BEN ALBRITTON
President of the Senate

DANIEL PEREZ
Speaker of the House

Joint Administrative Procedures Committee

Monday, February 3, 2025
3:30 PM - 5:30 PM
Reed Hall (102 HOB)

BEN ALBRITTON
President

DANIEL PEREZ
Speaker

THE FLORIDA LEGISLATURE

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

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Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
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COMMITTEE MEETING AGENDA

February 3, 2025

Reed Hall (102 HOB)

3:30 p.m. – 5:30 p.m.

CALL TO ORDER AND ROLL CALL

REMARKS BY THE CHAIR

RESPONSE FROM THE AGENCY FOR HEALTH CARE ADMINISTRATION ON DEFFERED OBJECTIONS

TAB 1 DEFFERED OBJECTIONS:

Existing Rule Chapter 59A-8, Minimum Standards for Home Health Agencies

59A-8.005 Certificate of Exemption and Exempt Status
59A-8.007 Geographic Service Area

Existing Rule Chapter 59A-11, Birth Center Standards and Licensure

59A-11.019 Reports

Existing Rule Chapter 59A-26, Minimum Standards for Intermediate Care Facilities for the Developmentally Disabled

59A-26.002 Licensure Procedure, Fees and Exemptions

Existing Rule Chapter 59A-35, Health Care Licensing Procedures

59A-35.040 License Required; Display
59A-35.110 Reporting Requirements; Electronic Submission
59A-35.120 Inspections

Existing Rule Chapter 59A-36, Assisted Living Facility

59A-36.002 Definitions
59A-36.006 Admission Procedures, Appropriateness of Placement and Continued Residency Criteria
59A-36.007 Resident Care Standards
59A-36.008 Medication Practices
59A-36.022 Limited Nursing Services
59A-36.028 ALF Minimum Core Training Curriculum Requirements

Existing Rule Chapter 59A-37, Adult Family Care Homes

59A-37.002 License Application, Renewal and Conditional Licenses
59A-37.007 Staff Qualifications, Responsibilities and Training

Existing Rule Chapter 59C-1, Procedures for the Administration of Sections 408.031-408.045, F.S., Health Facility and Services Development Act

59C-1.004 Projects Subject to Review
59C-1.005 Certificate of Need Exemption Procedure
59C-1.010 Certificate of Need Application Review Procedures
59C-1.012 Administrative Hearing Procedures
59C-1.021 Certificate of Need Penalties
59C-1.022 Health Care Facilities Fee Assessments and Fee Collection Procedures
59C-1.030 Criteria Used in Evaluation of Applications

Existing Rule Chapter 59G-1, General Medicaid

59G-1.010 Definitions
59G-1.058 Eligibility
59G-1.060 Provider Enrollment Policy

Existing Rule Chapter 59G-4, Medicaid Services

59G-4.150 Inpatient Hospital Services

Existing Rule Chapter 59G-6, Reimbursement to Providers

59G-6.005 Reimbursement Methodology for Services Provided by Medical School Faculty
59G-6.010 Payment Methodology for Nursing Home Services
59G-6.045 Payment Methodology for Services in Facilities Not Publicly Owned and Not Publicly Operated (Facilities Formerly Known as ICF-MR/DD Facilities)

Existing Rule Chapter 59G-13, Medicaid Waiver Programs

59G-13.070 Developmental Disabilities Individual Budgeting Waiver Services
59G-13.081 Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table

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TAB 2 Presentation by the Department of Environmental Protection

a) **The economic analysis relied upon to determine that a statement of estimated regulatory costs is not required for proposed rules 62-41.400, 62-41.401, and 62-41.402, F.A.C., relating to Outstanding Florida Springs; and**
b) **The implementation and financial impact of existing rule chapter 62-330, F.A.C, relating to Stormwater Management**

TAB 3 Recommended changes to Chapter 120, Florida Statutes

REPORTS AND APPEARANCES

TAB 1

RON DESANTIS
GOVERNOR

November 11, 2019

Dear Governor's Agency Heads:

The Office of Fiscal Accountability and Regulatory Reform (OFARR), was established within the Executive Office of the Governor's Office of Policy and Budget, to ensure that agency rules are efficient, not overly burdensome, and adhere to statute as enacted by the Legislature. This directive serves to inform agencies of my administration's changes to OFARR and rulemaking procedures.

Rulemaking is an inherent and wholly executive authority. All agency rulemaking is overseen by OFARR. As Governor, I have directed OFARR to enhance oversight of the rulemaking process in the following ways:

1. OFARR will review all proposed rules to determine if the rule:
    a. Impedes entry to the profession or industry;
    b. Imposes additional or unnecessary fees on professionals or industries currently in the profession or seeking entry into the profession; and
    c. Is the most efficient and cost effective method of imposing a regulation.

2. OFARR is directed to stop or suspend rulemaking on a case-by-case, or agency-wide basis if it is determined that a proposed or existing rule is in violation of the above criteria.

Updates to OFARR's rulemaking notification process and reporting requirements are as follows:

1. By September 1, 2020, each agency shall conduct a thorough review of all current rules and regulations and report to OFARR any rules or regulations that are barriers to entry for private business competition, duplicative, outdated, obsolete, overly burdensome, or impose excessive cost.

2. All rulemaking notices must be submitted to OFARR at least 7 days prior to publishing in the Florida Administrative Weekly. Rule text and a detailed explanation of the rulemaking must be provided to OFARR, along with the Rulemaking Notification Form, the SERC Checklist, and the completed SERC if required.

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 717-9249

3. Notice of emergency rules shall be provided to OFARR with as much prior notice as practical, and remain subject to provisions in section 120.54(4), Florida Statutes. When emergency rulemaking occurs, OFARR must be provided the proposed rule and a detailed explanation, as well as a justification of emergency circumstances within 30 days after the initiation of emergency rulemaking occurs.

