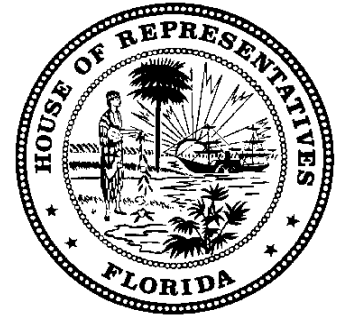


BEN ALBRITTON
President of the Senate

DANIEL PEREZ
Speaker of the House



Joint Administrative Procedures Committee

**Monday, January 13, 2025
3:30 PM - 5:30 PM
Reed Hall (102 HOB)**

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

COMMITTEE MEETING AGENDA

January 13, 2025

Reed Hall (102 HOB)

3:30 p.m. – 5:30 p.m.

CALL TO ORDER AND ROLL CALL

WELCOME AND INTRODUCTORY COMMENTS BY THE CHAIR

INTRODUCTION OF MEMBERS AND STAFF

TAB 1 Overview of the Role of the Committee

TAB 2 Approval of Committee Rules

NEW OBJECTIONS: Agency for Health Care Administration

TAB 3 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

TAB 4 Existing Rule Chapter 59A-11, Birth Center Standards and Licensure

59A-11.019 Reports

- TAB 5 Existing Rule Chapter 59A-26, Minimum Standards for Intermediate Care Facilities for the Developmentally Disabled**
- 59A-26.002 Licensure Procedure, Fees and Exemptions**
- TAB 6 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
- TAB 7 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
- TAB 8 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
- TAB 9 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
- TAB 10 Existing Rule Chapter 59G-1, General Medicaid**
- 59G-1.010 Definitions**
59G-1.058 Eligibility
59G-1.060 Provider Enrollment Policy
- TAB 11 Existing Rule Chapter 59G-4, Medicaid Services**
- 59G-4.150 Inpatient Hospital Services**

TAB 12 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)**

TAB 13 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**

REPORTS AND APPEARANCES

TAB 1

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE



Representative Tobin Rogers “Toby” Overdorf, Chair
Representative William “Bill” Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. “Tom” Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough

What is the Joint Administrative Procedures Committee (JAPC)?

- JAPC is a joint legislative committee created by Joint Rule 4.6 of the Florida Legislature and consists of no fewer than 5 and no more than 7 members of each chamber.
- JAPC is currently composed of 7 Senators and 7 Representatives, appointed by the Senate President and the Speaker of the House.
- JAPC functions as a review or oversight mechanism for the Legislature to ensure that agencies are acting within delegated legislative authority.

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JAPC Review

Joint Rule 4.6 charges the Committee with:

- Maintaining a continuous review of administrative rulemaking of state agencies, boards and commissions currently operating under Chapter 120, and advising agencies of its findings;
- Consulting regularly with legislative standing committees regarding the legislative authority of proposed rules;
- Maintaining a continuous review of statutes that authorize agencies to adopt rules; and
- Considering objections to proposed rules.

What is a “rule”?

- The term “rule” is defined as “each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.” § 120.52(16), F.S.
- Each rule number may consist of sections, subsections, paragraphs, and subparagraphs which may also fit the definition of a rule.
- Material incorporated by reference (i.e., forms, manuals, books) into a rule may also meet the definition of a “rule.”

Rulemaking Authority

Agencies are creatures of statute and only have the authority granted to them by statute.

Rulemaking Authority - Examples

- Section 320.011, provides that the Department of Highway Safety and Motor Vehicles “shall administer and enforce the provisions of this chapter and has the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement them.”
- Rulemaking may also be directed to specific divisions. For example, section 258.007(2), states that the Division of Recreation and Parks within the Department of Environmental Protection, “has the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties on it and authority to impose penalties as provided in s. 258.008 for the violation of any rule authorized by this section.”

Rulemaking Authority - Examples

- Rulemaking authority may be granted for specific sections or even subsections of statutes. For example: Section 288.095(3)(d), provides that the Department of Commerce “may adopt rules necessary to carry out the provisions of this subsection. . . .

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- Rulemaking authority may be mandatory (“the department shall adopt” or “the department shall adopt rules no later than”) or permissive (“the department may adopt rules” or “the department may adopt rules as deemed necessary”).

JAPC Review

The scope of JAPC Review is set forth in section 120.545, F.S., and focuses on whether:

- The agency failed to follow the provisions of chapter 120;
- The rule enlarges, modifies or contravenes the enabling statute;
- The rule is vague or fails to establish adequate standards for agency decisions;
- Whether the proposed rule is consistent with expressed legislative intent;
- Whether the rule is necessary to accomplish the apparent or expressed objectives of the statute;
- Whether the rule is reasonable;
- Whether the rule could be made less complex and more easily comprehensible to the general public;
- Whether the rule is within the rulemaking authority delegated by the Legislature;
- Whether the statement of estimated regulatory costs (SERC) complies with the requirements of section 120.541, F.S.; and
- Whether the rule implements a specific statute.

JAPC Review Procedure v. Policy

- JAPC’s review is limited to the “4 corners” of the statute.
- In reviewing agency rules, JAPC considers the criteria in section 120.545, F.S., and does not comment on policy matters that may be driving the rulemaking decisions.
- Whether a rule constitutes “good” policy is left to the discretion of the agency.

JAPC Review

Limitations on JAPC Authority

- JAPC does not have the authority to direct an agency to adopt a rule.
- Additionally, JAPC does not “approve” or “disapprove” rules.
- Chapter 120 requires JAPC to “certify” rules prior to adoption. “Certification” means that the agency has responded to all “material and timely written comments or written inquiries made on behalf of the Committee.”
- An agency may file a rule for adoption, even if JAPC has raised proposed objections, so long as the agency has responded to “all material and timely written comments or written inquiries made on behalf of the committee.” § 120.54 (3)(e)4., F.S.
- JAPC cannot unilaterally delay the adoption of a rule.

JAPC Review Objections

- Section 120.545, F.S., sets out the procedures in the event of a JAPC objection to a rule.
- If difficulties cannot be resolved at the staff level, staff prepares a recommendation for formal objection to be presented to the members of the committee.
- The agency is advised of the recommended objection and is invited to appear before the committee to defend the rule and present arguments that the rule is authorized.
- If the committee concludes that there is no authority for the rule, it votes an objection. The agency then has the option of either agreeing or refusing to amend or repeal the rule.

JAPC Review Objections

- If an agency refuses to amend or repeal its rule, a footnote to the rule referencing the JAPC objection is published in the Florida Administrative Code.
- The Committee may recommend to the President of the Senate and the Speaker of the House of Representatives that a bill to modify or suspend the adoption of a proposed rule, or amend or repeal an existing rule, be introduced in the event that the agency fails to initiate administrative action to meet the Committee's objection within 60 days of the objection, or then fails to proceed in good faith to complete the action.
- JAPC may request that the agency temporarily suspend the rule or the adoption of a proposed rule, pending consideration of proposed legislation during the next regular legislative session.

TAB 2

RULES OF THE
JOINT
ADMINISTRATIVE
PROCEDURES
COMMITTEE



Proposed January 2025

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RULE ONE

RELATIONS WITH THE LEGISLATURE AND THE PUBLIC

1.1 Legislative Inquiries

The Committee shall respond to legislative inquiries regarding agency action pursuant to the operation of the Administrative Procedure Act.

1.2 Ombudsman

Committee members and staff receive complaints, comments, and questions from the general public relating to agency action pursuant to the operation of the Administrative Procedure Act. The staff shall not represent any person, but if informed of matters within the statutory charge of the Committee, the staff shall investigate and take such action as is required by Chapter 120, Florida Statutes, and these rules.

1.3 Open Meetings

All meetings of the Committee shall be noticed and open to the public, subject only to the authority of the presiding chair to maintain order and decorum. Meetings of the Committee shall be conducted pursuant to Joint Rule 4.2.

1.4 Public Records

There shall be available for public inspection in Tallahassee the retained papers and records developed or received in the course of Committee business including:

(a) Rule notices, proposed rules, and supporting documents filed with the Committee pursuant to the Administrative Procedure Act;

(b) Copies of correspondence sent or received by the Committee or its staff relating to any proposed, existing, or emergency rule or rule filing;

(c) Minutes and electronic recordings of all Committee meetings, with the records of attendance of members and records of any votes taken; and

(d) Final objections voted and reports presented by the Committee and final staff reports and proposed objections submitted by Committee staff.

Provided, however, that this rule shall not affect legislative records specifically protected by law or by rule of the Senate or House of Representatives.

RULE TWO

OPERATION OF COMMITTEE RULES

2.1 Interpretation of Rules

The presiding chair shall interpret all Committee rules and decide all questions of order, pursuant to Joint Rule 4.2(3) and (4).

2.2 Waiver of Rules

Committee rules shall be waived or suspended by a majority vote of all members of the Committee of each house present and voting. The Committee may waive a rule as long as that rule is not required by Joint Rule, the Constitution, or a rule of the House or Senate.

2.3 Amendment of Rules

Proposed changes to these rules shall be transmitted to the Committee staff by any Committee member. The staff shall report to the Committee as soon as practicable thereafter. Consideration of such a report shall always be in order. All votes to amend the Committee rules shall be taken pursuant to Joint Rule 4.2(4).

