

## Notice of Proposed Rule

### DEPARTMENT OF MANAGEMENT SERVICES

#### Agency for Workforce Innovation

RULE NO: RULE TITLE

60BB-8.204: Uniform Attendance Policy for Funding the VPK Program

PURPOSE AND EFFECT: The purpose of the proposed rule development is to revise the Agency's Rule 60BB-8.204, Florida Administrative Code, in response to recent statutory changes.

SUMMARY: The proposed rule addresses the new legislation by ensuring that no more than 20 percent of the payment made for each student is for absences and requires providers to submit class schedules to ensure accuracy of payment.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1002.79(2) FS.

LAW IMPLEMENTED: 1002.71(6)(d) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: August 18, 2009, 1:30 p.m. – 3:30 p.m. or until business is concluded

PLACE: 107 East Madison Street, Tallahassee, Florida 32399-4128, or (888)808-6959 Conference Code 921-3193

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kristin R. Harden, Assistant General Counsel, 107 East Madison Street, MSC #110, Tallahassee, Florida 32399-4128, (850)245-7150

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 60BB-8.204 follows. See Florida Administrative Code for the present text.)

60BB-8.204 Uniform Attendance Policy for Funding the VPK Program.

(1) Attendance and Absences.

(a) For payment purposes, a private provider or school district shall report that a student attended all of the instructional hours offered for a day if the student attends any portion of the day whether the private provider or school district is determined to be in compliance or out of compliance with all VPK statutes and rules for the day.

(b) A private provider or school district may not receive payment for a student prior to the student's first day of attendance or after the student's last day of attendance.

(2) Monthly Payment and Final Reconciliation. Each early learning coalition shall pay private providers or school districts on a monthly basis for each VPK classroom in accordance with this rule unless a private provider or school district chooses to accept advance payments under Rule 60BB-8.205, F.A.C. Early learning coalitions shall make monthly payments by the last day of the month following the month for which the provider is receiving payment. Each early learning coalition shall calculate and reconcile monthly classroom payments using the Agency's statewide information system.

(a) Monthly payments shall be equal to the sum of the following calculation for each student who has attended the VPK class: the county's allocation per full-time equivalent student (calculated in accordance with Section 1002.71(3)(b), F.S.) divided by the number of hours for the VPK program type multiplied by the lesser of:

1. The sum of the hours within the month which each student attends the VPK program divided by .8; or

2. The hours the student is enrolled in the class for the month.

(b) The total program payment shall be equal to the sum of the following calculation for each student who has attended the VPK class except that the school district's payment shall be rounded in accordance with Section 1002.71(3)(d), F.S.: the county's allocation per full-time equivalent student divided by the number of hours for the VPK program type multiplied by the lesser of:

1. The sum of all the hours the student attends the program with the provider divided by .8.

2. The hours the student is enrolled with the provider for the program type.

(c) If the sum of the monthly payments made to the private provider or school district under paragraph (2)(a) is:

1. Less than the total program payment to the private provider or school district, the early learning coalition shall make a final reconciliation payment to the provider equal to the total program payment minus the sum of the monthly payments.

2. Greater than the total program payment to the private provider or school district, the difference shall be deemed an overpayment.

(d) If a private provider or school district disputes the calculation of the total program payment based on inaccurate attendance or absence reporting or calculation, it must submit a request for an adjustment of a prior no later than the last day of the month following the calendar month in which it receives payment.

(3) Establishing VPK Class Schedules. To ensure that private providers or school districts receive accurate payment for a student's attendance and absences when permissible under this rule, a private provider or school district shall submit a VPK class schedule for each VPK class to its early learning coalition in writing no later than the time the provider submits its class application. Private providers and school districts are not eligible to receive payment for hours of services unless the services are rendered during hours indicated on the VPK class schedule. A VPK class schedule shall:

(a) Be comprised of 540 hours for the school-year VPK program and 300 hours for the summer VPK program.

(b) Indicate the dates and times which instructional hours will be offered.

(c) For the school-year program:

1. Not begin instruction more than 14 days before Labor Day or, if the uniform date fixed by a district school board under Section 1001.42(4)(f), F.S., for the opening of public schools for regular school programs occurs in a county more than 14 days before Labor Day, a school-year program in the county may not begin instruction before the uniform date.

