

**FISH AND WILDLIFE CONSERVATION
COMMISSION**

Marine Fisheries

RULE NOS.:	RULE TITLES:
68B-34.002	Definitions
68B-34.005	Bonefish Tournaments, Exemptions

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 37, No. 9, March 4, 2011 issue of the Florida Administrative Weekly.

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 37, No. 9, March 4, 2011, issue of the Florida Administrative Weekly.

Proposed amendment to Rule 68B-34.002 has been changed to include the following revised subsection (3):

(3) “Harvest for commercial purposes” means the taking or harvesting of fish for purposes of sale, barter, trade, or exchange, or with intent to sell, barter, trade, or exchange, ~~or in excess of established bag limits.~~

Proposed amendment to Rule 68B-34.005 has been changed to include the following revised language:

(1) The Executive Director of the FWC, or his designee, shall issue a tournament exemption permit to the director of an organized tournament to allow for the temporary possession and transport of bonefish when such tournament will allow catch-and-release fishing for bonefish and when an applicant agrees to comply with the following provisions:

(a) through (d) No change.

(e) Organized tournament staff shall maintain at least one aerated or recirculating recovery tank at each certified scale and tournament check-in location. Organized tournament staff may hold up to one bonefish per 10 gallons of seawater in such a recovery tank prior to release. Bonefish must be released by official sunset each day of the tournament, as established and published by the U.S. Weather Service, and may not be possessed longer than 16 hours. Recovery holding tank requirements will be specified in the tournament exemption permit by the FWC in a manner to ensure ~~insure~~ increased survival of released bonefish.

(f) through (i) No change.

(2) Application for issuance of a tournament exemption permit shall be made on a form provided by the FWC (Form DMF-SL6000 (4-11), incorporated herein by reference and available online at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00257> ~~www.MyFWC.com/License~~).

(3) through (4) No change.

(5) Any ~~violation of the conditions and requirements specified within the tournament exemption permit will be considered a violation of this rule and permits issued under this section are subject to the provisions of Rule 68A-5.004, F.A.C., such as denial of future tournament exemption permits.~~ No other changes were made to the rule amendments as proposed.

**Section IV
Emergency Rules**

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NOS.:	RULE TITLES:
59GER11-06	Repeal of 59GER11-01 Developmental Disabilities Waiver Provider Rate Table
59GER11-07	Repeal of 59GER11-02 Developmental Disabilities Waiver Services Procedure Codes
59GER11-08	Repeal of 59GER11-03 Developmental Disabilities Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table
59GER11-09	Repeal of 59GER11-04 Family and Supported Living Waiver Provider Rate Table
59GER11-10	Repeal of 59GER11-05 Family and Supported Living Waiver Services Procedure Codes

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Secretary of the Agency for Health Care Administration, after consultation with the Agency for Persons with Disabilities, hereby issues the following statement of facts and reasons, in support of adopting Emergency Rules 59GER11-06, 07, 08, 09, 10 which repeal Emergency Rules 59GER11-01, 02, 03, 04, and 05, respectively.

1. The Agency for Health Care Administration (“AHCA”) is the “single state agency” responsible for the administration of the Florida Medicaid program. § 409.902, Fla. Stat.; 42 U.S.C. § 1396a(a)(5). As the single state agency, AHCA has the authority to make rules, regulations, and policies that it follows in administering the state’s Medicaid program. § 409.919, Fla. Stat.; 42 U.S.C. § 431.10(b)(2). No other state agency has the “authority to change or disapprove any administrative decision of [AHCA], or otherwise substitute its judgment for that of the Medicaid agency with respect to application of policies, rules, and regulations issued by the Medicaid agency.” 42 C.F.R. § 431.10(e)(3).

2. The Agency for Persons with Disabilities (“APD”) is responsible for the administration of the Developmental Disabilities Home and Community Based Medicaid Waiver programs (the “waiver”). § 393.0661, Fla. Stat. APD’s waiver serves over 30,000 people with developmental disabilities, which Florida law defines as persons diagnosed with intellectual disability (formerly known as mental retardation), cerebral palsy, autism, spina bifida, or Prader-Willi syndrome. § 393.063(9), Fla. Stat.

