



April 16, 2021

Comment regarding Proposed Rule 59G-4.193, F.A.C. Shared at April 15, 2021 Public Hearing

Submitted electronically to MedicaidRuleComments@ahca.myflorida.com

Dear Friends,

The Florida Health Justice Project (FHJP) is a Florida based 501c(3). Our mission is to help ensure increased access to healthcare and improve health equity for Florida's most vulnerable populations, including seniors and persons with disabilities who are in need of home and community based services (HCBS). We appreciate the opportunity to submit comments regarding the proposed rule and the opportunity to participate in both the March 25, 2021 Public Hearing and the April 15, 2021 Public Hearing.

We greatly appreciate that changes were made to the first draft of the rule in response to due process concerns expressed by FHJP and others. However, we also note our agreement with concerns expressed about the hearing process. (see attached comment letter submitted by Nancy Wright on behalf of the Elder Law Section of the Florida Bar.)

Confirmation that requested change was provided:

Again, we want to underscore our appreciation of your changes to the draft which addressed the core concern stated in our March 26, 2021 comment letter, i.e. the prior draft failed to ensure that all elements of the written notice specified in section (3)(d) of the rule be provided to anyone who completes the screening process—including both those with a high score and a low score.

In sum, pursuant to the draft provided at the hearing yesterday, everyone who completes a screening, regardless of score, will receive written notice of the following:

- 1) The individual's priority rank
- 2) Contact information for the ADRCs
- 3) Instructions for requesting an administrative fair hearing
- 4) Instructions for requesting a copy of the conflated screening tool, which includes the priority score
- 5) Instructions for requesting a rescreening.

Request for additional information to be included in final draft:

- 1) The rule should also include a provision stating when the notice will be sent, e.g. the notice should be sent within a reasonable time period following the screening, not to exceed 30 days.

- 2) The rule should also include a provision stating that individuals who have been screened prior to ultimate promulgation of this new draft rule and who had a “low score” be sent the new notice. Per yesterday’s draft, this also includes written notification of ineligibility for waitlist placement, and information on how to find community resources available to assist them. (See section (3)(d)6.,)
- 3) We also recommend that the notice contain a statement that an individual has the right to seek the assistance of an attorney with a link to Florida’s legal aid directory.

Thank you so much for your work on this important rule and for consideration of these comments.

Sincerely,



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To: MedicaidRuleComments@ahca.myflorida.com
cc: AHCA General Counsel James D. Varnado, james.varnado@ahca.myflorida.com
From: Nancy E. Wright, Esq.
Date: April 16, 2021

RE: Comments on Proposed Rule 59G-4.193 and inadequate public hearing

On behalf of the Elder Law Section of the Florida Bar, I have now attended two "public hearings" held by AHCA on their proposed rule 59G-4.193. For both hearings, all callers were muted throughout and could only comment or ask questions via the chat feature of the webinar format. This means that phone participants could not comment at all and for everyone else, in order to provide anything in depth, the commenter must be capable of typing very, very quickly while, at the same time trying to listen to responses. At least one participant who was a caregiver complained that she was not able to express herself in that format but no other option was allowed except to submit written comments later. If the law only required written comments, there would be no need for a public hearing.

In the first hearing, the moderator did not read or respond to all questions or comments and ended the hearing 15 minutes early with questions still pending.

In the second hearing, only questions were read - not comments - and some were missed. It is unclear how many were missed because in both hearings, the participants could not see who was participating and could not see any questions or comments made by anyone else. This eliminated the ability of the "public" to be heard.

Also at the second hearing, a new draft rule was presented as a handout at the webinar. Anyone participating by phone would not have been able to see it. The draft had not yet been published. Participants were given a brief summary of changes then asked to submit questions or comments. At that point, participants were trying to read the new draft, compare it to the old draft, rapidly type questions into the chat feature, and listen to AHCA or DOEA responses. Many of the responses to how the new draft rule was intended to work were met with the statement that we should read the rule. We were also told that the comment period would end the next day (today, April 16th) at 5:00pm. This would seem to mean that only participants of the hearing would have the ability to comment since the rule hasn't been made public.

This is not how public hearings have been handled by AHCA (and other agencies I'm familiar with) in the past. Even during the pandemic, participants have been able to sign up if they wanted to comment (with an understood time limit) and there was time at the end for others to voice their questions or concerns.

I hope that this particular experience was a bump in the road and not an expression of how AHCA intends to handle these hearings in the future. I would appreciate discussing this further.