

(17) Form U-4 is incorporated by reference in subsection 69W-301.002(7), F.A.C.

(18) For purposes of this rule, “certified” means that there must be a certification or attestation by the issuer of the record that the document is a true copy of a record contained in the issuer’s office and the issuer’s seal, if any.

Rulemaking Authority 517.1611(2) FS. Law Implemented 517.12, 517.161 FS. History—New _____.

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 MANAGEMENT SERVICES

Agency for Workforce Innovation

RULE NOS.:	RULE TITLES:
60BBER09-4	Definitions Relating to Emergency Unemployment Compensation
60BBER09-5	Eligibility for Emergency Unemployment Compensation
60BBER09-6	Emergency Unemployment Compensation Individual Accounts
60BBER09-7	How to Apply for Emergency Unemployment Compensation

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The rate of unemployment in the State of Florida has risen dramatically over the last three years. Florida’s unemployment rate now stands at 11.2%, a dramatic increase from the 7.6% rate in December 2008, and over three times the 3.3% rate in July 2006. Currently, 658,986 Floridians receive unemployment compensation, an increase of 86% from the approximately 354,000 recipients in December 2008. Over 210,000 of the current recipients have exhausted the maximum 26 weeks of regular benefits authorized by Florida law. These individuals continue to receive unemployment compensation only because federal law now provides additional benefits to persons whose state benefits have been exhausted. By December 31, 2009, the Agency estimates that 250,000 recipients will have exhausted these additional benefits. Recent federal legislation has authorized and funded additional benefits, enabling most of the 250,000 to continue to receive unemployment compensation. Implementing this legislation, however, will require the creation of administrative rules. In order to ensure that these rules are in place before

unemployment compensation recipients lose their benefits, the Agency seeks to adopt emergency rules implementing the new federal legislation while it pursues the regular rulemaking process set forth in Section 120.54, Florida Statutes.

Since July 2008, Congress has passed five pieces of legislation which have progressively increased the duration of these additional benefits. These were: Title IV of the Supplemental Appropriations Emergency Unemployment Compensation (EUC) Act of 2008 (Public Law 110-252), the Unemployment Compensation Extension Act of 2008 (Public Law 110-449), Title II of the American Recovery and Reinvestment Act of 2009 (Public Law 111-4), the Worker, Homeownership and Business Assistance Act of 2009 (Public Law 11-92), and House Bill 3326. (House Bill 3326 does not yet have a Public Law number, as it was signed into law less than a week before this writing.)

The cumulative effect of the first three of these acts was to create and fund a system of Emergency Unemployment Compensation. Under this system, states can pay additional benefits to unemployed persons who had exhausted their regular state benefits. Eligible recipients can receive Tier One benefits for up to 20 weeks. Upon exhaustion of Tier One benefits, eligible recipients can receive Tier Two benefits for up to 13 weeks. As of this writing, 213,273 recipients have exhausted their Tier Two benefits.

The most recent federal legislation, the Worker, Homeownership and Business Assistance Act of 2009 (Public Law 11-92), created and funded a third and fourth tier of Emergency Unemployment Compensation and added an extra week of benefits to Tier Two. Under this law, Tier Three recipients may receive benefits for up to 13 weeks, and Tier Four recipients may receive benefits for up to 6 weeks. House Bill 3326 extended the duration of time within which eligible persons might collect these benefits.

In order to determine which individuals are eligible for benefits and provide compensation to them as quickly as possible, it is necessary that the processes set forth in this emergency rule, and the forms incorporated by reference, be implemented immediately, without the delay attendant with regular rulemaking procedures. The Agency is currently pursuing the regular rulemaking process for incorporating these forms and procedures into its current claims rules, found in Chapter 60BB-3, Florida Administrative Code.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The rules under development by the Agency provide the most efficient means of providing unemployment benefits to those individuals that are entitled to them. In adopting these forms, the Agency has acted to ensure that all procedural remedies available to recipients of regular state unemployment compensation will be available to Emergency Unemployment Compensation program applicants under state law and under the terms of the governing agreement with the United States Department of

Labor. The Agency crafted the proposed rules to comply with the new federal legislation, controlling state law, and existing federal standards.

SUMMARY: The new rules define terms used in connection with the Emergency Unemployment Compensation Program, describe eligibility criteria and notice requirements, provide a methodology for computing total amount of available benefits, and inform individuals how to apply for Emergency Unemployment Compensation.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: John R. Perry, Assistant General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida 32399-4128

THE FULL TEXT OF THE EMERGENCY RULE IS:

60BBER09-4 Definitions Relating to Emergency Unemployment Compensation.