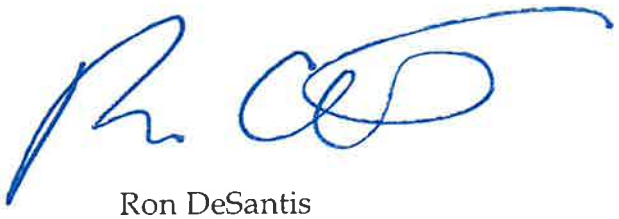
4. Agencies under the supervision of the Governor shall submit annual rulemaking and regulatory plans to OFARR by September 1 of each year for review and shall contain all information required in section 120.74, Florida Statutes.

5. All agencies must include a sunset provision in all proposed or amended rules unless otherwise directed by applicable law. The sunset provision may not exceed five years unless otherwise required by existing statute. Rules may be renewed through the normal rulemaking process after the sunset period only if it is determined the rule is still necessary, following the OFARR process outlined herein.

All agencies under the under the direction of the Governor must comply with the new OFARR reporting requirements outlined above. Additionally, executive branch departments or entities placed under the supervision of an officer or board appointed by and serving at the pleasure of the Governor are requested to do the same. All agencies are directed to fully cooperate with OFARR and any representative thereof.

Thank you for your cooperation in ensuring that Florida's regulatory landscape is efficient, cost effective and not overly burdensome.

Sincerely,



Ron DeSantis
Governor

INDEX TO DEFERRED OBJECTIONS

Existing Rule Chapter 59G-4, Medicaid Services

Existing Rule Chapter 59G-6, Reimbursement to Providers

Existing Rule Chapter 59G-13, Medicaid Waiver Programs

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-8.005

CHAPTER TITLE: CHAPTER 59A-8, MINIMUM STANDARDS FOR HOME HEALTH AGENCIES

OBJECTIONABLE PROVISION:

59A-8.005 Certificates of Exemption and Exempt Status

(17) This rule is in effect for five years from its effective date.
[Note: The most recent effective date of the rule is 2-24-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 400.497, F.S.	s. 400.464(5), (6), F.S.

SPECIFIC OBJECTION:

Rule 59A-8.005(17) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 400.497, Florida Statutes, authorizes the Agency for Health Care Administration to adopt rules establishing minimum standards for home health services. The statute does not authorize the Agency to adopt rules which expire in five years.

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Section 409.497, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the

Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-8.005(17) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-8.007

CHAPTER TITLE: CHAPTER 59A-8, MINIMUM STANDARDS FOR HOME HEALTH AGENCIES

OBJECTIONABLE PROVISION:

59A-8.007 Geographic Service Area

(4) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 1-12-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 400.497, F.S.	s. 400.497, F.S.

SPECIFIC OBJECTION:

Rule 59A-8.007(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 400.497, Florida Statutes, authorizes the Agency for Health Care Administration to adopt rules establishing minimum standards for home health services. The statute does not authorize the Agency to adopt rules which expire in five years.

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Section 409.497, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005)

(holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-8.007(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-11.019

CHAPTER TITLE: CHAPTER 59A-11, BIRTH CENTER STANDARDS AND LICENSURE

OBJECTIONABLE PROVISION:

59A-11.019 Reports

(3) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 4-7-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 383.309, F.S.	s. 383.327, F.S.

SPECIFIC OBJECTION:

Rule 59A-11.019(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 383.309, Florida Statutes, provides, in part, that "the agency shall adopt rules and enforce rules to administer ss. 383.30-383.332 and part II of chapter 408. . . ."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Section 383.309, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.,* 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005)

(holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration date does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-11.019(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-26.002

CHAPTER TITLE: CHAPTER 59A-26, MINIMUM STANDARDS FOR INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

OBJECTIONABLE PROVISION:

59A-26.002 Licensure Procedure, Fees and Exemptions

(6) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 2-27-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 400.967, 408.819 F.S.	ss. 400.962, 400.967, 408.804, 408.805, 408.806, 408.807, 408.809, 408.810, 408.811, F.S.

SPECIFIC OBJECTION:

Rule 59A-26.002(6) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating an expiration provision that is not authorized by statute.

Section 400.967, Florida Statutes, provides, in part, that ". . . the agency, in consultation with the Agency for Persons with Disabilities and the Department of Elderly Affairs, shall adopt and enforce rules to administer this part and part II of chapter 408. . . ." Further, the Agency is mandated to establish standards for facilities and equipment, adopt fair and reasonable rules setting forth conditions under which existing facilities can comply with updated or revised standards; and adopt rules for the classification of deficiencies "when the criteria established under this part and part II of chapter 408 are not met. . . ." Section 408.819, Florida Statutes, provides that "The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions]."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute."

Neither section 400.967 nor 408.819, Florida Statutes, authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-26.002(6) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-35.040

CHAPTER TITLE: CHAPTER 59A-35, HEALTH LICENSING PROCEDURES

OBJECTIONABLE PROVISION:

59A-35.040 License Required: Display

(5) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 11-1-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 408.819 F.S.	ss. 408.804, 408.810, 408.813, F.S.

SPECIFIC OBJECTION:

Rule 59A-35.040(5) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 408.819, Florida Statutes, provides: "The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions]."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Section 408.819, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.,* 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005)

(holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-35.040(5) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-35.110

CHAPTER TITLE: CHAPTER 59A-35, HEALTH LICENSING PROCEDURES

OBJECTIONABLE PROVISION:

59A-35.110 Reporting Requirements: Electronic Submission

(3) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 10-4-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 395.0197, 408.806, 408.813, 408.819, 429.23, F.S.	ss. 408.806, 408.810, 408.813, 429.23, 395.0197, F.S.

SPECIFIC OBJECTION:

Rule 59A-35.110(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date that is not authorized by statute.

Section 395.0197, Florida Statutes, authorizes the Agency to "adopt rules governing the establishment of internal risk management programs to meet the needs of individual licensed facilities." Section 408.806, Florida Statutes, states that "An application for licensure must be made to the agency on forms furnished by the agency," and prescribes the information to be included on the form/application. Section 408.813, Florida Statutes, provides that the Agency may impose administrative fines. Section 401.819, Florida Statutes, states that "The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions]." Finally, section 429.23, Florida Statutes, provides "the agency may adopt rules necessary to administer this section [internal risk management and quality assurance program: adverse incidents and reporting requirements]."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute."