2.4 Supplementary Rules of Order

In the absence of an applicable Joint Rule or Committee Rule, the Rules of the house of which the Chair is a member shall apply.

RULE THREE <i>STAFF REVIEW OF AGENCY RULES</i>

3.1 General Rule Review Procedures

The Committee staff shall review all proposed agency rules and accompanying information submitted to the Committee pursuant to the Administrative Procedure Act. An agency shall be requested to provide any required materials not filed.

In deference to the quasi-judicial nature of rule challenge proceedings conducted by the Division of Administrative Hearings under section 120.56(2), the Committee shall temporarily suspend its review of the issues identified in a rule challenge upon notification that a petition seeking an administrative determination has been filed. Review of the challenged issues will be resumed after the administrative law judge's order becomes final or when appellate review is complete.

3.2 Review Criteria

Rules, supporting documents, and material incorporated by reference shall be evaluated under the criteria set forth in section 120.545, F.S., the procedural requirements of Chapter 120, F.S., and the relevant provisions of the agency's enabling act. In determining whether or not to recommend that the Committee object to a rule, the staff shall give particular attention to prior objections of the Committee, orders of administrative law judges, Attorney General's Opinions, and decisions of the courts of this state. The staff shall recommend that the Committee object to any rule which constitutes an invalid exercise of delegated legislative authority, as defined in subsection 120.52(8), F.S.

3.3 Agency Notification

The Committee staff shall communicate to an agency questions and concerns regarding a rule before recommending that the Committee object to the rule. If such questions and concerns

are resolved through the rulemaking process or otherwise, the rule shall not be recommended for Committee objection.

3.4 Notification of Failure to Meet Statutory Requirements

The Committee staff shall notify the Department of State of the failure of an agency to timely file required materials or notices with the Committee or to otherwise comply with any of the time limitations or other requirements for rulemaking established in the Administrative Procedure Act.

3.5 Certification of Proposed Rules

After notification by an agency that it intends to file a proposed rule for adoption, the Committee staff shall certify that there were no material and timely written comments or written inquiries from the Committee, that the agency has responded in writing to all such correspondence, or that the agency has failed to respond to all such correspondence. The certification shall be filed with the Department of State.

3.6 Preparation of Proposed Objections

For each rule to which an objection is recommended, the Committee staff shall prepare a brief report detailing the proposed objections with particularity. Copies of the report shall be sent to the agency, to the legislative committees with jurisdiction over the subject area of the rule, and to the Speaker of the House of Representatives and the President of the Senate.

RULE FOUR <i>MEETINGS OF THE COMMITTEE</i>

4.1 Notice

The Committee staff shall inform an agency of the time and place of any Committee meeting at which agency action will be considered. Notice of the date, time, and place of each meeting and, if an objection to a rule is recommended, the name of the agency and number of the rule, shall be filed in accordance with applicable joint rules. If there is sufficient time following the call of the Chair, notice of Committee meetings shall be published in the Florida Administrative Register.

4.2 Basis of Objection

Committee objections shall be based solely on the criteria contained in section 120.545, Florida Statutes. Rules are evaluated under existing statutory authority, and the merits of the agency action are irrelevant to the question of statutory authority.

4.3 Objections to Rules

Motions on agency rule objections shall be stated in the affirmative as a motion to object to the rule, but the member making the motion may request a vote against it. A motion to defer consideration of the rule shall have precedence over a motion to object to a rule.

The Committee shall not object to a rule under challenge at the Division of Administrative Hearings or on appeal from an order issued in such proceedings. The finding of an administrative law judge that a petitioner has failed to demonstrate the invalidity of a rule shall not preclude subsequent objection by the Committee on the same grounds, but the staff shall give due consideration to the analysis and order of the administrative law judge before recommending Committee objection.

<p>RULE FIVE <i>COMMITTEE ACTION AFTER NO OBJECTION</i></p>

5.1 Notification of Action

The staff shall notify an agency when the Committee votes to defer consideration of one of the agency's rules. If the Committee voted to defer consideration of the rule to allow its amendment by the agency or to await the enactment of law authorizing the rule, the notice shall also advise the agency of this reason for the Committee action. The Committee shall concurrently provide notice of the Committee action to the Speaker of the House of Representatives, to the President of the Senate, and to the legislative standing committees that have jurisdiction over the subject areas addressed in the rule.

5.2 Reporting on Deferred Rules

When the Committee votes to defer consideration of a rule, the staff shall place the rule on the agenda of each succeeding meeting until the Chair directs otherwise or until the Committee votes on the proposed objection to the rule. If the Committee voted to defer consideration of the rule to allow its amendment by the agency or to await the enactment of law authorizing the rule, the staff shall report on the status of these actions.

5.3 Reconsideration of Rule

The Committee shall have authority to consider any rule for objection at any time notwithstanding the fact that it may have earlier considered objection to the same rule and the motion to object failed or it may have earlier voted to defer consideration of the rule. A vote to object to a rule may also be reconsidered at any time. A motion to reconsider an objection to a rule must be made by a member voting in favor of the objection. If the Committee votes to reconsider a rule for objection or an objection to a rule, the rule shall be placed on the agenda for consideration at the next Committee meeting and the agency shall be notified in accordance with these rules.

RULE SIX <i>COMMITTEE ACTION FOLLOWING OBJECTION</i>

6.1 Certification of Objection

Not later than 5 days after a Committee meeting the staff shall certify that the Committee has objected to any proposed, existing, or emergency rule to the agency whose rule has been examined, and include with that certification a statement detailing the Committee's objections with particularity. The Committee shall concurrently provide notice of the objection and a copy of the statement to the Speaker of the House of Representatives, to the President of the Senate, and to the legislative standing committees that have jurisdiction over the subject areas addressed in the rule.

6.2 Monitoring Agency Response

The Committee staff shall continue to monitor each rule to which objection has been voted and which has not been corrected, and shall periodically report the status of the rule to the members of the Committee.

6.3 Failure to Correct a Proposed Rule

If within 30 days of receipt of the objection certification, or within 45 days if the agency is headed by a collegial body, an agency notifies the Committee that it refuses to modify or withdraw a proposed rule to which objection has been voted, as provided in paragraph 120.545(3)(a), F.S., the Committee shall send notice to the Department of State. The notice shall indicate the date the Committee objected to the rule and shall have a copy of the objection report attached for publication in the Florida Administrative Register. The Committee shall request that the published objection report be referenced in the history note to the rule in the Florida Administrative Code.

If within 30 days of receipt of the objection certification, or within 45 days if the agency is headed by a collegial body, an agency fails either to modify or withdraw the proposed rule, or alternatively to notify the Committee that it refuses to modify or withdraw the rule, the Committee shall request the Department of State to publish a withdrawal notice and strike the rule from the department's files, as provided by subsection 120.545(4), F.S.

6.4 Failure to Correct an Existing Rule

If an agency either fails to respond to the objection or alternatively notifies the Committee that it refuses to amend or repeal an existing rule to which objection has been voted within 30 days of receipt of the objection certification, or within 45 days if the agency is headed by a collegial body, as provided in paragraph 120.545(3)(b), F.S., the Committee shall send notice to the Department of State. The notice shall indicate the date the Committee objected to the rule and shall have a copy of the objection report attached for publication in the Florida Administrative Register. The Committee shall request that the published objection report be referenced in the history note to the rule in the Florida Administrative Code.

6.5 Failure to Correct a Statement of Estimated Regulatory Costs

If an agency either fails to respond to the objection or alternatively notifies the Committee that it refuses to prepare a corrected Statement of Estimated Regulatory Costs within 30 days of receipt of the objection certification, or within 45 days if the agency is headed by a collegial body, as provided in paragraph 120.545(3)(c), F.S., the Committee shall send notice to the Department of State. The notice shall indicate the date the Committee objected to the rule and shall have a copy of the objection report attached for publication in the Florida Administrative Register. The Committee shall request that the published objection report be referenced in the history note to the rule in the Florida Administrative Code.

6.6 Change of Rule to Address Objection

The staff shall report the modification, withdrawal, amendment or repeal of a rule to address a Committee objection at the next public meeting of the Committee.

If the agency initially failed to respond or otherwise refused to correct the rule and the history note to the rule in the Florida Administrative Code references the Committee objection, as provided in subsection 120.545(7), F.S., the Committee shall also notify the Department of State that the rule has now been corrected. The notice shall indicate the date that the rule was repealed or amended and shall request that the history note reflect that the rule was corrected to address the Committee objection.

6.7 Change of Statute Subsequent to Objection

If a statutory change is made which eliminates the basis for an objection and the history note to the rule in the Florida Administrative Code references the Committee objection, the Committee shall notify the Department of State. The notice shall indicate the date that the statute was amended and shall request that the history note reflect that the objection is no longer valid.

TAB 3



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.

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

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

s. 400.497, F.S.

(b) Law Implemented

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

s. 400.497, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
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japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59A-8.005 and .007, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 25, 2024, regarding the above-referenced existing rules. Please be advised that if the rules are not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #193991 #193992



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
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Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

October 25, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59A-8.005 and .007, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules and have the following comments.