(1) Emergency Unemployment Compensation: A federally funded program created by Public Laws 110-252, 110-449, 111-5, and 111-92, and implemented in Florida through an agreement between the Agency for Workforce Innovation and the United States Department of Labor which provides additional weeks of unemployment benefits to qualified individuals who have exhausted their rights to regular unemployment compensation on claims that were effective on or after May 2, 2006.

(2) Extended unemployment compensation: Benefits, including benefits payable to federal civilian employees and to ex-servicemembers under 5 U.S.C. ss. 8501-8525, that are payable to an individual under Section 443.1115, Florida Statutes.

(3) Qualifying benefit year: The benefit year established on a Florida claim for regular unemployment compensation which was effective on or after May 2, 2006, and is the basis of the individual's eligibility for emergency unemployment compensation.

(4) Regular unemployment compensation: Benefits payable to an individual under Chapter 443, Florida Statutes, including benefits payable to federal civilian employees and to ex servicemembers under 5 U.S.C. ss. 8501-8525, other than extended unemployment compensation under Section 443.1115, Florida Statutes.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.036, 443.221(3) FS. History--New 12-23-09.

60BBER09-5 Eligibility for Emergency Unemployment Compensation.

(1) Eligibility Conditions. Emergency Unemployment Compensation is available to individuals who:

(a) Have exhausted all rights to regular unemployment compensation on a Florida claim with a benefit year that ended on or after May 1, 2007;

(b) Have no rights to unemployment compensation under any other state or federal law;

(c) Are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(d) Are legally authorized to work in the United States.

(2) Exhaustion of Benefits. For purposes of this rule, an individual has exhausted all rights to regular unemployment compensation when that individual:

(a) Has received all regular unemployment compensation available on the qualifying benefit year; or

(b) Had rights to regular unemployment compensation on the qualifying benefit year, but has insufficient wage credits to establish a new benefit year for regular unemployment compensation.

(3) Amount Payable.

(a) The amount of emergency unemployment compensation payable to an individual for any week of total unemployment will be equal to the amount of regular unemployment compensation payable during the individual's qualifying benefit year for a week of total unemployment.

(b) The maximum amount of emergency unemployment compensation payable to any individual will not exceed the amount established for such individual in the emergency unemployment compensation account described in Rule 60BB-3.0253, F.A.C.

(4) Applicable Law. The terms and conditions of the law under which the individual claimed and received regular unemployment compensation will apply to claims for and payment of emergency unemployment compensation.

(5) Overpayments. An individual who receives emergency unemployment compensation to which he is not entitled will repay any such overpayment to the Agency for Workforce Innovation. The requirement to repay the overpayment will not be waived.

(a) The Agency may recoup any such overpayments by deducting 50 percent of the weekly benefit amount from any future payments until the overpayment is repaid in full.

(b) Recoupment of overpayments from future benefits may occur at any time during the 3-year period after the date the individual received the payment of the emergency unemployment compensation to which he was not entitled.

(c) No waiver of such recoupment may occur except as permitted by Section 443.151(6)(c), Florida Statutes.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.091, 443.101, 443.111, 443.151(6), 443.221(3) FS. History--New 12-23-09.

60BBER09-6 Emergency Unemployment Compensation Individual Accounts.

(1) Establishment of Account. Persons deemed eligible under Rule 60BB-3.0252, F.A.C., will be paid from emergency unemployment compensation accounts established for each individual with respect to that individual's benefit year.

(2) Eligibility Established Prior to November 23, 2008. The emergency unemployment compensation accounts of individuals whose period of eligibility began between July 6, 2008 and November 22, 2008, will be augmented as provided in this subsection.

(a) The amount established in an account under this subsection will equal the lesser of:

1. 50 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 13 times the individual's average weekly benefit amount for the benefit year.

(b) Benefits under this subsection may be paid only for weeks of unemployment beginning on or after July 6, 2008.

(c) If the individual exhausts these benefits before November 23, 2008, no further benefits may be paid to the individual except as provided in subsections (3), (4), (5), and (6) of this rule.

(3) Tier One.

(a) Tier One benefits may be paid only for weeks of unemployment beginning on or after November 23, 2008.

(b) The emergency unemployment compensation account of each individual whose period of eligibility began after November 22, 2008, will be augmented with an amount equal to the lesser of:

1. 80 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 20 times the individual's average weekly benefit amount for the benefit year.

(c) The emergency unemployment compensation account of an individual whose period of eligibility began before November 23, 2008 will, if the individual remains otherwise eligible, receive an additional augmentation equal to the amount previously paid under paragraph (b) of this subsection minus the amount actually received under subsection (2).

(d) Tier One benefits may be paid only in cases in which an individual's regular unemployment compensation benefits are exhausted by the week ending February 27, 2010.

(4) Tier Two.

(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (3) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:

1. The individual exhausts all first tier benefits by the week ending February 27, 2010;

2. The individual remains otherwise eligible.

(b) Amount Added to Account. The amount established in an account under this subsection will equal the lesser of:

1. 54 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 14 times the individual's average weekly benefit amount for the benefit year.

