007, Laws of Fla.

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Because providers have been following this policy since 2004, and at the rates established in 2014, they will not incur any impact from the regulatory codification of this rule. To the extent that a provider or finder of fact would disagree, the rule making grant of authority requires the Agency to write a rule, and any increased cost would be attributed to that statute, and not the rule.

This rule does not establish the rate at which a group home can charge for room and board to be paid by a facility resident. A licensed facility is free to charge an amount that is higher than the reimbursement rate established by the Agency.

Rate Calculation

The reimbursement rate is a minimum guarantee of payment by the Agency to reimburse a residential habilitation provider for a client's room and board, when the remaining amount is less than \$583.42. The rate is based on a fixed and limited Legislative appropriation, which the Agency must not exceed.

This is the reimbursement rate for one client. Most providers for the Agency are licensed for six (6) beds. Thus, most providers stand to collect, or be reimbursed, for room and board alone, \$3,500.52.

In Florida, the typical layout for a group home is a shared private bedroom, with a shared bathroom and common areas. A reimbursement rate of \$583.42, without a private bedroom, bathroom, and with shared common areas, is a reasonable reimbursement rate when the client has their SSI check reduced. This would necessarily not be the sole source of income for the resident.

Indeed, the rule, like the policy, in no way places a cap on rent, allowing clients to select different settings based on what the provider offers. Further, providers and clients are free to negotiate what an appropriate room and board rate will be.

The room and board appropriation for: FY 20-21 was \$2,639,201, FY 21-22 was \$2,639,201, and FY 22-23 is \$2,639,201. This limits the amount the Agency can provide in room and board. The number of Agency clients who reside in a licensed facility is 10,997 as of July 1, 2022.

While this rule only applies to adults, the Agency also reimburses 100% of the room and board reimbursement rate to clients under the age of 21 out of this appropriation.

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Personal Allowance

As discussed above, the second aspect to these Rules is the personal needs allowance deduction from the SSI payment. The rule specifies that Agency clients receive eighteen (18%) percent of the federal benefit rate.

This personal allowance calculation has two consequences itself. It will ensure that Agency clients receive 1) a minimum personal needs allowance; and 2) will keep any proportional cost-of-living increase.

The figure of \$133.58 has been in use since 2014. The rule does specify a percentage, which is new. The percentage serves to allow the client to keep any cost-of-living increase proportionally and automatically, instead of having it applied wholly to room and board. This increases regulatory certitude and obviates the need for updates due to cost-of-living increases.

Section 393.067(1) provides the Agency shall by rule set facility and client care standards.

Section 393.066(1), F.S. requires that “[t]he agency shall plan, develop, organize, and implement its programs of services and treatment for persons with developmental disabilities to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.” The personal needs allowance is part of that planning, development, and organization because the personal needs allowance contributes to both current maintenance and the material needs to live in the community. Indeed, the personal needs allowance aids in residents’ pursuit of happiness and autonomy of leisure and discretionary activities, hallmarks of community living. *Accord* §393.13(2)(e), (3)(c), (4)(b).

Section 393.066(1), F.S., also allows the Agency to purchase necessary services in lieu of providing services, directly, to clients when it is more cost-effective. The policy also describes how room and board payments would be paid out of client third-party benefits, after a personal allowance is deducted from said benefits.

In accordance with s. 402.33(2), F.S., the Agency, is required to establish, by rule, a process for the collection of fees from clients for services provided by contractors. Moreover, pursuant to 402.33(3) the Agency can set requirements and standards for designation of representative payees. These fees are collected from the clients’ third-party benefits and benefit payments. The licensed facility is to set aside the personal allowance for the clients’ sole benefit.

Through this lens, the personal needs allowance could be viewed as a fee charged by the Agency that is directly given back to the client by the provider.

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However, the fee is not an “adverse impact” or “regulatory cost” under s. 120.54 or 120.541. Providers have been voluntarily following this calculation since its inception in 2004, and the current rates since 2014. Nothing in this rule charges an additional regulatory or adverse fee that has not been previously assented to.

Indeed, this proceeding to codify is being done based on feedback received from providers and stakeholders that the lack of cost-of-living updates and plain rule language was placing providers and clients in an uncertain position. Placing the percentage in the personal needs allowance section ensures that the client will keep any proportional cost of living increase, while allowing the provider and client to negotiate the difference.

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? **No**

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

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?

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Yes No

Explanation: This Rule does not directly or indirectly have an adverse impact on business competitiveness, productivity, or innovation as listed above. See explanation above in section A.

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	\$0.00
2. New one-time costs	\$0.00
3. Subtract 1 from 2	\$0.00
4. Current recurring costs	\$0.00
5. New recurring costs	\$0.00
6. Subtract 4 from 5	\$0.00
7. Number of times costs will recur in 5 years	\$0.00
8. Multiply 6 times 7	\$0.00
9. Add 3 to 8	\$0.00

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.

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).*

The number of entities that are potentially impacted is estimated to be under 2,129—which is the number of Agency licensed facilities as of May 1, 2022.

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

Agency clients residing at Agency licensed residential facilities.

Agency licensed residential facilities.

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).*

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.

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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).*

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:

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- 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

This regulation is needed to establish a process for requesting and method for calculating a room and board reimbursement amount for a client that resides at an Agency for Persons with Disabilities licensed residential facility. Furthermore, the standard is necessary to ensure a greater level of independence for Agency clients living in the community pursuant to sections 393.066(1) and 402.33(3).

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

Agency licensed residential facilities that serve Agency clients.

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

Agency-licensed facilities may receive reimbursement from the Agency for room and board services provided to eligible clients at a rate initially set by appropriation proviso that was placed in policy, and once again in proviso which shall now be codified in rule. To the extent that the personal needs allowance rule reduces a third-party benefits or benefit payments amount to less than the set rate for room and board, the Agency may reimburse the provider up to the amount authorized by legislative appropriation. Therefore, Agency-licensed facilities required to comply with this Rule will not be financially impacted.

Accordingly, with respect to these proposed rules, there is no financial impact on small business and no per-firm regulatory cost increase.

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

Establishing less stringent compliance and reporting requirements in the rules would undermine the purpose and requirements of chapters 393 and 402. The Agency is required to implement the collection of fees and that a set-aside be deducted from said fees to ensure the "development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and

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permit them to be diverted or removed from unnecessary institutional placements.” Fla. Stat. § 393.062. Furthermore, the Legislature is anticipated to establish a personal needs allowance the require that it be deducted from the authorized room and board reimbursement from the Agency.

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

This Rule does not establish any particular time frames for compliance.

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

The Rule cannot be further simplified. The Agency is required to adopt rules regarding the use of third-party benefits and a personal needs allowance to offset the reimbursement of room and board costs for Agency clients. Even with some of these parameters being included within an appropriations proviso, the process still needs to be established in Rule.

**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 allow this minimum standard to be set as merely a best practice would allow for potential inconsistency in its application and enforcement. This Rule is to allow for greater consistency and predictability by licensees as to what is expected of them.

**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 chapters 393 and 402. The small businesses that work with the Agency, and its clients, must be bound by the deadlines and standards in the rule otherwise the rule would cease to function. There is no disproportionate impact on small businesses compared to large businesses the Agency works with.

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

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

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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.

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).*

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).*

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".

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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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