Each of the rules contains the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letters to the Agency prior to the adoption of the rules, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code. In order to amend or repeal a rule from the Florida Administrative Code, an agency must follow 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.

The Agency cites section 400.497, Florida Statutes, as rulemaking authority. Section 400.497 provides, in part, that "The agency shall adopt, publish, and enforce rules to implement part II of chapter 408 and this part including, as applicable, ss. 400.506 and 400.509. . . ." An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes, which provide: "Statutory language granting 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 400.497, Florida Statutes, does not authorize the Agency to adopt rules that enlarge, contravene, modify 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

Mr. Andrew T. Sheeran
October 25, 2024
Page 2

“[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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”).

Based on the foregoing, please initiate rulemaking to amend or repeal rules 59A-8.005 and .007 in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large, stylized initial 'K'.

Kenneth J. Plante
Coordinator

KJP:tf #193991 #193992

WILTON SIMPSON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 17, 2020

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Number 59A-8.007**

Dear Ms. Stewart:

I have reviewed the Agency's December 15, 2020, letter. Please be advised that an objection will be recommended at the next scheduled meeting of the Committee in January 2021.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Jowanna N. Oates".

Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw #182901



RON DESANTIS
GOVERNOR

SHEVAUN L. HARRIS
ACTING SECRETARY

Revised Letter

December 15, 2020

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RECEIVED
2020 DECEMBER 15
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

RE: Rule 59A-8.007, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated October 7, 2020 regarding the review of proposed Rule 59A-8.007, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-8.007(1) The Agency will ensure Rule 59A-8.003, F.A.C., is filed for adoption prior to Rule 59A-8.007, F.A.C.

59A-8.007(4) No changes to the language published in the notice of proposed rule for section (4) are anticipated.

The Agency intends to move forward with final adoption of Rule 59A-8.007 using the language as published in the notice of proposed rule (published in Vol. 46 / No. 191 of the Florida Administrative Register on September 30, 2020).

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

Cc: Brad Herter, Interim Agency Rules Coordinator
Ruby Grantham, Laboratory and In-Home Services Unit Manager





RON DESANTIS
GOVERNOR

SHEVAUN L. HARRIS
ACTING SECRETARY

October 27, 2020

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RE: Rule 59A-8.007, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated October 7, 2020 regarding the review of proposed Rule 59A-8.007, F.A.C. This letter is to advise that your comments regarding the language in section (4) and the incorporation of forms in section (1) will be addressed in a forthcoming notice of change, with additional hearings scheduled as needed to adopt the proposed rule simultaneously with, or after the adoption of, Rule 59A-8.003, F.A.C.

If any additional information is needed, please contact me by phone at (850) 412-3492 or by email at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kim Stewart, Division Rules Coordinator
Division of Health Quality Assurance

Cc: Brad Herter, Interim Agency Rules Coordinator
Ruby Grantham, Manager, Laboratory and In-Home Services Unit

RECEIVED
2020 OCTOBER 27
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Representative Erin Grall, Vice Chair
Senator Janet Cruz
Senator Ed Hooper
Senator Keith Perry
Senator Tom A. Wright
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Representative Tommy Gregory
Representative Cindy Polo
Representative Holly Raschein
Representative Jason Shoaf
Representative Clovis Watson, Jr.



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

October 7, 2020

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Number 59A-8.007**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on September 30, 2020. I have the following comments for your consideration and response:

59A-8.007(1) The subsection requires an applicant to complete "Health Care Licensing Application, Home Health Agency, AHCA Form 3110-1011, April 2019, incorporated by reference in Rule 59A-8.003(1)." However, rule 59A-8.003 has not yet been for filed for adoption. Please be sure that the rules are either adopted simultaneously or that rule 59A-8.003 is filed for adoption before rule 59A-8.007.

59A-8.007(4) The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, F.S.

Ms. Kimberly Stewart
October 7, 2020
Page 2

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw # 182901

TAB 4

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

s. 383.309, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
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Senator Thomas J. "Tom" Leek
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Senator Carlos Guillermo Smith
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Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
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COORDINATOR
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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



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www.japc.state.fl.us
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DANIEL PEREZ
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KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rule 59A-11.019, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 25, 2024, regarding the above-referenced existing rule. Please be advised that if the rule is not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #193993



Senator Blaise Ingoglia, Chair
 Representative Tobin Rogers "Toby" Overdorf, Vice Chair
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 COORDINATOR
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THE FLORIDA LEGISLATURE
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October 25, 2024

Mr. Andrew T. Sheeran
 General Counsel
 Agency for Health Care Administration
 Health Facility and Agency Licensing
 2727 Mahan Drive
 Tallahassee, Florida 32308

Re: Existing Rule Review: Rule 59A-11.019, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rule and have the following comments.

This rule contains the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letter to the Agency prior to the adoption of the rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code. In order to amend or repeal a rule from the Florida Administrative Code, an agency must follow 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.

The Agency cites section 383.309, Florida Statutes, as rulemaking authority. Section 383.309 provides that "[T]he 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, which provide: "Statutory language granting 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 enlarge, contravene, modify or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See* § 120.52(8)(c), Fla. Stat.; *see, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla.

Mr. Andrew T. Sheeran

October 25, 2024

Page 2

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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”).

Based on the foregoing, please initiate rulemaking to amend or repeal rule 59A-11.019, in accordance with section 120.54(3)(d)5., Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K" and a distinct "P".

Kenneth J. Plante
Coordinator

KPJ:tf #193993



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

January 13, 2022

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RE: Rule 59A-11.019, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated January 10, 2022, regarding the review of proposed rule 59A-11.019, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-11.019(3) No changes to the sunset language in this rule section are anticipated. The Agency intends to proceed with rulemaking using the sunset language as published in the notice of proposed rule.

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

cc: Shena Grantham, Chief Counsel and Agency Rules Coordinator
Jack Plagge, Manager, Hospital and Outpatient Services Unit

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
9:12 am, Jan 14 2022



WILTON SIMPSON
President



Senator Ben Albritton, Chair
Representative Rick Roth, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Wyman Duggan
Representative Yvonne Hayes Hinson
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon
Representative Anthony Sabatini

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

January 10, 2022

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Number 59A-11.019**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on December 23, 2021. I have the following comments for your consideration and response:

59A-11.019(3)

The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, F.S.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Jowanna N. Oates".

Jowanna N. Oates
Chief Attorney

cc: Ms. Shena Grantham, Rules Coordinator and Assistant General Counsel

JNO:yw # 185831

TAB 5

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

ss. 400.967, 408.819 F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rule 59A-26.002, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 30, 2024, regarding the above-referenced existing rule. Please be advised that if the rule is not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #194024



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

October 30, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rule 59A-26.002, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rule and have the following comments.

This rule contains the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letter to the Agency prior to the adoption of the rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code. In order to amend or repeal a rule from the Florida Administrative Code, an agency must follow 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.

The Agency cites sections 400.967 and 408.819, Florida Statutes, as rulemaking authority. Section 400.967 provides, *inter alia*, 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 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, which provide: "Statutory language granting 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 enlarge, contravene, modify 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'").

Based on the foregoing, please initiate rulemaking to amend or repeal rule 59A-26.002 in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf #194024



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

December 1, 2021

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RE: Rule 59A-26.002, Florida Administrative Code

Dear Ms. Oates:

Thank you for your letter dated November 24, 2021, regarding the review of proposed rule 59A-26.002, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-26.002

The Agency will remove the reference to section 400.965, F.S., via a technical change upon adoption of the rule.

59A-26.002(6)

No changes to sunset language in this rule are anticipated. The Agency intends to proceed with rulemaking using the sunset language as published in the notice of proposed rule.

If any additional information is needed, please contact me at (850) 412-3492 or by email at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

for
Kim Stewart, Division Rules Coordinator
Division of Health Quality Assurance

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
2:53 pm, Dec 01 2021

Cc: Shena Grantham, Chief Counsel and Agency Rules Coordinator
Bernard Hudson, Unit Manager





Senator Ben Albritton, Chair
Representative Rick Roth, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Wyman Duggan
Representative Yvonne Hayes Hinson
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon
Representative Anthony Sabatini



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

November 24, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Number 59A-26.002**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on November 16, 2021. I have the following comments for your consideration and response:

59A-26.002

Law Implemented: The reference to section 400.965, F.S., must be removed, as the statute has been repealed.

59A-26.002(6)

The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. See also Fla. Admin. Code R. 1-1.011. Please be advised that until such time, the rule remains in effect.

Ms. Kimberly Stewart
November 24, 2021
Page 2

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Ms. Shena Grantham, Rules Coordinator and Assistant General Counsel

JNO:tf #185418

TAB 6

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

s. 408.819 F.S.

(b) Law Implemented

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

ss. 395.0197, 408.806, 408.813,
408.819, 429.23, F.S.

(b) Law Implemented

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

ss. 408.811, 408.819, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
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Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



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www.japc.state.fl.us
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THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59A-35.040, .110 and .120, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 30, 2024, regarding the above-referenced existing rules. Please be advised that if the rules are not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #194025 #194027



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

October 30, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59A-35.040, .110 and .120, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules and have the following comments.