2. Complete instruction by June 30.

(d) For the summer program, not begin instruction before May 1 and complete instruction before the uniform date fixed by the district school board under Section 1001.42(4)(f), F.S., for the opening of public schools for regular school programs in the county.

(4) Modifying VPK Class Schedules.

(a) A private provider or school district may modify its schedule up to two times for any reason other than a temporary closure caused by emergency circumstances as described in subsection (5). A private provider or school district may modify its schedule as frequently as necessary to restore instructional days lost as a result of a temporary closure caused by emergency circumstances.

(b) To modify a VPK class schedule, a private provider or school district shall submit notice in writing to the coalition.

1. If the modification of the class schedule results from a closure other than a temporary closure caused by emergency circumstances, as described in subsection (5), a private provider or school district shall submit:

a. An initial notification of the closure before the coalition's close of business on the first day of the closure. Initial notification shall indicate the provider's name and address, the date(s) of the closure, the VPK class(es) affected by the closure, and, if available, an estimate of the date upon which the affected VPK class(es) will resume instruction.

b. A notification of schedule modification no later than two business days following resumption of VPK instruction. Notification of schedule modification and resumption of instruction shall indicate the provider's name and address, the class(es) resuming instruction, the date(s) which each VPK class did not offer instruction as previously scheduled, and a revised class schedule which indicates the date(s) and times added to the schedule as revised to restore the hours lost as a result of the closure.

2. If the modification of the class schedule results from a temporary closure caused by emergency circumstances, the private provider or school district shall submit a notification of schedule modification as described in sub-subparagraph (4)(b)1.b.

(c) If a private provider or school district fails to modify a VPK class schedule as required in this rule or fails to comply with the deadlines established for submission of notifications, the private provider or school district shall be ineligible to receive payment for those closures and shall forfeit the opportunity to revise its class schedule to restore the lost instructional hours for those closures.

(5) Closures.

(a) Temporary Closures Caused by Emergency Circumstances.

1. A student is considered to have attended all VPK program hours offered during a temporary closure caused by emergency circumstances for a combined total of five (5) instructional days for each VPK class if the private provider or school district submits notification in writing to the coalition the dates which the provider was closed.

a. A closure is temporary if the provider resumes instruction following the closure.

b. A closure is caused by emergency circumstances when a state of emergency is declared by federal, state or local officials for the area in which the provider is located.

2. A temporary closure caused by emergency circumstances is not payable for any student who does not attend a VPK instructional day following the closure.

3. A private provider or school district shall revise its class schedule to restore VPK instructional days which are lost due to temporary closures caused by emergency circumstances in excess of a total of five (5) instructional days for a VPK class.

4. A private provider or school district may revise its class schedule to restore the instructional days lost as a result of a temporary closure caused by emergency circumstances instead of accepting payment for a temporary closure.

(b) Temporary Closures Caused by Other Circumstances. A temporary closure is not payable unless it is caused by emergency circumstances. A private provider or school district shall revise its VPK class schedule and receive payment for days it restores in accordance with subsection (4) following a closure.

(6) Overpayment.

(a) If the coalition determines that a private provider or school district received payment in an amount greater than the amount earned by the provider, resulting in a negative reconciliation payment calculation, the coalition shall make reasonable efforts to collect the overpayment from the provider. Reasonable efforts may include but are not limited to informing the provider of the full amount owed, making written requests for repayment, offering to negotiate a repayment schedule, and offsetting the overpayment against any future payments for early learning programs.

(b) If the coalition is unable to arrange for collection of the overpayment within ninety (90) calendar days of determining that the provider has received an overpayment and after making a reasonable effort, as determined by the Agency, the coalition shall provide all information necessary for the Agency to act to collect the overpayment. The Agency retains the ability to require the coalition to make continued efforts toward recovery of the overpayment or to consider the overpayment to be a disallowed expenditure of the coalition.

Rulemaking Specific Authority 1002.79(2) FS. Law Implemented 1002.71(6)(d) FS. History--New 8-17-06, Amended 5-24-07,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kristin R. Harden

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Cynthia R. Lorenzo

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 20, 2009