(c) Tier two benefits may be paid only for weeks of unemployment beginning on or after November 23, 2008.

(5) Tier Three.

(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (4) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:

1. The individual exhausts all Tier Two benefits by the week ending February 27, 2010;

2. The individual remains otherwise eligible; and

3. During or after the week these benefits are exhausted, but no later than the week ending February 28, 2010, one of the following circumstances occur:

a. The rate of insured unemployment for the current week and the immediately preceding 12 weeks equals or exceeds 4 percent; or

b. The average rate of total unemployment, seasonally adjusted, for the most recent 3 month period for which data for all States are published equals or exceeds 6 percent.

(b) The amount established in an account under this subsection will equal the lesser of:

1. 50 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 13 times the individual's average weekly benefit amount for the benefit year.

(c) Tier Three benefits may be paid only for weeks of unemployment beginning on or after November 8, 2009.

(6) Tier Four.

(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (5) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:

1. The individual exhausts all Tier Three benefits by the week ending February 27, 2010;

2. The individual remains otherwise eligible; and

3. During or after the week these benefits are exhausted, but no later than the week ending February 27, 2010, one of the following circumstances occur:

a. The rate of insured unemployment for the current week and the immediately preceding 12 weeks equals or exceeds 6 percent; or

b. The average rate of total unemployment, seasonally adjusted, for the most recent 3 month period for which data for all States are published equals or exceeds 8.5 percent.

(b) The amount established in an account under this subsection will equal the lesser of:

1. 24 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 6 times the individual's average weekly benefit amount for the benefit year.

(c) Tier Four benefits may be paid only for weeks of unemployment beginning on or after November 8, 2009.

(7) Termination of Emergency Unemployment Compensation. An individual who has a balance remaining in his or her individual account as of February 28, 2010, will continue to receive emergency unemployment compensation from such balance for any week beginning after that date for which he or she meets the eligibility requirements of this rule, except that no compensation will be payable for any week beginning after July 31, 2010.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.111, 443.191, 443.221(3) FS. History--New 12-23-09.

60BBER09-7 How to Apply for Emergency Unemployment Compensation.

(1) Method of Application. Individuals whose regular unemployment compensation benefits are exhausted, whose benefit year expires between July 6, 2008 and February 27, 2010, or who are entitled to an augmentation of their emergency unemployment compensation accounts pursuant to Rule 60BB-3.0253, F.A.C., will receive notice regarding their eligibility or ineligibility for emergency unemployment compensation. Individuals who claim benefits through the week ending November 7, 2009, will be deemed eligible for these benefits without filing an application as long as they comply with the continued claims reporting requirements set forth in Rule 60BB-3.015, F.A.C. All other individuals who wish to receive emergency unemployment compensation must submit an application for benefits to the Agency for Workforce Innovation. An application may be submitted:

(a) Online by using the Online FLUID EUC Potential Eligibility Site Screens (12/09), which are hereby incorporated by reference into this rule, which will take the claimant to the Online Internet Unemployment Compensation Claim Application (11/07), or the Online Internet Unemployment Compensation Claim Application (Spanish version) (11/07), which are incorporated by reference in paragraphs 60BB-3.029(1)(yy) and (zz), F.A.C., and which are available at www.fluidnow.com; or

(b) In writing on one of the forms listed in subsection (2) of this rule, which are hereby incorporated by reference into this rule and which are available at www.floridajobs.org/unemployment/uc_emp_claims.html;

(2) Written Applications.

(a) To submit a written application for emergency unemployment compensation under subsections (2), (3), or (4) of Rule 60BB-3.0253, F.A.C., the claimant must complete and submit one of the following forms:

1. Form AWI-UC310EUC (Rev. 10/09), Application for Emergency Unemployment Compensation;

2. Formulario AWI-UC310EUC(S) (Rev. 10/09), Solicitud de Compensacion de emergencia por desempleo, or

3. Fom AWI-UCB310EUC(C) (Rev. 10/09), Aplikasyon pou Aloksyon Chomaj sou Ka Dijan.

(b) To submit a written application for emergency unemployment compensation under subsections (5) or (6) of Rule 60BB-3.0253, F.A.C., the claimant must complete and submit one of the following forms:

1. Form AWI-UC310EUCIII (12-09), Application for Tier III;

2. Formulario AWI-UC310EUCIII (Sp) (12-09), Agencia para la innovacion en la fuerza de trabajo de Florida Compensacion de emergencia por desempleo; or

3. Fom AWI-UCB310EUCIII (Cr) (12-09), Ajans pou Inovasyon Fos Travay "Agency for Workforce Innovation" Konpansasyon Chomaj Dijans.