Each of these rules contain the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letters to the Agency prior to the adoption of each rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code. In order to amend or repeal a rule from the Florida Administrative Code, an agency must follow 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.

The Agency cites sections 395.0197, 408.806, 408.811, 408.813, 408.819, and 429.23, Florida Statutes, as rulemaking authority. Section 395.0197 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 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 408.811, entitled "Right of inspection; copies; inspection reports; plan for correction of deficiencies," provides: "(1)(d) The agency may adopt rules to waive any inspection including a relicensure inspection or grant an extended time period between relicensure inspection based upon" certain enumerated factors. Section 408.813 provides that the Agency may

Mr. Andrew T. Sheeran

October 30, 2024

Page 2

impose administrative fines. Section 408.819 provides: “The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions].” Finally, section 429.23 Provides: “(10) 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, which provide: “Statutory language granting 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 enlarge, contravene, modify 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”).

Based on the foregoing, please initiate rulemaking to amend or repeal rules 59A-35.040, .110, and .120 in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf #194025 #194027



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

July 27, 2021

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
11:43 am, Jul 27 2021

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RE: Rule 59A-35.040, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated July 26, 2021, regarding the review of proposed rule 59A-35.040, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-35.040(5), F.A.C.

No change to the sunset language in this rule section is anticipated. The Agency intends to proceed with rulemaking using the sunset language as published in the notice of proposed rule.

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

cc: Shena Grantham, Chief Counsel and Agency Rules Coordinator



WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Loranne Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
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Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

July 26, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Number 59A-35.040**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rules, which were advertised in the Florida Administrative Register on July 20, 2021. I have the following comments for your consideration and response:

59A-35.040(5)

The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please be advised that until such time, the rule remains in effect.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Jowanna N. Oates".

Jowanna N. Oates
Chief Attorney

cc: Ms. Shena Grantham, Rules Coordinator and Assistant General Counsel

JNO:yw #184501



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

July 27, 2021

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
11:42 am, Jul 27 2021

RE: Rule 59A-35.110, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated July 26, 2021, regarding the review of proposed rule 59A-35.110, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-35.110(3), F.A.C.

No change to the sunset language in this rule section is anticipated. The Agency intends to proceed with rulemaking using the sunset language as published in the notice of proposed rule.

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

cc: Shena Grantham, Chief Counsel and Agency Rules Coordinator



WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
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Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

July 26, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Number 59A-35.110**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on July 20, 2021. I have the following comments for your consideration and response:

59A-35.110(3)

The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please be advised that until such time, the rule remains in effect.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Jowanna N. Oates".

Jowanna N. Oates
Chief Attorney

cc: Ms. Shena Grantham, Rules Coordinator and Assistant General Counsel General Counsel

JNO:yw # 184502



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

March 3, 2021

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RECEIVED
2021 MAR -03 AM 11:29
JOWANNA N. OATES
CHIEF ATTORNEY
JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

RE: Rule 59A-35.120, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated February 18, 2021 regarding the review of proposed Rule 59A-35.120, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-35.120(5) No changes to the language published in the notice of proposed rule for section (5) are anticipated.

If no comments are received during the open comment period that would necessitate a notice of change the Agency intends to move forward with final adoption of Rule 59A-35.120 using the language as published in the notice of proposed rule (published in Vol. 47 / No. 31 of the Florida Administrative Register on February 16, 2021).

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

cc: Brad Herter, Interim Agency Rules Coordinator



WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
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Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

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Speaker



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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

February 18, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Number 59A-35.120**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on February 16, 2021. I have the following comments for your consideration and response:

59A-35.120(5)

The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, F.S.

Ms. Kimberly Stewart
February 18, 2021
Page 2

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw #183790

TAB 7

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

ss. 429.41, 429.929, F.S.

(b) Law Implemented

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

ss. 429.07, 429.41, F.S.

(b) Law Implemented

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

s. 429.41, F.S.

(b) Law Implemented

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

ss. 429.256, 429.41, F.S.

(b) Law Implemented

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

s. 429.41, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

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www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59A-36.002, .006, .007, .008, .022 and .028, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 25, 2024, regarding the above-referenced existing rules. Please be advised that if the rules are not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #193994 #193998

KATHLEEN PASSIDOMO
President



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.

PAUL RENNER
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
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Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

October 25, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules and have the following comments.

Each of the rules contains the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letter to the Agency prior to the adoption of each rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code. In order to amend or repeal a rule from the Florida Administrative Code, an agency must follow 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.

The Agency cites sections 429.07, 429.256, 429.41, 429.52 and 429.929, Florida Statutes, as rulemaking authority. 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 429.256 states that "The agency may by rule establish facility procedures and interpret terms as necessary to implement this section." Section 429.41 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 429.52(12) states: "The agency shall adopt rules to establish core trainer registration and removal requirements[.]" while section 429.929 states: "The agency shall adopt rules to implement this part[.]"

Mr. Andrew T. Sheeran
October 25, 2024
Page 2

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes, which provide: "Statutory language granting 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 enlarge, contravene, modify 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'").

Based on the foregoing, please initiate rulemaking to amend or repeal rules 59A-36.002, .006, .007, .008, .022 and .028 in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf \$193994 #193998



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

June 29, 2021

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
3:41 pm, Jun 29 2021

RE: Rules 59A-36.002, .006, .021 and .022, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated June 16, 2021, regarding the review of proposed rules 59A-36.002, .006, .021 and .022, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-36.002(41), .006(6), .021(10), and .022(4), F.A.C.

No changes to the sunset language in these rule sections are anticipated. The Agency intends to proceed with rulemaking using the sunset language as published in the notice of proposed rule.

59A-36.006(2)(a), F.A.C.

The Agency will address the comment by removing the word “calendar” via a forthcoming notice of change.

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

cc: Brad Herter, Interim Agency Rules Coordinator
Keisha Woods, Manager, Assisted Living Unit



WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

June 16, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Numbers 59A-36.002, .006, .021, and .022**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rules, which were advertised in the Florida Administrative Register on May 26, 2021. I have the following comments for your consideration and response:

- 59A-36.002(41)** The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please remember until such time, the rule remains in effect.
- 59A-36.006(2)(a)** Please explain how the reference to "60 calendar days" comports with section 429.26(5), F.S. The reference to calendar days is not found in the aforementioned provision. *See* §120.52(8)(c), Fla. Stat. (2020).
- 59A-36.006(6)** Please see the comments for rule 59A-36.002(41).

Ms. Kimberly Stewart
June 16, 2021
Page 2

59A-36.021(10) Please see the comments for rule 59A-36.002(41).

59A-36.022(4) Please see the comments for rule 59A-36.002(41).

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

JNO:yw #184276 thru 184279



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

April 27, 2021

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RECEIVED
2021 APRIL 27
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

RE: Rules 59A-36.007, .008 and .028, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated April 26, 2021 regarding the review of proposed Rules 59A-36.007, .008 and .028, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-36.007(6)(d)9.-10.

Technical changes will be made prior to or at final adoption to correct the alignment of these sections.

Rules 59A-36.007(13), 59A-36.008(9), and 59A-36.028(9), F.A.C.

No changes to the sunset language published in the notice of proposed rule for the rule sections noted above are anticipated. If no comments are received during the open comment period that would necessitate a notice of change the Agency intends to move forward with final adoption of Rules 59A-36.007, 59A-36.008, and 59A-36.028, F.A.C.

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

cc: Brad Herter, Interim Agency Rules Coordinator
Keisha Woods, Manager, Assisted Living Unit



WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

April 26, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Numbers 59A-36.007, .008, and .028**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rules, which were advertised in the Florida Administrative Register on April 7, 2021. I have the following comments for your consideration and response:

- 59A-36.007(6)(d)9.-10.** Please check the formatting for this portion of the rule; the list is not aligned.
- 59A-36.007(13)** The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, F.S.
- 59A-36.008(9)** Please see the comments for rule 59A-36.007(13).

Ms. Kimberly Stewart

April 26, 2021

Page 2

59A-36.028(9)

Please see the comments for rule 59A-36.007(13).

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw # #184097 thru 184099

TAB 8

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

ss. 429.67, 429.73, 429.75, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59A-37.002 and .007, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 30, 2024, regarding the above-referenced existing rules. Please be advised that if the rules are not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #193028 #194029



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

November 23, 2021

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RE: Rules 59A-37.002 and 59A-37.007, Florida Administrative Code

Dear Ms. Oates:

Thank you for your letter dated November 19, 2021, regarding the review of proposed rules 59A-37.002 and 37.007, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59A-37.002(1)(a)2.

The Agency will correct the rule reference for AHCA Form 3180-1021 via a technical change upon adoption of the rule.

59A-37.002(1)(a)5.

The Agency will correct the rule reference for AHCA Form 3180-1017 via a technical change upon adoption of the rule.

59A-37.002(4)

No changes to sunset language in these rules are anticipated. The Agency intends to proceed with rulemaking using the sunset language as published in the notice of proposed rule.

59A-37.007(5)

No changes to sunset language in these rules are anticipated. The Agency intends to proceed with rulemaking using the sunset language as published in the notice of proposed rule.

