

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER26-3 AIDS Drug Assistance Program (ADAP)

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Ryan White Grant program is a voluntary federal program that issues grant monies to states for HIV/AIDS prevention and treatment. There is no state statute compelling the Department to participate in that grant program nor is there any federal requirement that the Department participate. The Department has, however, applied for the grant as part of the Department's broad authority to implement programs and policies that provide for the prevention and control of communicable diseases. See § 381.0011, Fla. Stat. Specifically, the Department has broad authority and discretion to determine which programs, if any, to implement (and the contours of those programs) for the prevention and control of human immunodeficiency virus infection and acquired immune deficiency syndrome. See § 381.003, Fla. Stat.

That authority and discretion have been exercised, in part, by applying for and administering a federal grant program to provide certain medications to low-income individuals with HIV/AIDS. The program, as implemented by the Department includes, among other things, direct dispense medication and the payment of insurance premiums for full healthcare coverage (not just limited to medication) to certain individuals who qualify under the Department's program parameters. The health insurance has been acquired and provided through the Affordable Care Act (ACA) marketplace exchange.

The federal government implemented enhanced subsidies in 2021 that helped maintain ACA insurance premiums at a certain level. The federal government ended those enhanced subsidies for ACA insurance premiums in 2025. As a result, ACA insurance costs have increased by almost double. Concurrently, the federal government has not increased Ryan White Grant funding to offset the ACA insurance cost increases.

The Department is allotted a finite sum of money under the Ryan White Grant and a much smaller amount of state dollars is allocated yearly by the legislature for this program. The federal government requires that States receiving the grant provide direct dispense medication with the grant money, but it does not require use of grant money for ACA insurance.

If current program eligibility and program parameters are not adjusted, the Department will have insufficient funds such that it could have to terminate all services to all eligible persons. Put more simply, the Department has not been allocated enough money federally or at the state level to continue with the program as-is for the remainder of the calendar year. Approximately 32,000 persons with HIV/AIDS could lose access to some or all medications as a result.

The Department concludes that such a situation would create an immediate danger to the public health, safety, or welfare. Without any continued medication, the viral loads in 32,000 infected persons could elevate and could facilitate transmission of HIV within the state. Accordingly, in an attempt to mitigate that situation, it is necessary to ensure the greatest number of people can receive some direct dispense medication within the constraints of available funding, which is the baseline federal requirement under the grant. Accordingly, the Department must immediately update the program parameters to ensure access to HIV/AIDS Patient Care Programs by those most in financial need of medication. While not all currently eligible persons may receive medication, and while the insurance component of the program will be terminated to achieve these goals, the continuance of direct dispense medication under revised parameters will continue to comply with federal grant requirements, will provide the greatest medical benefit to those in greatest financial need, and will mitigate risk of transmission – all within the constraints of allocated funding.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The program parameters are set by existing rules. The federal enhanced subsidies for ACA insurance ended late 2025. The Department is engaged in non-emergency rulemaking procedures to ensure public participation in the rulemaking process. However, that legislatively established process will take too long to immediately address the consequences from the lack of adequate funding. There is no other feasible mechanism under the Administrative Procedure Act to revise the existing program parameters other than an emergency rule that modifies existing rules.

SUMMARY: The emergency rule updates the eligibility requirements for AIDS Drug Assistance Programs.
THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Amber Pepe at amber.pepe@flhealth.gov or (850)901-6953.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER26-3 (64D-4.007) AIDS Drug Assistance Program (ADAP).

(1) No change

(2) To receive ADAP Program for Medication Co-Payment and Medication Deductibles Premium Plus Insurance Program benefits, individuals participants must be deemed eligible according to subsection (1), ~~above~~, and use an ADAP contracted pharmacy(ies) to receive medication co-payment and/or assistance with medication deductibles.

~~(a) Use the ADAP contracted insurance benefits manager to enroll in an ADAP approved plan to receive insurance premium assistance.~~

~~(b) Need insurance policy pharmaceutical coverage to the extent that payment cannot be made or cannot reasonably be expected to be made by another payer source.~~

~~(c) Use an ADAP contracted pharmacy(ies) to receive premium assistance, medications co-payment and/or deductible.~~

~~(3) To receive ADAP insurance benefits for plans purchased through the federally facilitated Marketplace, participants must be deemed eligible according to subsection (1) above; meet the ADAP Premium Plus Insurance Program requirements in subsection (2) above; and comply with the following requirements:~~

~~(a) Determination of available subsidies must be requested when submitting a Marketplace application. If an individual qualifies for a premium tax credit, the individual must select the advanced premium tax credit that is paid directly to the insurance provider.~~

~~(b) All supporting documentation submitted to the Marketplace as part of the application and/or enrollment process must also be submitted to ADAP.~~

(3) Individuals previously deemed eligible and currently enrolled in ADAP who do not meet the definition of “low-income” in Emergency Rule 64DER26-1, F.A.C., are no longer eligible and are terminated effective March 1, 2026.