None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-35.110(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-35.120

CHAPTER TITLE: CHAPTER 59A-35, HEALTH LICENSING PROCEDURES

OBJECTIONABLE PROVISION:

59A-35.120 Inspections

(5) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 5-17-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 408.811, 408.819, F.S.	ss. 408.806, 408.811, F.S.

SPECIFIC OBJECTION:

Rule 59A-35.120(5) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date that is not authorized by statute.

Section 408.811, Florida Statutes, entitled "Right of inspection; copies; inspection reports; plan for correction of deficiencies," provides: The agency may adopt rules to waive any inspection including a relicensure inspection or grant an extended time period between relicensure based upon" certain enumerated factors. Section 401.819, Florida Statutes, states that "The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions]."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st

DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-35.120(5) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.002

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.002 Definitions

(41) This rule is in effect for five years from its effective date.
[Note: The most recent effective date 10-7-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 429.41, 429.929, F.S.	ss. 429.07, 429.075, 429.11, 429.14, 429.19, 429.41, 429.47, 429.52, 429.905. F.S.

SPECIFIC OBJECTION:

Rule 59A-36.002(41) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 429.41, Florida Statutes, provides "that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated." Section 429.929, Florida Statutes, states: "The agency shall adopt rules to implement this part."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and*

Family Services v. I.B., 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.002(41) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.006

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.006 Admission Procedures, Appropriateness of Placement and Continued Residency Criteria

(6) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 10-7-21].

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 429.07, 429.41, F.S.	ss. 429.07, 429.26, 429.28, 429.41, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.006(6) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.07, Florida Statutes, entitled "License required; fees," cited as rulemaking authority in rule 59A-36.006, relates to fees for licenses and states: "(4) . . . The amount of the fee shall be established by rule. Section 429.41, Florida Statutes, provides "that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does

not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.006(6) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.007

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.007 Resident Care Standards

(12) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 8-16-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 429.41, F.S.	ss. 429.255, 429.26, 429.28, 429.41, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.007(12) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date provision that is not authorized by statute.

Section 429.41, Florida Statutes, provides "that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." The statute cited by the Agency as rulemaking authority does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every

other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.007(12) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.008

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.008 Medication Practices

(9) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 8-16-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 429.256, 429.41, F.S.	ss. 429.255, 429.56, 429.41, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.008(9) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date authorized by statute.

Section 429.256, Florida Statutes, states that "The agency may by rule establish facility procedures and interpret terms as necessary to implement this section." Section 429.41, Florida Statutes, provides "that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any

statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005)(holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.008(9) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.022

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.022 Limited Nursing Services

(4) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 10-7-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 429.41, F.S.	ss. 429.07, 429.255, 429.26, 429.41, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.022(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.41, Florida Statutes, provides "that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." The statute cited by the Agency as rulemaking authority does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every

other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.022(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.028

TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.028 ALF Minimum Core Training Curriculum Requirements

(4) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 8-16-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 429.52, F.S.	s. 429.52, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.028(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.52(12), Florida Statutes, states: "The agency shall adopt rules to establish core trainer registration and removal requirements."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." The statute cited by the Agency as rulemaking authority does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively

governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.028(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-37.002

CHAPTER TITLE: CHAPTER 59A-37, ADULT FAMILY CARE HOMES

OBJECTIONABLE PROVISION:

59A-37.002 License Applications, Renewal and Conditional Licenses

(4) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 2-27-22].

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 429.67, 429.69, 429.71, 429.73, F.S.	ss. 429.67, 429.69, 429.71, 429.73, F.S.

SPECIFIC OBJECTION:

Rule 59A-37.002(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.67(10) provides that "The agency may adopt rules to establish procedures, identify forms, specify documentation, and clarify terms, as necessary, to administer this section." Section 429.69 authorizes the agency to "deny, suspend, and revoke a license" for certain stated reasons. Section 429.71 authorizes the Agency to impose administrative fines, and "establish by rule notice requirements and procedures for correction of deficiencies." Section 429.73 provides that "The agency in consultation with the Department of Health and the Department of Children and Families shall establish by rule minimum standards to ensure the health, safety, and well-being of each resident in the adult family-care home pursuant to this part."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes.

See, e.g., 4245 Corp. v Div. of Beverage, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-37.002(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-37.007

CHAPTER TITLE: CHAPTER 59A-37, ADULT FAMILY CARE HOMES

OBJECTIONABLE PROVISION:

59A-37.007 Staff Qualifications, Responsibilities and Training

(5) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 2-27-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 429.67, 429.73, 429.75, F.S.	ss. 429.67, 429.73, 429.75, F.S.

SPECIFIC OBJECTION:

Rule 59A-37.007(5) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.67(10) provides that "The agency may adopt rules to establish procedures, identify forms, specify documentation, and clarify terms, as necessary, to administer this section." Section 429.73 provides that "The agency in consultation with the Department of Health and the Department of Children and Families shall establish by rule minimum standards to ensure the health, safety, and well-being of each resident in the adult family-care home pursuant to this part." Finally, section 429.75(5), provides: "The agency may adopt rules as necessary to administer this section [Training and education programs].

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that

"[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-37.007(5) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.004

CHAPTER TITLE: CHAPTER 59C-1, PROCEDURES FOR THE ADMINISTRATION OF SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.004 Projects Subject to Review

(3) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 408.034(8), 408.15(8), F.S.	ss. 408.033, 408.035, 408.036(1), (2), 408.037, 408.038, 408.039, F.S.

SPECIFIC OBJECTION:

Rule 59C-1.004(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency "to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[,]" while section 408.15(8) authorizes the Agency to "Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into

existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.004(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.005

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.005 Certificate of Need Exemption Procedures

(7) This rule is in effect for five years from its effective date.

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 408.034(8), 408.15(8), F.S.	s. 408.036(3), (4) F.S.

SPECIFIC OBJECTION:

Rule 59C-1.005(7) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency "to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[,]" while section 408.15(8) authorizes the Agency to "Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into

existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic sunset of agency rules. Including a sunset provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.005(7) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.010

CHAPTER TITLE: CHAPTER 59C-1, PROCEDURES FOR THE ADMINISTRATION OF SECTIONS 408.031-408.045, FLORIDA STATUTES, HEALTH FACILITY AND SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.010 Certificate of Need Application Review Procedures

(8) This rule is in effect for five years from its effective date.
[Note: Most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 408.034(8), 408.15(8), F.S.	ss. 408.033(1), 408.036(2), 408.039(3), (4), (5), F.S.

