

Headquarters in Tallahassee, FL. The address is: 1317 Winewood Blvd., Tallahassee, FL 32399-0700. Facilities that are not required to report these deaths to CMS shall report the death to the Director of Mental Health/Designee in the Mental Health Program Office Headquarters at the address above ~~to the department in accordance with Departmental operating procedures.~~

~~Rulemaking Specific~~ Authority 916.1093(2) FS. Law Implemented 916.105(4), 916.107(4)(b), 916.1093(2) FS. History--New _____.

DEPARTMENT OF FINANCIAL SERVICES

Division of Consumer Services

RULE NO.: RULE TITLE:

69J-123.002 Procedures

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 39, October 2, 2009 issue of the Florida Administrative Weekly.

This notice is to correct the “name of agency head who approved the proposed rule” section to read as follows:

NAME OF PERSON ORIGINATING PROPOSED RULE:
Greg Thomas, Chief of Education, Advocacy & Research, Division of Consumer Services, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 14, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 5, 2009

**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.”

DEPARTMENT OF CITRUS

RULE NO.: RULE TITLE:
20ER09-1 Oranges: 2009-2010 Anhydrous Acid Maturity Standards

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 120.54(4)(b), Florida Statutes, states that those rules pertaining to perishable agricultural commodities shall be included in the definition of rules relating to the public health, safety, or welfare.

Due to adverse climactic conditions through periods of this growing season significant amounts of the Florida navel citrus crop in the 2009-2010 season will have an acid content below the 0.4 minimum established in Section 601.19, Florida Statutes. Strict enforcement of the anhydrous acid content requirements, which were adopted largely to control abuse of plant growth regulators which are no longer in use, could cause economic waste by allowing good and safe food to be ruled immature.

After taking testimony and discussing the matter at a public meeting and hearing in Lakeland, Florida on November 10, 2009, the Florida Citrus Commission found that there exist unusual growing conditions which could cause a substantial portion of the orange crop to fail minimum acid requirements. They voted to adopt Emergency Rule 20ER09-1, adjusting the percentage of anhydrous citric acid requirement for oranges for fresh and processed use from .40 to .36, for a 90 day period.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: Adequate notice procedures were used by the Department of Citrus to inform the public and the Florida citrus industry of the pending adoption of Emergency Rule 20ER09-1 adjusting the percentage of anhydrous citric acid requirements for oranges, in that notice was made via email and/or fax of the meeting notice on November 9, 2009 to members of the Florida Citrus Commission, all industry organizations, the Florida Press Corps and other interested persons.

SUMMARY: Emergency Rule 20ER09-1 adjusts the percentage of anhydrous citric acid requirement for oranges from .40 to .36 for a period of 90 days.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Alice P. Wiggins, License & Regulation Specialist, Legal Department, Florida Department of Citrus, P. O. Box 148, Lakeland, Florida 33802-0148 or awiggins@citrus.state.fl.us

THE FULL TEXT OF THE EMERGENCY RULE IS:

20ER09-1 (20-13.0011) Oranges: ~~2009-2010~~ ~~2004-2005~~ Anhydrous Acid Maturity Standards.

(1) During the period beginning ~~November 12, 2009~~ ~~October 29, 2004~~ up to and including ~~February 10, 2010~~ ~~July 31, 2005~~ oranges shall be deemed mature when the juice sample contains not less than .36 percent of anhydrous citric acid.

(2) No change.

~~Rulemaking Specific~~ Authority 601.10(1),(7), 601.11, 601.19 FS. Law Implemented 601.111, 601.19 FS. History--New 3-14-93, Amended 2-12-95, 1-17-96, 5-1-02, 2-19-03, 3-22-05, ~~11-12-09~~.

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: November 12, 2009

DEPARTMENT OF THE LOTTERY

RULE NO.: 53ER09-62 RULE TITLE: Holiday MILLIONAIRE RAFFLE™

SUMMARY: This emergency rule describes the on-line game "Holiday MILLIONAIRE RAFFLE," for which the Department of the Lottery will sell tickets beginning November 13, 2009.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Faith L. Schneider, Legal Analyst, Department of the Lottery, Capitol Complex, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER09-62 Holiday MILLIONAIRE RAFFLE™.