(c) The applications described in paragraph (2)(b) of this rule will be mailed to:

1. All out of state claimants whose application for extended benefits was denied because the law of their state of residence did not permit payment of extended benefits; and

2. All claimants who did not qualify for extended benefits because their Tier Two benefits expired on or before February 27, 2010.

(d) All applications mailed pursuant to paragraph (2)(c) of this rule will be accompanied by a Form AWI-UC310EUCIII LTR(S) (Rev 12/09), Emergency Unemployment Compensation Instruction Sheet or a Form AWI-UC310EUCIII LTR(N) (Rev 12/09), Emergency Unemployment Compensation Instruction Sheet, which are hereby incorporated by reference into this rule.

(3) Submitting Written Applications. The claimant must submit his or her application by mailing the completed form to the address set forth on the form and/or accompanying instructions.

(4) Notice of Determination.

(a) Notice of ineligibility for cases in which the claimant does not meet the eligibility requirements of Rule 60BB-3.0252, F.A.C., will be mailed to the claimant on a Form AWI-UCB11-I (10/09), Emergency Unemployment Compensation Monetary Determination EUC, which is hereby incorporated by reference into this rule.

(b) Notice of the Agency's determination of a claimant's eligibility or ineligibility for emergency unemployment compensation under subsection (2) or (3) of Rule

60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC (11/09), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

(c) Notice of the Agency’s determination of a claimant’s eligibility or ineligibility for emergency unemployment compensation under paragraph (4)(b) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant:

1. On a Form AWI-UCB11 EUC-2 (12/22/09), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule, when the claimant exhausts his Tier One benefits; or

2. On a Form AWI-UCB11 EUC-2R (12/09), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule, when the claimant:

a. Claimed weeks on a Florida claim for extended benefits in a state in which extended benefits are not payable;

b. Received extended benefit payments for any week ending on or after November 14, 2009; or

c. Was determined to be entitled to an additional week of Tier Two benefits under the augmentation authorized by Public Law 111-92 for any week ending on or after November 14, 2009.

(d) Notice of the Agency’s determination of a claimant’s eligibility or ineligibility for emergency unemployment compensation under subsection (5) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC3 (12/22/09), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

(e) Notice of the Agency’s determination of a claimant’s eligibility or ineligibility for emergency unemployment compensation under subsection (6) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC4 (12/09), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.111, 443.191, 443.221(3) FS. History—New 12-23-09.

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: December 23, 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:
65GER09-7	Tier Waivers
65GER09-8	Tier One Waiver
65GER09-9	Tier Two Waiver
65GER09-10	Tier Three Waiver
65GER09-11	Tier Four Waiver

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: STATEMENT OF SPECIFIC FACTS AND REASONS FOR FINDING AN IMMEDIATE DANGER TO PUBLIC HEALTH, SAFETY, OR WELFARE

1. The Agency provides essential medical, adaptive, and behavioral services through the Developmental Disabilities Home and Community Based (DD-HCBS) Medicaid waiver program to 31,000 individuals with developmental disabilities. Additionally, there are nearly 19,000 individuals who have been deemed eligible for DD-HCBS who currently are not receiving services due to budgetary limitations. These 19,000 are on a waitlist and must wait until either by attrition or by improvements in the budget there is new capacity for them to receive services.

2. All 31,000 individuals receiving services through the Agency, and the 19,000 on the waitlist, meet a level of need qualifying them for placement in an institution. The DD-HCBS waiver provides these individuals an opportunity to remain at home or other non-institutional community settings.

3. In addition to the 31,000 individuals served by the DD-HCBS waiver, there are almost 19,000 additional individuals who have been deemed eligible for waiver services but who are on a waiting list owing entirely to state budgetary constraints.

4. The number of individuals on the DD-HCBS Waitlist has fluctuated over the years. In July of 2004 there were over 15,000 individuals on the waiver Waitlist and at that time there were under 24,000 persons receiving services under the waiver. By 2006 the waitlist had been reduced to a little over 11,000 individuals while over 25,000 were receiving services. The waitlist has grown over time, and that rapid growth was part of the impetus of the Legislature’s decision to redesign the DD-HCBS waiver program in 2007 to create service tiers.

5. No one will be removed from the DD-HCBS waiver program as a result of the Emergency Rule. Instead, in accordance with the Legislature’s objective in mandatory tier assignments, the Emergency Rule will be used to ensure more individuals can be added to receive services under the program.

6. In 2007, the Legislature amended Section 393.0661, F.S., to create a four-tiered waiver system to deliver the Medicaid waiver services provided through the DD-HCBS waiver by this

Agency. There were two critical elements causing the creation of the tiers: (1) the home and community-based services delivery system, and (2) the availability of appropriated funds.