3. On March 31, 2011, AHCA filed emergency rules 59ER11-01, 02, 03, 04 and 05 (“the emergency rules”). The emergency rules reduced waiver provider reimbursement rates.

4. The underlying emergency justifying the emergency rules was a \$174 million budget deficit at APD.

5. The emergency rules were one part of a larger plan to address the budget shortfall.

6. On April 14, 2011, the Legislature agreed to appropriate funds to address the budget shortfall that prompted the emergency rules. This fact, once carried through, will eliminate the emergency that justified the emergency rules and obviate the need for the emergency rules.

7. Accordingly, AHCA is repealing the emergency rules effective April 16, 2011.

8. Billing for services rendered from April 1, 2011 up to and including April 15, 2011 will be reimbursed according to the rates promulgated by the emergency rules. The emergency rules will not apply to billings for services rendered after April 15, 2011.

9. The emergency rules were one part of a larger plan to address APD’s budget deficit. This repeal of the emergency rules is a repeal only of the provider rate reductions in the emergency rules. Other portions of the larger plan that were not covered by the emergency rules remain in place.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: 1. Emergency Rules 59GER11-06, 07, 08, 09, 10, effective April 16, 2011, will repeal Emergency Rules 59GER11-01, 02, 03, 04, and 05, respectively.

2. On March 31, 2011, AHCA filed emergency rules 59ER11-01, 02, 03, 04 and 05 (“the emergency rules”).

3. One requirement of emergency rulemaking is that the Agency take only that action necessary to cure the underlying emergency.

4. On April 14, 2011, Legislature agreed to appropriate funds to cure the underlying emergency justifying the emergency rules.

5. The procedure is fair under the circumstances because the Agency is taking only those actions necessary to cure the underlying emergency that justified the emergency rules. The emergency rules 59ER11-01, 02, 03, 04 and 05 will be effective only for the duration of the emergency, from April 1, 2011 through April 15, 2011.

SUMMARY: Emergency Rules 59GER11-06, 07, 08, 09, 10 repeal Emergency Rules: 59GER11-01, Developmental Disabilities Waiver Provider Rate Table; 59GER11-02, Developmental Disabilities Waiver Services Procedure Codes; 59GER11-03, Developmental Disabilities Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table; 59GER11-04, Family and Supported Living Waiver Provider Rate Table; and 59GER11-05, Family and Supported Living Waiver Services Procedure Codes, respectively.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULES IS: Leigh Meadows, Medicaid Services, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308-5407, telephone: (850)412-4258, e-mail: leigh.meadows@ahca.myflorida.com

THE FULL TEXT OF THE EMERGENCY RULES IS:

59GER11-06 Repeal of 59GER11-01 Developmental Disabilities Waiver Provider Rate Table.

59GER11-01 which was effective April 1, 2011 through April 15, 2011 is hereby repealed.

~~(1) This rule applies to all developmental disabilities waiver services providers enrolled in the Medicaid program. This rule is effective from April 1, 2011 through June 30, 2011.~~

~~(2) All developmental disabilities waiver services providers enrolled in the Medicaid program must be in compliance with the Developmental Disabilities Home and Community Based Services Waiver Provider Rate Table, April 1, 2011, which is incorporated by reference. The rate table is available from the Medicaid fiscal agent’s Web Portal at <http://mymedicaid-florida.com>. Click on Public Information for Providers, then on Provider Support, and then on Fee Schedules. Paper copies of the rate table may be obtained from the Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, M.S. 20, Tallahassee, Florida 32308.~~

Rulemaking Authority 409.919 FS. Law Implemented 393.0661, 409.906, 409.908 FS. History—New 4-1-11, Repealed 4-16-11.

59GER11-07 Repeal of 59GER11-02 Developmental Disabilities Waiver Services Procedure Codes.

59GER11-02 which was effective April 1, 2011 through April 15, 2011 is hereby repealed.

~~(1) This rule applies to all developmental disabilities waiver services providers enrolled in the Medicaid program. This rule is effective from April 1, 2011 through June 30, 2011.~~

~~(2) All developmental disabilities waiver services providers enrolled in the Medicaid program must be in compliance with the Developmental Disabilities Home and Community Based Services Waiver Procedure Codes and Maximum Units of Service, April 1, 2011, which is incorporated by reference. The Developmental Disabilities Home and Community Based Services Waiver Procedure Codes and Maximum Units of Service is available from the~~

~~Medicaid fiscal agent Web Portal at <http://mymedicaid-florida.com>. Click on Public Information for Providers, then on Provider Support, and then on Fee Schedules.~~

~~Rulemaking Authority 409.919 FS. Law Implemented 393.0661, 409.906, 409.908 FS. History–New 4-1-11, Repealed 4-16-11.~~

59GER11-08 Repeal of 59GER11-03 Developmental Disabilities Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table.