(1) How to Play Holiday MILLIONAIRE RAFFLE™.

(a) Holiday MILLIONAIRE RAFFLE is an on-line number match game.

(b) Each Holiday MILLIONAIRE RAFFLE ticket costs \$20.

(c) Holiday MILLIONAIRE RAFFLE tickets will go on sale on Friday, November 13, 2009. Sales of Holiday MILLIONAIRE RAFFLE tickets will cease immediately after the 1,000,000th ticket is sold or at midnight on December 30, 2009, whichever occurs first.

(d) Each Holiday MILLIONAIRE RAFFLE ticket will contain a unique ticket number that will be entered automatically into the Holiday MILLIONAIRE RAFFLE drawing. Holiday MILLIONAIRE RAFFLE tickets will automatically print from the terminal with ticket numbers issued in sequential order from 0000001 to 1000000 as they are sold around the state. Each Holiday MILLIONAIRE RAFFLE ticket will contain only one ticket number. Players cannot select their own ticket numbers.

(e) The overall odds of winning a prize in the Holiday MILLIONAIRE RAFFLE game depend upon the number of tickets sold and are 1 in 492 if all 1,000,000 tickets are sold.

(f) Holiday MILLIONAIRE RAFFLE tickets cannot be cancelled.

(2) Holiday MILLIONAIRE RAFFLE Drawing and Prizes.

(a) A random computerized drawing from among all Holiday MILLIONAIRE RAFFLE ticket numbers issued during the sales period will be held on December 31, 2009 to select 2,034 numbers. Prizes will be awarded in the order drawn. The first through ninth numbers drawn will win \$1 million cash. The 10th through 19th numbers drawn will win \$50,000 and will be alternates in the order drawn for a \$1 million prize in the event a top prize is not claimed within the 180-day claim period. The 20th through 34th numbers drawn will each win \$5,000 and the 35th through 2,034th numbers drawn will each win \$250.

(b) The Holiday MILLIONAIRE RAFFLE drawing shall be public and witnessed by an accountant employed by an independent certified public accounting firm, as required by paragraph 24.105(2)(d), F.S.

(c) The results of the drawing will be revealed on December 31, 2009, and will be available after the drawing on the Lottery's website at www.flalottery.com. The winning numbers in the top prize category will also be available by phone at (850)921-PLAY (529), [TDD (850)487-7784], and the winning numbers in the top three prize categories will be available at lottery retailers.

(3) How to Claim a Holiday MILLIONAIRE RAFFLE Prize.

(a) Holiday MILLIONAIRE RAFFLE prizes must be claimed by submitting the winning ticket for validation at a Lottery office or retailer within 180 days from the date of the drawing (June 29, 2010) and, if the prize is not paid at that time, by submitting the winning ticket for payment at a Florida Lottery office as required by the Lottery's rule governing payment of prizes. Tickets winning \$1 million must be submitted for payment at Lottery Headquarters. Failure of a prizewinner to claim a Holiday MILLIONAIRE RAFFLE prize by submitting the winning ticket for validation and payment in accordance with the Lottery's rule governing payment of prizes shall result in forfeiture of the prize. Information about procedures for filing a claim can be obtained by calling (850)487-7777 [TDD (850)487-7784]. Holiday MILLIONAIRE RAFFLE tickets are the only valid receipts to redeem a prize.

(b) A claim filed for a \$50,000 prize shall also be a contingent claim for a \$1 million prize. If a winning Holiday MILLIONAIRE RAFFLE ticket bearing any of the first nine winning numbers is not submitted for validation and payment in accordance with the Lottery's rule governing payment of prizes, the 10th through 19th prizewinners who have submitted their tickets for validation and payment in accordance with the Lottery's rule governing payment of prizes constitute contingent winners for the \$1 million prize and will be used in the order in which they were drawn to select a winner for the \$1 million top prize. The contingent winner will be awarded the cash difference between the \$50,000 prize and the \$1 million prize.

