Division: Medicaid
Board: Rule Number: 59G-13.070
Rule Description: The purpose of Rule 59G-13.070, F.A.C. is to incorporate by reference the Development Disabilities Individual Budgeting (iBudget) Waiver Handbook. The incorporated policy will specify program requirements including services definitions and provider requirements.
Contact Person: Rebecca Best

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

A. Is the rule likely to, directly or indirectly, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to reduce personal income? □ Yes □ No
2. Is the rule likely to reduce total non-farm employment? □ Yes □ No
3. Is the rule likely to reduce private housing starts? □ Yes □ No
4. Is the rule likely to reduce visitors to Florida? □ Yes □ No
5. Is the rule likely to reduce wages or salaries? □ Yes □ No
6. Is the rule likely to reduce property income? □ Yes □ No

Explanation:
If any of these questions are answered “Yes,” presume that there is a likely and adverse impact in excess of $1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, directly or indirectly, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business? □ Yes □ No
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2. Is the rule likely to add regulation that is not present in other states or markets?
   ☐ Yes   ☑ No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?
   ☐ Yes   ☑ No

4. Is the rule likely to cause Florida businesses to reduce workforces?
   ☐ Yes   ☑ No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?
   ☐ Yes   ☑ No

6. Is the rule likely to make illegal any product or service that is currently legal?
   ☐ Yes   ☑ No

Explanation:

If any of these questions are answered “Yes,” presume that there is a likely and adverse impact in excess of $1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, directly or indirectly, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of $1 million in the aggregate within 5 years after the implementation of this rule?

1. Current one-time costs $0
2. New one-time costs $0
3. Subtract 1 from 2 $0
4. Current recurring costs $0
5. New recurring costs $0
6. Subtract 4 from 5 $0
7. Number of times costs will recur in 5 years $0
8. Multiply 6 times 7 $0
9. Add 3 to 8 $0

If 9. is greater than $1 million, there is likely an increase of regulatory costs in excess of $1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule. (Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).

   There are approximately 4107 active providers contracted with the Agency for Persons with Disabilities (APD) to provide iBudget Waiver services.

2. A general description of the types of individuals likely to be affected by the rule.

   Providers who choose to participate in Medicaid and are contracted with APD to provide iBudget Waiver services.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

   ☒ None. The department intends to implement the proposed rule within its current workload, with existing staff.

   ☐ Minimal. (Provide a brief explanation).

   ☐ Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

2. Cost to any other state and local government entities of implementing the proposed rule:

   ☒ None. This proposed rule will only affect the department.

   ☐ Minimal. (Provide a brief explanation).

   ☐ Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

3. Cost to the department of enforcing the proposed rule:
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None. The department intends to enforce the proposed rule within its current workload with existing staff.

Minimal. (Provide a brief explanation).

Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

4. Cost to any other state and local government of enforcing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. (Provide a brief explanation).

Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. (Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).

None. This proposed rule will only affect the department.

Minimal. (Provide a brief explanation).

Other. (Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. (Includes:

- Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?]?
- The type of small businesses that would be subject to the rule;
- The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?]?
- The likely per-firm regulatory cost increase, if any).

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration
8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as “any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.” And, a small city is defined in Section 120.52(18), F.S., as “any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.”

The estimated number of small businesses that would be subject to the rule:

- 1-99
- 1,000-4,999
- 500-999
- More than 5,000
- Unknown, please explain:

Analysis of the impact on small business:
The rule is needed to ensure the Medicaid Program and those involved with it stay in compliance with updated State and Federal Regulations. Only small businesses who choose to participate in the Medicaid program and are contracted with APD to provide iBudget Waiver services will be subject to the rule. The rule will not have any impact on small business due to the voluntary nature of participation in the Medicaid program as well as the lack of any increases in reporting or staffing requirements nor any increases in legal or accounting fees.

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them. See Attachment AH. Any additional information that the agency determines may be useful.

None.

Additional. Pursuant to Section 409.907(2), Florida Statutes, enrollment in the Florida Medicaid program is voluntary. See Diaz v. State, Agency for Health Care Admin., 65 So. 3d 78, 83 (Fla. Dist. Ct. App. 2011). When providers enroll in Florida Medicaid, they sign a Medicaid Provider Agreement; pursuant to the Medicaid Provider Agreement, an enrolled Medicaid provider “agrees to
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comply with local, state, and federal laws, as well as rules, regulations, and statements of policy applicable to the Medicaid program, including the Medicaid Provider Handbooks issued by AHCA.” In addition, pursuant to Section 120.541, Florida Statutes, “If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s.120.54(3)(b).” Rule 59G-13.070 establishes programmatic requirements for providers who wish to furnish iBudget Waiver services under the Florida Medicaid program. Due to the voluntary nature of the relationship between the Agency and providers for whom this rule shall affect, the Agency has determined that Rule 59G-13.070 will not increase regulatory costs in excess of $200,000 nor will it have any adverse impact on small business as these business already face the same reporting requirements and other transactional costs under the current requirements.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

☐ No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

☒ See attachment “A”.

☐ Adopted in entirety.

☐ Adopted / rejected in part. (Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).

☒ Rejected in entirety. (Provide a brief statement of the reasons rejecting this alternative).

☐ See attachment “B”.

☐ Adopted in entirety.

☐ Adopted / rejected in part. (Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).

☐ Rejected in entirety. (Provide a brief statement of the reasons rejecting this alternative).

☐ See attachment “C”.

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☐ Adopted in entirety.

☐ Adopted / rejected in part. (Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).

☐ Rejected in entirety. (Provide a brief statement of the reasons rejecting this alternative).

☐ See attachment “D”.

☐ Adopted in entirety.

☐ Adopted / rejected in part. (Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).

☐ Rejected in entirety. (Provide a brief statement of the reasons rejecting this alternative).

☐ See attachment “E”.

☐ Adopted in entirety.

☐ Adopted / rejected in part. (Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).

☐ Rejected in entirety. (Provide a brief statement of the reasons rejecting this alternative).

#  #  #
Attachment A

The estimated regulatory cost submitted by Therap Services is not a reliable estimate of the costs of implementing the proposed rule. The four proposed lower cost regulatory alternatives are similarly unreasonable and suffer the same defects as the cost estimate. Participation in the Medicaid program is voluntary and as such no entities are forced to comply with the proposed rule, only entities who choose to participate in Medicaid and are contracted with the Agency for Persons with Disabilities to provide iBudget Waiver services. These entities are already required to comply with section 393.066(2), Florida Statutes (2016), which requires contracted entities to meet minimum hardware and software technical requirements as well as any training or professional development requirements established for delivery of home and community-based services. These entities must also comply with the current Rule 59G-13.070, Florida Administrative Code, implementing the Developmental Disabilities Individual Budgeting Waiver Services handbook. This handbook imposes the same requirements for technical infrastructure as well as reporting requirements as the proposed rule. Accordingly, the proposed rule does not impose any additional costs on any entities.