(4) The ADAP Premium Plus Insurance Program is terminated effective March 1, 2026.

Rulemaking Authority 381.0011(2), 381.003(2) FS. Law Implemented 381.0011, 381.003(1)(b) FS. History—New 7-4-16, Amended 4-5-21, 11-1-22, _____.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: February 24, 2026

64DER26-1 (64D-4.002) Definitions.

For the purpose of Emergency Rules 64DER26-2 and 64DER26-3, the words and phrases below are defined as follows:

(1) “Federal Poverty Level” – the poverty income guidelines (effective January 2026) as published by the U.S. Department of Health and Human Services, which is incorporated by reference and available at <https://www.floridahealth.gov/wp-content/uploads/2026/02/FPL-2026-FederalRegister.pdf>.

(2) “Household Income” – income from all sources received by the applicant, the applicant’s spouse (if married), anyone who lives with the applicant who the applicant can claim as a dependent on their taxes, and anyone who lives with the applicant and claims the applicant as a dependent on their taxes.

(3) “Household Size” – the number of persons in an applicant’s household, which includes the applicant, the applicant’s spouse (if married), all persons the applicant could claim as dependents on their taxes, and anyone living with the applicant who could claim the applicant as a dependent on their taxes.

(4) “HIV/AIDS Patient Care Programs” – include the following programs:

(a) Ryan White Part B Consortia Program, a federal grant program authorized by 42 U.S.C. §300ff-23, that assesses the service needs of persons living with HIV/AIDS in an area that received Ryan White Part B funding, and secures providers to deliver the needed core medical and support services based on available funding;

(b) Ryan White Part B AIDS Drug Assistance Program (ADAP), a federal grant program that provides medications to uninsured or underinsured individuals living with HIV/AIDS disease, authorized under 42 U.S.C. §300ff-26. Services are provided through the distribution of medications directly to eligible individuals;

(c) ADAP Program for Medication Co-Payment and Medication Deductibles, a component of ADAP designed to assist eligible individuals, as defined in Emergency Rule 64DER26-3, F.A.C., who have insurance and need assistance with medication copays, and/or medication deductibles; and

(d) HIV/AIDS patient care programs provided by the patient care networks, as defined in rule 64D-2.001, F.A.C., and county health departments as administered by the Florida Department of Health, Bureau of Communicable Diseases.

(5) State Housing Opportunities for Persons with AIDS (HOPWA) Program, as defined by 24 C.F.R. Part 574 (04/01/13), a housing program, funded by the U.S. Department of Housing and Urban Development and administered by the state, that is intended to prevent the condition of homelessness from occurring to individuals or families living with HIV/AIDS; or if already homeless, to transition the individuals or families back into stable housing as soon as possible, as well as to create a strategy for long-term housing stability for persons living with HIV/AIDS. The program funds short-term rent, mortgage and utility assistance, permanent housing placement, transitional housing, resource identification and case management.

(6) “Low Income” – is defined as follows:

(a) For ADAP, adjusted gross household income at or below 130 percent of the Federal Poverty Level.

(b) For ADAP Program for Medication Co-Payment and Medication Deductibles, adjusted gross household income at or below 400 percent of the Federal Poverty Level.

(c) For HOPWA, 80 percent of a county’s median income, as defined by the U.S. Department of Housing and Urban Development, County Income Limits 2025, effective April 01, 2025, which is incorporated by reference and is available at https://www.floridahealth.gov/wp-content/uploads/2026/02/Median-County-Income_2025.pdf.

(d) For all other HIV/AIDS Patient Care Programs under paragraphs 64DER26-1(4)(a) and (d), F.A.C., adjusted gross household income at or below 400 percent of the Federal Poverty Level.