If any additional information is needed, please contact me at (850) 412-3492 or by email at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kim Stewart, Division Rules Coordinator
Division of Health Quality Assurance

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
4:04 pm, Nov 23 2021

Cc: Shena Grantham, Chief Counsel and Agency Rules Coordinator
Keisha Woods, Unit Manager

2727 Mahan Drive • Mail Stop #28A
Tallahassee, FL 32308
AHCA.MyFlorida.com



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Representative Angela "Angie" Nixon
Representative Anthony Sabatini



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
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www.japc.state.fl.us
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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
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November 19, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Health Facility and Agency Licensing
Proposed Rule Numbers 59A-37.002 and .007**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rules, which were advertised in the Florida Administrative Register on November 16, 2021. I have the following comments for your consideration and response:

- 59A-37.002(1)(a)2.** AHCA Form 3180-1021 - Please correct the rule reference in the footer of the form; the form is incorporated by reference in rule 59A-37.002(1)(a)2.
- 59A-37.002(1)(a)5.** AHCA Form 3180-1017 - Please correct the rule reference in the footer of the form; the form is incorporated by reference in rule 59A-37.002(1)(a)5.
- 59A-37.002(4)** The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please be advised that until such time, the rule remains in effect.

Ms. Kimberly Stewart
November 19, 2021
Page 2

59A-37.007(5)

Please see the comments for rule 59A-37.002(4).

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Ms. Shena Grantham, Rules Coordinator and Assistant General Counsel

JNO:df #185419_185420



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

October 30, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Health Facility and Agency Licensing
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59A-37.002 and .007, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules and have the following comments.

Each of these rules contain the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letters to the Agency prior to the adoption of each rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code. In order to amend or repeal a rule from the Florida Administrative Code, an agency must follow 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.

The Agency cites sections 429.67, 429.69, 429.71, 429.73, and 429.75, Florida Statutes, as rulemaking authority. 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."

Mr. Andrew T. Sheeran

October 30, 2024

Page 2

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, which provide: “Statutory language granting 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 enlarge, contravene, modify 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”).

Based on the foregoing, please initiate rulemaking to amend or repeal rules 59A-37.002 and .007 in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf #194028 #194029

TAB 9

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

ss. 408.034(8), 408.15(8), F.S.

(b) Law Implemented

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

ss. 408.034(8), 408.15(8), F.S.

(b) Law Implemented

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

ss. 408.034(8), 408.15(8), F.S.

(b) Law Implemented

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

ss. 408.040(2)(a), 408.034(8), 408.15(8), F.S.

(b) Law Implemented

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

ss. 408.15(8), 408.034(3), (8), F. S.

(b) Law Implemented

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

BEN ALBRITTON
President



DANIEL PEREZ
Speaker



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



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Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
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DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew Sheeran
General Counsel
Agency for Health Care Administration
Certificate of Need
2727 Mahan Drive, Bldg. 3, Mail Stop #3
Tallahassee, Florida 32308-5407

**Re: Existing Rule Review: Rules 59C-1.004, .005, .010, .012, .021, .022,
and .030, F.A.C.**

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 28, 2024, regarding the above-referenced existing rules. Please be advised that if the rules are not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #194014 #194020



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.



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THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

October 28, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59C-1.004, .005, .010, .012, .021, .022, and .030, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules and have the following comments.

Each of these rules contain the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letters to the Agency prior to the adoption of each rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code. In order to amend or repeal a rule from the Florida Administrative Code, an agency must follow 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.

The Agency cites sections 408.033(2), 408.034(3) and (8), 408.040(2)(a), 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. . . ." 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 408.040(2)(a) contains no rulemaking authority, 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."

Mr. Andrew Sheeran
October 28, 2024
Page 2

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes, which provide: "Statutory language granting 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 enlarge, contravene, modify 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'").

Based on the foregoing, please initiate rulemaking to amend or repeal rules 59C-1.004, .005, .010, .012, .021, .022, and .030, F.A.C., in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf #194014 #194020



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

May 20, 2021

RECEIVED
2021 MAY 20
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RE: Rules 59C-1.004, .005, .0085, .010, .012, .021, and .030, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated May 6, 2021 regarding the review of proposed rules 59C-1.004, .005, .0085, .010, .012, .021, and .030, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

59C-1.004(3), 59C-1.005(7), 59C-1.010(8), 59C-1.012(3), 59C-1.021(5), and 59C-1.030(7), F.A.C.
No changes to the sunset language published in the notice of proposed rule are anticipated. If no comments are received during the open comment period that would necessitate a notice of change the Agency intends to move forward with final adoption of these rules.

59C-1.021, F.A.C. (Legal Citations)
Reference to 408.034(5), F.S., will be removed from law implemented.

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

cc: Brad Herter, Interim Agency Rules Coordinator
James McLemore, Program Manager, Certificate of Need Unit





Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevvin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

May 6, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Certificate of Need
Proposed Rule Numbers 59C-1.004, .005, .0085, .010, .012, .021, and .030**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rules, which were advertised in the Florida Administrative Register on April 21, 2021. I have the following comments for your consideration and response:

- | | |
|---------------------|--|
| 59C-1.004(3) | The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. <i>See also</i> Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. |
| 59C-1.005(7) | Please see the comments for rule 59C-1.004(3). |
| 59C-1.010(8) | Please see the comments for rule 59C-1.004(3). |
| 59C-1.012(3) | Please see the comments for rule 59C-1.004(3). |

Ms. Kimberly Stewart
May 6, 2021
Page 2

59C-1.021 Legal Citations: Please explain how the rule implements section 408.034(5), F.S. In the event the statute is properly cited, section 408.034(5), F.S., should be added as rulemaking authority.

59C-1.021(5) Please see the comments for rule 59C-1.004(3).

59C-1.030(7) Please see the comments for rule 59C-1.004(3).

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw # 184148 thru 184154



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

April 29, 2021

Jowanna N. Oates, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RECEIVED
2021 APRIL 29
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

RE: Rules 59C-1.022, F.A.C.

Dear Ms. Oates:

Thank you for your letter dated April 28, 2021 regarding the review of proposed Rule 59C-1.022, F.A.C. Your comments have been taken into consideration and the information below is provided in response to those comments.

Notice:


Although moving forward with publishing a notice of proposed rule after opening rule development was delayed, we feel that with the minimal changes being proposed and the rule hearing being set for May 20, 2021 (published the notice of proposed rule on April 21, 2021) the public will have sufficient time to review the changes and provide comments. Comments will be accepted and taken into consideration during the open comment period which we anticipate will end one week after the rule hearing.

59C-1.022(8), F.A.C.:

No changes to the sunset language published in the notice of proposed rule are anticipated. If no comments are received during the open comment period that would necessitate a notice of change the Agency intends to move forward with final adoption of Rule 59C-1.022, F.A.C.

If you have questions or need additional information, please contact me by phone at 850-412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,



Kimberly A. Stewart, Division Rules Coordinator
Division of Health Quality Assurance

cc: Brad Herter, Interim Agency Rules Coordinator
James McLemore, Program Manager, Certificate of Need Unit



WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

April 28, 2021

Ms. Kimberly Stewart
Division Rules Coordinator
Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, MS #28A
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Certificate of Need
Proposed Rule Number 59C-1.022**

Dear Ms. Stewart:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on April 21, 2021. I have the following comments for your consideration and response:

Notice

The notice of proposed rule development was published in 2018. Please explain the delay between the publication of the notice of rule development workshop and the publication of the notice of proposed rule. Does the Agency have any concern that interested persons may have thought that the rule would not be revised given the delay?

59C-1.022(8)

The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

Ms. Kimberly Stewart
April 28, 2021
Page 2

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw # 184156

TAB 10

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

ss. 409.919, 409.961, F.S.

(b) Law Implemented

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

s. 409.919, F.S.

(b) Law Implemented

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

ss. 409.919, 409.961, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



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www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Medicaid
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59G-1.010, .058 and .060, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 25, 2024, regarding the above-referenced existing rules. Please be advised that if the rules are not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #193999 #194001



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.



KENNETH J. PLANTE
COORDINATOR
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111 West Madison Street
Tallahassee, Florida 32399-1400
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Fax (850) 922-6934
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japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

October 25, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Medicaid
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59G-1.010, .058 and .060, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules and have the following comments.

Each of the rules contains the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letters to the Agency prior to the adoption of each rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code or to otherwise become unenforceable. 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.

Sections 409.919 and 409.961, Florida Statutes, cited by the Agency as rulemaking authority, 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.

Mr. Andrew T. Sheeran

October 25, 2024

Page 2

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes, which provide: "Statutory language granting 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'").

Based on the foregoing, please initiate rulemaking to amend or repeal rules 59G-1.010, .058, and .060, in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf #193999 #194001



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

March 25, 2024

Sharon Jones, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
680 Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
2:40 pm, Mar 25 2024

RE: Agency for Health Care Administration, Bureau of Medicaid Policy
Proposed Rule Number 59G-1.010

Dear Ms. Jones:

I am submitting the following response to your comments in the letter dated March 21, 2024, regarding the above-referenced rule:

59G-1.010

The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. See also Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, F.S.