SPECIFIC OBJECTION:

Rule 59C-1.010(8) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency "to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[,]" while section 408.15(8) authorizes the Agency to "Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes.

See, e.g., 4245 Corp. v Div. of Beverage, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.010(8) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.012

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.012 Administrative Hearing Procedures

(3) This rule is in effect for five years from this date.
[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 408.034(8), 408.15(8), F.S.	s. 408.039(5), (6), F.S.

SPECIFIC OBJECTION:

Rule 59C-1.012(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency "to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[,]" while section 408.15(8) authorizes the Agency to "Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that

"[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.012(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.021

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.021 Certificate of Need Penalties

(5) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 408.040(2)(a), 408.034(8), 408.15(8), F.S.	ss. 408.034(8), 408.040(1)(b), (d), (2)(a), 408.044, 408.061(6), 408.08(2), F.S.

SPECIFIC OBJECTION:

Rule 59C-1.021(5) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.033(2)(a), 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency "to adopt rules necessary to implement ss. 408.031-408.045." Section 408.040(2)(a) contains no rulemaking authority. Section 408.15(8) authorizes the Agency to "Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or

otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is at odds with section 120.54, Florida Statutes, it is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.021(5) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.022

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.022 Health Care Facilities Fee Assessments and Fee Collection Procedures

(8) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 408.033(2), 408.034(8), 408.15(8), F.S.	ss. 408.033(2), F.S.

SPECIFIC OBJECTION:

Rule 59C-1.012(8) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.033(2), 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.033(2)(c) provides that "The agency shall, by rule, establish fees for hospitals and nursing homes. . .[;] fees for assisted living facilities. . . [;] an annual fee of $150 for all other facilities and organizations listed in paragraph (a)[; and] establish a facility billing and collection process. . . ." Section 408.034(8) directs the Agency "to adopt rules necessary to implement ss. 408.031-408.045." Section 408.15(8) authorizes the Agency to "Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or

otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.022(8) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.030

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.030 Criteria Used in Evaluation of Applications

(7) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 408.15(8), 408.034(3), (8), F. S.	ss. 408.035, 408.037, F.S.

SPECIFIC OBJECTION:

Rule 59C-1.030(7) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(3) and (8), and 408.15(8), Florida Statutes, as rulemaking authority. Sections 408.034(3) and (8) direct the Agency "to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[,]" respectively. Section 408.15(8) authorizes the Agency to "Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that

"[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.030(7) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-1.010

CHAPTER TITLE: CHAPTER 59G-1, GENERAL MEDICAID

OBJECTIONABLE PROVISION:

59G-1.010 Definitions

(3) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 6-17-24.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 409.919, 409.961, F.S.	ss. 409.901, 409.902, 409.90201, 409.9021, 409.9025, 409.903, 409.904, 409.905, 409.906, 409.9062, 409.9063, 409.90637, 409.90638, 409.9066, 409.907, 409.9071, 409.9072, 409.908, 409.9081, 409.9082, 409.9083, 409.910, 409.9101, 409.9102, 409.911, 409.9113, 409.9115, 409.91151, 409.9116, 409.9118, 409.91188, 409.9119, 409.91195, 409.91196, 409.912, 409.91206, 409.9121, 409.91212, 409.9122, 409.9123, 409.91235, 409.91255, 409.91256, 409.9126, 409.9127, 409.9128, 409.913, 409.9131, 409.9132, 409.9133, 409.9134, 409.914, 409.915, 409.916, 409.918, 409.919, 409.920, 409.973, F.S.

SPECIFIC OBJECTION:

Rule 59G-1.010(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Sections 409.919 and 409.961, Florida Statutes, provide that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements[,]" and "The agency shall adopt any rules necessary to comply with or administer this part [Part IV: Managed Medicaid Managed Care] and all rules necessary to comply with federal requirements[,]" respectively.

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Neither section 409.919 nor 409.961, Florida Statutes, authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.,* 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-1.010(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-1.058

CHAPTER TITLE: CHAPTER 59G-1, GENERAL MEDICAID

OBJECTIONABLE PROVISION:

59G-1.058 Eligibility

(8) This rule is in effect for five years from its effective date.
[The most recent effective date is 8-19-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 409.919, F.S.	s. 409.903, F.S.

SPECIFIC OBJECTION:

Rule 59G-1.058(8) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 409.919, Florida Statutes, provides that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Section 409.919, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and

each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-1.058(8) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-1.060

CHAPTER TITLE: CHAPTER 59G-1, GENERAL MEDICAID

OBJECTIONABLE PROVISION:

59G-1.060 Provider Enrollment Policy

(4) This rule is in effect for five years from its effective date.
[The most recent effective date is 2-9-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 409.919, 409.961, F.S.	ss. 409.907, 409.973, F.S.

SPECIFIC OBJECTION:

Rule 59G-1.060(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 409.919, Florida Statutes, provides that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements." Section 409.961, Florida Statutes, provides that "The agency shall adopt any rules necessary to comply with or administer this part [Part IV: Managed Medicaid Managed care] and all rules necessary to comply with federal requirements."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Neither section 409.919 nor 409.961, Florida Statutes, authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family*

Services v. I.B., 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-1.060(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-4.150

CHAPTER TITLE: CHAPTER 59G-4, MEDICAID SERVICES

OBJECTIONABLE PROVISION:

59G-4.150 Inpatient Hospital Services

(4) This rule is in effect for five years from its effective date.
[The most recent effective date is 4-3-24.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 409.919, 409.961, F.S.	ss. 409.902, 409,905, 409.907, 409.908, 409.912, 409.913, 409.973, F.S.

