




State of Florida
Department of Children and Families

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Governor

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DATE: November 25, 2013

TO: Drew Parker
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FROM: Kelly McGrath 
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SUBJECT: Effect of Chapter 2013-178, Laws of Florida, on the Department's foster and group home licensing rules

Question presented:

What effect does Chapter 2013-178, Laws of Florida, have on the Department's foster and group home licensing rules contained in Chapters 65C-13 and 14, Florida Administrative Code?

Brief Answer:

The amended and created statutes in Chapter 2013-178, Laws of Florida, take precedence over the licensing rules contained in Chapters 65C-13 and 14, Florida Administrative Code. A statute takes precedence over a rule. *Willette v. Air*, 700 So.2d 397 (Fla. 1st DCA 1997). The Department must follow the statutory language even if a rule is silent on the issue. However, the rules should be amended to reflect statutory changes to Chapters 39 and 409, Florida Statutes.

Background:

Statutes

Currently, the Department may assist the young adult formerly in foster care with stipends for tuition assistance, emergency assistance to avoid homelessness, and other services related to the transition to adulthood. These programs, such as the Road-to-Independence Program under section 409.1451, Florida Statutes, allow for the young adult to remain in the supervised living arrangement under certain circumstances.

The Nancy C. Detert Common Sense and Compassion Independent Living Act ("Act"), Chapter 2013-178, Laws of Florida, includes expanding foster care and services to

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eligible young adults between eighteen and twenty-one years of age (twenty-two if the young adult has a disability). Young adults eligible for these programs include children who have not achieved permanency and are living in licensed care on their eighteenth birthday. The Act encourages stability for the young adult and section 12 of the Act states:

Effective January 1, 2014, a child or young adult who is a participant in the program shall transfer to the program services provided in this act, and his or her monthly stipend may not be reduced, the method of payment of the monthly stipend may not be changed, **and the young adult may not be removed to change his or her living arrangement. These conditions shall remain in effect for a child or young adult until he or she ceases to meet the eligibility requirements under which her or she entered the Road-to-Independence Program.** A child or young adult applying or reapplying for the Road-to-Independence Program on or after January 1, 2014, may apply for the program services only as provided in this act.

Chapter 2013-178, Laws of Florida. (Emphasis added).

Rules

Chapters 65C-13 and 14, Florida Administrative Code, which implement section 409.175, Florida Statutes, provide licensure rules for entities providing supervised living arrangements, such as foster homes or group homes, for children under the care or custody of the Department. Currently, these rules contain requirements for the number of children in a supervised living arrangement, staff training specifications, emergency preparedness, as well as other safety and welfare requirements. The licensing rules, which were adopted prior to the Act, do not speak to the issue of supervised living arrangements for eligible young adults.

However, Rule 65C-31.002, Florida Administrative Code, which implements section 409.1451, Florida Statutes, the Road-to-Independence program and other services for young adults, provides some licensing guidance. The rule states that young adults are permitted to live in licensed care beyond 18 and that the young adult will not count towards licensing restrictions on the number of children in the home:

(7) Selection of Placements for Young Adults Formerly in Foster Care. Prior to his or her 18th birthday, each young adult formerly in foster care shall choose the placement that best suits his or her needs. The services worker assigned to work with a young adult shall provide information to the young adult so as to assist in the best decision making.

(a) **If the young adult elects to reside in the same or different licensed placement after reaching age 18**, the services worker assigned to work with the young adult shall assist both the placement provider and the young adult understand the roles and the responsibilities of continuing this placement after the young adult's eighteenth birthday.

(b) **A young adult who continues with the foster family shall not be**

included as a child in calculating any licensing restriction on the number of children in the foster home.

Fla. Admin. Code R. 65C-31.002. (Emphases added). This rule works in concert with the licensing rules in Chapters 65C-13 and 14, Florida Administrative Code.

Analysis:

A statute takes precedence over a rule. *Willette v. Air*, 700 So.2d 397 (Fla. 1st DCA 1997). Pursuant to the Act, certain young adults will be permitted to reside in supervised living arrangements as of January 1, 2014. The fact that the rules regulating supervised living arrangements fail to address the inclusion of young adults is not dispositive of whether the licensee is allowed to provide the young adult with a supervised living arrangement. A statute takes precedence over a rule. To the extent that section 409.175, Florida Statutes, doesn't include eligible young adults in Rule 65C-13.030, Florida Administrative Code, the statute controls.

Here, the Act allows for certain young adults to remain in supervised living arrangements. The licensing rules related to this care will implicitly include the eligible young adults because the statutes take precedence over the rules.

At least one court has addressed analogous facts. In *Cleveland v. Dept. of Children and Families*, 868 So.2d 1227 (Fla. 1st DCA 2004), the Department denied a grandmother's application for relative-caregiver benefits due to its interpretation of a rule related to eligibility requirements. The rule, adopted prior to the amendment of section 39.5085, Florida Statutes, had not subsequently been amended to conform to the amended statute. The amended statute included long-term caregivers, such as the grandmother, in the relative-caregiver program.

The Court determined that the Department's interpretation of the rule was clearly at odds with the statutory language. It was rejected, and the Court held that the grandmother satisfied all statutory criteria for eligibility in the relative-caregiver benefits program.

Conclusion

Based on precedent and the analogous *Cleveland* case, the Department should allow licensed entities to provide supervised living arrangements for eligible young adults. The statutory changes to Chapters 39 and 409, Florida Statutes, require amendments to the rules implementing those statutes. However, a statute ultimately controls over a rule.