(7) “Notice of Eligibility” – a document issued by the department or a contractor or subcontractor of the department that indicates an individual meets the eligibility requirements to receive allowable Ryan White services, as stated in Emergency Rule 64DER26-2, F.A.C., and that lists, at a minimum, the individual’s name, address, household size and income, which must meet the definition of low income.

Rulemaking Authority 381.0011(2), 381.003(2) FS. Law Implemented 381.0011, 381.003(1)(b) FS. History–New 1-23-07, Amended 8-31-07, 3-21-08, 10-27-08, 3-30-09, 7-4-16, 5-5-21, 10-12-22, 2-24-26.

64DER26-2 (64D-4.003) Eligibility and Documentation Requirements.

Only an individual seeking assistance, or their court-appointed representative, legal representative, or legal guardian seeking assistance on their behalf, may apply for services. Program enrollment and services are subject to available funding. An applicant for HIV/AIDS Patient Care and/or HOPWA Programs is eligible to be linked to services based on a preliminary positive HIV test result from a test approved by the Food and Drug Administration to determine the presence of HIV infection. For this rule, linkage to service is defined as referring the applicant to eligibility determination and counseling services and the scheduling of medical appointments. To be considered eligible for an HIV/AIDS Patient Care and/or HOPWA Program an applicant:

(1) Must have a positive test result from a test approved by the Food and Drug Administration to determine the presence of HIV infection.

(2) Must be living in Florida which may be documented by providing one of the following: current state or local Florida photo identification; utility bill, with name and street address; housing, rental or mortgage agreement in client's name; recent school records; bank statement, with name and street address; letter from person with whom the applicant resides; property tax receipt or W-2 form for previous year; unemployment document with street address; current voter registration card; official correspondence, postmarked in last 3 months; prison records, if recently released; current documentation from the Florida Medicaid Managed Information System (FLMMIS) or the Medical Eligibility Verification System (MEVSNET) showing that the applicant is currently receiving Medicaid or assistance from the Supplemental Nutritional Assistance Program (SNAP), formally known as food stamps; Florida Department of Corrections offender search website photo print out; or a Declaration of Domicile, as per section 222.17, F.S. If homeless: a statement from the shelter in which the applicant resides or visits; physical observation of location of residence by eligibility staff; a written statement from the applicant describing living circumstances may be used, signed and dated by the applicant. Eligibility staff may provide assistance with writing the statement; or a statement from a social service agency attesting to the homeless status of the applicant.

(3) Cannot be receiving the same services or be eligible to participate in local, state, or federal programs where the same type service is provided or available.

(4) Must have low-income, which must be verified through the provision of W2s, tax returns, pay stubs, documentation of unemployment, or Medicaid award documentation.

(5) Must submit a completed and signed Application to Receive Allowable Services, DH8028-DCHP-02/2026 (eff. 02/2026), which is incorporated by reference and available at https://www.floridahealth.gov/wp-content/uploads/2026/02/DH8028-DCHP-02.2026_ER-application.pdf, be willing to cooperate with eligibility staff during the eligibility process, and comply with the Rights and Responsibilities stated in the application.

(6) Must have their eligibility confirmed every 366 days or at shorter intervals if the individual's income or other factors change. To avoid a lapse in eligibility, individuals may confirm eligibility up to 45 days before the expiration of their Notice of Eligibility.

Rulemaking Authority 381.0011(2), 381.003(2) FS. Law Implemented 381.0011, 381.003(1)(b) FS. History--New 1-23-07, Amended 10-27-08, 7-4-16, 10-12-22, 2-24-26.

64DER26-3 (64D-4.007) AIDS Drug Assistance Program (ADAP).

(1) To participate in the AIDS Drug Assistance Program an individual must be determined eligible as defined in Rule 64D-4.003, F.A.C.

(2) To receive ADAP Program for Medication Co-Payment and Medication Deductibles benefits, individuals must be deemed eligible according to subsection (1) and use an ADAP contracted pharmacy(ies) to receive medication co-payment and/or assistance with medication deductibles.

(3) Individuals previously deemed eligible and currently enrolled in ADAP who do not meet the definition of “low-income” in Emergency Rule 64DER26-1, F.A.C., are no longer eligible and are terminated effective March 1, 2026.

(4) The ADAP Premium Plus Insurance Program is terminated effective March 1, 2026.

Rulemaking Authority 381.0011(2), 381.003(2) FS. Law Implemented 381.0011, 381.003(1)(b) FS. History—New 7-4-16, Amended 4-5-21, 11-1-22, 2-24-26.