SPECIFIC OBJECTION:

Rule 59G-4.150(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 409.919 and 409.961, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements." Section 409.961 states that "The agency shall adopt any rule necessary to comply with or administer this part and all rules necessary to comply with federal requirements."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into

existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-4.150(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-6.005

CHAPTER TITLE: CHAPTER 59G-6, REIMBURSEMENT TO PROVIDERS

OBJECTIONABLE PROVISION:

59G-6.005 Reimbursement Methodology for Services Provided by Medical School Faculty

(4) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 8-15-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
s. 409.919, F.S.	s. 409.908, F.S.

SPECIFIC OBJECTION:

Rule 59G-6.005(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites section 409.919, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and

each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-6.005(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-6.010

CHAPTER TITLE: CHAPTER 59G-6, REIMBURSEMENT TO PROVIDERS

OBJECTIONABLE PROVISION:

59G-6.010 Payment Methodology for Nursing Home Services

(7) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 9-14-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 409.919, 409.9082, F.S.	ss. 409.908, 409.9082, 409.913, F.S.

SPECIFIC OBJECTION:

Rule 59G-6.010(7) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 409.919 and 409.9082, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements." Section 409.9082 states that "The agency shall adopt rules necessary to administer this section."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the

Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-6.010(7) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-6.045

CHAPTER TITLE: CHAPTER 59G-6, REIMBURSEMENT TO PROVIDERS

OBJECTIONABLE PROVISION:

59G-6.045 Payment Methodology for Services in Facilities Not Publicly Owned and Not Publicly Operated (Facilities Formerly Known as ICF-MR/DD Facilities)

(9) This rule is effective for 5 years after its effective date.
[Note: The most recent effective date is 10-24-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 409.919, 409.9083, F.S.	ss. 409.908, 409.9083, F.S.

SPECIFIC OBJECTION:

Rule 59G-6.045(9) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 409.919 and 409.9083, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements." Section 409.9083 states that "The agency shall adopt rules necessary to administer this section."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891

So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-6.045(9) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-13.070

CHAPTER TITLE: CHAPTER 59G-13, MEDICAID WAIVER PROGRAMS

OBJECTIONABLE PROVISION:

59G-13.070 Developmental Disabilities Individual Budgeting Waiver Services

(4) This rule is in effect for five years from its effective date.
[Note: The most recent effective date is 5-18-23.]

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 393.501, 409.919, F.S.	ss. 393.0662, 409.902, 409.906, 409.907, 409.908, 409.912, 409.913, F.S.

SPECIFIC OBJECTION:

Rule 59G-13.070(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 393.501 and 409.919, Florida Statutes, as rulemaking authority. Section 393.501 provides: "The agency may adopt rules pursuant to ss. 120.536(1) and 120.54 to carry out its statutory duties." Section 409.919 provides, in part, that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements."

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Neither of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into

existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-13.070(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-13.081

CHAPTER TITLE: CHAPTER 59G-13, MEDICAID WAIVER PROGRAMS

OBJECTIONABLE PROVISION:

59G-13.081 Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table

(3) This rule is in effect for 5 years from its effective date.

CITED AGENCY AUTHORITY:

(a) Rulemaking	(b) Law Implemented
ss. 393.0661, 409.919, F.S.	ss. 409.902, 409.906, 409.908, 409.912, 409.913, F.S.

SPECIFIC OBJECTION:

Rule 59G-13.081(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 393.0661 and 409.919, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that "The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements." Section 393.0661 does not exist.

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Neither of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage,* 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.,* 891

So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-13.081(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

TAB 2

Notice of Proposed Rule

DEPARTMENT OF ENVIRONMENTAL PROTECTION
RULE NOS.:RULE TITLE:S
62-41.400 Outstanding Florida Springs, Scope of Rule
62-41.401 Outstanding Florida Springs, Conditions for Issuance of Permits
62-41.402 Outstanding Florida Springs, Uniform Definition of Harmful to the Water Resources of the Area
PURPOSE AND EFFECT: Rule 62-41.400, F.A.C., identifies the scope of the rules for the .400 series, which relate to the regulation of consumptive uses of water that may impact an Outstanding Florida Spring (OFS) or its spring run as defined in subsections 373.802(5) and 373.802(8), F.S. Rule 62-41.401, F.A.C., defines the term "Harmful to Water Resources" for purposes of consumptive use permits for OFS areas and requires applicants to provide reasonable assurance that their withdrawal will not cause such harm to the water resources, related to an OFS. Rule 62-41.402, F.A.C., creates uniform conditions for issuance for consumptive use permits whose withdrawals influence an OFS.
SUMMARY: This rule implements subsection 373.219(3), F.S., for Outstanding Florida Springs, which requires the department to adopt uniform rules, consistent with the overall policy of the state, for issuing permits which prevent groundwater withdrawals that are harmful to the water resources and adopt by rule a uniform definition of the term "harmful to the water resources." These supplemental rules provide the basis for the evaluation of consumptive uses of water to ensure they are not harmful to an Outstanding Florida Spring or its spring run as defined in subsections 373.802(5) and 373.802(8), F.S. And this rule states that the .400 series will be used as minimum standards in the evaluation of consumptive use permits to ensure that these permits are not harmful to an Outstanding Florida Spring or its spring run. Rule 62-41.400, F.AC., sets the scope of the rules and provides definitions. Rule 62-41.401, F.A.C., sets forth the uniform criteria for determining whether consumptive uses are harmful and enumerates multiple prongs for evaluating adverse impacts. Finally, this rule states what information a permit applicant will need to provide to ensure that the consumptive use will not cause harm through any of the enumerated impacts. Rule 62-41.402, F.A.C., states that agencies shall not issue permits for the consumptive use of water that are harmful to Outstanding Florida Springs and their spring runs. Further, it provides a list of the reasonable assurance information that must be provided by the permit applicant concerning the use of the water, that the withdrawals will not cause harm to Outstanding Florida Springs and their spring runs, and that the permits are in accordance with any minimum flows or levels or implementation strategies established pursuant to sections 373.042 and 373.0421, F.S. and will not use water reserved pursuant to subsection 373.223(4), F.S.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:
The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.
The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department's economic analysis of the adverse impact or potential regulatory costs of the proposed rules does not exceed any of the criteria established in Section 120.541(2)(a), Florida Statutes. As part of this analysis, the Department relied on the evaluation of the impact of the rules on regulated entities and the cost associated with its implementation.
Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.
RULEMAKING AUTHORITY: 373.216, 373.217, 373.219, 373.223, 373.2234, 373.801, 373.802, 373.805, 373.813, F.S.
LAW IMPLEMENTED: 373.223, 373.802, F.S.
IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE,TIME AND PLACE SHOWN BELOW(IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):
DATE AND TIME: January 6, 2025 starting at 9:00 a.m.
PLACE: Marjory Stoneman Douglas Building, Room 137