7. The situation was summarized in legislative staff analysis of the Tiers bill in 2007:

There are over 14,200 citizens on the waitlist for waiver services. In recent years, APD has instituted a number of fiscal and management controls to reduce costs and the waitlist for services. These include a standardized rate structure, prior service authorization, pre-payment billing review, and support coordination. In spite of these controls, the Office of Economic and

Demographic Research and APD forecast total deficits in the HCBS waiver category for FY 2007-2008 from \$140 million (APD March 12, 2007) to \$190 million (EDR 12/06/2006). The general revenue portion of these deficits varies from \$63 million to \$85 million.

Staff Analysis of CS/SB 1124, Senate Committee on Health and Human Services Appropriations, March 28, 2007.

8. Section 393.0661(3)(e), F.S., directed the Agency and the Agency for Health Care Administration (“AHCA”), 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.

9. Section 393.0661(3)(e), F.S., also directed AHCA to seek federal waivers consistent with the four-tiered waiver system. The federal waivers consistent with the four-tiered system of Section 393.0661 were approved by the Centers for Medicare and Medicaid Services (“CMS”). The waivers serve as the Agency’s authority to provide DD-HCBS waiver services to individuals with developmental disabilities.

10. The Legislature adopted the tier system into law effective July 1, 2007. Ch. 2007-64, § 1, Laws of Florida. The Agency began the rule development process by noticing the rule development on December 7, 2007. The Agency published proposed rules on March 28, 2008. Those proposed rules were challenged on May 5, 2008. During the pendency of the challenge the proposed rules could not be adopted. See Section 120.54(3)(e), (2), F.S. On August 8, 2008, the Administrative Law Judge at DOAH issued findings which rejected the rule challenge in its entirety and upheld the validity of the rules. The petitioners filed a notice of appeal on September 5, 2008. The Agency filed the rules for adoption on September 30, 2008, and they became effective on October 20, 2008.

11. On August 21, 2009, the First District Court of Appeal issued its decision determining that the Agency’s Rules 65G-4.0021, 65G-4.0022, 65G-4.0023, 65G-4.0024, and 65G-4.0025, Florida Administrative Code, were invalid in *Moreland v. Agency for Persons with Disabilities*, 19 So. 3d 1009 (Fla. 1st DCA Aug. 21, 2009). Although the District Court affirmed the Administrative Law Judge’s findings in most respects, the Court held that Rules 65G-4.0021, 65G-4.0024, and 65G-4.0025, F.A.C., were invalid because

“(1) the Agency failed to demonstrate it adopted a valid, reliable assessment instrument; (2) the rules place an age limit on eligibility for Tier 3; and (3) the rules automatically place some former waiver recipients into Tier 4 without an assessment.” The Court found the rules were so inextricably linked that these problems required it to hold the remaining tier rules to be invalid. Rehearing was denied on October 8, 2009. The mandate issued on October 26, 2009.

12. On November 16, 2009, the Agency filed emergency rules 65GER09-2, 65GER09-3, 65GER09-4, 65GER09-5, and 65GER09-6 (the “Emergency Rules”) with the Department of State. These emergency rules were intended to recommence the Agency’s implementation of the tier system as required by the 2007 amendments to section 393.0661, F.S., which was delayed as a result of the *Moreland* decision.

13. Section 120.54(a)(2), F.S., requires that an agency, in filing an emergency rule, “take” only that action necessary to protect the public interest” In the spirit of this provision, the Agency’s Emergency Rules were very narrow in that they substantially incorporated the rules previously adopted by the Agency that had been invalidated by the *Moreland* decision and amended only those portions of the rule which were the specific basis for the First District’s holding in *Moreland*. The Agency did not change other provisions of the rules because the First District in *Moreland* explicitly affirmed the findings of the ALJ that upheld the validity of the rules as to all issues the First District did not specifically address. *Moreland*, 19 So. 3d at 1013.

14. In implementing the emergency rules, however, the Agency has found that the Emergency Rules as adopted on November 16, 2009 do not contain sufficient detail for staff to make appropriate tier determinations. The amendments to the Emergency Rules adopted today provide this necessary detail. These amendments are of critical importance because, without them, the Agency is unable to revise tier assignments for existing clients or to make initial tier assignments. Accordingly, without the revised and expanded emergency rules adopted today, the emergency described in the Agency’s Statement of Specific Facts and Reasons for Finding an Immediate Danger to Public Health, Safety, or Welfare, filed on November 16, 2009, continues to exist.

15. The population APD serves through its DD-HCBS program includes some of Florida’s most vulnerable citizens. The service needs of these individuals change over time, often increasing, and the service needs can change rapidly. The Emergency Rules adopted on November 16, 2009, and as amended today by APD, are critical 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. 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 DD-HCBS Waiver.