If applicable, the Lottery will attempt to notify, for a period of two weeks, the first contingent winner drawn in the \$50,000 prize category. If the Lottery is unable to contact the first contingent winner, the Lottery will attempt to notify, for a period of two weeks, the second contingent winner drawn. This process will continue until a contingent winner is contacted or the Lottery has exhausted the list of available contingent winners, in which case the \$1 million prize will not be awarded.

(c) Payment of federal, state and/or local taxes will be the responsibility of the winner. Federal withholding taxes will be deducted from the \$1 million and \$50,000 prizes.

(4) General Information.

(a) Players must be at least 18 years of age. Persons prohibited by Section 24.116, F.S., from purchasing a Florida Lottery ticket are not eligible to play.

(b) All Holiday MILLIONAIRE RAFFLE prizes are subject to the provisions of Chapter 24, F.S., and rules promulgated thereunder. Prizes will be paid in accordance with the rule of the Florida Lottery governing payment of prizes.

A copy of the current rule can be obtained from the Florida Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011.

Rulemaking Authority 24.105(9), 24.109(1) FS. Law Implemented 24.105(9), 24.115(1) FS. History—New 11-9-09.

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: November 9, 2009

DEPARTMENT OF THE LOTTERY

RULE NO.: 53ER09-63
 RULE TITLE: Holiday MILLIONAIRE RAFFLE™ Retailer Incentive Program

SUMMARY: The Department of the Lottery will conduct a “Holiday Millionaire Raffle Retailer Incentive” program, in which certain retailers will receive bonus commissions during the promotion period.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Faith L. Schneider, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER09-63 Holiday MILLIONAIRE RAFFLE™ Retailer Incentive Program.

(1) Holiday MILLIONAIRE RAFFLE™ is an on-line number match game. Holiday MILLIONAIRE RAFFLE tickets will go on sale Friday, November 13, 2009. Sales of Holiday MILLIONAIRE RAFFLE tickets will cease immediately after the 1,000,000th ticket is sold or at midnight on December 30, 2009, whichever occurs first.

(2) Each Holiday MILLIONAIRE RAFFLE ticket will contain a unique ticket number that will be entered automatically into the Holiday MILLIONAIRE RAFFLE drawing. A random computerized drawing from among all Holiday MILLIONAIRE RAFFLE ticket numbers issued during the sales period will be held on December 31, 2009. A

total of 2,034 prizes will be awarded. Prizes will be awarded in the order drawn. The first through ninth numbers drawn will win \$1 million cash. The 10th through 19th numbers drawn will win \$50,000 and will be alternates in the order drawn for a \$1 million prize. The 20th through 34th numbers drawn will win \$5,000 and the 35th through 2,034th numbers drawn will win \$250.

(3) A retailer who sells a winning \$1 million Holiday MILLIONAIRE RAFFLE ticket will receive a bonus commission of \$5,000 in addition to the regular five percent sales commission set forth in Rule 53ER05-14, F.A.C.

(4) Award of a bonus commission is not dependent upon the winning Holiday MILLIONAIRE RAFFLE ticket being claimed by the winner. Retailers who sell winning \$50,000 Holiday MILLIONAIRE RAFFLE tickets that subsequently become alternate winners of a \$1 million prize will not be eligible for a bonus commission.

(5) Retailers whose Florida Lottery contracts are terminated or inactivated prior to the bonus commission award shall be paid the bonus commission provided the termination or inactivation was not due to non-compliance with Florida Lottery laws, rules or contract terms.

(6) A bonus commission will be considered compensation to the retailer for Internal Revenue Service purposes. The Florida Lottery reserves the right to apply the bonus commission earned against a retailer’s outstanding debt to the Florida Lottery.

(7) This emergency rule is effective upon filing. Holiday MILLIONAIRE RAFFLE bonus sales commissions are subject to availability of funds appropriated for retailer incentives. This Promotion is subject to cancellation by future emergency rule if retailer incentive funding is not appropriated or if the Florida Lottery determines that it is no longer in the state’s best interest to use such funds for this purpose.