3900 Commonwealth Boulevard
Tallahassee, FL, 32399-3000
Public participation is solicited without regard to race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status. Persons who require special accommodations under the American with Disabilities Act (ADA) or persons who require translation services (free of charge) are asked to contact DEP's Limited English Proficiency Coordinator at (850)245-2118 or LEP@FloridaDEP.gov at least ten (10) days before the hearing within 10 days of publication of this notice. If you have a hearing or speech impairment, please contact the agency using the Florida Relay Service, (800)955-8771 (TDD) or (800)955-8770 (voice).
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Albright
Environmental Administrator
OWP_Rulemaking@FloridaDEP.gov

THE FULL TEXT OF THE PROPOSED RULE IS:

62-41.400 Outstanding Florida Springs, Scope of Rules and Definitions.

(1) Rules 62-41.400 through 62-41.402, F.A.C., implement section 373.219, F.S. These supplemental rules provide the basis for the evaluation of consumptive uses of water to ensure they are not harmful to an Outstanding Florida Spring or its spring run as defined in subsections 373.802(5) and 373.802(8), F.S.

(2) The phrases "Consumptive Use Permit," "Consumptive Use Permitting," and "Consumptive Use Applicants" are synonymous with "Water Use Permit," "Water Use Permitting," and "Water Use Applicants," respectively, as used by agencies implementing Part II of Chapter 373, F.S.

(3) "Agency" or "agencies" means the Department of Environmental Protection and the water management districts as entities with the authority to implement Part II of Chapter 373, F.S.

(4) These supplemental rules shall be utilized as minimum standards in the evaluation of consumptive use permits to ensure they are not harmful to an Outstanding Florida Spring or its spring run. The agencies shall implement these supplemental rules in conjunction with their consumptive use permitting or water use permitting rules upon determination that a proposed water use potentially impacts an Outstanding Florida Spring. The agencies shall update their rules as necessary to be consistent with these minimum standards.

(5) These supplemental rules do not prohibit an agency from adopting a definition of the term "harmful to the water resources" that is more protective of the water resources consistent with local or regional conditions and objectives.

Rulemaking Authority: 373.026, 373.0421, 373.043, 373.216, 373.217, 373.219, 373.223, 373.801, 373.802, 373.813, FS. Law Implemented: 373.219, 373.802, FS. New: xx-xx-xxxx.

62-41.401 Outstanding Florida Springs, Uniform Definition of Harmful to the Water Resources.

(1) Harmful to the Water Resources for Outstanding Florida Springs means a consumptive use that adversely impacts an Outstanding Florida Spring or its spring run in one or more of the following ways:

(a) Causing harmful water quality impacts to the Outstanding Florida Spring or its spring run resulting from the withdrawal or diversion;

(b) Causing harmful water quality impacts from dewatering discharge to the Outstanding Florida Spring or its spring run;

(c) Causing harmful saline water intrusion or harmful upconing to the Outstanding Florida Spring or its spring run;

(d) Causing harmful hydrologic alterations to natural systems associated with an Outstanding Florida Spring or its spring run, including wetlands or other surface waters; and

(e) Otherwise causing harmful hydrologic alterations to the water resources of the Outstanding Florida Spring or its spring run.

(2) Consistent with paragraph (1), the applicant shall provide reasonable assurance, using the best available information, that there are no adverse impacts caused by the withdrawal or diversion, on an individual or cumulative basis, to the extent that:

(a) The withdrawal or diversion does not induce movement of a contamination plume or alter the rate or direction of the movement of a contamination plume towards an Outstanding Florida Spring or its spring run such that the alteration causes harmful water quality impacts as evidenced by the predicted influence the water withdrawals would have on inducing movement of the contamination plume or as indicated by a sustained increase in background levels in contaminant concentrations.

(b) Dewatering discharges do not cause harmful water quality impacts to the Outstanding Florida Spring or its spring run. Dewatering water must be retained onsite unless the applicant demonstrates it is not technically or environmentally feasible to retain the dewatering water onsite. Applicants who have obtained and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or Environmental Resource Permit (ERP) for dewatering shall be considered to not cause harmful water quality impacts from dewatering discharge to receiving waters.

(c) Withdrawals do not cause an increase in total dissolved solids (TDS) or chloride concentrations that adversely affects the Outstanding Florida Spring or its spring run. The agencies will not consider saline water intrusion as harmful if it is the result of seasonal fluctuations; climatic conditions; or operation of the Central and Southern Flood Control Project, secondary canals, or stormwater systems. As part of the consideration of whether the use will cause harmful saline water intrusion or upconing, the following factors must be considered, as applicable:

1. Whether there is a sustained amount and rate of increase of TDS or chloride concentrations in the Outstanding Florida Spring;

2. Whether there would be adverse impacts to values or functions of wetlands or other surface waters associated with an Outstanding Florida Spring or its spring run.

(d) Hydrologic alterations to the spring resulting from withdrawals do not cause adverse impacts to the aquatic or wetland dependent flora or fauna in the spring or its spring run.

(3) To provide reasonable assurance that harm to the water resources will not occur due to the proposed water withdrawal or diversion, the following information shall be submitted as applicable:

(a) An assessment inclusive of any predicted hydrologic alterations to an Outstanding Florida Spring or its spring run caused by the withdrawal or diversion. The assessment will include any predicted changes in hydrology, or changes in aquatic or wetland flora or fauna at an Outstanding Florida Spring or its spring run. An applicant shall only be required to address its relative contribution of harm to the Outstanding Florida Spring or its spring run associated with its water withdrawal.

(b) A summary of any monitoring or modeling analysis performed and electronic copies of any modeling files.