59GER11-03 which was effective April 1, 2011 through April 15, 2011 is hereby repealed.

~~(1) This rule applies to all developmental disabilities waiver services providers enrolled in the Medicaid program. This rule is effective from April 1, 2011 through June 30, 2011.~~

~~(2) All developmental disabilities waiver services providers enrolled in the Medicaid program must be in compliance with the Developmental Disabilities Waiver Residential Habilitation Services in a Licensed Facility Provider Rate Table, April 1, 2011, which is incorporated by reference. The rate table is available from the Medicaid fiscal agent's Web Portal at <http://mymedicaid-florida.com>. Click on Public Information for Providers, then on Provider Support, and then on Fee Schedules. Paper copies of the rate table may be obtained from the Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, M.S. 20, Tallahassee, Florida 32308.~~

~~Rulemaking Authority 409.919 FS. Law Implemented 393.0661, 409.906, 409.908 FS. History–New 4-1-11, Repealed 4-16-11.~~

59GER11-09 Repeal of 59GER11-04 Family and Supported Living Waiver Provider Rate Table.

59GER11-04 which was effective April 1, 2011 through April 15, 2011 is hereby repealed.

~~(1) This rule applies to all family and supported living waiver services providers enrolled in the Medicaid program. This rule is effective from April 1, 2011 through June 30, 2011.~~

~~(2) All family and supported living waiver services providers enrolled in the Medicaid program must be in compliance with the Family and Supported Living Waiver Provider Rate Table, April 1, 2011, which is incorporated by reference. The rate table is available from the Medicaid fiscal agent's website at <http://mymedicaid-florida.com>. Click on Provider Support, and then on Fee Schedules.~~

~~Rulemaking Authority 409.919 FS. Law Implemented 393.0661, 409.906, 409.908 FS. History–New 4-1-11, Repealed 4-16-11.~~

59GER11-10 Repeal of 59GER11-05 Family and Supported Living Waiver Services Procedure Codes.

59GER11-05 which was effective April 1, 2011 through April 15, 2011 is hereby repealed.

~~(1) This rule applies to all family and supported living waiver services providers enrolled in the Medicaid program. This rule is effective from April 1, 2011 through June 30, 2011.~~

~~(2) All family and supported living waiver services providers enrolled in the Medicaid program must be in compliance with the Family and Supported Living Home and Community Based Services Waiver Procedure Codes and Maximum Units of Service, April 1, 2011, which is incorporated by reference. The Family and Supported Living Home and Community Based Services Waiver Procedure Codes and Maximum Units of Service is available from the Medicaid fiscal agent's website at <http://floridamedicaid.aes-inc.com>. Click on Provider Support, and then on Fees.~~

~~Rulemaking Authority 409.919 FS. Law Implemented 393.0661, 409.906, 409.908 FS. History–New 4-1-11, Repealed 4-16-11.~~

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: April 16, 2011

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF LAW ENFORCEMENT

NOTICE IS HEREBY GIVEN that on April 19, 2011, the Criminal Justice Standards and Training Commission, received a petition for permanent waiver of subsection 11B-27.00212(14), F.A.C., from Riviera Beach Police Department. The rule requires officers to requalify with a firearm every two years on a course of fire mandated by Commission rule. The petition supports the requested waiver by stating that the officers for whom the waiver is sought did successfully complete the course of fire, however, the instructors who supervised the mandatory shoots were not fully certified as a CJSTC firearms instructors at the time of the officers'/.xafsd

[pointewq requalifications. Petitioner states that the officers
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' will suffer a substantial hardship if their certifications are rendered inactive as a result of this situation. Petitioner further states that it would violate the principles of fairness to fail to recognize that the officers affected by this situation did successfully complete the requirement simply because their instructors had failed to comply with all administrative aspects of firearms instructor certification.