Rulemaking Authority 24.105(9), 24.109(1), 24.112(1) FS. Law Implemented 24.105(9), 24.112(1) FS. History—New 11-9-09.

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: November 9, 2009

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.”

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Agency for Persons with Disabilities

RULE NOS.:	RULE TITLES:
65GER09-2	Tier Waivers
65GER09-3	Tier One Waiver
65GER09-4	Tier Two Waiver
65GER09-5	Tier Three Waiver
65GER09-6	Tier Four Waiver

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: 1) The First District Court of Appeal found the Agency’s Rules 65G-4.0021, 0022, 0023, 0024, and 0025, F.A.C. invalid in *Moreland v APD*, 34 FLA L. Weekly D1715 (1st DCA, August 21, 2009) Reh.Den. October 8, 2009.

2) The Agency provides essential medical, adaptive and behavioral services through a Home and Community Based (HCBS) Medicaid waiver program to 31,000 individuals with developmental disabilities.

3) All 31,000 individuals served by the Agency meet a level of need qualifying them for placement in an institution. The HCBS waiver provides these individuals an opportunity to remain at home or other non-institutional community settings.

4) In 2007, the Florida Legislature amended Section 393.0661, F.S., to create a four-tiered waiver system to deliver the medicaid waiver services provided through the HCBS waiver by this Agency.

5) Paragraph 393.0661(3)(e), F.S., directed the Agency and the Agency for Health Care Administration (ACHA), the State Medicaid Administrator, to implement the four-tiered system and provided authority to adopt any rules necessary to administer the four-tiered waiver system.

6) Paragraph 393.0661(3)(e), F.S., also directed AHCA to seek federal waivers consistent with the four-tiered waiver system.

7) The federal waivers consistent with the four-tiered system of 393.0661 were approved by the Centers for Medicare and Medicaid Services. The waivers serve as the Agency’s authority to provide HCBS waiver services to individuals with developmental disabilities.

8) The population APD serves through its Home and Community Based Services Waivers (referred to as “HCBS”) program includes some of Florida’s most vulnerable citizens. The service needs of these individuals change over time, often increasing, and the service need can change rapidly.

The emergency rules adopted today by APD are of critical need for the preservation of the health, safety, and welfare of this vulnerable population because, without them, APD lacks the capability and legal authority to adequately respond to changes in service needs and, as a result, APD is unable to provide certain services that have been established to be medically necessary, and that would otherwise be available through the HCBS Waiver.

As mandated by Section 393.0661(3), F.S., the majority of the individuals served by the waiver program have been assigned to tiers. Three of the tiers have spending limitations. Although APD’s tier rules were invalidated by the First DCA in *Moreland*, the statutory tier system remains in place. Thus, APD has no rules for the day-to-day operations that are affected by the tier system. APD uses an emergency protocol for delivery of services, but this protocol cannot be used until an emergency for the client exists. Thus, APD cannot act until a client’s health, safety or welfare is in jeopardy. It is the waiting until a client is in an emergency situation to deliver essential services that creates a danger to the health, safety and welfare of the vulnerable clients served by APD.

This is a significant problem. To access additional waiver services, an APD client must apply for Prior Service Authorization which determines that (1) the service is medically necessary and (2) the cost of the service is within the client’s budget allocated within the tier system. If the service cannot be added within the budget of the client’s present tier assignment, that client’s tier assignment must be reevaluated to determine whether that service can be added within the parameters of the tier system.

There are more than 1,000 HCBS Waiver clients who have requested Prior Service Authorizations for new or additional services, which cannot be provided without reevaluating their tier assignment. Many of these services have been determined to be medically necessary. However, due to the absence of tier assignment rules in place, APD cannot consider whether to approve any of these services until the lack of their provision develops into an emergency situation, triggering APD’s emergency 30-day protocol. Further, if the emergency protocol is triggered, a client cannot retain those services if no emergency situation continues to exist at the end of the 30-days. APD will then have to wait for a new crisis or emergency situation to develop before those services can again be provided.