(c) Any additional materials utilized in the analysis to provide reasonable assurance that harm, as defined above, will not occur due to the withdrawal or diversion, including aerial photographs, topographic maps, hydrologic data, environmental assessments, or other relevant information.

Rulemaking Authority: 373.026, 373.0421, 373.043, 373.216, 373.217, 373.219, 373.801, 373.802, 373.813 FS. Law Implemented: 373.219 FS. New: xx-xx-xxxx.

62-41.402 Outstanding Florida Springs, Uniform Conditions for Issuance of Permits.

(1) No permit issued by the agencies for the consumptive use of water shall authorize groundwater withdrawals that are harmful to the water resources as provided in paragraph (3)(g), and each permittee shall meet the criteria established in section 62-41.401, F.A.C.

(2) In order to prevent groundwater withdrawals that are harmful to an Outstanding Florida Spring, an applicant seeking a consumptive use permit, renewal, or modification, whose withdrawal potentially impacts an Outstanding Florida Spring or its spring run must provide reasonable assurance that the proposed consumptive use of water, on an individual and cumulative basis:

(a) Is a reasonable-beneficial use;

(b) Will not interfere with any presently existing legal use of water; and

(c) Is consistent with the public interest.

(3) In order to provide reasonable assurances that the consumptive use is reasonable-beneficial, an applicant shall demonstrate that the consumptive use:

(a) Is a quantity that is necessary for economic and efficient use;

(b) Is for a purpose and occurs in a manner that is both reasonable and consistent with the public interest;

(c) Will utilize a water source that is suitable for the consumptive use;

(d) Will utilize a water source that is capable of producing the requested amount;

(e) Will utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally, and economically feasible, except for the following agricultural water uses;

1. Water used for washing hands during and after harvest activities;

2. Water that is applied in any manner that directly contacts produce during or after harvest activities (for example, water applied for washing or cooling); and

3. Water used to make ice that directly contacts produce during or after harvest activities.

(f) Will not cause harm to existing offsite land uses resulting from hydrologic alterations;

(g) Will not cause harm to an Outstanding Florida Spring or its spring run a in any of the following ways:

1. Will not cause harmful water quality impacts to an Outstanding Florida Spring or its spring run resulting from the withdrawal or diversion;

2. Will not cause harmful water quality impacts from dewatering discharge to an Outstanding Florida Spring or its spring run;

3. Will not cause harmful saline water intrusion or harmful upconing to an Outstanding Florida Spring or its spring run;

4. Will not cause harmful hydrologic alterations to an Outstanding Florida Spring or its spring run; and

5. Will not otherwise cause harmful hydrologic alterations to an Outstanding Florida Spring or its spring run;

(h) Is in accordance with any minimum flow or level and implementation strategy established pursuant to sections 373.042 and 373.0421, F.S.; and

(i) Will not use water reserved pursuant to subsection 373.223(4), F.S.

Rulemaking Authority: 373.026, 373.0421, 373.043, 373.171, 373.216, 373.217, 373.219, 373.223, 373.2234, 373.801, 373.802, 373.813, FS. Law Implemented: 373.219, 373.223, FS. New: xx-xx-xxxx.

NAME OF PERSON ORIGINATING PROPOSED RULE: James C. Albright
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: DEP Secretary Alexis Lambert
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 04, 2024
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 11, 2023

TAB 3

RECOMMENDED LEGISLATION

Joint Rule 4.6, Special Powers and Duties of the Administrative Procedures Committee, provides that the Administrative Procedures Committee shall: "Maintain a continuous review of statutes that authorize agencies to adopt rules and shall make recommendations to the appropriate standing committees of the Senate and House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances." To this end, based upon a review of the current practices relating to the rulemaking procedures under chapter 120, Florida Statutes, the following changes to chapter 120, Florida Statutes, are recommended.

Recommendation 1: Require timeframe for rule adoption.

Prior to 2015, section 120.54, Florida Statutes, directed agencies to notice proposed rules within 180 days after the effective date of an act requiring mandatory rulemaking. The provision was removed with the enactment of section 120.74, Florida Statutes, which requires agencies to file annual regulatory plans outlining proposed rulemaking for the coming year and allows agencies to unilaterally extend any rulemaking plans/notices. Adding the 180-day rulemaking requirement back to section 120.54, Florida Statutes, will give the Committee greater oversight authority to ensure that agencies adopt rules mandated by the Legislature in a timely manner.

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

* * *

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within ~~the times provided in s. 120.74(4) and (5)~~180 days after the effective date of the act granting rulemaking authority.

Recommendation 2: Define the term "technical change."

Technical changes proposed or existing rules do not require the publication of a notice in the Florida Administrative Register. The term is not defined in the Department of State's rules, leading to inconsistent interpretation by agencies and interested parties. Including a definition of "technical change" and requiring their publication will clarify the rulemaking process. The proposed amendment also requires the Department of State to include the date of any technical changes in the rule's history note. The amendment would allow for a more complete record of any rule changes.

120.52 Definitions.—As used in this act:

(21) "Technical change" means a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of a rule.

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

* * *

5. If any of the information, other than substantive changes to the rule text, which is required to be included in the notice required by subparagraph 1., is omitted or is incorrect, the agency must publish a notice of correction in the Florida Administrative Register at least 7 days prior to the intended agency action. The publication of a notice of correction does not affect the timeframes for filing the rule for adoption as set forth in paragraph (e). Technical changes must be published as a notice of correction.

Recommendation 3: Provide the Committee with copies of lower cost regulatory alternatives.

Sections 120.54(3)(b) and 120.541(l)(a), Florida Statutes, provide for the submission of lower cost regulatory alternatives to agencies for consideration. The submission of a lower cost regulatory alternative results in a 21-day extension to the rulemaking procedure timeframe, and in some cases will require an agency to prepare a new or revised statement of estimated regulatory costs (SERC). Under the current procedures, there is no requirement that the Committee be provided with a copy of the regulatory alternative. The proposed amendment would require that a copy of any regulatory alternative be provided to the Committee by the agency, thereby enabling the Committee to keep an accurate record of the rulemaking timeframe.