Agency Response:

No changes to the language published in this paragraph of the proposed rule are anticipated. The Agency intends to move forward with promulgating rule 59G-1.010.

Thank you for your review of rule 59G-1.010, Definitions. Please contact me at (850) 412-4628, or by email at Susan.Hamrick@ahca.myflorida.com if you have any further questions or concerns.

Sincerely,

Susan Hamrick, Program Administrator
Bureau of Medicaid Policy

SCH/djb



KATHLEEN PASSIDOMO
President



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.

PAUL RENNER
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

March 21, 2024

Ms. Susan Hamrick
Program Administrator
Bureau of Medicaid Policy
Agency for Health Care Administration
2727 Mahan Dr., MS #20
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-1.010**

Dear Ms. Hamrick:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on March 12, 2024. I have the following comments.

59G-1.010 The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. See also Fla. Admin. Code 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, F.S.

Please let me know if you have any questions. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sharon Jones".

Sharon Jones
Chief Attorney

SJ:yw #192588



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

June 29, 2021

Jowanna N. Oates
Chief Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
1:45 pm, Jun 29 2021

RE: Agency for Health Care Administration
Rule No: 59G-1.058 Rule Title: Eligibility

Dear Ms. Oates:

I am submitting the following responses to your comments in the letter dated June 28, 2021, regarding the above-referenced rule.

59G-1.058(8)

The rule has been amended to provide: "This rule is in effect 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. See also Fla. Admin. Code R. 1-1.011. Please note, until such time, the rule remains in effect.

Agency Response:

No changes to the language published in the notice of proposed rule are anticipated. The Agency intends to move forward with final adoption of rule 59G-1.058, Eligibility, using language as published in the proposed rule published in Vol. 47 / No. 109 of the Florida Administrative Register on June 7, 2021.

Thank you for your review of rule 59G-1.058 Eligibility. Please feel free to contact me at 412-4691 or by e-mail at Cole.Giering@ahca.myflorida.com if you have any further questions or concerns.

Sincerely,

Cole Giering

Cole Giering, Program Administrator
Bureau of Medicaid Policy

CG/me



WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Loranne Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

June 28, 2021

Ms. Ann Dalton
AHC Administrator
Bureau of Medicaid Policy
Agency for Health Care Administration
2727 Mahan Drive MS #20
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-1.058**

Dear Ms. Dalton:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on June 7, 2021. I have the following comments for your consideration and response:

59G-1.058(8) The rule has been amended to provide: "This rule is in effect 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please note, until such time the rule remains in effect.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Jowanna N. Oates".

Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw #184319



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

October 5, 2021

Jowanna N. Oates
Chief Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
10:18 am, Oct 5 2021

RE: Agency for Health Care Administration
Rule No: 59G-1.060 Rule Title: Provider Enrollment Policy

Dear Ms. Oates:

I am submitting the following responses to your comments in the letter dated September 28, 2021, regarding the above-referenced rule.

59G-1.060(2)

Florida Medicaid Provider Enrollment Policy

Page 5 The proposed rule does not incorporate by reference AHCA Form 5000-1061. Please publish a notice of change to address this error.

Agency Response:

The Agency will publish a Notice of Change to incorporate by reference AHCA Form 5000-1061.

59G-1.060(4)

The rule has been amended to provide: "This rule is in effect 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please be aware that until such time, the rule remains effect.

Agency Response:

No changes to the language published in this paragraph of the proposed rule are anticipated. The Agency intends to move forward with promulgating rule 59G-1.060, Provider Enrollment Policy.



Ms. Jowanna Oates

October 5, 2021

Page 2

Thank you for your review of rule 59G-1.060 Provider Enrollment Policy. Please feel free to contact me at 412-4691 or by e-mail at Cole.Giering@ahca.myflorida.com if you have any further questions or concerns.

Sincerely,

Cole Giering

Cole Giering, Program Administrator
Bureau of Medicaid Policy

CG/mh

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
10:18 am, Oct 5 2021



Senator Ben Albritton, Chair
Representative Rick Roth, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Wyman Duggan
Representative Yvonne Hayes Hinson
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon
Representative Anthony Sabatini



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

September 28, 2021

Ms. Ann Dalton
AHC Administrator
Bureau of Medicaid Policy
Agency for Health Care Administration
2727 Mahan Drive MS #20
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-1.060**

Dear Ms. Dalton:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on September 15, 2021. I have the following comments for your consideration and response:

59G-1.060(2)

Florida Medicaid Provider Enrollment Policy

Page 5 The proposed rule does not incorporate by reference AHCA Form 5000-1061. Please publish a notice of change to address this error.

59G-1.060(4)

The rule has been amended to provide: "This rule is effective for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please be aware that until such time, the rule remains in effect.

Ms. Ann Dalton
September 28, 2021
Page 2

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Ms. Shena Grantham, Rules Coordinator and Assistant General Counsel

JNO:yw # 184914

TAB 11

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

ss. 409.919, 409.961, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Medicaid
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rule 59G-4.150, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 25, 2024, regarding the above-referenced existing rule. Please be advised that if the rule is not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #194006



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.



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COORDINATOR
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THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

October 25, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Medicaid
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rule 59G-4.150, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rule and have the following comments.

This rule contains the provision: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a 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.

The Agency cites sections 409.919 and 409.961, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, "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 provides that "The agency shall adopt any rules 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, which provide: "Statutory language granting 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 sections 409.919 nor 409.961, Florida Statutes, authorize the Agency to adopt rules that enlarge,

Mr. Andrew T. Sheeran

October 25, 2024

Page 2

contravene, modify 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”).

Based on the foregoing, please initiate rulemaking to amend or repeal rule 59G-4.150, in accordance with section 120.54(3)(d)5., Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf #194006

TAB 12

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

s. 409.919, F.S.

(b) Law Implemented

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

ss. 409.919, 409.9082, F.S.

(b) Law Implemented

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

ss. 409.919, 409.9083, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



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COORDINATOR
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111 West Madison Street
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www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Medicaid
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59G-6.005, .010 and .045, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 25, 2024, regarding the above-referenced existing rules. Please be advised that if the rules are not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #194007 #194009



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

October 25, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Medicaid
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59G-6.005, .010 and .045, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules and have the following comments.

Each of the rules contains the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letters to the Agency prior to the adoption of each rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code. In order to amend or repeal a rule from the Florida Administrative Code, an agency must follow 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.

The Agency cites sections 409.919, 409.9082 and 409.9083, Florida Statutes, as rulemaking authority. Section 409.919, 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." Sections 409.9082 and 409.9083 both state 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, which provide: "Statutory language granting 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

Mr. Andrew T. Sheeran
October 25, 2024
Page 2

cited by the Agency authorize the Agency to adopt rules that enlarge, contravene, modify 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”).

Based on the foregoing, please initiate rulemaking to amend or repeal rules 59G-6.005, .010 and .045, in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf #194007 #194009



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

June 17, 2021

Jowanna N. Oates
Chief Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
9:39 am, Jun 17 2021

RE: Agency for Health Care Administration
Rule No: 59G-6.005 Rule Title: Reimbursement Methodology for Services Provided by
Medical School Faculty

Dear Ms. Oates:

I am submitting the following responses to your comments in the letter dated June 16, 2021, regarding the above-referenced rule.

59G-6.005(4)

The rule has been amended to provide: "This rule is in effect 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. See also Fla. Admin. Code R. 1-1.011. Please note, until such time, the rule remains in effect.

Agency Response:

No changes to the language published in the notice of proposed rule are anticipated. The Agency intends to move forward with final adoption of rule 59G-6.005, Reimbursement Methodology for Services Provided by Medical School Faculty, using lanagauge as published in the proposed rule published in Vol. 47 / No. 99 of the Florida Adminsitrative Register on May 21, 2021.

Thank you for your review of rule 59G-6.005 Reimbursement Methodology for Services Provided by Medical School Faculty. Please feel free to contact me at 412-4284 or by e-mail at Kimberly.Quinn@ahca.myflorida.com if you have any further questions or concerns.

Sincerely,

Kimberly Quinn

Kimberly Quinn, AHC Administrator
Bureau of Medicaid Policy

KQ/me

2727 Mahan Drive • Mail Stop #20
Tallahassee, FL 32308
AHCA.MyFlorida.com



Facebook.com/AHCAFlorida
Twitter.com/AHCA_FL



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

July 1, 2021

Jowanna N. Oates
Chief Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
4:09 pm, Jul 01 2021

RE: Agency for Health Care Administration
Rule No: 59G-6.010 Rule Title: Payment Methodology for Nursing Home Services

Dear Ms. Oates:

I am submitting the following responses to your comments in the letter dated July 1, 2021, regarding the above-referenced rule.

59G-6.010(7)

The rule has been amended to provide: "This rule is in effect 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. See also Fla. Admin. Code R. 1-1.011. Please note until such time, the rule remains in effect.

Agency Response:

No changes to the language published in the notice of proposed rule are anticipated. The Agency intends to move forward with final adoption of rule 59G-6.010, Payment Methodology for Nursing Home Services, using language as published in the proposed rule published in Vol. 47 / No. 117 of the Florida Administrative Register on June 17, 2021.