In sum, absent tier rules, these clients cannot get medically necessary services implemented. Those services are not available through the tier system unless and until the lack of provision of these services develops into a crisis requiring the agency to respond on an emergency basis. This means that individuals’ needs are not met and this creates a significant and immediate danger to their health and safety. The individuals whose needs are not served will have deterioration in their health and safety. Further, the inability of APD to respond to changes in circumstances poses an immediate danger to the welfare of every member of the population subject to expenditure or service limitations. Thus, APD’s present inability to make changes to a client’s services results in clients not receiving medically necessary services that would otherwise be available through the HCBS Waiver program and

has therefore created a significant and immediate danger to the health, safety, and welfare of this vulnerable population that will continue until rules are in place.

As a specific example, one client served by the waiver recently lost his provision of personal care assistance (“PCA”), which had been provided to him through the state Medicaid program, as a result of his attaining the age of 21. He requires this service because he is totally disabled and is unable to bathe, toilet, or feed himself. Because the client was living at home and receiving PCA services through the state Medicaid plan, he was assigned to Tier 4. Because of the service limitations in Tier 4, this individual can no longer receive his necessary PCA services. Without tier rules in place, APD is without a framework to reevaluate the appropriate tier assignment for this individual in response to his change of circumstances. Thus, although he now has a life-long need for service, APD only has rules in place that authorize this service to the extent that it can be approved on a thirty-day emergency basis.

Similarly, another young individual became extremely physically aggressive at home. As a result, he cannot return home. Intensive behavior residential habilitation was recommended as the appropriate housing to address his behavior needs. This individual is currently assigned to Tier 3. Because of the spending limitation of Tier 3, he cannot receive the needed intensive behavioral residential habilitation. Without tier rules in place, he is only able to receive his necessary housing to the extent it can be approved on a thirty-day emergency basis.

Another specific example is an individual who recently had surgery. Her recovery for surgery is taking longer than expected. She cannot leave her home. She needs additional personal care assistance for this recovery period. Her health and safety are compromised without this additional service. However, her current tier assignment cannot accommodate this additional need. Without a tier rule in place, she can only get this additional service to the extent it can be approved on a thirty-day emergency basis.

The inability to approve medically necessary services in the regular course of APD’s operations threatens the health, safety and welfare of every one of the more than 20,000 individuals receiving services through the HCBS Waiver who have been assigned to tiers with spending limitations, as required by Section 393.0661(3), F.S. As explained above, individuals within this vulnerable population experience changing needs, and the absence of tier rules in place leaves APD helpless to respond to those changes unless and until changes in circumstances attain emergency status. APD’s inability to respond to changing circumstances for many members of this population endangers the health, welfare, and safety of every member of the population subject to limitations resulting from APD’s implementation of Section 393.0661(3), F.S.

There is a danger to the public welfare related to the appropriations for the operation of the HCBS Waiver services. APD was charged by state law with the duty to implement the Medicaid Waiver agreement between the state and CMS on behalf of the federal government. APD was directed by the Legislature to “mak[e] any other adjustment necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act.” Section 393.0661(7), F.S. Without tier rules the Agency cannot perform its statutory duties and its inability to act on any basis other than an emergency endangers the public welfare as described above.

9) Without administrative rules to operate the four-tiered waiver system, the State of Florida may have to provide institutional beds for thousands of individuals. This possibility contravenes the Legislative intent of Chapter 393, F.S.:

Section 393.62, F.S., Legislative findings and declaration of intent. – The Legislature finds and declares that existing state programs for the treatment of individuals with developmental disabilities, which often unnecessarily place clients in institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to many clients. A re-direction in state treatment programs for individuals with developmental disabilities is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that prevent or reduce the severity of developmental disabilities. Further, the greatest priority shall be given to 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 permit them to be diverted or removed from unnecessary institutional placements. . .