16. As mandated by Section 393.0661(3), Florida Statutes, 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 District in Moreland, the statutory tier system remains in place. Thus, prior to November 16, 2009, APD had no rules for the day-to-day operations that are affected by the tier system as a result of the Moreland decision. The amendments adopted today are necessary because the Emergency Rules as originally adopted provided insufficient guidelines for Agency staff to make accurate tier placement decisions.

17. APD has 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.

18. As of November 16, 2009, DD-HCBS clients had requested more than 1,000 Prior Service Authorizations for new or additional services, which could not be provided without reevaluating their tier assignments. Many of these services had been determined to be medically necessary. However, due to the absence of sufficiently detailed tier assignment rules in place, APD has been unable to 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. This population of waiver clients with outstanding Prior Service Authorization requests has been growing by approximately 30 clients each day. As of December 21, 2009, the number of outstanding Prior Service Authorization requests with tier assignment implications had grown to 1663.

19. 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.

20. In sum, absent tier rules that are sufficiently detailed for Agency staff to make accurate tier placement decisions, those tier placement decisions cannot be made, and 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 DD-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.

21. 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 sufficiently detailed tier rules in place, APD lacks an adequate 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 - - i.e., as acute health crises develop and reappear over time.

22. 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 sufficiently detailed tier rules in place, he cannot be reassigned and thus is only able to receive his necessary housing to the extent it can be approved on a thirty-day emergency basis - i.e., as acute health crises develop and reappear over time.

23. 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 sufficiently detailed tier rules in place, she cannot be reassigned and thus can only get this additional service to the extent it can be approved on a thirty-day emergency basis - - i.e., as acute health crises develop and reappear over time. 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 DD-HCBS Waiver who have been assigned to tiers with spending limitations, as required by Section 393.0661(3). As explained above, individuals within this vulnerable population experience changing needs, and the absence of sufficiently detailed 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.

24. There is a danger to the public welfare related to the appropriations for the operation of the DD-HCBS Waiver services. APD has been 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 sufficiently detailed 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.

25. Further, the lack of sufficiently detailed tier rules impedes the Agency's ability to make initial tier assignments and reassignments and restricts the population that can be served through the DD-HCBS Waiver. There are almost 19,000 persons who have been deemed eligible for DD-HCBS Waiver services but who are on a waiting list owing entirely to state budgetary constraints. Many of these individuals on the waiting list have critical service needs. The Emergency Rules, as amended today, are necessary to provide an adequate framework to impose spending limitations on clients who would be appropriately placed in tiers two, three, or four due to duplication of services or other criteria, with the resulting savings used to move individuals with critical needs from the waiting list into the DD-HCBS Waiver program.

26. There are almost 24,000 clients receiving services who were assigned tiers and have expenditure caps as required by the tiers. There are approximately 4,500 clients who do not have an effective tier assignment and there are additional clients who have been added to the waiver who have never been assigned to a tier. These clients are considered to be in a "to be determined" category ("TBD") and they are not subject to budget caps. Owing to that lack of a limitation, they consume resources disproportionately.

27. There is nothing unique about the clients in the TBD category which would make them differ in condition from the clients who have been assigned tiers. Of the nearly 24,000 clients who are in tiers, their average monthly waiver service

expenses are \$2465 per client per month. These clients do have budget caps in line with the statutory tier system. The 4,518 clients who are in the TBD category do not have budget caps and are running expenses of \$3,592 per client per month. In November 2009, these TBD clients had combined waiver services expenses of over \$16 million for that month alone. Were these TBD clients to be assigned to tiers, and their service expenses to be similar to the average of clients currently in tiers, the projected difference would be a \$5 million savings each month. The result of every client in the TBD category having no budget cap is it creates a \$60 million a year expense exceeding APD's appropriated budget. If that \$5 million a month overage can be properly reduced by APD being enabled to apply the tiers to these clients, there would be a material improvement in the budgetary situation which would allow APD to serve more individuals currently on the waitlist.

28. The legislature's concern with the DD-HCBS waiver has been to maintain the program within its yearly appropriation. That concern is reiterated throughout Chapter 393, F.S. Accordingly, provided there is budget capacity, APD will add clients from the waitlist to the group receiving services. By law there is a priority-system for adding clients from the waitlist, the first priority is clients in crisis who have been added on an ongoing basis as necessary when there was budgetary capacity within that year's appropriation. The second priority, those who would directly benefit from an expansion, are children in the state's child welfare system. Section 393.065(5), F.S. Children who are developmentally challenged and who have suffered from neglect or abuse would directly benefit from being enabled to receive services under the DD-HCBS program. There are approximately 250 children in this category, based upon the general trends and availability of other Medicaid state programs, these children likely would be placed in tier four which has average expenditures of roughly \$10,000 per client per year. If capacity of approximately \$2,500,000 were available these children could be added and receiving DD-HCBS services. It is an imperative to implement the tiers to control the budget to enable APD to serve these children.