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

* * *

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—

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2. Small businesses, small counties, and small cities.—

* * *

b.(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. Before filing the rule for adoption, the agency must provide a copy of any regulatory alternative offered to the agency to the committee within 7 days of receipt by the agency.

Recommendation 4: Add a "sunset provision."

In November 2019, Governor DeSantis issued a letter to all of the Governor's agency heads requiring that "All agencies must include a sunset provision in all proposed or amended rules unless otherwise directed by applicable law." This requirement resulted in some confusion as there is currently no provision in chapter 120, Florida Statutes, for the automatic sunset of a rule. Adding a definition of "sunset provision" would create a process whereby a rule could sunset upon ratification by the Legislature.

120.52 Definitions. – As used in this act:

(23) "Sunset provision" means a provision included in a rule whereby the entire rule, or a portion thereof, automatically expires at the end of a specified date set forth in the rule, subject to the ratification of the rule in the next legislative session following adoption as set forth in s. 120.54(3)(d)6., unless the rule is amended or repealed pursuant to the procedures specified in this chapter.

120.545 Committee review of agency rules. –

(1) . . . the committee shall examine each proposed rule, . . . and may examine any existing rule, for the purpose of determining whether:

* * *

(m) The rule contains a sunset provision requiring legislative ratification.

120.54 Rulemaking. –

(3) ADOPTION PROCEDURES. –

* * *

(d) Modification or withdrawal of proposed rules.

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6. If a rule contains a sunset provision, the rule containing the sunset provision shall be submitted to the President of the Senate and the Speaker of the House of Representative for ratification prior to the date specified in the sunset provision of the rule and no later than 30 days prior to the next regular legislative session following the effective date of the rule. The agency shall notify the Committee when the rule is submitted for ratification by the legislature.

If the sunset provision is ratified, the agency shall initiate rulemaking to repeal the rule pursuant to the procedures specified in this chapter prior to the expiration date of the rule. If the rule is not repealed as required herein, the Committee shall notify the Department of State to remove the rule from the Florida Administrative Code.

If the sunset provision is not ratified, or if no action is taken by the legislature during the legislative session at which the rule was submitted for ratification, the agency shall, within 30 days of the close of the legislative session, initiate rulemaking to amend or

repeal the sunset provision of the rule pursuant to the procedures specified in this chapter. The rule shall be adopted within 180 days after the close of the legislative session. If the rule is not amended or repealed as required herein, the Committee shall notify the Department of state to remove the rule from the Florida Administrative Code.

Recommendation 5: Renewal of emergency rules.

Section 120.54(4), Florida Statutes, allows an agency to renew an emergency rule where a challenge to the proposed rule addressing the subject of the emergency rule has been filed or where the proposed rule is awaiting ratification by the legislature. Currently, chapter 120, Florida Statutes, does not prescribe the procedure for the renewal of emergency rules. The proposed amendment would require an agency to publish notice of the renewal of an emergency rule in the Florida Administrative Register prior to the expiration of the emergency rule.

Recommendation 6: Publication of emergency rules.

Notice of the adoption of an emergency rule is published in the Florida Administrative Register along with the text of the rule. The emergency rule is not, however, published in the Florida Administrative Code. Therefore, unless an individual is aware of the publication of an emergency rule and the date of its publication, the rule is effectively hidden from the public. This practice is especially problematic for emergency rules that are the subject of litigation or are on appeal, have been renewed by an agency, or have an effective period of more than 90 days. The proposed amendment would require the text of emergency rules to be published in the Florida Administrative Code.

Recommendation 7: Changes to emergency rules.

Section 120.54(4), Florida Statutes, does not provide a procedure to amend an emergency rule, nor does it specifically prohibit amending an emergency rule. The proposed amendment recognizes that technical changes may be necessary and would allow for technical changes to be made within the first seven days after the adoption of the emergency rule and preserves the 90-day integrity of the emergency rule. Additionally, the proposed amendment clarifies that an agency may make changes to an emergency rule by superseding the previous emergency rule, while maintaining the original 90-day timeframe of the rule.

120.54 Rulemaking.—

(4) EMERGENCY RULES.—

* * *

(d) Notice of the renewal of an emergency rule must be published in the Florida Administrative Register before the expiration of the existing emergency rule. The notice of renewal must state the specific facts and reasons for such renewal.

(e) For emergency rules with an effective period greater than 90 days which are intended to replace existing rules, a note must be added to the history note of the existing rule

which specifically identifies the emergency rule that is intended to supersede the existing rule and includes the date that the emergency rule was filed with the Department of State.

(f) Emergency rules must be published in the Florida Administrative Code.

(g) An agency may supersede an emergency rule in effect through adoption of another emergency rule before the superseded rule expires. The reason for adopting the superseding rule must be stated in accordance with the procedures set forth in paragraph (a), and the new rule is in effect during the effective period of the superseded rule.

(h) An agency may make technical changes to an emergency rule within the first 7 days after the rule is adopted and must be published in the Florida Administrative Register as a Notice of Correction.

Recommendation 8: Statements of Estimated Regulatory Costs.

Section 120.541, Florida Statutes, provides for the submission of lower cost regulatory alternatives to agencies for consideration. The submission of a lower cost regulatory alternative results in a 21-day extension to the rulemaking procedure timeframe, and in some cases will require an agency to prepare a new or revised statement of estimated regulatory costs (SERC). Under the current procedures, there is no requirement that the Committee be provided with a copy of the regulatory alternative. The proposed amendment would require that a copy of any regulatory alternative be provided to the Committee by the agency, thereby enabling the Committee to keep an accurate record of the rulemaking timeframe.

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice required under s. 120.54(3)(a), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency must provide to the committee a copy of any proposal for a lower cost regulatory alternative before filing the rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for a lower cost regulatory alternative and the agency's response thereto is deemed to be made in good faith only if the person reasonably believes, and the proposal states the person's reasons for believing, that the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses that was not created by the previous proposed rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency must provide a copy to the committee and ~~shall~~ prepare a statement of estimated regulatory costs as provided in subsection (2), or must ~~shall~~ revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative in favor of the proposed rule and provide the committee with a copy of the revised statement of estimated regulatory cost or the reason for rejecting the alternative.