Thank you for your review of rule 59G-6.010 Payment Methodology for Nursing Home Services. Please feel free to contact me at 412-4691 or by e-mail at Cole.Giering@ahca.myflorida.com if you have any further questions or concerns.

Sincerely,

Susan Hamrick for Cole Giering

Cole Giering, Program Administrator
Bureau of Medicaid Policy

CG/me



WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

July 1, 2021

Ms. Ann Dalton
AHC Administrator
Bureau of Medicaid Policy
Agency for Health Care Administration
2727 Mahan Drive MS #20
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-6.010**

Dear Ms. Dalton:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on June 17, 2021. I have the following comments for your consideration and response:

59G-6.010(7) The rule has been amended to provide: "This rule is in effect 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please note until such time, the rule remains in effect.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Jowanna N. Oates".

Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw #184383



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

July 29, 2021

Jowanna N. Oates
Chief Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
9:18 am, Jul 29 2021

RE: Agency for Health Care Administration
Rule No: 59G-6.045 Rule Title: Payment Methodology for Services in Facilities Not Publicly Owned and Not Publicly Operated

Dear Ms. Oates:

I am submitting the following responses to your comments in the letter dated July 21, 2021, regarding the above-referenced rule.

59G-6.045 Rulemaking Authority: Section 409.9083(7), F.S., should be added as rulemaking authority.

Agency Response: **The Agency has included Section 409.9083(7), F.S., as rulemaking authority for the proposed rule.**

59G-6.045(2)(i) This paragraph is awkwardly phrased; it does not provide a clear definition of the term "Patient Responsibility." See § 120.545(1)(i), Fla. Stat. (2020).

Agency Response: **The Agency will publish a Notice of Change to update this paragraph and provide a clear definition of "Patient Responsibility."**

59G-6.045(2)(l) Please see the comments for rule 59G-6.045(2)(i).

Agency Response: **The Agency will publish a Notice of Change to update this paragraph and provide a clear definition of "Rate setting due date."**

59G-6.045(2)(m) Please see the comments for rule 59G-6.045(2)(i); it is unclear that the information provided in the subparagraphs are part of the definition of the term "Reimbursement Class."

Agency Response: **The Agency will publish a Notice of Change to clarify that the subparagraphs are included in the definition for "Reimbursement Class."**



59G-6.045(2)(o) Prior to using the abbreviation "ROE," the term should be written out in full and the abbreviation placed in parenthesis next to the term.

Agency Response: **The Agency will publish a Notice of Change to update the rule text to include the term "ROE," written out in full and the abbreviation placed in parenthesis next to the term.**

59G-6.045(5)(a) Please forward a copy of the form to the Committee for my review. See § 120.54(3)(a)4., Fla. Stat. (2020).

Agency Response: **The Agency has forwarded the Committee the Facility Quality Assessment Form, referenced in the rule text for your review.**

59G-6.045(9) The rule has been amended to provide: "This rule is in effect for 5 years after its effective date." There is no provision in chapter 120, F.S., 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, F.S. See *also* Fla. Admin. Code R. 1-1.011. Please be aware that until such time, the rule remains in effect.

Agency Response: **No changes to the language published in this paragraph are anticipated. The Agency intends to move forward with publishing a Notice of Change for rule 59G-6.045, Payment Methodology for Services in Facilities Not Publicly Owned and Not Publicly Operated, using the language published in the proposed rule Vol. 47 / No. 129 of the Florida Administrative Register on July 6, 2021.**

Thank you for your review of rule 59G-6.045 Payment Methodology for Services in Facilities Not Publicly Owned and Not Publicly Operated. Please feel free to contact me at 412-4691 or by e-mail at Cole.Giering@ahca.myflorida.com if you have any further questions or concerns.

Sincerely,

Cole Giering

Cole Giering, Program Administrator
Bureau of Medicaid Policy

CG/me

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
9:18 am, Jul 29 2021

WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

July 21, 2021

Ms. Ann Dalton
AHC Administrator
Bureau of Medicaid Policy
Agency for Health Care Administration
2727 Mahan Drive MS #20
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-6.045**

Dear Ms. Dalton:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on July 6, 2021. I have the following comments for your consideration and response:

- 59G-6.045** Rulemaking Authority: Section 409.9083(7), F.S., should be added as rulemaking authority.
- 59G-6.045(2)(j)** This paragraph is awkwardly phrased; it does not provide a clear definition of the term "Patient Responsibility." See § 120.545(1)(i), Fla. Stat. (2020).
- 59G-6.045(2)(l)** Please see the comments for rule 59G-6.045(2)(j).
- 59G-6.045(2)(m)** Please see the comments for rule 59G-6.045(2)(j); it is unclear that the information provided in the subparagraphs are part of the definition of the term "Reimbursement Class."
- 59G-6.045(2)(o)** Prior to using the abbreviation "ROE," the term should be written out in full and the abbreviation placed in parenthesis next to the term.

Ms. Ann Dalton
July 21, 2021
Page 2

59G-6.045(5)(a)

Please forward a copy of the form to the Committee for my review. *See* § 120.54(3)(a)4., Fla. Stat. (2020).

59G-6.045(9)

The rule has been amended to provide: "This rule is in effect for 5 years after its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please be aware that until such time, the rule remains in effect.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Ms. Shena Grantham, Rules Coordinator and Assistant General Counsel

JNO:df #184428

TAB 13

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

ss. 393.501, 409.919, F.S.

(b) Law Implemented

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

ss. 393.0661, 409.919, F.S.

(b) Law Implemented

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

BEN ALBRITTON
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 8, 2025

Mr. Stefan Grow
Chief of Staff
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, FL 32308

Re: Proposed Objections to Agency for Health Care Administration Rules

Dear Mr. Grow:

Pursuant to our conversation, the following language would be acceptable to resolve all of the proposed rule objections identified in my previous correspondence: "This rule shall be reviewed, and if necessary, repealed or modified pursuant to section 120.54 within five years from the effective date." If the Agency agrees to make the changes, please advise as soon as possible, and initiate the amendment process within the next two weeks.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Representative Tobin Overdorf, Chair
Senator Erin Grall, Vice Chair

KJP:tf



THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
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Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

December 20, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Rules 59A-8.005 and .007, F.A.C.
Rule 59A-11.019, F.A.C.
Rule 59A-26.002, F.A.C.
Rules 59A-35.040, .110 and .120, F.A.C.
Rules 59A-36.002, .006, .007, .008, .022, and .028, F.A.C.
Rules 59A-37.002 and .007, F.A.C.
Rules 59C-1.004, .005, .010, .012, .021, .022, .030, .058, and .060, F.A.C.
Rule 59G-4.150, F.A.C.
Rules 59G-6.005, .010 and .045, F.A.C.
Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

Please be advised that, pursuant to section 120.545(2), Florida Statutes, recommended objections to the above-referenced rules will be presented to the Committee for consideration at the January 13, 2025, Committee meeting. A representative of the Agency is requested to be in attendance.

Sincerely,

Kenneth J. Plante
Coordinator

cc: Stefan Grow, Chief of Staff

KJP:tf

BEN ALBRITTON
President



Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 5, 2024

Mr. Andrew T. Sheeran
General Counsel
Agency for Health Care Administration
Medicaid
2727 Mahan Drive
Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

To date, the Committee has not received a response to its letter of October 25, 2024, regarding the above-referenced existing rules. Please be advised that if the rules are not amended to address the concerns raised in the letter, I anticipate recommending an objection to the Committee at the next available meeting.

Please let me know if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

KJP:tf #194010 #194011



Senator Blaise Ingoglia, Chair
 Representative Tobin Rogers "Toby" Overdorf, Vice Chair
 Senator Colleen Burton
 Senator Erin Grall
 Senator Rosalind Osgood
 Senator Darryl Ervin Rouson
 Representative Shane G. Abbott
 Representative Jervonte "Tae" Edmonds
 Representative Alina Garcia
 Representative Yvonne Hayes Hinson
 Representative Joel Rudman, M.D.



KENNETH J. PLANTE
 COORDINATOR
 Room 680, Pepper Building
 111 West Madison Street
 Tallahassee, Florida 32399-1400
 Telephone (850) 488-9110
 Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
 PROCEDURES COMMITTEE**

October 25, 2024

Mr. Andrew T. Sheeran
 General Counsel
 Agency for Health Care Administration
 Medicaid
 2727 Mahan Drive
 Tallahassee, Florida 32308

Re: Existing Rule Review: Rules 59G-13.070 and .081, F.A.C.

Dear Mr. Sheeran:

In accordance with the Committee's responsibilities pursuant to section 120.545(1), Florida Statutes, and Joint Rule 4.6 of the Florida Legislature, I have reviewed the above-referenced existing rules and have the following comments.

Each of the rules contains the provision: "This rule is in effect for five years from its effective date." As noted in the Committee's letters to the Agency prior to the adoption of each rule, there is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including such a provision does not cause a rule to be removed from the Florida Administrative Code or to otherwise become unenforceable. 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.

Sections 409.919, 409.961, and 393.0661, Florida Statutes, are cited by the Agency as rulemaking authority. Sections 409.919 and 409.961, 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. Section 393.0661 does not exist.