29. The concept of this Medicaid Waiver is that it is to supply services which are not available from any other source or which could be paid for by any other source, including other state Medicaid programs. Clients are required to access available supports and services from other sources, including Medicaid state plan and other federal, state and local programs as well as natural and community supports. This funding restriction is part of the reason why the Legislature chose to implement the tier system with its budget caps. Everyone does not get everything which may be determined as "medically necessary" so that more people may get some benefit from the Waiver services. The current situation is that the few who have

unrestrained budgets are effectively foreclosing the opportunity of many who are on the Waitlist from obtaining some services.

30. This projected cost savings to broaden the population the Agency could serve through the DD-HCBS Waiver program was one of the Legislature's principal goals in amending Section 393.0661, F.S., and creating the tier system. Section 393.0661, F.S. Without sufficiently detailed tier rules in place, the Agency lacks the ability to realize this legislative goal.

31. In summary, the Legislature has appropriated a finite pool of funds for delivery of services through the DD-HCBS Waiver program in the 2009/2010 fiscal year. Individuals currently on the waiting list cannot be moved into the waiver program as long as this finite appropriation is being exhausted by existing clients. The clients in the TBD category are creating a material deficit. Accordingly, the Emergency Rules as amended are of critical importance to the health, safety, and welfare of any individual currently on the waiting list who can be moved into the DD-HCBS Waiver program as a result of spending limitations imposed on these existing clients due to tier assignment or reassignment.

32. The legislature has directed APD to act as necessary to restrict the waiver program's expenses to stay within its appropriated budget. Specifically, APD is required under Section 393.0661, F.S. (e.s.):

(7) 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 directions provided for in the General Appropriations Act.

(8) ... If at any time an analysis by the agency, in consultation with the Agency for Health Care Administration, indicates that the cost of services is expected to exceed the amount appropriated, the agency shall submit a plan in accordance with subsection (7) to the Executive Office of the Governor, the chair of the Senate Ways and Means Committee or its successor, and the chair of the House Fiscal Council or its successor to remain within the amount appropriated. The agency shall work with the Agency for Health Care Administration to implement the plan so as to remain within the appropriation.

33. The Florida Constitution requires that APD cannot exceed its budgeted appropriation. Article VII, Section I, Fla. Const. Additionally, the statute directs and requires APD to take any action necessary to ensure the DD-HCBS program serves clients. To stay within the limits of its legislative appropriation, APD could reduce provider rates, but the unintended consequence could be a loss of providers and thus an interruption in services for clients. APD could institute across

the board client services budget cuts, it could target particular services to reduce or eliminate. However, the legislative directive is to provide support as possible to as many people as possible under the DD-HCBS appropriation. It was not designed to provide a few with virtually unlimited services while a sizeable eligible population receives none.

34. Absent the ability to implement the four-tiered waiver system, the State of Florida may have to provide institutional beds for thousands of individuals. As provided above, all of the 19,000 individuals of the waitlist meet a level of need qualifying them for placement in a nursing home. That individuals with developmental disabilities who have needs which could be met through diversion are nonetheless institutionalized 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 taken by the Agency on November 16, 2009 amended only those portions of rule specifically addressed by the Moreland case.
2. The emergency rules as amended today take only the action necessary to ensure that necessary services may be authorized to protect the vulnerable individuals with developmental disabilities served by the Agency, and to increase the availability of services to vulnerable individuals with developmental disabilities not presently served by the Agency, within existing resources, as mandated by the Legislature.
3. These emergency rules include only those changes necessary to address the Moreland decision, and those changes necessary to make effective tier assignments or reassignments.

4. Any client who will be assigned or reassigned to a tier as a result of further agency action implementing these emergency rules will be accorded direct notice and an opportunity for a hearing meeting the requirements of Chapter 120, Florida Statutes, Title 42 Part 431 of the Code of Federal Regulations, and other applicable state and federal law.

5. The emergency rules as adopted will be effective only until February 14, 2010 and will not be renewed, except during the pendency of a challenge to proposed rules addressing the subject of the emergency rules.

SUMMARY: These emergency rules replace recently invalidated rules and the Emergency Rules 65GER09-2, 65GER09-3, 65GER09-4, 65GER09-5, and 65GER09-6. They are necessary for the administration and continued implementation of Section 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:

65GER09-7 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. 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. These criteria include:

(a) The client's needs in functional, medical, and behavioral areas, as reflected in the client's approved cost plan.

(b) The client's cost plan is developed through Agency evaluation of client characteristics, the Agency approved assessment process, support planning information, and the Agency's prior service authorization process.

(c) The services listed below in subsection (5), when authorized in an approved cost plan, shall be key indicators of a tier assignment because they directly reflect the level of medical, adaptive or behavioral needs of a client.