For the reasons stated above, the Agency finds that an immediate danger to the public health, safety, and welfare exists and requires immediate action.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: 1. The emergency action by the Agency uses the rules previously adopted and amends only those portions of rule specifically addressed by the Moreland case.

2. The proposed rules take only the action necessary to ensure that necessary services remain in place to protect the vulnerable, individuals with developmental disabilities served by the Agency.

3. Specifically, the following changes to the originally promulgated rules, consistent with the Moreland, opinion are contained in the emergency rules: Rule 65G-4.0021, F.A.C., identifies the Agency assessment instruments; Rule 65G-4.0024, F.A.C., no longer references any age limits; and Rule 65G-4.0025, F.A.C., deletes reference to client age limits,

and no longer includes reference to clients who received services under the Family and Supported Living waiver prior to the implementation of the four-tiered waiver system, or clients who are dependent children residing in residential facilities licensed by DCF.

SUMMARY: These emergency rules replace recently invalidated rules. They are necessary for the administration and continued implementation of Subsection 393.0661(3), F.S., which created a four-tiered waiver system. These rules are essential for the public health, safety, and welfare because without rules in place, the delivery system of Medicaid services cannot provide medically necessary services to 31,000 affected individuals in the manner prescribed by statute.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULES IS: Celeste Sanders, Agency for Persons with Disabilities, 4030 Esplanade Way, Tallahassee, Florida 32399, (850)922-0371

THE FULL TEXT OF THE EMERGENCY RULES IS:

65GER09-2 Tier Waivers.

(1) The Agency for Persons with Disabilities will assign clients of home and community-based waiver services for persons with developmental disabilities to one of the four Tier Waivers created by Section 393.0661, F.S. (2007). The Agency will determine the Tier Waiver for which each client is eligible and assign the client to that waiver based on the developmental disabilities waiver criteria and limitations contained in the following provisions: Sections 409.906(13) and 393.0661, F.S.; and Rules 59G-13.080 and 59G-13.083, F.A.C., and the following:

(a) The client's level of need in functional, medical, and behavioral areas, as determined through Agency evaluation of client characteristics, the Agency approved assessment process, and support planning information;

(b) The client's service needs as determined through the Agency's prior service authorization process to be medically necessary;

(c) The client's current living setting; and

(d) The availability of supports and services from other sources, including Medicaid state plan and other federal, state and local programs as well as natural and community supports.

(2) As part of the assessment process, the Individual Cost Guidelines (ICG) and the Questionnaire for Situational Information 4.0 (QSI) are hereby adopted by the Agency as valid and reliable assessment instruments. The ICG and the QSI are available at: <http://apd.myflorida.com/waiver/qsi-version-4.pdf>, or <http://apd.myflorida.com/waiver/>. The ICG is only valid through December 31, 2009. The QSI is valid in all other instances.

(3) The services described by the Developmental Disabilities Waiver Services Coverage and Limitations Handbook, July 2007 (available at <http://portal.flmmis.com/>

FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_08_070701_Waiver_DevSev_ver1%203%20(2).pdf or <http://apd.myflorida.com/waiver/>) (hereinafter referred to as the "DD Handbook"), adopted by Rule 59G-13.083, F.A.C. and incorporated herein by reference, are available to clients of the Developmental Disabilities Waiver (hereinafter called "the Tier One Waiver"), the Developmental Disabilities Tier Two Waiver (hereinafter called "the Tier Two Waiver"), and Developmental Disabilities Tier Three Waiver (hereinafter called "the Tier Three Waiver"). The following services described in the DD Handbook are available to clients assigned to the Tier Four Waiver (presently known as The Family and Supported Living Waiver):

(a) Adult Day Training;

(b) Behavior Analysis;

(c) Behavior Assistance;

(d) Consumable Medical Supplies;

(e) Durable Medical Equipment;

(f) Environmental Accessibility Adaptations;

(g) In-Home Support Service;

(h) Personal Emergency Response System;

(i) Respite Care;

(j) Support Coordination;

(k) Supported Employment;

(l) Supported Living Coaching; and

(m) Transportation.