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

Mr. Andrew T. Sheeran

October 25, 2024

Page 2

interpreting the specific powers and duties conferred by the enabling statute.” Neither sections 409.919 nor 409.961 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.*, 893 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedures Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”).

Based on the foregoing, please initiate rulemaking to amend or repeal rules 59G-13.070 and .081, in accordance with section 120.54, Florida Statutes.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large initial "K".

Kenneth J. Plante
Coordinator

KJP:tf #194010 #194011



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

December 4, 2023

Sharon Jones, Chief Attorney
Joint Administrative Procedures Committee
111 W. Madison Street
680 Pepper Building, Room 680
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
3:27 pm, Dec 04 2023

RE: Agency for Health Care Administration, Bureau of Medicaid Policy
Proposed Rule Number 59G-13.081

Dear Ms. Jones:

I am submitting the following response to your comments in the letter dated November 17, 2023, regarding the above-referenced rule:

59G-13.081

The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in Chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with Chapter 120, F.S.

Agency Response:

No changes to the language published in this paragraph of the proposed rule are anticipated. The Agency intends to move forward with promulgating rule 59G-13.081.

Thank you for your review of rule 59G-13.081, Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table. Please contact me at (850) 412-4628, or by email at Susan.Hamrick@ahca.myflorida.com if you have any further questions or concerns.

Sincerely,

Susan Hamrick, Program Administrator
Bureau of Medicaid Policy

SCH/sch



KATHLEEN PASSIDOMO
President



Senator Blaise Ingoglia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
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Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.

PAUL RENNER
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

November 17, 2023

Mr. Jeremy Roberts
Rules Coordinator
Agency for Health Care Administration
Medicaid
2727 Monroe Drive
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-13.081**

Dear Mr. Roberts:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on October 10, 2023. I have the following comments.

59G-13.081 The rule has been amended to provide: "This rule is in effect for five years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, Florida Statutes.

Please let me know if you have any questions. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sharon Jones".

Sharon Jones
Chief Attorney

SJ:tf #191996



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

April 11, 2023

Jowanna N. Oates
Chief Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
12:47 pm, Apr 11 2023

RE: Agency for Health Care Administration
Rule No: 59G-13.081 Rule Title: Developmental Disabilities Individual Budgeting Waiver
Services Provider Rate Table

Dear Ms. Oates:

I am submitting the following responses to your comments in the letter dated March 13, 2023, regarding the above-referenced rule.

59G-13.081(3)

The rule has been amended to provide: "This rule is in effect for 5 years after its effective date." There is no provision in chapter 120, F.S., 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, F.S. See *also* Fla. Admin. Code R. 1-1.011. Please be aware that until such time, the rule remains in effect.

Agency Response:

No changes to the language published in the notice of proposed rule are anticipated. The Agency intends to move forward with final adoption of rule 59G-13.081, Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table, using language as published in the proposed rule published in Vol. 49 / No. 20 of the Florida Administrative Register on January 31, 2023.

Thank you for your review of rule 59G-13.081 Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table. Please feel free to contact me at 412-4691 or by e-mail at Cole.Giering@ahca.myflorida.com if you have any further questions or concerns.



Ms. Jowanna Oates

4/11/2023

Page 2

Sincerely,

A handwritten signature in blue ink, appearing to read "Cole Giering".

Cole Giering, Program Administrator
Bureau of Medicaid Policy

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
12:47 pm, Apr 11 2023

KATHLEEN PASSIDOMO
President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Blaise Ingoglia, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Kimberly Berfield
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson

PAUL RENNER
Speaker



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COORDINATOR
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Tallahassee, Florida 32399-1400
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japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

March 13, 2023

Mr. Cole Giering
Program Administrator
Bureau of Medicaid Policy
Agency for Health Care Administration
2727 Mahan Drive MS #20
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-13.081**

Dear Mr. Giering:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on January 31, 2023. I have the following comments for your consideration and response:

59G-13.081(3) The rule has been amended to provide: "This rule is in effect for 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Please be aware that until such time, the rule remains in effect.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your written response.

Sincerely,

A handwritten signature in blue ink that reads "Jowanna N. Oates".

Jowanna N. Oates
Chief Attorney

cc: Ms. Shena Grantham, Chief MAL, MPI, Agency Rules Counsel

JNO:yw # 189461



RON DESANTIS
GOVERNOR

SIMONE MARSTILLER
SECRETARY

June 8, 2021

Jowanna N. Oates
Chief Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
12:22 pm, Jun 08 2021

RE: Agency for Health Care Administration
Rule No: 59G-13.081

Rule Title: Developmental Disabilities Individual
Budgeting Waiver Services Provider Rate Table

Dear Ms. Oates:

I am submitting the following responses to your comments in the letter dated June 7, 2021, regarding the above-referenced rule.

59G-13.081(2)

Please clarify the effective date of the incorporated document. The document provided to the Committee has an effective date of July 1, 2021, on pages 1-8 and an effective date of July 1, 2019, on pages 9-14.

Agency Response:

The Agency has clarified the intended effective date of the incorporated material.

59G-13.081(3)

The rule has been amended to provide: "This rule is in effect 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. See also Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

Agency Response:

No changes to the language published in the notice of proposed rule are anticipated. The Agency intends to move forward with final adoption of rule 59G-13.081, Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table, using language as published in the proposed rule published in Vol. 47 / No. 97 of the Florida Administrative Register on May 19, 2021.



Ms. Jowanna Oates

June 8 2021

Page 2

Thank you for your review of rule 59G-13.081, Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table. Please feel free to contact me at 412-4284 or by e-mail at Kimberly.Quinn@ahca.myflorida.com if you have any further questions or concerns.

Sincerely,

Kimberly Quinn

Kimberly Quinn, AHC Administrator
Bureau of Medicaid Policy

KQ/me

RECEIVED
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE
12:21 pm, Jun 08 2021

WILTON SIMPSON
President



Representative Rick Roth, Chair
Senator Ben Albritton, Vice Chair
Senator Lorraine Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Demi Busatta Cabrera
Representative Anna V. Eskamani
Representative Sam Garrison
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon

CHRIS SPROWLS
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

June 7, 2021

Ms. Ann Dalton
AHC Administrator
Bureau of Medicaid Policy
Agency for Health Care Administration
2727 Mahan Drive MS #20
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-13.081**

Dear Ms. Dalton:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on May 19, 2021. I have the following comments for your consideration and response:

59G-13.081(2) Please clarify the effective date of the incorporated document. The document provided to the Committee has an effective date of July 1, 2021, on pages 1-8 and an effective date of July 1, 2019, on pages 9-14.

59G-13.081(3) The rule has been amended to provide: "This rule is in effect 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

Ms. Ann Dalton
June 7, 2021
Page 2

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw # 184259



October 13, 2020

R E C E I V E D
2020 OCTOBER 13
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

Jowanna N. Oates
Chief Attorney
Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400

RE: Agency for Health Care Administration
Rule No: 59G-13.081 Rule Title: Developmental Disabilities Individual Budgeting Waiver
Services Provider Rate Table

Dear Ms. Oates:

I am submitting the following responses to your comments in the letter dated October 5, 2020, regarding the above-referenced rule.

59G-13.081(2) Please clarify the effective date of the incorporated document. The document provided to the Committee has an effective date of July 1, 2020, on pages 1-8 and an effective date of July 1, 2019, on pages 9-14.

Agency Response: **The Agency has clarified the effective date throughout the incorporated document.**

59G-13.081(3) The rule has been amended to provide: "This rule expires 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. See also Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, F.S.

Agency Response: **The Agency will publish a notice of change to revise the rule language, as follows: "The Agency will review this rule five years from the effective date and repromulgate, amend or repeal the rule as appropriate, in accordance with section 120.54, F.S. and Chapter 1-1, Fla. Admin."**



Ms. Jowanna Oates
October 13, 2020
Page 2

Thank you for your review of Rule 59G-13.081, Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table. Please feel free to contact by e-mail At Ann.Dalton@ahca.myflorida.com, if you have any further questions or concerns.

Sincerely,

Ann Dalton

Ann Dalton, AHC Administrator
Bureau of Medicaid Policy

AD/me

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KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
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Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
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October 5, 2020

Ms. Ann Dalton
AHC Administrator
Bureau of Medicaid Policy
Agency for Health Care Administration
2727 Mahan Drive MS #20
Tallahassee, Florida 32308

**RE: Agency for Health Care Administration, Medicaid
Proposed Rule Number 59G-13.081**

Dear Ms. Dalton:

I have reviewed the above-referenced proposed rule, which was advertised in the Florida Administrative Register on September 9, 2020. I have the following comments for your consideration and response:

59G-13.081(2) Please clarify the effective date of the incorporated document. The document provided to the Committee has an effective date of July 1, 2020, on pages 1-8 and an effective date of July 1, 2019, on pages 9-14.

59G-13.081(3) The rule has been amended to provide: "This rule expires 5 years from its effective date." There is no provision in chapter 120, F.S., 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, F.S. *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect. Please revise this portion of the rule so that it complies with chapter 120, F.S.

Ms. Ann Dalton
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Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,



Jowanna N. Oates
Chief Attorney

cc: Mr. Brad Herter, Rules Coordinator and Assistant General Counsel

JNO:yw #182717

REPORTS AND APPEARANCES