(d) The client needs considered in tier assignments are only those services approved through the prior service authorization process to be medically necessary;

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

(f) 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/qsiversion-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](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 the client must utilize all available State Plan Medicaid services including, but not limited to, personal care assistance, therapies, medical services, and nursing 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, medical services, and nursing 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.

(6) The following services, if approved through the Agency's prior authorization process, will be used as the basis for making a tier assignment or determining whether a tier change is required:

- (a) Personal Care Assistance;
- (b) Behavior Analysis;
- (c) Behavior Assistance;
- (d) Supported Living Coaching;
- (e) In-home Supports;
- (f) Skilled, Residential or Private Duty Nursing Services;
- (g) Intensive Behavioral Residential Habilitation Services;
- (h) Behavior Focus Residential Habilitation Services at the moderate or above level of support;
- (i) Behavior Focus Residential Habilitation Services at the minimal level of support;
- (j) Standard Residential Habilitation at the extensive 1, or higher, level of support;
- (k) Standard Residential Habilitation at the moderate level of support;
- (l) Live-in Residential Habilitation;
- (m) Special Medical Home Care;
- (n) Occupational Therapy;
- (o) Physical Therapy;
- (p) Speech Therapy;
- (q) Respiratory Therapy;
- (r) Specialized Mental Health Services; or
- (s) ADT at the 1:1 ratio.

(7) In determining tier level assignment for clients with behavioral needs, the Agency may consider less costly services not listed in subsection (6) for those clients who choose less costly services to address a documented behavioral need.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 12-22-09.

65GER09-8 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 are intense and 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) Tier One shall include, but is not limited to clients who are authorized by the Agency to receive the following services which are defined in the DD Handbook:

(a) 180 hours or more per month of intensive Personal Care Assistance;

(b) Supported Living Coaching and In-home Supports, in combination with any of the following additional services: Physical Therapy, Occupational Therapy, Respiratory Therapy or Behavior Analysis;

(c) Behavior analysis and Behavior Assistance services of sixty or more hours per month, if living in the family home; or

(d) Four or more hours per day of continuous Nursing Services.

(3) Clients living in a licensed residential facility receiving any of the following services, defined in Rule 59G-13.084, F.A.C., 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, as defined in the DD Handbook.

(4) Needs for services described in subsections (2) and (3) 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 12-22-09.

65GER09-9 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 as defined in the DD Handbook; or

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

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 12-22-09.

65GER09-10 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 licensed residential facility and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(2) The client resides in their own home, 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 standard or 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;
- (b) Physical Therapy;
- (c) Speech Therapy; or
- (d) Respiratory Therapy.

(7) All services described in this rule are defined in the DD Handbook.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History—New 12-22-09.

65GER09-11 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 12-22-09.

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: December 22, 2009

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF LAW ENFORCEMENT

NOTICE IS HEREBY GIVEN THAT on December 21, 2009, the Criminal Justice Standards and Training Commission, received a petition for a waiver of Rule 11B-35.0024, F.A.C., by Santa Fe Community College. The Petitioner wishes to waive the requirement in the rule that all aspects of the

CJSTC-6 CMS form be completed. The Petitioner requests a permanent waiver to cover all Defensive Tactics courses taught from May 20, 2005, to September 22, 2009. Petitioner states that its instructors met all the requirements for correctly teaching the defensive tactics courses at issue, but failed to completely fill in all aspects of the CJSTC-6 CMS forms for courses taught during the time in question.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302, (850)410-7676.

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."

WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN THAT on December 18, 2009, the Suwannee River Water Management District, received a petition for variance from Bishop Robert J. Baker, 18847 N. W. 282 Drive, High Springs, FL 32643, pursuant to Section 120.542, F.S. Petitioner is seeking variance from subsection 40B-4.3030(9), F.A.C., as to the zero-rise certification requirement, and paragraph 40B-4.3030(12)(b), F.A.C., as to the 75-foot setback requirement. Petitioner intends to repair existing residence and deck, located in Alachua County, in Township 8 South, Range 17 East, Section 6. These rules are intended to set forth criteria for development activities within a Work of the District. Comments on this petition should be filed with: Jon Dinges, District Clerk, SRWMD, 9225 CR 49, Live Oak, FL 32060, within 14 days of publication of this notice. The petition has been assigned ERP Number 09-0303.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Robin Lamm, Business Resource Specialist, Suwannee River Water Management District, 9225 CR 49, Live Oak, FL 32060, (386)362-1001 or 1(800)226-1066 in Florida only.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

NOTICE IS HEREBY GIVEN THAT on December 21, 2009, the Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, received a petition for a Routine Variance for subsections 61C-4.010(6), (7), Florida Administrative Code, from The Broasted Chicken Shack located in Jacksonville, FL. The above referenced F.A.C. addresses the requirement that at least one accessible