(4) For all Tiers client must utilize all available State Plan Medicaid services including, but not limited to, personal care assistance, therapies, and medical services, that duplicate the waiver services proposed for the client. A client shall not be provided waiver services that duplicate available State Plan Medicaid Services including, but not limited to, personal care assistance, therapies, and medical services.

(5) The Agency will review a client's tier eligibility when a client has a significant change in circumstance or condition that impacts on the client's health, safety, or welfare or when a change in the client's plan of care is required to avoid institutionalization. The information identifying and documenting a significant change in circumstance or condition that necessitates additional or different services must be submitted by the client's Waiver Support Coordinator to the appropriate Agency Area office for determination.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

65GER09-3 Tier One Waiver.

(1) The Tier One Waiver is limited to clients that the Agency has determined meet at least one of the following criteria:

(a) The client's needs for medical or adaptive services cannot be met in Tiers Two, Three, and Four and are essential for avoiding institutionalization, or

(b) The client possesses behavioral problems that are exceptional in intensity, duration, or frequency with resulting service needs that cannot be met in Tiers Two, Three, and Four, and the client presents a substantial risk of harm to themselves or others.

(2) Clients living in a licensed residential facility receiving any of the following services shall be assigned to the Tier One Waiver:

(a) Intensive behavioral residential habilitation services;

(b) Behavior focus residential habilitation services at the moderate or above level of support; or

(c) Standard residential habilitation at the extensive 1, or higher, level of support; or

(d) Special medical home care.

(3) Nursing service needs that can be met through the Tier Two, Tier Three, or Tier Four Waivers are not "services" or "service needs" that support assignment to the Tier One Waiver.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

65GER09-4 Tier Two Waiver.

The total budget in a cost plan year for each Tier Two Waiver client shall not exceed \$55,000. The Tier Two Waiver is limited to clients who meet the following criteria:

(1) The client's service needs include placement in a licensed residential facility and authorization for a moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitation services; or

(2) The client is in supported living and is authorized to receive more than six hours a day of in-home support services.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

65GER09-5 Tier Three Waiver.

The total budget in a cost plan year for each Tier Three Waiver client shall not exceed \$35,000. A client must meet at least one of the following criteria for assignment to the Tier Three Waiver:

(1) The client resides in a residential facility licensed by the Agency and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(2) The client resides in their own home and is authorized by the Agency to receive In-Home Support Services and is not eligible for the Tier One Waiver or the Tier Two Waiver and the need for these services cannot be met in Tier Four; or

(3) The client is authorized by the Agency to receive Personal Care Assistance services at the moderate level of support as defined in the DD Handbook.

(4) The client is authorized by the Agency to receive Skilled or Private Duty Nursing Services and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(5) The client is authorized by the Agency to receive services of a behavior analyst and/or a behavior assistant and the need for these services cannot be met in Tier Four.

(6) The client is authorized by the Agency to receive at least one of the following services:

(a) Occupational Therapy; or

(b) Physical Therapy; or

(c) Speech Therapy; or

(d) Respiratory Therapy.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

65GER09-6 Tier Four Waiver.

(1) The total budget in a cost plan year for each Tier Four Waiver client shall not exceed \$14,792 per year.

(2) Clients who are not eligible for assignment to the Tier One Waiver, the Tier Two Waiver, or the Tier Three Waiver, shall be assigned to the Tier Four Waiver.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

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: November 16, 2009

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF TRANSPORTATION

NOTICE IS HEREBY GIVEN THAT on November 13, 2009, the Department of Transportation has issued an order.

Morris-Depew Associates, Inc., shall be deemed qualified to perform work for the Department in Work Type Group 15: Landscape Architecture based upon the extensive experience, education, and qualifications of Vice-President, James M. McCord.

A copy of the Order may be obtained by contacting: Deanna R. Hurt, Assistant General Counsel and Clerk of Agency Proceedings, Department of Transportation, Haydon Burns Building, 605 Suwannee Street, Mail Stop #58, Tallahassee, Florida 32399-0458.